

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6

FILED

2015 JUL 30 AM 9:15

IN THE MATTER OF

Performance Energy Resources, LLC
Barnsdall, OK

Respondent

§ DOCKET NO. SDWA-06-2015-1140
§
§
§ Proceeding to Assess a
§ Civil Penalty under Section 1423(c)
§ of the Safe Drinking Water Act
§
§ ADMINISTRATIVE COMPLAINT

I. STATUTORY AUTHORITY

This Complaint is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") pursuant to Section 1423(c) of the Safe Drinking Water Act ("the Act"), 42 U.S.C. § 300h-2(c). The Administrator of EPA delegated the authority to issue this Complaint to the Regional Administrator of EPA Region 6 ("RA"), who delegated the authority to the Director of the Compliance Assurance and Enforcement Division of EPA Region 6 ("Complainant"). This Complaint is issued in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," 40 C.F.R. §§ 22.1 through 22.52, including Rules related to administrative proceedings not governed by Section 554 of the Administrative Procedure Act, 40 C.F.R. §§ 22.50 through 22.52.

EPA has primary enforcement responsibility for underground injection within the meaning of Section 1422(c) of the Act, 42 U.S.C. § 300h-1(c), to ensure that owners or operators of Class II injection wells within Osage County, Oklahoma, comply with the requirements of the Act.

Based on the following Findings of Fact and Conclusions of Law ("Findings"), Complainant finds that Performance Energy Resources, LLC ("Respondent") violated the Act and the regulations promulgated under the Act and should be ordered to pay a civil penalty.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is a corporation doing business in the State of Oklahoma, and as such, Respondent is a “person,” as that term is defined at Section 1401(12) of the Act, 42 U.S.C. § 300f(12).

2. At all relevant times, Respondent owned or operated an “injection well” which is an “existing Class II well” as those terms are defined at 40 C.F.R. § 147.2902. The injection well is identified as well number 5 (“well”). The well is also identified by EPA inventory number OS4923, and is located in the Northwest Quarter of Section 02, Township 26 North, Range 11 East, Big Horse District Field, in Osage County, Oklahoma.

3. Because Respondent owned or operated an injection well, Respondent is subject to underground injection control (“UIC”) program requirements at 40 C.F.R. Part 147, Subpart GGG, which are authorized under Section 1421 of the Act, 42 U.S.C. § 300h.

4. Regulations at 40 C.F.R. § 147.2903(a) require that any underground injection is prohibited except as authorized by rule or authorized by a permit issued under the UIC program. The construction or operation of any well required to have a permit is prohibited until the permit has been issued. The term “permit” is defined at 40 C.F.R. § 147.2902.

5. Regulations at 40 C.F.R. § 147.2909 provide that existing injection wells (wells authorized by the Bureau of Indian Affairs and constructed or completed on or before the effective date of the Osage UIC program) are authorized by rule. Owners or operators of wells authorized by rule must comply with provisions of 40 C.F.R. §§ 147.2903, 147.2905, 147.2907, and 147.2910 through 147.2915.

6. Well No. 5 is authorized by rule in accordance with 40 C.F.R. § 147.2909.

7. Regulations at 40 C.F.R. § 147.2912(a) require each well authorized by rule to have mechanical integrity. A well has mechanical integrity if there are no significant leaks in the casing, tubing, or packer and there is no significant fluid movement into an “Underground Source of Drinking Water” (“USDW”) through vertical channels adjacent to the well bore. The term USDW is defined at 40 C.F.R. § 147.2902.

8. Regulations at 40 C.F.R. § 147.2905 require an injection well to be plugged within one year after termination of injection. The RA may extend the time to plug if no fluid movement into a “USDW” will occur and the operator has presented a viable plan for utilizing the well within a reasonable time. Regulations at 40 C.F.R. § 147.2905 also set out administrative and technical requirements to be followed when plugging an injection well.

9. July 3, 2012, and February 27, 2013, Mechanical Integrity Test (“MIT”) reports show the well failed to demonstrate mechanical integrity. The February 27, 2013 inspection report also shows the Respondent declared plans to convert “the well” to production.

10. EPA’s August 7, 2013 letter notified Respondent that “the well” was overdue for plugging.

11. On April 23, 2014, an EPA representative inspected “the well” and observed that Respondent was using Well No. 5 for underground injection of fluids.

12. On September 10, 2014, EPA issued an Administrative Compliance Order, SDWA-06-2014-1112 (“AO”), to Respondent for violations related to maintaining and operating “the well” in a manner that may contaminate USDWs.

13. Respondent’s October 9, 2014 response to the “AO” indicated plans for future use. EPA’s November 14, 2014 letter approved Respondent’s plan to repair, achieve mechanical integrity, and operate the well as an injector.

14. On January 12, 2015, EPA made final the "AO" issued to the Respondent on September 10, 2014.

15. A March 10, 2015 inspection report indicates the well was not plugged, the fluid level in the well tubing and annulus was equalized within fifty feet of the lower zone of the USDW, the well was not connected, or injecting, and Respondent has not completed an MIT.

16. On June 18, 2015, Respondent submitted plans to plug and abandon "the well."

17. Therefore, Respondent violated regulations at 40 C.F.R. §§ 147.2905, 147.2909 and 147.2912(a)(1), by failing to properly plug and abandon Well No. 5 and operate it without mechanical integrity of the casing, tubing, and packer. Respondent also failed to comply with an EPA issued final enforcement action.

III. PROPOSED PENALTY

18. Based on the foregoing findings, and pursuant to the authority of Section 1423(c) of the Act, 42 U.S.C. § 300h-2(c), EPA Region 6 hereby proposes to assess against Respondent a penalty of \$ 9,100.00.

19. The proposed penalty amount has been determined based on the statutory factors specified in Section 1423(c)(4)(B) of the Act, 42 U.S.C. § 300h-2(c)(4)(B), which include such factors as the seriousness of the violation; the economic benefit resulting from the violation; any history of such violations; any good-faith efforts to comply with the applicable requirements; the economic impact of the penalty on the violator; and such other matters as justice may require.

IV. COMPLIANCE ORDER

20. Based on the foregoing findings, and pursuant to the authority of Section 1423(c) of the Act, 42 U.S.C. § 300h-2(c), EPA Region 6 hereby orders Respondent to:

- a. Plug Well No. 5 according to regulations at 40 C.F.R. § 147.2905 by October 31, 2015, or
- b. Convert Well No. 5 to production use by October 31, 2015, or
- c. If you have plans to use Well No. 5 for fluid injection in the future, apply for an EPA UIC Injection Permit.

21. Corrective action specified in paragraph 14 of this Order shall be considered complete when Respondent submits a report of work completed to the Bureau of Indian Affairs and EPA and EPA notifies Respondent in writing that the work is satisfactory.

V. FAILURE TO FILE AN ANSWER

22. If Respondent wishes to deny or explain any material allegation listed in the above Findings or to contest the amount of the penalty proposed, Respondent must file an Answer to this Complaint within thirty (30) days after service of this Complaint whether or not Respondent requests a hearing as discussed below.

23. The requirements for such an Answer are set forth at 40 C.F.R. § 22.15 (copy enclosed). Failure to file an Answer to this Complaint within thirty (30) days of service of the Complaint shall constitute an admission of all facts alleged in the Complaint and a waiver of the right to a hearing. Failure to deny or contest any individual material allegation contained in the Complaint will constitute an admission as to that finding or conclusion under 40 C.F.R. § 22.15(d).

24. If Respondent does not file an Answer to this Complaint within thirty (30) days after service of this Complaint, a Default Order may be issued against Respondent pursuant to 40 C.F.R. § 22.17. A Default Order, if issued, would constitute a finding of liability, and could

make the full amount of the penalty proposed in this Complaint due and payable by Respondent without further proceedings thirty (30) days after a final Default Order is issued.

25. Respondent must send its Answer to this Complaint, including any request for hearing, and all other pleadings to:

Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

26. The Answer must be signed by Respondent, Respondent's counsel, or other representative on behalf of Respondent and must contain all information required by 40 C.F.R. §§ 22.05 and 22.15, including the name, address, and telephone number of Respondent and Respondent's counsel. All other pleadings must be similarly signed and filed.

Complainant has specified that the administrative procedures specified in 40 C.F.R. Part 22, Subpart I, shall apply to this matter, and the administrative proceedings shall not be governed by Section 554 of the Administrative Practice Act.

VI. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

27. Respondent may request a hearing to contest the issuance of this Complaint or to contest the appropriateness of the amount of the penalty, pursuant to Section 1423(c)(3)(A) of the Act, 42 U.S.C. § 300h-2(c)(3)(A). The procedures for hearings are set out at 40 C.F.R. Part 22 (copy enclosed), including 40 C.F.R. §§ 22.50 through 22.52.

28. Any request for hearing should be included in an Answer to this Complaint; however, as discussed above, Respondent must file an Answer meeting the requirements of 40 C.F.R. § 22.15 in order to preserve the right to a hearing or to pursue other relief.

29. Should a hearing be requested, members of the public who commented on the issuance of this Complaint during the public comment period would have a right to be heard and to present evidence at a hearing under Section 1423(c)(3)(C) of the Act, 42 U.S.C. § 300h-2(c)(3)(C).

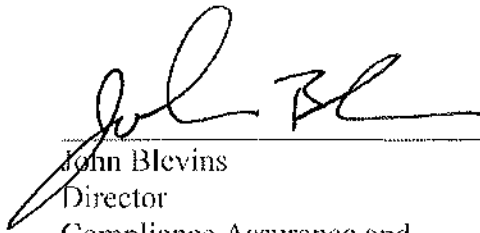
VII. SETTLEMENT

30. EPA encourages all parties against whom civil penalties are proposed to pursue the possibility of settlement through informal meetings with EPA. Regardless of whether a formal hearing is requested, Respondent may confer informally with EPA about the alleged violations or the amount of the proposed penalty. Respondent may wish to appear at any informal conference or formal hearing personally, by counsel or other representative, or both. To request an informal conference on the matters described in this Complaint, please contact Mr. David Aguinaga, of my staff, at 214-665-6439.

31. If this action is settled without a formal hearing and issuance of an opinion by the Presiding Officer pursuant to 40 C.F.R. § 22.27, this action will be concluded by issuance of a Consent Agreement and Final Order ("CAFO") pursuant to 40 C.F.R. § 22.18(b). The issuance of a CAFO would waive the Respondent's right to a hearing on any matter stipulated to therein or alleged in the Complaint. Any person who commented regarding this Complaint would be notified and given an additional thirty (30) days to petition EPA to set aside any such CAFO and to hold a hearing on the issues raised in the Complaint. Such a petition would be granted and a hearing held only if the evidence presented by the petitioner's comment is material and was not considered by EPA in the issuance of the CAFO.

32. Neither assessment nor payment of a penalty in resolution of this action will affect Respondent's continuing obligation to comply with all requirements of the Act, the applicable regulations and permits, and any separate Compliance Order issued under Section 1423(c) of the Act, 42 U.S.C. § 300h-2(c), including one relating to the violations alleged herein.

7.29.15
Date



John Blevins
Director
Compliance Assurance and
Enforcement Division

CERTIFICATE OF SERVICE

I certify that the foregoing Complaint was sent to the following persons, in the manner specified, on the date below:

Original hand-delivered: Regional Hearing Clerk (6RC-D)
 U.S. EPA, Region 6
 1445 Ross Avenue, Suite 1200
 Dallas, TX 75202-2733

Copy by certified mail Performance Energy Resources, LLC
return receipt requested: P.O. Box 628
 Barnsdall, OK 74002

Copy: Bureau of Indian Affairs, Osage Agency
 P.O. Box 1539
 Pawhuska, OK 74056

 Osage Nation ENR Department
 100 W. Main St., Ste. 304
 Pawhuska, OK 74056

Copy hand-delivered: Office of Regional Counsel
 U.S. EPA, Region 6
 1445 Ross Avenue, Suite 1200
 Dallas, TX 75202-2733

Dated: Jul 30 2015

