

U. S. ENVIRONMENTAL PROTECTION AGENCY REGION 6
PROPOSED ADMINISTRATIVE ORDER
In the Matter of Smith Petroleum, LLC, Respondent
Docket No. SDWA-06-2012-1109

FILED

STATUTORY AUTHORITY

The following findings are made and Order issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 1423(c) of the Safe Drinking Water Act ("Act"), 42 U.S.C. § 300h-2(c). The authority to issue this Order has been delegated by the Administrator to the Regional Administrator of EPA Region 6 who further delegated such authority to the Director of the Compliance Assurance and Enforcement Division. The 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.

FINDINGS

1. Respondent, Smith Petroleum, LLC, is a "person," within the meaning of Section 1401(12) of the Act, 42 U.S.C. § 300f(12).

2. At all times relevant to the violation alleged herein, Respondent operated an injection well located in the Southwest Quarter of Section 20, Township 25 North, Range 11 East, Quapaw Field, Osage County, Oklahoma, designated as Well Number L1W and EPA Inventory Number OS1290 ("the well").

3. Respondent is subject to underground injection control program requirements set forth at 40 C.F.R. Part 147, Subpart GGG, which are authorized under Section 1421 of the Act, 42 U.S.C. § 300h.

4. EPA regulations require the operator of an "injection well," as defined at 40 C.F.R. § 147.2902, to plug the well within one year after termination of injection operations, pursuant to 40 C.F.R. § 147.2905.

5. The EPA established a plugging deadline for the well of February 2, 2011. Inspections and annual reports show the well has not been plugged according to EPA rules.

6. Respondent violated the regulations cited above by failing to plug the well within one year after termination of injection operations.

7. EPA regulations at 40 C.F.R. § 147.2903(b) require the operator of an injection well to maintain the well so that fluids containing contaminants will not flow through the well bore into "underground sources of drinking water" ("USDWs"), as defined at 40 C.F.R. § 147.2902.

8. Reports of inspections of the well dated April 5, September 14, and December 19, 2011, show the fluid level in the well to be above the base of USDWs in the vicinity of the well.

9. Respondent violated the regulations cited above by maintaining the well in such a manner which could allow fluids to migrate through the well bore into USDWs because a static fluid level above the base of USDWs indicates that fluids could be moving through the well bore into USDWs.

10. Therefore, Respondent violated the regulations set forth at 40 C.F.R. §§ 147.2903(b) and 147.2905.

ORDER

11. Based on the foregoing findings and under the authority of Section 1423(c) of the Act, it is hereby ordered that Respondent shall complete one of the actions listed below within thirty (30) days after the effective date of this Order:

- a. Plug the well according to EPA procedures; or
- b. submit a plan for future use of the well to the EPA and complete appropriate corrective actions to prevent fluids from moving through the well into USDWs. Two examples of corrective actions are (1) demonstrate mechanical integrity of the well, and (2) lower the static fluid level in the well to at least 465 feet subsurface.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

12. Respondent may request a hearing to contest the issuance of this Order, pursuant to Section 1423(c)(3)(A) of the Act, 42 U.S.C. § 300h-2(c)(3)(A). Submit the hearing request to the Regional Hearing Clerk (6RC-D); U.S. EPA, Region 6; 1445 Ross Avenue, Suite 1200; Dallas, Texas 75202 within thirty (30) days of the date of receipt of this Proposed Administrative Order.

13. A request for hearing should be included in any response to this Order. Respondent must file a response in order to preserve the right to a hearing or to pursue other relief.

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

GENERAL PROVISIONS

15. This Order does not constitute a waiver, suspension, or modification of the requirements of 40 C.F.R. Part 147, Subpart GGG, which remain in full force and effect.

16. Issuance of this Order is not an election by EPA to forego any civil or criminal action otherwise authorized under the Act.

17. Violation of the terms of this Order after its effective date or date of final judgment as described in Section 1423(c)(6) of the Act, 42 U.S.C. § 300h-2(c)(6), may subject Respondent to further enforcement action, including a civil action for enforcement of this Order under Section 1423(b) of the Act, 42 U.S.C. § 300h-2(b), and civil and criminal penalties for violations of the compliance terms of this Order under Section 1423(b)(1) and (2) of the Act, 42 U.S.C. § 300h-2(b)(1) and (2).

SETTLEMENT

18. EPA encourages all parties against whom an administrative order is 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. 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 Order, please contact Mr. Ronald Van Wyk, of my staff, at (214) 665-6459.

19. If this action is settled without a formal hearing, it will be concluded by issuance of a Final Order.

EFFECTIVE DATE

20. This Order becomes effective thirty (30) days after issuance unless an appeal is taken pursuant to Section 1423(c)(6) of the Act, 42 U.S.C. § 300h-2(c)(6).

1.27.12

Date



John Blevins
Director
Compliance Assurance and
Enforcement Division

CERTIFICATE OF SERVICE

I certify that the foregoing Proposed Administrative Order 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. Andrew D. Smith
Smith Petroleum, LLC
P.O. Box 134
Barnsdall, OK 74002

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

Dated: _____

1/31/12

Jackie Allen