



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. John McNally, President
Otter Exploration, Inc.
422 Crescent Park
Warren, PA 16365

Re: Final Order on Consent; Otter Exploration, Inc.
EPA Docket No. SDWA-03-2009-0205-DU

Dear Mr. McNally:

On July 1, 2009, the U.S. Environmental Protection Agency (EPA) issued you a proposed Administrative Order (Order) for violations of the Safe Drinking Water Act (SDWA) and the Underground Injection Control (UIC) regulations. As mentioned in the proposed Order, you were in violation for unauthorized injection of gas into an injection well on the Lot 478 Lease, located in Warren County, Pennsylvania. Prior to the issuance of the proposed Order, you ceased injection into the well and committed to take measures to assure that no future unauthorized injection takes place. In addition, you agreed to plug and abandon the injection wells or convert the injection wells to production wells to ensure the protection of underground sources of drinking water.

Enclosed is a copy of the final Order. Under the Order, you are required to plug and abandon the injection wells or convert the injection wells to production wells within 60 days of the effective date of this Order. The plugging and abandonment or conversion shall be coordinated with EPA's UIC field inspector and the Northwest Regional Office, Office of Oil and Gas, of the Pennsylvania Department of Environmental Protection. In addition, within 30 days of the effective date of this Order, you are required to pay a civil penalty of \$2,00.00 for the violations cited in the Order. EPA has received confirmation that this payment has been received, however the Order needed to be finalized to process the payment.

Customer Service Hotline: 1-800-438-2474

SEP 01 2009

The issuance of an Administrative Order under the SDWA requires public notice of the proposed Order for a period of forty (40) days. This was done when the proposed Order was issued to you in March. We did not receive any comments. Therefore, this final Order will become effective thirty (30) days from the time you receive this package. EPA appreciates your cooperation in resolving this matter. If you have any questions, please contact James Bennett of my staff at (215) 814-5469.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon M. Capacasa", with a long horizontal flourish extending to the right.

Jon M. Capacasa, Director
Water Protection Division

Enclosure

cc: S. Craig Lobins
Office of Oil and Gas, PADEP

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

IN THE MATTER OF:) Docket No. SDWA-03-2009-0205-DU
)
Mr. John McNally, President) FINDINGS OF VIOLATION AND
Otter Exploration, Inc.) CONSENT AGREEMENT
422 Crescent Park) AND FINAL ORDER
Warren, PA 16365)
)
) Proceedings under Section
) 1423(c) of the Safe Drinking
) Water Act, 42 U.S.C. § 300h-2(c)

11-9-09
11-9-09

I. STATUTORY AND REGULATORY BACKGROUND

1. This Consent Agreement and Final Order ("CAFO") is entered into by the Director, Water Protection Division, United States Environmental Protection Agency, Region III (Complainant) and Otter Exploration, Inc. (Respondent) pursuant to Section 1423(c) of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300h-2(c), and 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 (Consolidated Rules), 40 C.F.R. Part 22. The parties having agreed to settlement of violations of the SDWA by Respondent, this CAFO simultaneously commences and concludes this action pursuant to 40 C.F.R. § 22.13(b) and 22.18(b)(2) and (3), and 22.45. The Administrator has delegated the authority to take these actions to the Regional Administrator for Region III, who in turn has delegated the authority to the Water Protection Division Director of Region III.

2. Section 1422(c) of the SDWA, 42 U.S.C. § 300h-1(c), requires the United States Environmental Protection Agency (EPA) to administer the Underground Injection Control (UIC) program in states which do not have approved state programs. The Commonwealth of Pennsylvania has not acquired primacy of the UIC program. Therefore, effective June 25, 1984, EPA Region III began direct implementation of the UIC program in Pennsylvania. See 40 C.F.R. § 147.1951.

3. The UIC regulations at 40 C.F.R. § 144.11 prohibit any underground injection, except into a well authorized by rule or by permit. See also 42 U.S.C. § 300h(b)(1)(A). In addition, all injection activities, including construction, of any well required to have a permit are prohibited unless the permit has been issued. See 40 C.F.R. § 144.31(a).

4. 40 C.F.R. §§ 144.6 & 146.5(b) of the UIC regulations define Class II injection wells as wells which inject fluids "(1) Which are brought to the surface in connection with natural gas storage operations, or conventional oil or natural gas production and may be commingled with waste water from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection. (2)

For enhanced recovery of oil or natural gas; and (3) For storage of hydrocarbons which are liquid at standard temperature and pressure.”

5. The UIC regulations contain requirements for all owners and operators of permitted Class II injection wells. Such requirements include conditions related to construction, operation and maintenance, monitoring, reporting, documenting mechanical integrity, and demonstrating adequate financial responsibility for resources to properly close, plug and abandon their injection wells. *See* 40 C.F.R. §§ 144.51, 144.52, 146.21, 146.22, 146.23.

6. Pursuant to Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), as amended by the Debt Collection Improvement Act of 1996 (codified at 28 U.S.C. § 2461) and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, the Administrator of the EPA is authorized after March 15, 2004, to issue an order requiring compliance and/or assessing administrative penalties against any person who has violated the applicable UIC program in an amount not to exceed \$11,000 per day for each violation, up to a total penalty amount of \$ 157,500.

II. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS AND CONCLUSIONS OF LAW

7. Respondent is a person within the meaning of Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12).

8. Respondent owns and operates the Project OEI-7, Lot 478 oil production facility located in Pleasant Township, Warren County, Pennsylvania. Respondent purchased the shallow mineral rights on March 5, 2007.

9. On January 29, 2009, an Oil and Gas Inspector for the Pennsylvania Department of Environmental Protection (PADEP), contacted EPA regarding a compressor located on well #4-17 at Project OEI-7, Lot 478.

10. On February 3, 2009, EPA inspectors met with the PADEP Inspector and conducted a joint inspection of the Project OEI-7, Lot 478 well #4-17. The inspectors observed a natural gas compressor configured to inject into the seven inch casing head. A check valve on the line from the compressor to the well head was configured to only allow gas flow into the well. A pressure gauge was connected to the well head. The gauge indicated a pressure of approximately 160 pounds per square inch (psi).

11. On February 17, 2009, EPA sent a letter to Respondent, requesting specific information pertaining to the details of the operation on the Project OEI-7, Lot 478.

12. In Respondent's written response dated March 5, 2009, Respondent informed EPA that it had used well #4-17 as an injection well. Natural gas brought to the surface in conjunction with oil production was being pumped back into the oil bearing formation through

the injection well.

13. On March 14, 2009, Michael Riche, an employee of Respondent, informed EPA that injection of natural gas into well #4-17 started on December 10, 2009 and ended on January 15, 2009.

14. Respondent's well #4-17 used to inject natural gas into the oil bearing formation; is a Class II injection well as defined in 40 C.F.R. §§ 144.6 & 146.5(b).

15. Respondent's well #4-17 is subject to the requirements of the SDWA, 42 U.S.C. §§ 300f-300j-11 and the UIC program and its implementing regulations at 40 C.F.R. Parts 144, 146 and 147.

16. The UIC regulations at 40 C.F.R. §§ 144.11 and 144.31 provides that unless an underground injection well is authorized by rule, all injection activities including construction of an injection well are prohibited until the owner or operator is authorized by a permit. Respondent failed to attain rule authorization or a permit for its injection well and is therefore in violation of 40 C.F.R. §§ 144.11 and 144.31.

17. Respondent's Class II injection well was not authorized by rule. EPA has no record of a UIC permit for Respondent to operate injection wells on the Project OEI-7, Lot 478. On information and belief, Respondent did not apply for a permit to operate Class II injection wells on the Project OEI-7, Lot 478 prior to EPA's inspection on February 3, 2009.

18. Respondent failed to monitor, report, maintain and document mechanical integrity, and demonstrate financial ability to properly close, plug and abandon its Class II injection well as required by 40 C.F.R. §§ 144.51 and 144.52.

19. Because Respondent did not submit a permit application, EPA is unable to determine whether Respondent's Class II injection well is constructed and operated consistent with 40 C.F.R. §§146.21-23.

20. Respondent violated 42 U.S.C. § 300h(b)(1)(A) and 40 C.F.R. § 144.11 by operating a Class II injection well that was not authorized by rule or by permit.

III. ORDER ON CONSENT AND ASSESSMENT OF PENALTY

21. In order to resolve the violations described in Paragraphs 1-20, and to provide a legal framework for the payment of a penalty, EPA and Respondent enter into this ORDER ON CONSENT. Respondent consents to issuance of this CAFO and agree to undertake all actions required by its terms and conditions. Respondent consents to the assessment of the civil penalty herein and consents to issuance of the compliance order contained herein.

22. Respondent admits the Findings of Fact, Jurisdictional Allegations and Conclusions of Law set forth in Section II, above, and waive any defenses it might have as to jurisdiction and venue. Respondent agrees not to contest EPA's jurisdiction to issue this Consent Agreement and Final Order (CAFO) and not to contest EPA's jurisdiction to enforce the terms of this CAFO.

23. Respondent hereby expressly waives its right to a hearing, pursuant to Section 1423(c)(3)(A), 42 U.S.C. § 300h-2(c)(3)(A), on any issue of law or fact in this matter and consents to issuance of this CAFO without adjudication, and waives its right to appeal this CAFO under Section 1423(c)(6), 42 U.S.C. § 300h-2(c)(6).

24. Each party to this action shall pay its own costs and attorney fees.

25. The provisions of this CAFO shall be binding upon the Respondent, and its officers, principals, directors, successors and assigns.

26. The parties agree that settlement of this matter prior to the initiation of litigation is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.

27. Pursuant to Section 1423(c)(3)(B) of the Act, 42 U.S.C. § 300h-2(c)(3)(B), and 40 C.F.R. § 22.45(b), EPA is providing public notice and an opportunity to comment on the Consent Agreement prior to issuing the Final Order. In addition, EPA has consulted with the Commonwealth of Pennsylvania regarding this action, and will mail a copy of this document to the appropriate Pennsylvania official.

28. Based on the foregoing FINDINGS, and having taken into account the factors listed in Section 1423(c)(4)(B) of the SDWA, 42 U.S.C. § 300h-2(c)(4)(B), including but not limited to: (1) the seriousness of Respondent's violations cited in Paragraphs 1-20 (2) the economic benefit accruing to Respondent resulting from the violations; (3) Respondent's history of other violations of Part C of the SDWA; (4) Respondent's good faith efforts to comply with the SDWA; (5) the economic impact of the penalty described below on the Respondent; (6) other such matters as justice may require; and (7) the administrative record; and under the authority of Section 1423(a) and (c) of the SDWA, 42 U.S.C. §§ 300h-2(a) and (c), EPA HEREBY ORDERS AND RESPONDENT HEREBY CONSENTS:

Order for Compliance

29. As of the effective date of this ORDER, Respondent shall not construct, maintain or operate any unauthorized injection well.

30. By August 31, 2009, Respondents shall implement one of the following options for the injection well #4-17 on Project OEI Lot 478.

a. plug and abandon the well in accordance with EPA guidelines (See Attachment 1). Respondent shall coordinate with David Rectenwald, EPA's UIC field inspector, and the PADEP, Northwest Regional Office, Office of Oil and Gas prior to implementing plugging procedure; or

b. convert the well to oil production wells by removing the injection string and packer in the well and installing a pump jack, tubing and rods. Respondent shall coordinate with David Rectenwald, EPA's UIC field inspector, and the PADEP, Northwest Regional Office, Office of Oil and Gas prior to implementing this conversion procedure.

Assessment of Penalty

31. Within thirty (30) days of the effective date of this ORDER, Respondent shall pay a civil penalty of two thousand dollars (\$2,000.00) for the violations cited herein. This does not constitute a demand as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412. Penalty payment shall be made according to the following specifications.

a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, i.e., SDWA 03-2009-0205-DU;

b. All checks shall be made payable to "United States Treasury";

c. All payments made by check and sent by regular mail shall be addressed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197 9000

Contact: Eric Volck 513 487 2105

d. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza

Mail Station SL MO C2 GL
St. Louis, MO 63101

Contact: 314 418 1028

e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS NWD
26 W. M.L. King Drive
Cincinnati, OH 45268 0001

f. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 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"

g. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact: Jesse White 301 887 6548 or REX, 1 866 234 5681

h. On Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

- i. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

- j. A copy of the check or money order or other proof of payment submitted in fulfillment of the penalty payment requirements of this order shall be sent to the following:

U.S. Environmental Protection Agency
Regional Hearing Clerk (3RC00)
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

and

Mr. James Bennett
Ground Water & Enforcement Branch (3WP22)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

32. Failure to pay the penalty assessed by this ORDER within thirty (30) days after its effective date subjects the Respondent to a collection action under Section 1423(c)(7) of the SDWA, 42 U.S.C. ' 300h- 2(c)(7). The validity, amount and appropriateness of the penalty are not subject to review in a collection proceeding. 15 U.S.C. ' 2615(a)(4)(A). Pursuant to 31 U.S.C. ' 3717, EPA is entitled to assess interest on unpaid penalties, and a charge to cover the cost of processing and handling a delinquent claim. Interest will begin to accrue on this civil penalty if it is not paid within fifteen days of the date due. Interest will be assessed at the rate of the United States Treasury tax and loan rate. 40 C.F.R. § 13.11. In addition, a quarterly nonpayment penalty charge may be assessed on any delinquent debt pursuant to Section 1423(c)(7) of the SDWA, 42 U.S.C. § 300h-2. Further, EPA will assess a \$15.00 administrative handling charge for administrative costs for the first 30 day period after the payment is due and an additional \$15.00 for each subsequent 30 days the penalty remains due.

33. All notifications and approvals required by this CAFO, except coordination with EPA's UIC field inspector, shall be made to:

Mr. James Bennett
Ground Water & Enforcement Branch (3WP22)

U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Telephone: (215) 814-5469

Coordination with EPA's UIC field inspector shall be made with:

Mr. David Rectenwald
Telephone: (814) 449-9577

34. All submissions provided pursuant to this Order shall be signed by Respondent and shall include the following certification:

"I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

IV. GENERAL PROVISIONS

35. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law and ordinance, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. This CAFO does not constitute a waiver, suspension or modification of the requirements of 40 C.F.R. § 147.1950-1955, which remain in full force and effect. Issuance of this ORDER is not an election by the EPA to forgo any civil or any criminal action otherwise authorized under the SDWA.

36. Violations of the terms of this ORDER after its effective date or the date of final judgment in the event of an appeal under Section 1423(c)(6) of the SDWA, 42 U.S.C. § 300h-2(c)(6), may subject Respondents to an administrative penalty of not more than \$11,000 for each day of violation up to a maximum penalty of \$157,500, and/or civil action in a United States district court with penalties up to \$32,500 per day of violation as authorized in Section 1423(b) and 1423(c)(1) of the SDWA, 42 U.S.C. §§ 300h-2(b) and (c)(1) and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19.

37. This Consent Agreement and the accompanying Final Order resolve only the civil claims for the specific violations alleged herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the Clean Water Act, 33 U.S.C.

§§ 301 *et seq.*, the regulations promulgated there under, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

38. Nothing in this CAFO shall be construed as prohibiting, altering or in any way eliminating the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violations of this CAFO or of the statutes and regulations upon which this CAFO is based or for Respondent's violation of any applicable provision of law.

39. The penalty described in Paragraph 29, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

40. Entry of this CAFO is a final settlement of all violations alleged in this CAFO. EPA shall have the right to institute a new and separate action to recover additional civil penalties for the claims made in this CAFO if the EPA obtains evidence that the information and/or representations of the Respondent are false, or, in any material respect, inaccurate, or if Respondent fails to comply with this CAFO. This right shall be in addition to all other rights and causes of action, civil or criminal, the EPA may have under law or equity in such event.

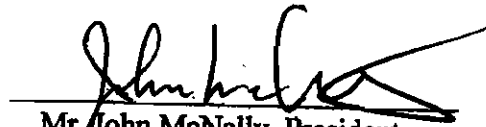
41. The undersigned representative of Respondent certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

42. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO, or one or more of its terms and conditions, is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Regional Administrator or his designee, then the entire CAFO shall be null and void.

V. EFFECTIVE DATE

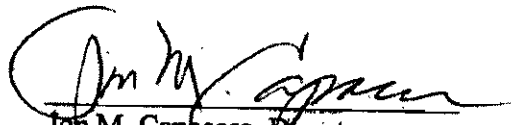
43. This ORDER will be issued after a forty (40) day comment period, execution by an authorized representative of the EPA and filing with the regional hearing clerk. It will become final and effective 30 days after issuance.

FOR RESPONDENT



Mr. John McNally, President
Otter Exploration, Inc.

Issued this 1st day of September, 2009



Jon M. Capacasa, Director
Water Protection Division
EPA Region III