



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

Ref: 8ENF-UFO

SEP 27 2010

CERTIFIED MAIL – 7005-0390-0000-4848-8772
RETURN RECEIPT REQUESTED

Corporation Service Company, Registered Agent
XTO Energy, Inc.
2180 South 1300 East
Suite 650
Salt Lake City, UT 84106

Re: Proposed Compliance Order, Penalty Complaint,
And Notice Of Opportunity For Hearing
Docket No. SDWA-08-2010-0080

Corporation Service Company:

Enclosed is a Proposed Compliance Order, 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 describes how XTO Energy, Inc. has violated the SDWA and proposes both compliance requirements and the assessment of a civil penalty. Please note that there are deadlines in the complaint that must be followed. The complaint is effective upon the receipt date and you have thirty (30) calendar days to file an answer to dispute the contents of the complaint.

Also note that under the Rules of Practice, XTO Energy, Inc. may just send in a check for that amount 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 and 22.45. A sheet with payment instructions is enclosed.

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 Brenda Morris, who can be reached at the above address (with the mail code 8ENF-L) or by phone at (303) 312-6891. We urge your prompt attention to this matter.

Sincerely,

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

Enclosures:

Proposed Compliance Order, Penalty Complaint,
and Notice of Opportunity for Hearing
Part 22 Rules of Practice
Public Notice
Penalty payment instructions

cc: The Honorable Curtis Cesspooch, Chairman
Uintah & Ouray Business Committee
P.O. Box 190
Fort Duchesne, Utah 84026

Mike Natchees, Environmental Coordinator
Ute Indian Tribe
P.O. Box 460
Fort Duchesne, Utah 84026

Gil Hunt
Utah Division of Oil, Gas and Mining
P.O. Box 145801
Salt Lake City, Utah 84114

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8
Docket No. SDWA-08-2010-0080

2010 SEP 27 AM 10:44

FILED
EPA REGION VIII
HEARING CLERK

In the Matter of:)
)
XTO Energy, Inc.) **PROPOSED COMPLIANCE ORDER,**
) **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 statute are set out in part 144 of title 40 of the Code of Federal Regulations (C.F.R.), and violations of the statute, 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 XTO Energy, Inc. (Respondent) has violated the regulations 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 RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF PENALTY UP TO THE MAXIMUM AUTHORIZED BY THE ACT.**

SETTLEMENT NEGOTIATIONS

6. 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:

7. Respondent, XTO Energy, Inc., is a corporation doing business in the State of Utah.
8. Respondent is a "person" as defined in the Act, and is therefore subject to the requirements of the statute and/or regulations 42 U.S.C. § 300f(12).
9. Respondent owns and/or operates the salt water disposal well named "13-11F" in the southwest quadrant of the southwest quadrant of Section 11, Township 10S, Range 20E of Uintah County in Utah ("facility").
10. The 13-11F well, as identified in paragraph 9, is classified as a "Class II Injection Well" as defined by 40 C.F.R. §§144.80(b) and 146.5(b). Respondent is subject to applicable requirements of 40 C.F.R. §§124, 144 and 146.
11. The 13-11F well is authorized to operate by EPA permit UT20961-06292, and Respondent is required to comply with all conditions in the permit.
12. The permitted maximum allowable injection pressure (MAIP) for the above-referenced well, as defined by the well permit under Part II, C(3) was 1135 psig during September of 2009.
13. In the 2009 Annual Disposal/Injection Well Monitoring Report submitted by the Respondent, the certified value of 1170 pounds per square inch gauge (psig) was reported for the maximum injection pressure recorded during September of 2009.

14. Based on the reported injection pressure listed above, and the MAIP permitted for the well, the Respondent exceeded the maximum allowable injection pressure during September of 2009.

15. Respondent is in violation of 40 C.F.R. §§ 144.51(a) and 144.52(a)(3), and 146.23 by operating a Class II salt water disposal well at pressures greater than the permitted MAIP. Respondent's operation of the well is in violation of the EPA regulations and is therefore in violation of the Act, 42 U.S.C. § 300h-2 (c)(1).

16. On May 6, 2010, EPA sent a Notice of Violation addressing the violations stated in paragraph 13 requiring a written response from Respondent within 30 days of the receipt of the letter. Respondent did not reply in writing to EPA within 30 days of the receipt of the letter.

PROPOSED COMPLIANCE ORDER

Within thirty (30) calendar days of Respondent's receipt of this complaint, submit to EPA, in writing, a description of what action has been taken to correct this situation and how you intend to prevent any recurrence in the future. EPA will promptly review the proposed plan and either approve it or provide Respondent with written comments;

17. Respondent shall submit all documentation to:

Sarah Roberts (Mail Code 8ENF-U'FO)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202

PROPOSED CIVIL PENALTY

18. For an administrative proceeding, the Act authorizes the assessment of a civil penalty of up to \$16,000 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 \$5,000 for the violations alleged in this complaint.

19. 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).

20. To discuss settlement or ask any questions you may have about this case or process, please contact Brenda Morris, Enforcement Attorney, at (303) 312-6891, 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: 7/2/10

By: 

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

In the Matter of: XTO Energy, Inc.
Docket No.: SDWA-08-2010-0080

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the PROPOSED COMPLIANCE ORDER, PENALTY COMPLAINT, AND NOTICE OF OPPORTUNITY FOR HEARING with the Consolidated Rules of Practice (40 C.F.R. Part 22), a Public Notice, and the U.S. EPA Small Business Resources Fact Sheet were hand-carried to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129, and that a true copy of the same was sent via Certified Mail to:

Corporation Service Company
2180 South 1300 East
Suite 650
Salt Lake City, UT
84106

9/27/2010
Date

Joice Maxwell

**U.S. ENVIRONMENTAL PROTECTION AGENCY
PUBLIC NOTICE
OPPORTUNITY FOR PUBLIC COMMENT ON
PROPOSED COMPLIANCE ORDER, PENALTY COMPLAINT,
AND
NOTICE OF OPPORTUNITY FOR HEARING
AGAINST
XTO ENERGY, INC,
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 Compliance Order, Penalty Complaint, and Notice of Opportunity for Hearing (complaint) [Docket No. **SDWA-08-2010-0080**] that Region 8 of the United States Environmental Protection Agency (EPA) proposes to issue to XTO Energy, Inc., for alleged violations at the facility located in the southwest quadrant of the southwest quadrant of Section 11, Township 10S, Range 20E of Uintah County in Utah. 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 injected fluids in a well above the allowed pressure and proposes compliance requirements and a civil penalty of \$5,000 for the alleged violation.

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 V Program has not been delegated to the 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 UIC well, which is the subject of this complaint is a Class II salt water disposal injection well, pursuant to 40 C.F.R. §§ 146.5, that injects fluids which are brought to the surface in connection with conventional oil or natural gas production.

The complaint alleges that XTO Energy, Inc., is in violation of UIC regulations and is subject to appropriate penalties for failing to prevent movement of fluids into a USDW that may cause a violation of a primary drinking water regulation under 40 C.F.R. Part 142 or otherwise adversely affect the health of persons.

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 XTO Energy, Inc., will be available for public review as part of the Administrative Record, subject to the provisions of law restricting the disclosure of confidential information. XTO Energy, Inc., 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. It is recommended that those wishing to view the Administrative Record call Brenda Morris, Enforcement Attorney, Legal Enforcement Program, EPA Region 8, at (303) 312-6891 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.



Philip S. Strobel, Acting Director
Technical Enforcement Program
Office of Enforcement, Compliance and Environmental Justice
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202