

June 20, 2021

7:00 AM

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

Docket No. SDWA-08-2021-0030

Received by
EPA Region VIII
Hearing Clerk

In the Matter of:)	
)	
Mann Oil Company LLC)	
)	
Respondent.)	COMPLAINT AND
)	NOTICE OF OPPORTUNITY
)	FOR HEARING
Proceedings under Section 1423)	
of the Safe Drinking Water Act)	
42 U.S.C. 300h-2)	

INTRODUCTION

1. This Complaint and Notice of Opportunity for Hearing is filed pursuant to sections 1423(a)(2) and (c)(2) of the Public Health Service Act, also known as the Safe Drinking Water Act (Act). 42 U.S.C. §§ 300h-2(a)(2) and (c)(2). The EPA regulations authorized by the Act are set out in parts 144-148 of title 40 of the Code of Federal Regulations (40 C.F.R. parts 144-148), and violations of the EPA regulations constitute violations of the Act. This proceeding is governed by 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. Complainant is Suzanne J. Bohan, Director, Enforcement and Compliance Assurance Division, EPA Region 8, who has been duly delegated the authority to initiate this action.
3. Complainant alleges that Mann Oil Company LLC (Respondent), has violated the Act and proposes the issuance of an administrative order requiring the assessment of a civil penalty.

NOTICE OF OPPORTUNITY FOR A HEARING

4. Pursuant to 42 U.S.C. § 300h-2(c)(3) and 40 C.F.R. § 22.15, Respondent has the right to a public hearing before a presiding officer to contest any material fact in this Complaint, the appropriateness of the proposed penalty, or to present the grounds for any legal defense it may have.

5. To contest the Complaint and assert Respondent's right to a hearing, Respondent must file a written answer (and one copy) with the Region 8 Hearing Clerk (RHC). Pursuant to 40 C.F.R. § 22.5(a)(1), the EPA's Region 8 Presiding Officer has authorized use of the EPA's email as the Region's electronic filing system (EFS), in addition to those methods already authorized by the Part 22 Rules for the filing of documents with the RHC. An answer being filed with the RHC using the EFS is to be emailed to: Haniewicz.Melissa@epa.gov, within 30 calendar days (see 40 C.F.R. §22.15(a)) of receiving this Complaint. The caption of the email must contain the following information: "In the Matter of Mann Oil Company LLC," include the EPA Docket No. SDWA-08-2021-0030, and "Administrative Complaint." In the alternative, filings may be mailed to the following address:

Missy Haniewicz, Regional Hearing Clerk
U.S. EPA Region 8 (8ORC)
1595 Wynkoop Street
Denver, CO 80202-1129

within 30 calendar days (see 40 C.F.R. §22.15(a)) of receiving this Complaint. The answer must clearly admit, deny or explain the factual allegations of the Complaint, the grounds for any defense, any disputed facts, and Respondent's specific request for a public hearing. Please see section 22.15(b) of the Rules of Practice for a complete description of what must be in the answer. **FAILURE TO FILE AN ANSWER AND REQUEST FOR HEARING WITHIN 30 CALENDAR DAYS MAY WAIVE RESPONDENT'S RIGHT TO CONTEST THE ALLEGATIONS OR PROPOSED PENALTY, AND RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF THE PENALTY PROPOSED IN THE COMPLAINT, OR UP TO THE MAXIMUM AUTHORIZED BY THE ACT.**

QUICK RESOLUTION

6. Respondent may pay the penalty amount proposed in this Complaint at which point the EPA shall resolve this proceeding following the procedures described in 40 C.F.R. § 22.45(c)(3). Such action to make payment need not contain any response to, or admission of, the allegations in this Complaint. Such action to make payment constitutes a waiver of Respondent's right to contest the allegations and to appeal the final order.

SETTLEMENT NEGOTIATIONS

7. The 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, please contact Mia Bearley, Enforcement Attorney, at 1-800-227-8917, extension 6554, or 303-312-6554, or at bearley.mia@epa.gov. **Please note that calling Ms. Bearley or requesting a**

settlement conference does NOT delay the running of the 30-day period for filing an answer and/or requesting a hearing.

GENERAL ALLEGATIONS

The following general allegations apply to all times relevant to this action, and to each count of this Complaint:

8. Respondent is incorporated in the State of North Dakota and conducts oil and gas production and injection activities in the State of North Dakota. Respondent's corporate address is 408 5th Street N, New Town, North Dakota, 58763-0878.
9. Respondent is a "person" within the meaning of section 1401(12) of the Act, 42 U.S.C. § 300f(12).
10. Respondent is the owner and operator of the well that is the subject of this Complaint, known as the McKenzie Federal 35-1 SWD Well (McKenzie Well). The McKenzie Well is a Class II injection well, as defined in 40 C.F.R. § 144.6(b).
11. The McKenzie Well penetrates known or possible underground sources of drinking water (USDW), including, but not limited to the Sentinel Butte, Tongue River, Cannonball, and Hell Creek formations and the Fox Hills aquifer. A USDW is defined in 40 C.F.R. § 144.3.
12. Pursuant to section 1422 of the Act, 42 U.S.C. § 300h-1(e), and 40 C.F.R. § 147.1752, the EPA administers the Underground Injection Control (UIC) program for Class II injection wells in Indian country within the State of North Dakota. Therefore, for purposes of 42 U.S.C. § 300h-2(a)(2), the EPA has jurisdiction and primary enforcement authority for Class II injection wells in Indian country in North Dakota. The effective date of the program is November 25, 1988, and the program requirements are located at 40 C.F.R. parts 124, 144, 146, 147, and 148. See 40 C.F.R. § 147.1752.
13. Class II underground injection wells under the jurisdiction of the EPA are authorized to operate either under an EPA-issued permit or under a rule. To be eligible to operate under rule-authorization, a UIC well must be a Class II enhanced oil recovery well and must have been such a well at the time the EPA UIC program became effective. See 40 C.F.R. part 144, subpart C. All other Class II wells must be authorized by an EPA-issued permit. Enhanced oil recovery (EOR) injection wells inject for the purpose of enhanced recovery of oil or natural gas. Saltwater disposal (SWD) injection wells are wells that inject fluids brought to the surface in connection with natural gas storage operations, or conventional oil or natural gas production. See 40 C.F.R. part 144, subpart D.

14. Pursuant to 40 C.F.R. sections 144.3, 144.11 and 144.31, all underground injection activities are prohibited, except into a well authorized by rule or except as authorized by a permit issued under the UIC program. The McKenzie Well is not authorized by rule and, for the duration at issue in this Complaint, was not authorized by an EPA-issued permit.
15. The McKenzie Well is located in McLean County, North Dakota, within the exterior boundaries of the Fort Berthold Indian Reservation near the intersection of 67th Avenue NW and 19th Street NW. For the duration at issue, Respondent used the McKenzie Well to dispose of produced water from Respondent's Zahnow Federal 42-35 oil production well (Zahnow Well). The Zahnow Well is located approximately 1000 feet north of the McKenzie Well and is part of Respondent's oil production operations (oil and gas production wells are not regulated by the EPA's UIC program) in the Centennial field.
16. The State of North Dakota has primary enforcement authority for regulating the UIC program on non-Tribal lands. On March 30, 2005, the North Dakota Industrial Commission (NDIC) issued Respondent a UIC permit pursuant to its non-Tribal authorities (NDIC Well File No. 14601). As the McKenzie Well is located on Tribal land, however, the EPA has primary enforcement authority regarding the permitting issues in this Complaint, as provided by 42 U.S.C. § 300h-1(e) and 40 C.F.R. § 147.1752. Therefore, the NDIC permit does not provide Respondent with the required authority to conduct injection operations.
17. Injection volume information submitted by Respondent to the NDIC is posted on the NDIC oil and gas online database (<https://www.dmr.nd.gov/oilgas/findwellsvw.asp>). A search of this database shows that the McKenzie Well began injection operations in April 2005.
18. On August 6, 2015, the NDIC alerted the EPA that it had authorized Respondent's injection into the McKenzie Well, as referenced in paragraph 16. On September 1, 2015, the EPA conducted an inspection of the McKenzie Well. During this inspection the EPA did not observe active injection taking place, however, the facility operator confirmed that the McKenzie Well had been actively in use for injection.
19. On February 20, 2018, the EPA sent Respondent a letter identifying that Respondent was in violation of the SDWA requirement to have an EPA-issued UIC permit to operate the McKenzie Well within the Fort Berthold Indian Reservation boundaries and provided Respondent with a UIC permit application package to assist Respondent meet its regulatory requirements under 40 C.F.R. part 144.
20. On April 11, 2018, Respondent submitted a permit application for the McKenzie Well, however, the EPA found initial submissions to be incomplete pursuant to 40 C.F.R. § 144.31(d). The EPA sent three separate letters, respectively on August

- 22, 2018, October 17, 2018, and November 29, 2018, notifying Respondent of its continued deficient permit application. The third notice informed Respondent that the EPA planned to initiate a process of denying the permit application if additional information was not provided to the EPA by December 12, 2018.
21. The EPA conducted a review of the McKenzie Well injection-history records available from the NDIC online database referenced in paragraph 17. These records indicated that Respondent was conducting injection operations not authorized by the EPA on Tribal land at the McKenzie Well during a timeframe over nine months. Specifically, injections occurred from August of 2018 through January of 2019, and then again from March of 2019 through June of 2019.
 22. The EPA conducted a UIC inspection of the McKenzie Well on June 11, 2019 and June 12, 2019. During this site visit, a representative for Respondent confirmed that the McKenzie Well was being used to conduct injections.
 23. After providing compliance assistance to enable Respondent to complete its permit application, on June 1, 2020, the EPA issued EPA UIC Permit ID UT22389-11621 (EPA Permit). The June 1, 2020, EPA permit action provided Respondent with the authority to conduct future injections pursuant to the terms of the EPA Permit.

**VIOLATION
COUNT I
Unauthorized Injection Without A Permit**

24. The UIC regulations found at 40 C.F.R. sections 144.11 and 144.31, provide that all underground injection activities are prohibited, except into a well authorized by rule or except as authorized by a permit issued under the UIC program, defined in 40 C.F.R. § 144.3 as the Underground Injection Control program under part C of the Act.
25. The McKenzie Well is not authorized by rule and, for the time-period at issue, did not have an EPA-issued UIC permit. Prior to obtaining an EPA UIC permit, injection-history records obtained from NDIC and EPA inspection records indicate that Respondent conducted injection operations at the McKenzie Well over a period of nine months, from August of 2018 through January of 2019, and March of 2019 through June of 2019. Therefore, Respondent has conducted unauthorized injection operations at the McKenzie Well in violation of part C of the Act and 40 C.F.R. §§ 144.11 and 144.31.

COMPLIANCE AND CIVIL PENALTY ASSESSMENT

26. The Act, as amended, authorizes the Administrator of the EPA to issue orders to require compliance with the Act and assess civil penalties for the violations alleged in this Complaint. 42 U.S.C. §§ 300h-2(a)(2) and (c)(2). The Act

authorizes civil administrative penalties of not more than \$5,000 for each day of violation, up to a maximum civil administrative penalty of \$125,000. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, requires the EPA to adjust statutory penalty amounts to account for inflation. The EPA's Civil Monetary Penalty Inflation Adjustment Rule adjusts the above-listed civil administrative penalties to \$11,803 for each day of violation, up to a maximum civil administrative penalty of \$295,088. 85 Fed. Reg. 83821 (Dec. 23, 2020).

27. The Act requires the EPA to take into account the following factors in assessing a civil penalty: the seriousness of the violation, the economic benefit resulting from the violation, any history of such violations, any good-faith efforts to comply, the economic impact on Respondent, and other matters as justice may require. 42 U.S.C. §300h-2(c)(4)(B).
28. Complainant has considered the statutory penalty factors with respect to the violations alleged in this Complaint. Pursuant to the specific facts of this case, including considerations such as Respondent's conduct of unauthorized injection operations despite having received notice of the prohibited activity and Respondent's submission of an incomplete EPA UIC permit application, the EPA proposes that Respondent pay a total civil penalty of **\$37,638** for the violations alleged in this Complaint.

PAYMENT OF PENALTY

29. Respondent's payment of the penalty shall be made using any method provided on the following website, <https://www.epa.gov/financial/makepayment>. Further, Respondent shall:
 - (a) identify each payment with this Complaint's Docket Number; and
 - (b) within 24 hours of payment, mail "proof of payment" (as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made in the amount due, and identified with this Complaint's Docket Number) to:

Nathan Wiser, Technical Enforcement Program
U.S. EPA Region 8 (8ENF-W-SD)
1595 Wynkoop Street
Denver, CO 80202-1129
Email: wiser.nathan@epa.gov

and

Missy Haniewicz, Regional Hearing Clerk
U.S. EPA Region 8 (8ORC-IO)
1595 Wynkoop Street

Denver, CO 80202-1129
Email: Haniewicz.Melissa@epa.gov

30. The provisions of this Complaint shall apply to and be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns.
31. As part of this proceeding, the EPA shall provide the public with notice of this Complaint to allow a reasonable opportunity for citizens to comment on the matter, as well as the opportunity for such citizens to present evidence in the event a hearing is held. 42 U.S.C. § 300h-2(c)(3).
32. The Presiding Officer is not bound by the penalty proposed by the EPA, and may assess a penalty above the proposed amount, up to \$295,088, as authorized in the Act, as amended.
33. This Complaint does not constitute a waiver, suspension, or modification of the requirements of any applicable provision of the Act or the UIC regulations implementing the Act, which remain in full force and effect. Issuance of this Complaint is not an election by the EPA to forego any civil or any criminal action otherwise authorized under the Act.

By:

X

Suzanne J. Bohan, Director

Enforcement and Compliance Assurance Division
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, Colorado 80202