



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

Ref: 8ENF-L

SEP 30 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Thomas C. Jepperson
Registered Agent
QEP Energy Company
180 East 100 South
Salt Lake City, UT 84145-0433

Re: Administrative Complaint under the Safe
Drinking Water Act; Uintah Basin
underground injection wells.

Dear Mr. Jepperson:

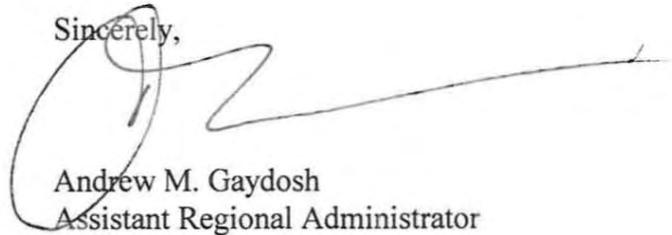
Enclosed is a complaint (a proposed order and notice of opportunity for hearing), with two accompanying documents, issued against QEP Energy Company for violations of the Safe Drinking Water Act having to do with the operation of underground injection wells located in various areas of the greater Uintah Basin.

This action proposes ordering QEP to perform various actions to attain compliance and assessing a penalty of \$89,798. Information on how and when to contest the facts or proposed penalty is contained in the complaint. **Please note that there is a 30 day time period by which you must either resolve the matter or act to contest the contents of the complaint.**

Also note that under the Rules of Practice, you may just send in a check for that amount to settle the proceeding, without the need for a settlement agreement, once the required public notice period has occurred. 40 C.F.R. §§ 22.18; 22.45. A sheet with payment instructions is enclosed.

Thank you for your cooperation. For further questions or discussion, please contact David J. Janik, the enforcement attorney for this at 303.312.6917, in writing at the address on the letterhead above, or via e-mail at janik.david@epa.gov.

Sincerely,



Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance &
Environmental Justice

Enclosures (complaint, 40 CFR part 22, payment instructions)

cc: (with enclosures)

Frances Poowegup, Vice Chairwoman
Uintah & Ouray Business Committee
Ute Tribe
P.O. Box 190
Fort Duchesne, Utah 84026

Curtis Cesspooch, Councilman
Uintah & Ouray Business Committee
Post Office Box 190
Fort Duchesne, Utah 84026

Irene Cuch, Councilwoman
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Richard Jenks, Jr., Councilman
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Phillip Chimburas, Councilman
Uintah & Ouray Business Committee
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Mike Natchees, Environmental Coordinator
Ute Tribe
P.O. Box 460
Fort Duchesne, Utah 84026

Manual Myore, Energy, Minerals and Air Director
Ute Tribe
P.O. Box 70
Fort Duchesne, Utah 84026

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY 2010 SEP 30 PM 2:05
REGION 8
Docket No. **SDWA-08-2010-0085**

FILED
EPA REGION VIII
HEARING CLERK

In the Matter of:)
)
QEP Energy Company,) **PENALTY COMPLAINT, PROPOSED**
Respondent.) **ORDER AND NOTICE OF OPPORTUNITY**
) **FOR HEARING (COMPLAINT)**

INTRODUCTION

1. This civil administrative enforcement action is authorized by Congress in section 1423(c) of the Public Health Service Act, also known as the Safe Drinking Water Act (SDWA or the Act). 42 U.S.C. 300h-2(c). The Environmental Protection Agency (EPA) has promulgated regulations to implement the statute, 40 CFR part 144, and violations of the statute, permits or regulations constitute violations of the Act. The rules for this proceeding are the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits (Rules of Practice)," 40 CFR part 22, a copy of which is enclosed.
2. The regulations at 40 CFR part 22, subpart I, apply to this complaint.
3. The undersigned EPA official has been properly delegated the authority to issue this complaint.
4. EPA alleges that QEP Energy Company (Respondent) has violated the Act and proposes the assessment of a civil penalty and compliance measures, as more fully explained below.

NOTICE OF OPPORTUNITY FOR A HEARING

5. Respondent has the right to a public hearing before an administrative law judge to disagree with any factual allegation made by EPA in the complaint or the appropriateness of the proposed penalty, or to present the grounds for any legal defense it may have. To disagree with the complaint and assert your right to a hearing, Respondent must file a written answer (and one copy) with the Regional Hearing Clerk (8RC), 1595 Wynkoop, Denver, Colorado 80202 within 30 days of receipt of this complaint. 40 CFR §22.15 (a). The answer must clearly admit, deny or explain the factual allegations of the complaint, the grounds for any defense, the facts you may dispute, and your specific request for a public hearing. Please see section 22.15 of the Rules of Practice for a complete description of what must be in the answer.

FAILURE TO FILE AN ANSWER AND REQUEST FOR HEARING WITHIN 30 CALENDAR DAYS MAY WAIVE RESPONDENT'S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR PROPOSED PENALTY, AND RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF THE PENALTY PROPOSED IN THE COMPLAINT, OR UP TO THE MAXIMUM AUTHORIZED BY THE ACT.

QUICK RESOLUTION

6. Respondent may resolve this proceeding at any time by simply paying the amount proposed in the complaint, provided that Respondent is presently in full compliance on the matters described below. Such payment need not contain any response to, or admission of, the allegations in the complaint, and it constitutes a waiver of Respondent's right to contest the allegations and to appeal the final order. See section 22.18 of the Rules of Practice for a full explanation of the quick resolution process, including the method for seeking an extension of the time to file an answer.

SETTLEMENT NEGOTIATIONS

7. EPA encourages discussing whether cases can be settled through informal settlement conferences. If you want to pursue the possibility of settling this matter, or have any other questions, contact David J. Janik, Senior Enforcement Attorney, at 303.312.6917 or janik.david@epa.gov. **Please note that contacting EPA or requesting a settlement conference does NOT delay the running of the 30 day period for filing an answer and requesting a hearing.**

GENERAL ALLEGATIONS

The following general allegations apply to all times relevant to this action, and to each count of this complaint:

8. EPA has the authority to enforce the requirements of the underground injection control (UIC) program, found at 40 CFR parts 124, 144, 146, 147, and 148, for the wells referred to in this complaint.
9. For Class II underground injection wells, EPA regulations, at 40 CFR §144.28 (f)(2), or the well permits, at 40 CFR § 144.51(q)(1), require operators to establish and maintain mechanical integrity, as defined in the regulations, until the well is properly plugged and abandoned.
10. Respondent has had Class II underground injection wells lacking mechanical integrity listed in this complaint that were not properly plugged and abandoned.
11. For Class II wells that are not used for two years, EPA regulations, at 40 CFR § 144.28 (c)(2)(iv), or the well permits, at 40 CFR § 144.52(a)(6), require that operators must properly plug and abandon the wells, unless the operator satisfactorily describes to EPA other actions or procedures that would be protective of underground sources of drinking water (USDWs).

Count 6-7 (Red Wash well RW #43-22A; EPA ID # UT20000-02414)

27. This well lost mechanical integrity in November of 2005 and remained unrepaired until it was plugged and abandoned by Respondent in March of 2008.
28. Respondent's failure to maintain mechanical integrity of this well, as required by 40 CFR §144.28 (f)(2), constitutes a violation of section 1423 of the Act, 42 U.S.C. § 300h-2.
29. Respondent's failure to plug and abandon this well, as required by 40 CFR § 144.28 (c)(2)(iv), constitutes a separate violation of section 1423 of the Act, 42 U.S.C. § 300h-2.

Count 8 (Wonsits Valley well WV # 21; EPA ID # UT20000-02471)

30. This well lost mechanical integrity in August of 2008 and remained unrepaired until it was plugged and abandoned by Respondent in December of 2009.
31. Respondent's failure to maintain mechanical integrity of this well, as required by 40 CFR §144.28 (f)(2), constitutes a violation of section 1423 of the Act, 42 U.S.C. § 300h-2.

Count 9 (Wonsits Valley well WV # 73; EPA ID # UT20000-02502)

32. This well lost mechanical integrity in March of 2008 and has not been used for injection since that time.
33. Respondent's failure to maintain mechanical integrity of this well, as required by 40 CFR §144.28 (f)(2), constitutes a violation of section 1423 of the Act, 42 U.S.C. § 300h-2.
34. Respondent's failure to plug and abandon this well, as required by 40 CFR § 144.28 (c)(2)(iv), constitutes a separate violation of section 1423 of the Act, 42 U.S.C. § 300h-2.

Count 10 (Gypsum Hills well GH # 6; EPA ID # UT20760-04242)

35. This well has not been used for injection since December of 2006.
36. Respondent was required to either properly plug and abandon this well or demonstrate its non-endangerment to USDWs by December of 2008.
37. Respondent demonstrated its non-endangerment to USDWs in June of 2009.
38. This well has not been plugged and abandoned.
39. Respondent's failure to plug or abandon this well or demonstrate its non-endangerment by December 2008, as required by 40 CFR § 144.52 (a)(6), constitutes a violation of section 1423 of the Act, 42 U.S.C. § 300h-2

Count 11-12 (Red Wash well RW # 34-22A; EPA ID # UT20812-04348)

40. This well lost mechanical integrity in May of 2005.
41. This well has not been used for injection since May of 2005.
42. This well has not been plugged and abandoned.
43. Respondent's failure to maintain mechanical integrity of this well, as required by 40 CFR §144.51 (q)(1), constitutes a violation of section 1423 of the Act, 42 U.S.C. § 300h-2.
44. Respondent's failure to plug and abandon this well, as required by 40 CFR § 144.52 (a)(6), constitutes a separate violation of section 1423 of the Act, 42 U.S.C. § 300h-2

Count 13 (Red Wash well RW #41-14B; EPA ID # UT20000-02441)

45. This well has not been used for injection since January of 2006.
46. Respondent was required to either properly plug and abandon this well or demonstrate its non-endangerment to USDWs by January of 2008.
47. Respondent demonstrated its non-endangerment to USDWs in June of 2009.
48. This well has not been plugged and abandoned.
49. Respondent's failure to plug or abandon this well or demonstrate its non-endangerment by January 2008, as required by 40 CFR § 144.28 (c)(2)(iv), constitutes a violation of section 1423 of the Act, 42 U.S.C. § 300h-2

Count 14 (Wonsits Valley well WV #78; EPA ID # UT20000-02504)

50. This well has not been used for injection since November of 2005.
51. Respondent was required to either properly plug and abandon this well or demonstrate its non-endangerment to USDWs by November of 2007.
52. Respondent demonstrated its non-endangerment to USDWs in June of 2009.
53. This well has not been plugged and abandoned.
54. Respondent's failure to plug or abandon this well or demonstrate its non-endangerment by November 2007, as required by 40 CFR § 144.28 (c)(2)(iv), constitutes a violation of section 1423 of the Act, 42 U.S.C. § 300h-2

Count 15 (Red Wash well RW # 13-26B; EPA ID # UT20000-02452)

55. The maximum allowable injection pressure for this well is 1936 pounds per square inch (psi).
56. On May 1, 2008, the well was injecting at 1946 psi on the long injection string and 1948 psi on the short injection string.
57. Respondent's exceeding of the maximum allowable pressure for this well, in violation of 40 CFR § 144.28 (f)(6), constitutes a violation of section 1423 of the Act, 42 U.S.C. § 300h-2.

Count 16 (Red Wash well RW # 34-13A; EPA ID # UT20922-04643)

58. The maximum allowable injection pressure for this well is 1855 psi, according to Respondent's permit.
59. On May 20, 2009, the well was injecting at 1862 psi.
60. Respondent's exceeding of the maximum allowable pressure for this well, in violation of the limit established under 40 CFR 144.52(a)(3), constitutes a violation of section 1423 of the Act, 42 U.S.C. § 300h-2.

PROPOSED ORDER WITH ADMINISTRATIVE CIVIL PENALTY

61. The Act, as amended, authorizes the assessment of a civil penalty of up to \$32,500.00 per day for violations that occur on or before January 12, 2009, and up to \$37,500.00 per day for violations that occur thereafter, 42 U.S.C. § 300h-2(b). The Act requires EPA to take

into account the following factors in assessing a civil penalty: the nature, circumstances, extent and gravity of the violations; any economic benefit or savings gained resulting from the violations; Respondent's history of such violations; Respondent's culpability for the violations; Respondent's good-faith efforts to comply with applicable requirements; the economic impact of the penalty on the Respondent; and other factors that justice may require. 42 U.S.C. § 300h-2(c)(4)(B).

62. EPA proposes to order Respondent to complete the following actions, following the requirements of EPA regulations:
- For each well for which Respondent has not maintained mechanical integrity, either repair and demonstrate its mechanical integrity, or properly plug and abandon in accordance with its plan, within 20 days.
 - For each well that has not been used for two years, properly plug and abandon in accordance with its plan or demonstrate its non-endangerment to USDWs, within 20 days.
 - For each well that has injected over the limits established by regulation or permit, immediately cease all injections over the established limits.
63. In light of the statutory factors and the specific facts of this case, EPA proposes a penalty of **\$89,798** for the violations alleged in this complaint. However, the administrative law judge is not bound by EPA's penalty policy or the penalty proposed by EPA, and may assess a penalty different from the proposed amount, up to \$32,500.00, per day for each violation that occurs on or before January 12, 2009, and up to \$37,500.00, per day for each violation thereafter, as authorized in the Act.
64. EPA, in proposing this penalty, considered the following: (a) there are underground sources of drinking water contained in the geologic formations in the area where these wells are located; (b) wells in these types of violation pose elevated risk to underground sources of drinking water; (c) EPA sent nine unique notices of violation to Respondent cumulatively citing these violations 15 times and requesting responses from Respondent; (d) Respondent is a large business; (e) Respondent has had continuous access to these well sites to address the alleged violations; and (f) Respondent's delayed expenditure of funds to address these alleged violations resulted in economic benefit.

Base Gravity

Considering the nature, circumstances, extent and gravity of the violations, the economic impact to the Respondent, and the number and duration of violations, EPA calculated a base penalty as follows:

for loss of mechanical integrity violations:	\$32,250
for failure to plug and abandon or demonstrate non-endangerment violations:	\$33,750, and
for injection pressure exceedance violations:	\$2,250; totaling \$68,250.

Economic Benefit

For these violations Respondent enjoyed and in some instances Respondent continues to enjoy, an economic benefit by not committing expenditures to be in compliance. EPA calculated an economic benefit as follows:

for loss of mechanical integrity violations:	\$22,236,
for failure to plug and abandon or demonstrate non-endangerment violations:	\$5,912, and
for injection pressure exceedance violations:	\$0; totaling \$28,148.

Other Adjustments:

Prior Compliance History

EPA Region 8 has not taken any prior formal enforcement actions against Respondent requiring compliance with the applicable UIC regulations. No adjustment has been made to the penalty owing to any prior compliance history.

Good-Faith Efforts to Comply

Respondent, since summer 2009, has apparently transferred responsibility for tracking UIC well compliance to a single person in the Denver office which has resulted in an increase in Respondent's compliance activities with respect to overdue testing, well repair, and making decisions about well plugging. The base gravity portion of the penalty associated with the loss of mechanical integrity and failure to plug and abandon violations was adjusted downward by 10%, resulting in a **decrease of \$6,600.**

Degree of Culpability

Respondent has had access to all its wells since it bought them and has had control over correcting these violations. EPA has no knowledge that anyone is interfering with this control. No adjustment has been made to the penalty owing to prior compliance history.

Ability to Pay

EPA did not reduce the proposed penalty due to this factor, but will consider any new information Respondent may present regarding Respondent's ability to pay the penalty proposed in this complaint.

Other Matters that Justice may Require

EPA has made no adjustments to the penalty due to this factor.

65. Respondent's payment of the penalty shall be payable to "Treasurer, United States of America" and submitted according to instructions in the enclosed "Collection Information" sheet.

COLLECTION INFORMATION

CHECK PAYMENTS:

**US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000**

WIRE TRANSFERS:

Wire transfers should be directed to the Federal Reserve Bank of New York

Federal Reserve Bank of New York

ABA = 021030004

Account = 68010727

SWIFT address = FRNYUS33

33 Liberty Street

New York NY 10045

Field Tag 4200 of the Fedwire message should read " D 68010727 Environmental Protection Agency "

OVERNIGHT MAIL:

U.S. Bank

1005 Convention Plaza

Mail Station SL-MO-C2GL

St. Louis, MO 63101

Contact: Natalie Pearson

314-418-4087

ACH (also known as REX or remittance express)

Automated Clearinghouse (ACH) for receiving US currency

PNC Bank

808 17th Street, NW

Washington, DC 20074

Contact - Jesse White 301-887-6548

ABA = 051036706

Transaction Code 22 - checking

Environmental Protection Agency

Account 310006

CTX Format

ON LINE PAYMENT:

There is now an On Line Payment Option, available through the Dept. of Treasury. This payment option can be accessed from the information below:

WWW.PAY.GOV

Enter sfo 1.1 in the search field

Open form and complete required fields.

CERTIFICATE OF SERVICE
Docket No. SDWA-08-2010-

I hereby certify that the original and a true copy of the Penalty Complaint, Proposed Order and Notice of Opportunity for Hearing bearing the above-referenced Docket number were hand-carried to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado, and that a true copy of the same was sent via Certified Mail Return Receipt Requested mail to:

Thomas C. Jepperson
Registered Agent
QEP Energy Company
180 East 100 South
Salt Lake City, UT 84145-0433

Dated: 9/30/2010 By: Judith McTernan
Judith McTernan

§21.13

approve or disapprove the State issued statement, in accordance with the requirements of §21.5.

(2) The Regional Administrator will periodically review State program performance. In the event of State program deficiencies the Regional Administrator will notify the State of such deficiencies.

(3) During that period that any State's program is classified as deficient, statements issued by a State shall also be sent to the Regional Administrator for review. The Regional Administrator shall notify the State, the applicant, and the SBA of any determination subsequently made, in accordance with §21.5, on any such statement.

(i) If within 60 days after notice of such deficiencies has been provided, the State has not taken corrective efforts, and if the deficiencies significantly affect the conduct of the program, the Regional Administrator, after sufficient notice has been provided to the Regional Director of SBA, shall withdraw the approval of the State program.

(ii) Any State whose program is withdrawn and whose deficiencies have been corrected may later reapply as provided in §21.12(a).

(g) Funds appropriated under section 106 of the Act may be utilized by a State agency authorized to receive such funds in conducting this program.

§21.13 Effect of certification upon authority to enforce applicable standards.

The certification by EPA or a State for SBA Loan purposes in no way constitutes a determination by EPA or the State that the facilities certified (a) will be constructed within the time specified by an applicable standard or (b) will be constructed and installed in accordance with the plans and specifications submitted in the application, will be operated and maintained properly, or will be applied to process wastes which are the same as described in the application. The certification in no way constitutes a waiver by EPA or a State of its authority to take appropriate enforcement action against the owner or operator of such facilities for violations of an applicable standard.

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION/TERMINATION OR SUSPENSION OF PERMITS

Subpart A—General

- Sec. 22.1 Scope of this part. 22.2 Use of number and gender. 22.3 Definitions. 22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment. 22.5 Filing, service, and form of all filed documents; business confidentiality claims. 22.6 Filing and service of rulings, orders and decisions. 22.7 Computation and extension of time. 22.8 Ex parte discussion of proceeding. 22.9 Examination of documents filed.

Subpart B—Parties and Appearances

- 22.10 Appearances. 22.11 Intervention and non-party briefs. 22.12 Consolidation and severance.

Subpart C—Prehearing Procedures

- 22.13 Commencement of a proceeding. 22.14 Complaint. 22.15 Answer to the complaint. 22.16 Motions. 22.17 Default. 22.18 Quick resolution; settlement; alternative dispute resolution. 22.19 Prehearing information exchange; prehearing conference; other discovery. 22.20 Accelerated decision; decision to dismiss.

Subpart D—Hearing Procedures

- 22.21 Assignment of Presiding Officer; scheduling the hearing. 22.22 Evidence. 22.23 Objections and offers of proof. 22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard. 22.25 Filing the transcript. 22.26 Proposed findings, conclusions, and order.

Subpart E—Initial Decision and Motion to Reopen a Hearing

- 22.27 Initial decision. 22.28 Motion to reopen a hearing.