



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

SEP 27 2011

Ref: 8ENF-UFO

CERTIFIED MAIL – 7009-3410-0000-2594-1733
RETURN RECEIPT REQUESTED

Alexis M. O'Hare, Registered Agent
Maralex Disposal, LLC
PO Box 338
Ignacio, CO 81137

Re: Proposed Penalty Complaint
And Notice Of Opportunity for Hearing
Docket No. **SDWA-08-2011-0079**

Registered Agent,

Enclosed is a Proposed Penalty Complaint and Notice Of Opportunity For Hearing (complaint) issued by the Environmental Protection Agency (EPA) as authorized by the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300h-2. The document alleges that Maralex Disposal, LLC, has violated the SDWA and proposes the assessment of a civil penalty. Please note that there are deadlines in the complaint that must be met. The complaint is effective upon the receipt date and the company has thirty (30) calendar days to file an answer to dispute the contents of the complaint.

Also note that under the Part 22 Rules of Practice enclosed herein and pursuant to paragraph 6 of the complaint, Maralex Disposal, LLC, may send in a check for the amount proposed 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.

If you have any technical questions, contact Sarah Roberts at the above address (with the mail code 8ENF-UFO) or by phone at (303) 312-7056. For legal questions, the attorney assigned to this matter is Jim Eppers, who can be reached at the above address (with the mail code 8ENF-L) or by phone at (303) 312-6893. We urge your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew M. Gaydosh", written over a horizontal line.

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

Enclosures:

Proposed Penalty Complaint
and Notice of Opportunity for Hearing
Part 22 Rules of Practice
Public Notice

cc: The Honorable Pearl E. Casias, Chairwoman
Southern Ute Indian Tribe
P.O. Box 737
Ignacio, Colorado 81137-0737

Thomas Johnson, Division Head
Environmental Programs
Southern Ute Indian Tribe
P.O. Box 737
Ignacio, Colorado 81137

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8
Docket No. SDWA-08-2011-0079**

2011 SEP 27 AM 11:05

FILED
EPA REGION 8
READING CLERK

In the Matter of:)	
)	
Maralex Disposal, LLC)	PROPOSED PENALTY
)	COMPLAINT AND NOTICE OF
)	OPPORTUNITY FOR HEARING
)	
Respondent.)	

INTRODUCTION

1. This Proposed Compliance Order, Penalty Complaint, and Notice of Opportunity for Hearing (complaint) is authorized by Congress in section 1423 of the Public Health Service Act, commonly known as the Safe Drinking Water Act (the Act). 42 U.S.C. § 300h-2. The Environmental Protection Agency (EPA) regulations authorized by the Act are set out in part 144 of title 40 of the Code of Federal Regulations (C.F.R.), and violations of the permits or EPA 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 C.F.R. Part 22, a copy of which is enclosed.

2. The undersigned EPA official has been properly delegated the authority to issue this complaint.

3. EPA alleges that Maralex Disposal, LLC, (Respondent) has violated certain regulations in 40 C.F.R. part 144 and therefore the Act, as more fully explained below.

NOTICE OF OPPORTUNITY FOR A HEARING

4. Respondent has the right to a public hearing before a presiding officer within the Agency to (1) disagree with any fact alleged by EPA in the complaint, (2) state the grounds for any legal defense or (3) disagree with the appropriateness of the proposed penalty.

5. To disagree with the complaint and assert Respondent's right to a hearing, Respondent must file a written answer (and one copy) with the Regional Hearing Clerk (1595 Wynkoop Street (8RC); Denver, Colorado 80202) within thirty (30) calendar days of receiving this complaint. The answer must clearly admit, deny or explain the factual allegations of the complaint, the grounds for any defense, the facts Respondent may dispute, and Respondent's 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 A HEARING WITHIN THIRTY (30) CALENDAR DAYS MAY WAIVE RESPONDENT'S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR PROPOSED PENALTY, AND MAY RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF PENALTY UP TO THE MAXIMUM AUTHORIZED BY THE ACT.

QUICK RESOLUTION

6. Respondent may resolve this proceeding at any time by paying the penalty amount proposed in the complaint. Such payment need not contain any response to, nor admission of, the allegations in the complaint. Such payment 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.

SETTLEMENT NEGOTIATIONS

7. EPA encourages discussing whether cases can be settled through informal settlement conferences. If Respondent wants to pursue the possibility of settling this matter, or has any other questions, contact the attorney listed at the end of this complaint. **Please note that calling the attorney or requesting a settlement conference does NOT delay the running of the thirty (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 violation alleged in this complaint:

8. Respondent, Maralex Disposal, LLC, (Maralex), is a Colorado corporation doing business in the State of Colorado.

9. Respondent is a "person" as defined in the Act, and is therefore subject to the requirements of the statute and its implementing regulations. 42 U.S.C. § 300f (12).

10. Respondent has owned and/or operated the Ferguson #1 well at all times relevant to this complaint.

11. The Ferguson #1 well is located in the Ignacio Blanco oilfield in township 33 north, section 32, range 9 west, in La Plata County, Colorado within the exterior boundary of the Southern Ute Indian Reservation.

12. The Ferguson #1 well is a "Class II Injection Well" as defined by 40 C.F.R. §§144.80 and 146.5.

13. Due to Respondent's ownership and/or operation of the Ferguson #1 well, Respondent is subject to applicable requirements of 40 C.F.R. §§124, 144 and 146.

14. Respondent is authorized to operate the Ferguson #1 well by EPA permit # CO21011-06908 (permit). Respondent is required to comply with all conditions in the permit at all times.

15. Weekly measurements of annulus pressure is required for the Ferguson #1 well by the permit at Part II(D)(1).

16. Respondent violated the permit and therefore the Act by failing to take weekly annulus pressure measurements of the Ferguson #1 well.

17. The mechanical integrity of permitted injection wells must be established and maintained as required by 42 U.S.C. § 300h-2 (c)(1) and 40 C.F.R § 144.51(q)(1).

18. EPA observed that the Ferguson #1 well had significant annulus pressure during an inspection on May 5, 2010 and again on May 26, 2010. On June 7, 2010, EPA issued to Respondent a Notice of Violation notifying Respondent of this finding and Respondent's failure to comply with the requirement to maintain the well's mechanical integrity pursuant to 40 C.F.R §§ 144.51(q)(1), and the requirement to maintain zero annulus pressure pursuant to the permit at Part II(C)(6). EPA received a letter from Respondent on July 8, 2010, wherein Respondent outlined a work over plan and stated that Maralex would contact EPA once dates of the work over and/or testing were known.

19. As of April 13, 2011, EPA had not received any additional information from Respondent regarding the Ferguson #1 well. On April 13, 2011, EPA conducted a site inspection and observed significant annulus pressure build up on the Ferguson #1 well. On April 19, 2011, EPA issued to Respondent another Notice of Violation notifying Respondent of this finding and Respondent's failure to comply with the requirement to maintain mechanical integrity according to 40 C.F.R § 144.51(q)(1) and to maintain zero annulus pressure pursuant to the permit at Part II(C)(6). Respondent sent a work over report to EPA describing a tubing leak repair and results of a follow up mechanical integrity test conducted on May 24, 2011.

20. Respondent violated 40 C.F.R § 144.51(q)(1) and the permit at Part II(C)(6) and therefore the Act by failing to maintain mechanical integrity for the Ferguson #1 well between at least May 5, 2010 and May 24, 2011. Annual monitoring reports submitted to EPA and EPA inspectors' observations indicate that the Ferguson #1 well was operating during this period of time.

21. As described herein, EPA observed and Maralex confirmed the existence of annulus pressure on the Ferguson #1 well in May of 2010 through May of 2011. On February 18, 2011, EPA received from Respondent the annual monitoring report for 2010 from Maralex which reported minimum and maximum annulus pressures of zero (0) pounds per square in gauge (psig) for every month of 2010.

22. Respondent's inaccurate reporting, described in paragraph 21 above, is a violation of 40 C.F.R §§ 144.28(h) and therefore the Act.

PROPOSED CIVIL PENALTY

23. For an administrative proceeding, the Act authorizes a civil penalty assessment of up to \$7,500 per day, for each violation of the Act, up to a maximum of \$177,500. 42 U.S.C. § 300h-2(c)(1). The Act requires EPA to take into account appropriate factors in assessing a civil penalty, including the seriousness of the violations, the economic benefit resulting from the violations, any history of such violations, any good-faith efforts to comply with the requirements, the economic impact on the violator, and such other matters as justice may require. Taking such factors into account, EPA proposes the assessment of a civil penalty of \$8,050 for violations described in paragraph 16, \$99,700 for violations described in paragraph 20, and \$3,900 for violations described in paragraphs 21 and 22. The total proposed civil penalty total is \$111,650 for the violations alleged in this complaint.

24. As required by the Act, prior to the assessment of a civil penalty, EPA will provide public notice of the proposed penalty, and reasonable opportunity for the public to comment on the matter and present evidence in the event a hearing is held 42 U.S.C. § 300h-2 (c)(3)(B).

25. Respondent's payment of the penalty shall be made by money order or certified check made payable to "Treasurer, United States of America" and mailed to the following address:

U.S. EPA - Region 8
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

A copy of the check shall be sent simultaneously to the following address:

Technical Enforcement Program
ATTN: Sarah Roberts (8ENF-UFO)
U.S. EPA - Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

and

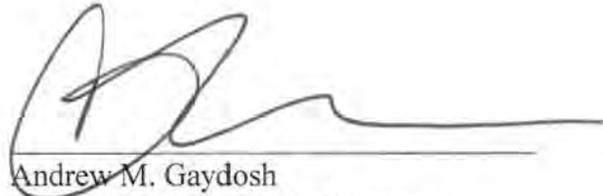
Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

26. To discuss settlement or ask any questions you may have about this case or process, please contact Jim Eppers, Senior Enforcement Attorney, at (303) 312-6893, or the address below.

United States Environmental Protection Agency
Region 8, Office of Enforcement, Compliance and
Environmental Justice
1595 Wynkoop Street (ENF-L)
Denver, CO 80202

Date: 9/27/2011

By:



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

**U.S. ENVIRONMENTAL PROTECTION AGENCY
PUBLIC NOTICE
OPPORTUNITY FOR PUBLIC COMMENT ON
PROPOSED PENALTY COMPLAINT
AND
NOTICE OF OPPORTUNITY FOR HEARING
AGAINST
MARALEX DISPOSAL, LLC
FOR FAILURE TO COMPLY WITH
UNDERGROUND INJECTION CONTROL REGULATIONS**

PURPOSE OF PUBLIC NOTICE

The purpose of this notice is to solicit written comments on a Proposed Penalty Complaint and Notice of Opportunity for Hearing (complaint) [Docket No. **SDWA-08-2011-0079**] that Region 8 of the United States Environmental Protection Agency (EPA) has issued to Maralex Disposal, LLC, for alleged violations at a salt water disposal injection well in the Ignacio Blanco oilfield and located within the exterior boundary of the Southern Ute Indian Reservation in La Plata County, Colorado. The complaint alleges violations of the Safe Drinking Water Act (SDWA) and the regulations detailing the requirements of the SDWA's Underground Injection Control (UIC) program. These regulations govern the injection of fluids that may endanger an underground source of drinking water (USDW). The complaint alleges that the company failed to properly operate a salt water disposal well. The complaint proposes a civil penalty of \$111,650 for the alleged violations.

EPA desires to receive written comments from any interested party having knowledge of the alleged violations or who can provide any information useful to ensure that the complaint is appropriate. EPA will review and consider all comments received, and will thereafter determine whether the comments, if any, justify the modification or withdrawal of the complaint.

BACKGROUND

Part C of the SDWA (40 U.S.C. §300h *et seq*) requires EPA to regulate underground injection of fluid through wells to assure that underground sources of drinking water (USDWs) are not endangered. Section 1421 of the SDWA (40 U.S.C. §300h) requires EPA to administer UIC programs in States or Indian Reservations that do not have approved UIC programs. Regulation of the UIC Class II Program has not been delegated to the Southern Ute Indian Tribe, therefore, EPA administers the program in accordance with title 40 of the Code of Federal Regulations (40 C.F.R.) parts 124, 144, 146, 147, and 148.

The Ferguson #1 Class II commercial salt water disposal injection well (EPA Permit #: CO21011-06908), which is the subject of this complaint, is located in the Ignacio Blanco oilfield in township 33 north, section 32, range 9 west, in La Plata County, Colorado. A Class II injection well, pursuant to 40 C.F.R. § 146.5, is a well that injects fluids which are brought to the surface in connection with conventional oil or natural gas production.

The complaint alleges that Maralex Disposal, LLC, the owner and/or operator of the Ferguson #1 injection well, violated UIC regulations and is subject to appropriate penalties for failing to meet the requirements of the 40 C.F.R. parts 144 through 146.

PUBLIC COMMENTS

Written comments on the complaint are encouraged and will be accepted at the address listed below for a period of thirty (30) calendar days after the publication of this notice. Written comments submitted by the public, as well as information submitted by Maralex Disposal, LLC, will be available for public review as part of the Administrative Record, subject to the provisions of law restricting the disclosure of confidential information. Maralex Disposal, LLC, may request a hearing. Any person submitting written comments will be notified of and has a right to participate in such a hearing. The complaint and the Administrative Record are available for review between 9:00 a.m. and 4:00 p.m. at the address listed below. Any person wishing to view the Administrative Record or receive a copy of this public notice should call Sarah Roberts in the Technical Enforcement Program, EPA Region 8, at (303) 312-7056 before visiting EPA Region 8 offices. Please submit written comments to:

Tina Artemis (8RC)
Regional Hearing Clerk
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, Colorado 80202

THE DECISION

EPA will review and consider all public comments received on the public notice and will thereafter determine whether the comments, if any, justify the modification or withdrawal of the complaint. If the complaint is revised, copies shall be provided to all parties and to all members of the public who have commented.



Sandra A. Stavnes, Director
UIC/FIFRA/OPA Technical Enforcement Program
Office of Enforcement, Compliance and Environmental Justice
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202