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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF)

) Docket No. SDWA-04-2005-1016

Gene A. Wilson)

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Respondent)

**CLARIFICATION OF COMPLAINANT'S POSITION REGARDING PERMIT
REQUIREMENTS TO DEMONSTRATE MECHANICAL INTEGRITY AND SUBMIT
MONITORING REPORTS**

COMES NOW, Counsel for Complainant and files this Clarification of Complainant's Position Regarding Permit Requirements to Demonstrate Mechanical Integrity and Submit Monitoring Reports ("Clarification"). This Clarification is submitted in response to the Court's Order on Motions for Summary Determination issued on June 19, 2007 (Order), which corrected and superseded an earlier version of the Order issued on June 13, 2007 (Order). In the Order, at pages 6-8, the Court referred to a perceived ambiguity in the Permit and in Complainant's pleadings as to whether a demonstration of mechanical integrity was required every two years or every five years. In addition, at pages 8-10 of the Order, the Court referred to ambiguity as to whether Respondent ever commenced operations of the well at issue, and, if operations had not commenced, whether the requirement to submit annual monitoring reports applied to the well. While the Court indicated that it would be appropriate to resolve these issues at hearing rather than summarily, Complainant submits this clarification of its litigating position in advance of hearing.

EPA's Complaint alleges (paragraphs 10 and 11) an almost twelve-year period during

which Respondent's well was temporarily abandoned and Respondent failed to demonstrate mechanical integrity of his well. EPA alleged (paragraph 12) that this violated the SDWA, 40 CFR §§ 144.51(a), 144.52(a)(6) and the permit, because Respondent failed to demonstrate mechanical integrity at least once every two (2) years, or to timely plug and abandon the well.

As the Court notes in its Order, Part II, Section G 3 of the permit requires a demonstration of mechanical integrity no later than five years from the date of the last approved demonstration. This requirement was violated by Respondent. Even if Respondent's claim that his well passed an unsupervised mechanical integrity test in April 1999 was credited (which Complainant does not), and even if an unsupervised mechanical integrity test were held to satisfy the regulatory requirement (EPA contends that it does not), a period of over a year would still exist during which Respondent failed to demonstrate mechanical integrity within five years of the last demonstration.

In addition to Respondent's failure to comply with the five-year mechanical integrity demonstration requirement of the permit, Respondent also failed to satisfy a more frequent obligation imposed by the permit as a result of the inactive status of his well during the relevant period. Part II, Section F 3 of the permit describes requirements applicable to inactive wells, and specifies that after cessation of injection for two years the permittee shall plug and abandon the well unless he:

- (a) Provided notice to the Director including a demonstration that the well will be used in the future; and
- (b) Described actions or procedures, which are deemed satisfactory by the Director, that the permittee will take to ensure that the well will not endanger USDWs during the period of temporary abandonment. These actions and procedures shall include compliance with the technical requirements applicable to active injection wells unless waived, in writing, by the Director."

Respondent himself characterizes his well as inactive, with no injection occurring during the period at issue. However, Respondent submitted no notice, no demonstration that the well would be used in the future, and no proposed actions to ensure that the well would not endanger USDWs. The typical, if not universal, way in which other permittees comply with this requirement in EPA Region 4 and avoid the plugging and abandonment requirement, is to demonstrate mechanical integrity every two years. This method is accepted by EPA and that is why Complainant has referred to an obligation to demonstrate mechanical integrity every two years or plug and abandon the well. However, since Respondent did not notify EPA of the inactive status of his well or identify and obtain approval of any actions to demonstrate that the well would not endanger USDWs (such as by demonstrating mechanical integrity every two years), nor did Respondent plug and abandon his well, he violated this permit requirement.

Thus, the facts, even as characterized by Respondent, demonstrate violations of the permit based on (1) the failure to demonstrate mechanical integrity every five years as required by Part II, Section G 3 of the Permit, and (2) the failure to plug and abandon the well after two years of inactivity or alternatively provide the requisite notice and obtain approval of actions to demonstrate the well would not endanger USDWs (such as by demonstrating mechanical integrity every two years, as is the general method used for Region 4 permitted wells), as required by Part II, Section F 3 of the permit. Complainant will demonstrate these violations, and why compliance with these requirements is important to the protection of USDWs, at the hearing. Complainant notes that these are not alternative requirements or inconsistent statements of the intervals by which demonstrations of mechanical integrity must be made under the permit.

Rather, Complainant is relying on two distinct permit requirements, both of which are applicable in this case and both of which were violated by Respondent.

With respect to the Respondent's failure to submit required annual monitoring reports, Complainant believes it is important to distinguish between the monitoring and reporting obligations. The Permit, at Part 1, Section C 2, provides that "observation and recording of injection pressure, annulus pressure, flow rate and cumulative volume shall be made over equal time intervals beginning on the date on which the well commences operation." While the obligation to observe and record the specified information does not begin until after commencement of operations (indeed there would be nothing to record for these parameters if operations were not occurring), the requirement to submit annual reports begins "the 28th day of the month following the first full year after the effective date of this permit." The annual report is not a meaningless exercise when a well is inactive and no parameters have been monitored and recorded. In the case of an inactive well, the annual report provides a mechanism by which EPA might learn that a well is in fact inactive.

EPA receives many reports from owners of inactive wells where EPA is informed of the inactive status and zero values are listed for the monitoring parameters. If EPA does not learn of a well's inactive status, enforcement of the requirement to plug and abandon a well (or comply with alternative provisions) after two years without injection becomes problematic. EPA would have no reason to suspect that a well is inactive and subject to the requirements that are triggered by the passing of two years without injection, and EPA would have no way of ensuring that required protective measures are implemented to protect USDWs during this period. EPA's position that monitoring reports must be submitted with respect to inactive wells is reflected in

the “Monitoring and Reporting Guidance for Class II-D and II-R Injection Wells” attached as Exhibit A to this Pleading. Complainant intends to timely file a Supplement to its Prehearing Exchange which will include this Guidance document as an additional Exhibit for introduction at hearing.

Complainant also notes that the requirement to conduct an injection fluid analysis in Part 1, Section C 3 of the permit must be carried out within twelve months from the effective date of the permit (see Part I, Section C 3). There is no authorization to delay this obligation until commencement of operations. Obviously, EPA would not require an analysis of injection fluid that does not exist; however, the annual report required under the permit would be the mechanism by which the owner would inform EPA that the well is inactive and therefore there is no analysis of injection fluid to be reported.

In order to clarify issues of ambiguity identified in the Order, Complainant submits this Clarification of Complainant’s Position Regarding Permit Requirements to Demonstrate Mechanical Integrity and Submit Monitoring Reports. This Pleading does not seek any action on the part of the Court but is simply an attempt to clarify Complainant’s position with respect to issues which, after reviewing the Order, Complainant became concerned were not adequately explained in Complainant’s prior pleadings in this matter. Wherefore, Complainant submits this Clarification of Complainant’s Position Regarding Permit Requirements to Demonstrate Mechanical Integrity and Submit Monitoring Reports.

Respectfully submitted this 25th day of July, 2007.



PAUL SCHWARTZ
Associate Regional Counsel
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
Telephone: (404) 562-9576
Facsimile: (404) 562-9486



Zylpha Pryor
Associate Regional Counsel
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
Telephone: (404) 562-9535
Facsimile: (404) 562-9486

APPENDIX A

Monitoring and Reporting Guidance for Class II-D and II-R Injection Wells

MONITORING AND REPORTING GUIDANCE FOR CLASS II-D AND II-R INJECTION WELLS UNDERGROUND INJECTION CONTROL PROGRAM

In accordance with federal regulations 40 CFR Section 144.28 for rule-authorized wells and 40 CFR Section 146.23 for permitted injection wells, the owner or operator of a Class II-D or Class II-R injection well is required to submit an annual report summarizing the results of all monitoring activities. In addition, owners or operators of permitted injection wells are required to submit a fluid analysis of the injectate. **These reports need to be submitted if the well is active, shut-in, or temporarily abandoned, and the current status of the well must be indicated on the report.**

This guidance was developed to clarify these regulations and assist the owner/operator in complying with federal regulations. Furthermore, it establishes the correct form to be used, the date when the annual report shall be submitted, and the address where the report shall be sent. The guidance is divided into two sections. Section 1 covers rule-authorized injection wells. Section 2 covers permitted injection wells. This report does not discuss the mechanical integrity requirement for Class II injection wells.

If you have any questions on this guidance, please contact the Ground Water/UIC Section Chief at the above address.

Section 1

Monitoring Requirements for Rule-Authorized Class II-D & II-R Injection Wells

Federal Regulation 40 CFR 144.28(g) addresses the monitoring requirements for Class II rule-authorized injection wells. Owners or operators of injection wells are required to observe the injection pressure, flow rate, and cumulative volume with at least the following frequency:

- (A) Weekly for produced fluid disposal operations; and
- (B) Monthly for enhanced recovery operations.

The owner or operator shall record one observation of injection pressure, flow rate, and cumulative volume at reasonable intervals of no more than thirty (30) days. The owner or operator of enhanced recovery wells may monitor them by manifold monitoring on a field or project basis if such facilities consist of more than one injection well, operate with a common

manifold, and provided the owner or operator demonstrates that manifold monitoring is comparable to individual well monitoring. The owner or operator of rule-authorized injection wells is required to monitor the nature of the injected fluids with sufficient frequency to yield data representative of their characteristics. For EPA administered programs in Kentucky, Tennessee and Florida, this frequency shall be at least once within the first year of the authorization and each time thereafter when changes are made to the fluid.

Reporting Requirements for Rule-Authorized Class II Injection Wells

Federal regulation 40 CFR 144.28(h) addresses the reporting requirement for rule-authorized injection wells. For Class II wells, an annual report is required summarizing the results of all monitoring. The report shall summarize the weekly/monthly records of the injection well for injection pressure, flow rate, cumulative volume, and any major changes in characteristics or sources of injection fluids. **These reports need to be submitted if the well is active, shut-in, or temporarily abandoned, and the current status of the well must be indicated on the report.** The owner or operator shall submit the report for each active, shut-in, or temporarily abandoned injection well on EPA Form 7520-11, Annual Report Form. **The first Annual Monitoring Report shall cover the period from the effective date of rule-authorization through December 31 of that year. Subsequently, the Annual Monitoring Report shall cover the period from January 1 through December 31, and shall be submitted by January 30th of each year thereafter. All reports shall indicate the current status of the injection well, i.e., active, shut-in, temporarily abandoned, or plugged.**

Copies of the Annual Monitoring Report shall be submitted to the address at the end of this document.

Section 2

Monitoring Requirements for Permitted Class II-D and II-R Injection Wells

Federal Regulation 40 CFR 146.23(b) addresses the monitoring requirements for Class II permitted injection wells. Owners and operators of permitted injection wells are required to record the injection pressure, flow rate, and cumulative volume of the injection fluid as outlined in the terms of their permit. At a minimum monitoring frequencies shall be:

- (A) Weekly for produced fluid disposal operations; and
- (B) Monthly for enhanced recovery operations.

The owner or operator shall record one observation of injection pressure, flow rate, and cumulative volume at reasonable intervals no greater than thirty (30) days. Region 4 allows the

owner or operator of enhanced recovery wells to monitor them by manifold monitoring on a field or project basis if such facilities consist of more than one injection well, operate with a common manifold, and provide the owner or operator demonstrates that the manifold monitoring is comparable to individual well monitoring.

The owner or operator of a permitted injection well is required to monitor the nature of injection fluids at time intervals sufficiently frequent to yield data representative of their characteristics. For EPA administered programs in Kentucky, Tennessee, and Florida, this frequency shall be at least once each year or whenever changes are made to the fluid. At a minimum, the injection fluid analysis shall include pH, specific gravity, and total dissolved solids.

Reporting Requirements for Permitted Class II Injection Wells

Federal regulation 40 CFR 146.23(c) addresses the reporting requirement for permitted Class II injection wells. For Class II wells, an annual report summarizing the results of all monitoring is required. The report shall summarize the weekly/monthly records of the injection well as required in the terms of the permit. At a minimum the report shall summarize the weekly/monthly records of the injection well for injection pressure, flow rate, cumulative volume, and any major changes in characteristics or sources of injection fluids. **This report needs to be submitted if the well is active, shut-in, or temporarily abandoned, and the current status of the well must be indicated on the report.** The owner or operator shall submit the report for each active, shut-in, or temporarily abandoned injection well on EPA Form 7520-11, Annual Report Form. **The first Annual Monitoring Report shall cover the period from the effective date of the permit through December 31 of that year. Subsequently, the Annual Monitoring Report shall cover the period from January 1 through December 31, and shall be submitted by January 30th of each year thereafter. All reports shall indicate the current status of the injection well, i.e., active, shut-in, temporarily abandoned, or plugged.**

Copies of all Annual Monitoring Reports shall be submitted to the following address:

Annual Monitoring Report
U.S. Environmental Protection Agency - Region 4
Water Management Division
Ground Water/Drinking Water Branch
Ground Water & UIC Section
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

CERTIFICATE OF SERVICE

The undersigned certifies that the original and one copy of the foregoing Clarification of Complainant's Position Regarding Permit Requirements to Demonstrate Mechanical Integrity and Submit Monitoring Reports, in the Matter of Gene A. Wilson, Docket No., SDWA-04-2005-1016, was hand delivered to the Regional Hearing Clerk, and that true and accurate copies were served as follows:

Original and copy by Hand-Delivery:

Ms. Patricia Bullock
Regional Hearing Clerk
U.S. EPA, Region 4
61 Forsyth St., S.W.
Atlanta, GA 30303

Copy by Intra-Office Mail:

Regional Judicial Officer Susan B. Schub
U.S. Environmental Protection Agency
Region 4
61 Forsyth St., S.W.
Atlanta, Georgia 30303

Copy by Regular First Class Mail to:

Mr. Gene A. Wilson
101 Madison Street
P. O. Box 702
Louisa, Kentucky 41230

Date: 7/25/07

Paul Schwartz
Paul Schwartz
Attorney for Complainant
Associate Regional Counsel
EPA Region 4
61 Forsyth St., SW
Atlanta, GA 30303
(404) 562-9576