

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6

FILED

2013 FEB 20 AM 8:37

IN THE MATTER OF

James R. Miller d/b/a Eagle One Oil
Shidler, Oklahoma

Respondent

§ DOCKET NO. SDWA-06-2014-1107
§
§
§ 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 (herein "RA"), who further 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.

The EPA has primary enforcement responsibility for underground injection within the meaning of Section 1422(e) of the Act, 42 U.S.C. § 300h-1(e), 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 James R. Miller, doing business as Eagle One Oil ("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 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 D1 (“Well No. D1”). Well No. D1 is also identified by EPA inventory number OS0801, and is located in the Northeast Quarter of Section 20, Township 29 North, Range 6 East, Frankfort Field, Osage County, Oklahoma.

3. At all relevant times, Respondent owned or operated injection wells which are “new Class II wells” as those terms are defined at 40 C.F.R. § 147.2902. The injection wells are located in Osage County, Oklahoma. Respondent’s new Class II wells included in this Administrative Order (collectively “new wells”) are described below:

Well Inventory		Location				Field	Hereinafter Referred to as
No.	No.	Quarter	Section	Township	Range		
7	OS5549	Northwest	21	28 North	7 East	Foraker	“Well No. 7”
1-B	OS5109	Southeast	17	29 North	6 East	Frankfort	“Well No. 1-B”
6	OS5247	Northwest	21	29 North	6 East	Frankfort	“Well No. 6”

4. Because Respondent owned or operated injection wells, 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.

5. 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.

Wells Authorized by a Permit

6. Regulations at 40 C.F.R. § 147.2916 require the owner or operator of a new Class II injection well, or any other Class II well required to have a permit in the Osage Mineral Reserve, to comply with the requirements of 40 C.F.R. §§ 147.2903, 147.2907, and 147.2918 through 147.2928.

7. The EPA issued UIC permits (collectively “permits”) to convert the new wells to injection wells. Permitting details are below:

<u>Well</u>	<u>Permit Number</u>	<u>Date Issued</u>	<u>Transferred to Respondent</u>
Well No. 7	06S1261P5549	December 23, 1991	October 24, 2003
Well No. 6	06S1261P5247	September 28, 1987	October 24, 2003
Well No. 1-B	06S1262P5109	April 9, 1986	June 14, 2001

8. Regulations at 40 C.F.R. §§ 147.2916 and 147.2925(a) and condition II.B of the permits require the permittee to comply with all permit conditions, except as authorized by an emergency permit (described at 40 C.F.R. § 147.2906). Respondent did not have an emergency permit for violations described in this Complaint.

9. Regulations at 40 C.F.R. §§ 147.2916, 147.2922(b) and each UIC permit require the owner or operator of a well to monitor injection rate and pressure monthly and to report monitoring results to the EPA annually. An approval of a plan for future use of Well No. 6 requires Respondent to monitor the static fluid level in Well No. 6 and to report monitoring results to the EPA annually.

10. Respondent has not submitted annual operations reports for the new wells for the period April 2012 through March 2013.

11. Therefore, Respondent violated regulations at 40 C.F.R. §§ 147.2916, 147.2922(b), and 147.2925(a) by failing to submit annual operations reports for the new wells for the period April 2012 through March 2013.

Well Authorized by Rule

12. 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.

13. Well No. D1 is authorized by rule in accordance with 40 C.F.R. § 147.2909.

14. Regulations at 40 C.F.R. §§ 147.2909 and 147.2913(b) require the operator of a well authorized by rule to monitor the injection pressure and rate at least monthly with results reported to the EPA annually. Approved plans for future use for Well No. D1 require Respondent to monitor the static fluid level in Well No. D1 and to report monitoring results to the EPA annually.

15. Respondent has not submitted an annual operations report for Well No. D1 for the period April 2012 through March 2013.

16. Therefore, Respondent violated regulations at 40 C.F.R. §§ 147.2909 and 147.2913(b) by failing to submit an annual operations report for Well No. D1 for the period April 2012 through March 2013.

III. PROPOSED PENALTY

17. 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 two thousand dollars (\$2,000.00).

18. 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

19. 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. Submit required annual operations reports for Well No. D1 and the new wells for the period April 2012 through March 2013.
- b. The required reports shall be submitted to the EPA at the address shown below within thirty (30) days after the effective date of this Order. Report forms are included in Appendix A of this Order.

U.S. Environmental Protection Agency
Water Enforcement Branch (6EN-WR)
1445 Ross Avenue, Suite 1200
Dallas, TX 75202

V. FAILURE TO FILE AN ANSWER

20. 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.

21. 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).

22. 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.

23. 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

24. 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

25. 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.

26. 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.

27. 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).

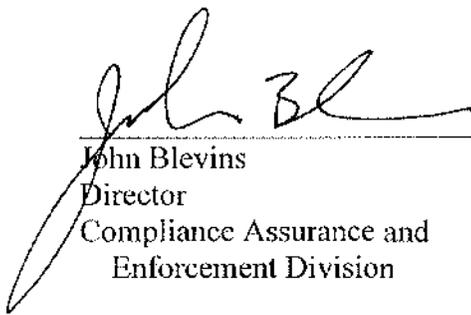
VII. SETTLEMENT

28. 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.

29. 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.

30. 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.

12.18.13
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
return receipt requested: Mr. James R. Miller d/b/a Eagle One Oil
P.O. Box 67
Shidler, OK 74652

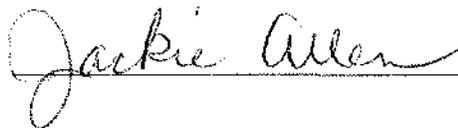
Copy: Bureau of Indian Affairs, Osage Agency
P.O. Box 1539
Pawhuska, OK 74056

Osage Nation Environmental and
Natural Resources Department
P.O. Box 1495
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: _____

DEC 20 2013

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