



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

SEP 13 2007

Ref: 8ENF-UFO

By HAND DELIVERY

John Morales, Jr., Chairman
Assiniboine & Sioux Tribes of the Fort Peck Reservation
P.O. Box 1027
Poplar, Montana 59255

Re: UNDERGROUND INJECTION
CONTROL PROGRAM (UIC)
Complaint with Notice of Opportunity
for Hearing

Docket No. SDWA-08-2007-0082

Dear Chairman Morales:

The enclosed document is a Complaint with Notice of Opportunity for Hearing ("complaint") for violations of the Safe Drinking Water Act ("SDWA"). Please carefully read the complaint soon, since it describes the Assiniboine & Sioux Tribes' ("the Tribes") rights and responsibilities in this matter as well as EPA's authority, the factual basis of the violations, and the background for the proposed penalties. EPA is enclosing a copy of the Rules of Practice that govern these proceedings, an information sheet about the Small Business Regulatory Enforcement Fairness Act, and a required Public Notice associated with this complaint.

The Tribes are required to take action within 30 calendar days of your receipt of this complaint to avoid the possibility of having a default judgment entered against the Tribes that could impose the penalty amount proposed in the complaint.

Whether or not the Tribes request a hearing, we encourage an informal conference with EPA concerning the alleged violations in an effort to negotiate a settlement. The Tribes may wish to appear at an informal conference and/or be represented by legal counsel. To arrange for such a conference, the Tribes should contact Jim Eppers, Enforcement Attorney, Legal Enforcement Program, at the number provided below. Request for such a conference does not extend the 30 calendar day period during which a request for hearing must be submitted. Public Notice of EPA's complaint and the opportunity to provide written comments on the complaint is being provided pursuant to section 1423 (c)(3)(B) of the SDWA, 42 U.S.C. § 300h-2(c)(3)(B). Should a hearing be held, any person who comments on the complaint has a right to participate in the hearing.

If the Tribes have technical questions relating to this matter, the person most knowledgeable on my staff is Nathan Wisler, UIC Enforcement Team, Technical Enforcement Program, at 1-800-227-8917 ext. 6211 or (303) 312-6211. For all legal questions, the person most knowledgeable on my staff is Jim Eppers at 1-800-227-8917 ext. 6893 or (303) 312-6893. Mr. Wisler and Mr. Eppers can also be reached at the following addresses:

Nathan Wisler (Mail Code 8ENF-UFO)
Environmental Scientist
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202, or

Jim Eppers (Mail Code 8ENF-L)
Enforcement Attorney
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202.

We urge the Tribes' prompt attention to this matter.

Sincerely,



Eddie A. Sierra
Deputy Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures:

Complaint with Notice of Opportunity for Hearing
Public Notice
Small Business Regulatory Enforcement Fairness Act fact sheet
40 CFR Part 22 Rules of Practice

cc: Deb Madison, Environmental Program Manager (with all enclosures)
Assiniboine and Sioux Tribes
P.O. Box 1027
Poplar, Montana 59255

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY 2007 SEP 10 AM 10:18
REGION 8
Docket No. SDWA-08-2007-0082

RECEIVED
HEARING CLERK

In the Matter of:)
)
Assiniboine & Sioux Tribes)
of the Fort Peck Reservation,)
)
Respondents.)
)
Proceedings under Section 1423(c))
of the Safe Drinking Water Act)
42 U.S.C. 300h-2(c))

**COMPLAINT WITH NOTICE OF
OPPORTUNITY FOR HEARING
(COMPLAINT)**

INTRODUCTION

1. This civil administrative enforcement action is authorized by Congress in section 1423(c) of the Public Health Service Act, also known as the Safe Drinking Water Act (SDWA or the Act). 42 § U.S.C. 300h-2(c). The Environmental Protection Agency (EPA) Underground Injection Control Program regulations authorized by the statute are set out in 40 C.F.R. parts 124, 144, 146, 147, and 148. 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. The procedures provided in 40 C.F.R. part 22, subpart I will apply to these proceedings, and the Regional Judicial Officer (“RJO”) will preside. 40 C.F.R. § 22.50(a)(2).
2. The Assiniboine & Sioux Tribes of the Fort Peck Reservation are each an Indian Tribe and a municipality, and each is therefore a “person” within the meaning of Section 1401 (10) and (12) of the Act, 42 U.S.C. §§ 300f (10) and (12).
3. EPA alleges that the Fort Peck Tribes’ Assiniboine & Sioux Tribes of the Fort Peck Reservation (Respondents) violated the Act, permit, and/or regulations and proposes the assessment of a civil penalty and an expeditious compliance schedule, as more fully explained below.

NOTICE OF OPPORTUNITY FOR A HEARING

4. Respondents have the right to a public hearing before the RJO to disagree with any factual allegation made by EPA in the complaint or the appropriateness of the proposed penalty, or to present the grounds for any legal defense they may have.

5. To disagree with the complaint and assert its right to a hearing, Respondents must file a written answer (and one copy) with the Region 8 Hearing Clerk at the following address:

Region 8 Hearing Clerk
1595 Wynkoop Street (8RC)
Denver, Colorado 80202

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 facts that may be in dispute, and the 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 DISAGREE WITH THE ALLEGATIONS OR PROPOSED PENALTY, AND MAY RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF THE PENALTY AND COMPLIANCE PROPOSED IN THE COMPLAINT, OR UP TO THE MAXIMUM AUTHORIZED BY THE ACT.**

SETTLEMENT NEGOTIATIONS

6. EPA encourages discussing whether cases can be settled through informal settlement conferences. If Respondents want to pursue the possibility of settling this matter, or have any other questions, contact Jim Eppers, Senior Enforcement Attorney, at 1-800-227-8917; extension 6893 or 303-312-6893 or at the address below. **Please note that calling Mr. Eppers or requesting a settlement conference does NOT delay the running of the 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 count of this complaint:

7. Pursuant to section 1422 of the Act, 42 U.S.C. § 300h-1, and 40 C.F.R. part 147 subpart BB, section 147.1351, EPA administers the Underground Injection Control (UIC) program for Class II wells in Indian country within the State of Montana. The effective date of the program is June 25, 1984. The program requirements are located at 40 C.F.R. parts 124, 144, 146, 147, and 148.
8. 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. All other Class II wells must be authorized by an EPA-issued permit. Salt water disposal wells are wells that inject water produced to the surface from other oil or gas production wells.

9. The well subject to this action is a Class II salt water disposal well. This well is authorized under a permit issued to Respondents by the EPA. This well is located in Roosevelt County, Montana, within the exterior boundary of the Fort Peck Indian Reservation. The specific well and its location is:

Koda Was-Te #1 well
 East Benrud Oil Field
 T31N, R47E, Section 36, SE/4, NW/4
 EPA Permit # MT20854-04469

EPA issued the permit for this well, with an effective date of December 16, 1998.

10. The 7,790 feet deep well which is the subject of this complaint penetrates known or possible underground sources of drinking water (USDWs) including, but not limited to, groundwater in the Flaxville, Fort Union, Hell Creek, Fox Hills, and Judith River formations within the uppermost 2017 feet of the well, as well as the Dakota/Lakota formation between 4076 and 4406 feet below ground surface.
11. A summary list of the violations alleged is included as Attachment A and is incorporated into this complaint.

COUNT 1

12. Respondents' UIC permit at parts II (D)(1) through (4) and the regulations at 40 C.F.R. §146.23(c) require that Respondents must annually by February 15 submit a report of the previous year's monitored and recorded information. At a minimum, this report must contain recorded observations of injection pressure, annulus pressure, flow rate, and cumulative injection volume, which report is known as an "annual monitoring report." Each year, prior to this due date, EPA sent a courtesy letter to Respondents as a reminder of their obligation to timely submit this annual monitoring report. Below is listed Respondents' compliance record with this requirement.

<u>Report Year</u>	<u>Report Due Date</u>	<u>Report Received</u>	<u>Comments</u>
2000	February 15, 2001	Never received	On-going
2001	February 15, 2002	February 19, 2002	4 days late, incomplete, on-going
2002	February 15, 2003	May 13, 2003	87 days late; incomplete, on-going
2003	February 15, 2004	February 14, 2004	Incomplete, corrected May 7, 2004
2004	February 15, 2005	February 17, 2005	2 days late
2005	February 15, 2006	March 3, 2006	16 days late
2006	February 15, 2007	March 30, 2007	43 days late, incomplete, on-going

13. Respondents are in violation of their UIC permit at parts II (D)(1) through (4) and the regulations at 40 C.F.R. §146.23(c) by failing to timely report monitored and recorded observations of injection pressure, annulus pressure, flow rate, and cumulative injection volume for the well referenced in paragraph 9. See Attachment A to this complaint where the duration of these violations are summarized and labeled with the letter “A.”

COUNT 2

14. Respondents’ UIC permit at parts II (D)(1) through (4) and the regulations at 40 C.F.R. §146.23(c) require that Respondents must annually by February 15 submit the analytical results of a fluid sample collected in the previous reporting year which is representative of the injected fluid and analyzed, at least, for pH, specific conductivity, specific gravity and total dissolved solids, which report is known as an “annual fluid analysis.” Each year since 2004, prior to this due date, EPA sent a courtesy letter to Respondents as a reminder of their obligation to timely submit this annual monitoring report. Below is listed Respondents’ compliance record with this requirement.

<u>Report Year</u>	<u>Report Due Date</u>	<u>Report Received</u>	<u>Comments</u>
2000	February 15, 2001	Never received	On-going
2001	February 15, 2002	Never received	On-going
2002	February 15, 2003	May 27, 2003	101 days late
2003	February 15, 2004	May 7, 2004	81 days late, resent 2002 report
2004	February 15, 2005	February 17, 2005	2 days late
2005	February 15, 2006	March 3, 2006	16 days late
2006	February 15, 2007	Never received	On-going

15. Respondents are in violation of their UIC permit at parts II (D)(1) through (4) and the regulations at 40 C.F.R. §146.23(c) by failing to timely submit analytical results of a fluid sample collected analyzed, at least, for pH, specific conductivity, specific gravity and total dissolved solids for the well referenced in paragraph 9. See Attachment A to this complaint where the duration of these violations are summarized and labeled with the letter “B.”

COUNT 3

16. Respondents’ UIC permit at part II (C)(4) and the regulations at 40 C.F.R. §144.52(a)(3) limit injection pressure to 500 pounds per square inch (psi). This maximum allowable injection pressure (“MAIP”) is set to prevent fracturing from occurring in the injection zone so that injected fluids remain geologically confined and do not migrate uncontrolled through fractures into overlying USDWs.
17. On August 26, 2003, during an inspection by EPA personnel, the well was observed to be operating at 610 psi, in excess of the well’s MAIP. In addition, the annual monitoring report for 2003 shows that for each month from January 2003 through September 2003, the MAIP was exceeded, with pressures as high as 700 psi reported. It is not possible to

determine if the MAIP was exceeded in months prior to January 2003, because the annual monitoring reports for 2001 and 2002 are incomplete, lacking the required maximum observed injection pressures, a problem highlighted under Count 1 above. The list below summarizes the injection pressure violations alleged.

<u>Month/Year</u>	<u>Max Reported Pressure</u>	<u>MAIP</u>	<u>Percent over MAIP</u>
January 2003	640 psi	500 psi	28%
February 2003	625 psi	500 psi	25%
March 2003	560 psi	500 psi	12%
April 2003	660 psi	500 psi	32%
May 2003	680 psi	500 psi	36%
June 2003	700 psi	500 psi	40%
July 2003	700 psi	500 psi	40%
August 2003	650 psi	500 psi	30%
September 2003	550 psi	500 psi	10%

18. Respondents are in violation of their UIC permit at part II (C)(4) and the regulations at 40 C.F.R. §144.52(a)(3) by exceeding the well's MAIP. This is a historic violation. See Attachment A to this complaint where the duration of this violation is summarized and labeled with the letter "C."

COUNT 4

19. Respondents' UIC permit at part II (F) and the regulations at 40 C.F.R. § 144.52(a)(7) require the Respondents to establish and maintain continuous financial responsibility to adequately plug and abandon the well.

Between December 16, 1998, when the permit was issued and December 7, 2004, when they established a letter of credit, Respondents elected to use a financial statement to cover their well plugging financial responsibility. To be allowed to use financial statement coverage, Respondents were required to submit updated financial statement documentation, including a Chief Financial Officer's ("CFO's") letter, within 90 days following the close of each fiscal year. The CFO's letter must be accompanied by certain financial ratios, the values of which determine whether or not Respondents must cease using a financial statement and instead establish a separate, stand-alone financial instrument such as a surety bond, letter of credit, or trust fund, to assure the eventual proper plugging of the well. Since Respondents' fiscal year ends December 31, the CFO's letter was due by March 31 of each following year. Every year, EPA sent Respondents a courtesy letter, serving as a reminder of their financial statement reporting obligations and deadlines. For the 2000, 2001, 2002, and 2003 reporting years, Respondents failed to timely submit an updated CFO's letter within 90 days following the close of their fiscal year. For the first three of these years, EPA received the updated CFO letter on May 18, 2001, August 9, 2002, and February 17, 2004, respectively. For the last year, Respondents never submitted the CFO's letter but replaced their financial responsibility mechanism by establishing a letter of credit with standby trust agreement,

ending the requirement to submit annual CFO letters. Respondents' compliance record submitting updated financial statements is listed below.

<u>Report Year</u>	<u>Updated Info Due</u>	<u>Updated Info Rec'd</u>	<u>Comments</u>
2000	March 31, 2001	May 18, 2001	48 days late
2001	March 31, 2002	August 9, 2002	131 days late
2002	March 31, 2003	February 17, 2004	320 days late
2003	March 31, 2004	Never submitted	Changed to letter of credit 12/7/04

20. Respondents are in violation of their UIC permit at part II (F) and the regulations at 40 C.F.R. § 144.52(a)(7) by failing to timely submit an updated CFO's letter within 90 days following the close of their fiscal year. These are historic violations. See Attachment A to this complaint where the duration of this violation is summarized and labeled with the letter "D."

COUNT 5

21. The UIC permit at part II (A)(3) and the regulations at 40 C.F.R. § 144.51(e) require Respondents to maintain the wellhead and related appurtenances in a condition sufficient to allow EPA inspectors to access compliance with the well's operational requirements. On August 26, 2003, during a routine inspection by EPA personnel, the well was observed to have no place to put EPA's pressure gauge on the well's injection tubing because the well housing was too low to allow its placement.
22. Respondents are in violation of their UIC permit at part II (A)(3) and the regulations at 40 C.F.R. § 144.51(e) by having left no space for inspectors to put EPA's pressure gauge on the well's injection tubing. This is a historic violation. See Attachment A to this complaint where the duration of this violation is summarized and labeled with the letter "E."

RELIEF SOUGHT

23. The Act, as amended, authorizes the assessment of an administrative civil penalty of up to \$6,500.00 per day per violation and the issuance of an order requiring compliance with the UIC requirements, 42 U.S.C. § 300h-2(c)(2), as amended by the Civil Monetary Penalty Inflation Adjustment Rule, 69 FR 7121 (February 13, 2004). See also 40 C.F.R. § 22.1(a)(9). The Act requires 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, Respondents' prior compliance history of such violation, any good-faith efforts to comply, the economic impact on Respondents, and other factors that justice may require. 42 U.S.C. §300h-2(c)(4)(B).
24. In light of the statutory factors and the specific facts of this case, EPA requests that the RJO assess a penalty of **\$35,472 (thirty-five thousand four hundred seventy-two dollars)**, plus additional penalties for each of the continuing violations from

September 15, 2007 until those violations cease, and order Respondents to comply expeditiously with each of its permit requirements cited in Counts 1-5. A brief explanation of the proposed penalty follows. The duration of any violation taking place prior to September 15, 2002, is not considered for penalty calculation purposes, consistent with the statute of limitations. 28 U.S.C §2462.

Seriousness of the Violations

For Counts 1 and 2, the UIC program is heavily reliant upon accurate and representative self-reporting. Since there are so many injection wells in the country, EPA depends on well operators to abide by their self-monitoring and self-reporting requirements. Given the use of the injected wastewater's density in calculating a maximum allowable injection pressure limit, a well may be injecting at a pressure, which although compliant with the injection pressure limit measured at the surface pressure monitoring gauge, may be causing fracturing in the receiving injection zone. It is for this reason that EPA needs to know the specific gravity of the injected wastewater. Fracturing in the injection zone can lead to fluid migrating into a USDW. Furthermore, the chemical analysis of the injected fluid confirms that the wastewater is oil field brine, permissible for injection under the regulations and UIC permit conditions. Similarly, EPA is reliant upon accurate reports of an injection well's operational history, including the measured injection and annulus pressure, and rates and total volumes injected. There are, for instance, rate and injection pressure limits in the permit for this well.

For Count 3, injection at a pressure exceeding its permitted maximum allowable limit can lead to fracturing in the injection zone, which can lead to fluid migrating into and contaminating a USDW.

For Count 4, EPA has a responsibility to ensure the proper plugging and abandonment of injection wells. When operators of wells are unable to plug and abandon their own wells, it is EPA's responsibility to ensure they get plugged using funding set aside by the operator for this purpose. When operators use financial statement coverage to meet the future plugging requirement, it is critical that EPA receive timely updates regarding certain financial tests to know whether an alternate type of financial instrument is warranted. Failure to timely report updated financial statement information places EPA in a position of not knowing whether the operator can continue to demonstrate it has the necessary resources to plug wells, which can lead to operation of wells by operators without the necessary resources to actually plug wells in the future.

For Count 5, having no place to attach EPA inspector's wellhead monitoring precludes independent monitoring of such critical parameters as injection pressure and annulus pressure. Accurate and independent pressure monitoring is necessary to ensure the well is not endangering USDWs.

Economic Benefit

For Counts 1 - 2, Respondents enjoyed an economic benefit by not timely committing expenditures to be in compliance. For Count 3, Respondents enjoyed an economic benefit by failing to keep the injection rate in line with the wellhead injection pressure limit, and avoided cost to find an alternative disposal method to dispose of the commensurate volume of produced water over the well's capacity. For Count 4, Respondents enjoyed an economic benefit by not timely committing the expenditures to be in compliance. EPA does not believe Respondents enjoyed an economic benefit from Count 5. The total economic benefit Respondents has enjoyed is estimated by EPA to be **\$16,933 (sixteen thousand nine hundred thirty-three dollars)**.

Prior Compliance History

EPA Region 8 has taken no prior formal enforcement actions against Respondents for violations of the UIC program regulations. EPA made no upward adjustments to the proposed penalty based on this factor.

Good-Faith Efforts to Comply

EPA has provided extensive compliance assistance to Respondents on a regular basis since the well was permitted. EPA sent to Respondents annual courtesy reminder letters regarding their annual reporting requirements each year since Respondents have operated the well. EPA sent annual courtesy reminder letters to Respondents regarding use of financial statement to meet their future plugging and abandonment financial responsibility. EPA also sent notices of violation after it discovered many of the violations. Attachment B to this complaint displays EPA's 18 written communications to Respondents, explaining requirements to Respondents. In addition, for the express purpose of compliance assistance, a 3-hour telephone conversation took place between EPA and Respondents on October 16, 2003. During the call EPA staff read the complete UIC permit, line-by-line, explaining all permit conditions to ensure Respondents understood their requirements under the permit.

Respondents have had full control over the well since it was permitted in 1998. Respondents have or should have all the monitoring data required to make the obligatory reports to EPA. EPA is not aware of any reason why Respondents failed to be timely in making their reports and has no knowledge that anyone is interfering with this control. EPA considers that Respondents have failed to make a good faith effort to comply. EPA made an upward adjustment to the proposed penalty due to this factor.

Economic Impact on the Violator

EPA evaluated this aspect of the proposed penalty by considering Respondents to be a medium-sized municipality, which resulted in a lower penalty than if the Respondents were considered a large-sized municipality. EPA will consider any new information Respondents may present regarding this factor.

Other Matters that Justice may Require

EPA has made no additional adjustments to the penalty due to this factor.

25. Respondents' 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:

Regular Mail:

Mellon Bank
Lockbox 360859
Pittsburgh, PA 15251-6859

Federal Express, Airborne, or other commercial carrier.:

U.S. EPA, 360859
Mellon Client Service Center Rm 154-0670
500 Ross Street
Pittsburgh, PA 15251-6859

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

ABA = 021030004
TREAS NYC/CTR/
BNF=/AC-68010727

A copy of said check shall be mailed simultaneously to the following addresses:

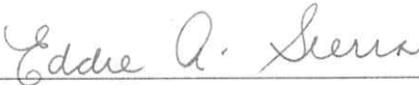
Jim Eppers (8ENF-L)
Senior Enforcement Attorney
U.S. EPA - Region 8
1595 Wynkoop Street
Denver, Colorado 80202, and

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

26. The provisions of this complaint shall apply to and be binding upon Respondents, their officers, directors, agents, servants, employees, and successors or assigns.

27. 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 people to comment on the matter, and present evidence in the event a hearing is held. 42 U.S.C. § 300h-2(c)(3)(B).
28. The presiding officer is not bound by EPA's penalty policy or the penalty proposed by EPA, and may assess a penalty above the proposed amount, up to \$6,500.00, per day for each violation, as authorized in the statute, as amended.
29. 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.

Issued this 10th day of September, 2007.



Eddie A. Sierra
Deputy Assistant Regional Administrator
Office of Enforcement, Compliance,
and Environmental Justice
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202-2466

Well Name	EPA Permit No.	Type of Violation	Date Violation Began	Date Violation Began (for penalty)	Date Violation Ended*	Violation duration in days
Koda Was-Te #1	MT20854-04469	A. Failure to timely submit a complete annual monitoring report	2/15/2001	2/15/2003	2/15/2003	0
Koda Was-Te #1	MT20854-04469	A. Failure to timely submit a complete annual monitoring report	2/15/2003	2/15/2003	5/13/2003	87
Koda Was-Te #1	MT20854-04469	A. Failure to timely submit a complete annual monitoring report	2/15/2004	2/15/2004	5/7/2004	82
Koda Was-Te #1	MT20854-04469	A. Failure to timely submit a complete annual monitoring report	2/15/2006	2/15/2006	3/3/2006	16
Koda Was-Te #1	MT20854-04469	A. Failure to timely submit a complete annual monitoring report	2/15/2007	2/15/2007	9/15/2007	212
Koda Was-Te #1	MT20854-04469	B. Failure to timely submit fluid analysis	2/15/2001	2/15/2002	2/15/2002	0
Koda Was-Te #1	MT20854-04469	B. Failure to timely submit fluid analysis	2/15/2002	9/15/2002	2/15/2003	153
Koda Was-Te #1	MT20854-04469	B. Failure to timely submit fluid analysis	2/15/2003	2/15/2003	5/27/2003	101
Koda Was-Te #1	MT20854-04469	B. Failure to timely submit fluid analysis	2/15/2004	2/15/2004	5/7/2004	82
Koda Was-Te #1	MT20854-04469	B. Failure to timely submit fluid analysis	2/15/2006	2/15/2006	3/3/2006	16
Koda Was-Te #1	MT20854-04469	B. Failure to timely submit fluid analysis	2/15/2007	2/15/2007	9/15/2007	212
Koda Was-Te #1	MT20854-04469	C. Exceeding maximum allowable injection pressure	1/1/2003	1/1/2003	9/30/2003	272
Koda Was-Te #1	MT20854-04469	D. Failure to maintain continuous financial responsibility to plug and abandon well	3/31/2001	5/18/2001	5/18/2001	0
Koda Was-Te #1	MT20854-04469	D. Failure to maintain continuous financial responsibility to plug and abandon well	3/31/2002	8/1/2002	8/1/2002	0
Koda Was-Te #1	MT20854-04469	D. Failure to maintain continuous financial responsibility to plug and abandon well	3/31/2003	3/31/2003	2/14/2004	320
Koda Was-Te #1	MT20854-04469	D. Failure to maintain continuous financial responsibility to plug and abandon well	3/31/2004	3/31/2004	12/7/2004	251
Koda Was-Te #1	MT20854-04469	E. Failure to maintain wellhead properly	8/26/2003	8/26/2003	8/27/2003	1
TOTAL NUMBER DAYS OF VIOLATION						1805

* On-going violations have been assigned an end date of September 15, 2007 as a best estimate. Those violations whose duration occurred more than five years before the date of EPA's Complaint action have been assigned a duration of zero and no penalty is assessed therefore.

Attachment B: List of written communication to Respondents

Date of EPA's Letter	Type of Letter	Topic of EPA's Letter
March 22, 2000	Courtesy reminder	Financial responsibility
December 19, 2000	Courtesy reminder	Annual monitoring report for the 2000 year
March 8, 2001	Courtesy reminder	Financial responsibility
March 16, 2001	Notice of violation	Failure to submit the 2000 annual reports by February 15, 2001
January 18, 2002	Courtesy reminder	Annual monitoring report for the 2001 year
February 19, 2002	Courtesy reminder	Financial responsibility
January 16, 2003	Courtesy reminder	Annual monitoring report for the 2002 year
February 19, 2003	Courtesy reminder	Financial responsibility
April 10, 2003	Notice of violation	Failure to submit the 2002 annual report by February 15, 2003
May 13, 2003	Notice of violation	Failure to submit the 2002 fluid analysis by February 15, 2003
September 10, 2003	Notice of violation	Excess injection pressure and failure to maintain wellhead equipment
January 14, 2004	Courtesy reminder	Annual monitoring report for the 2003 year
February 18, 2004	Courtesy reminder	Financial responsibility
April 8, 2004	Informational letter	Comprehensive compliance assistance regarding all historic UIC violations
January 7, 2005	Courtesy reminder	Annual monitoring report and fluid analyses for the 2004 year
January 17, 2006	Courtesy reminder	Annual monitoring report and fluid analyses for the 2005 year
March 10, 2006	Notice of violation	Failure to submit the 2005 annual report and fluid analysis by February 15, 2006
January 8, 2007	Courtesy reminder	Annual monitoring report and fluid analyses for the 2006 year

In the Matter of the Assiniboine & Sioux Tribes of the Fort Peck Reservation
Docket No. SDWA-08-2007-0082

CERTIFICATE OF SERVICE

I hereby certify that I hand delivered the original and a true copy of the Complaint with Notice of Opportunity for Hearing bearing the above-referenced Docket No. to:

Regional Hearing Clerk
EPA Region 8
1595 Wynkoop Street
Denver, Colorado, 80202.

Dated: 9/10/07

By: Judith McTernan
Judith McTernan

**U.S. ENVIRONMENTAL PROTECTION AGENCY
PUBLIC NOTICE
OPPORTUNITY FOR PUBLIC COMMENT ON
COMPLAINT WITH NOTICE OF OPPORTUNITY FOR HEARING AGAINST
ASSINIBOINE & SIOUX TRIBES OF THE FORT PECK RESERVATION
FOR FAILURE TO COMPLY WITH
UNDERGROUND INJECTION CONTROL REQUIREMENTS**

PURPOSE OF PUBLIC NOTICE

The purpose of this notice is to solicit written comments on the Complaint with Notice of Opportunity for Hearing (complaint), Docket # SDWA-08-2007- 0082 that complainant Region 8 of the United States Environmental Protection Agency (EPA) has filed against respondent Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation (the Tribes). The complaint alleges violations of the Underground Injection Control (UIC) permit number MT20854-04469 and proposes the assessment of a monetary penalty in the amount \$35,472. The complaint is issued under the UIC provisions of the Safe Drinking Water Act (SDWA) and the Act's implementing regulations. These regulations govern the injection of fluids that may endanger an underground source of drinking water (USDW). The addresses of complainant and respondent are listed here.

Respondent: Assiniboine & Sioux Tribes, P.O. Box 1027, Poplar, Montana 59255.

Complainant: Assistant Regional Administrator, Office of Enforcement, Compliance & Environmental Justice, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202.

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 any penalty assessed is appropriate.

BACKGROUND

Part C of the SDWA requires EPA to regulate *underground injection* of fluid through wells to assure that underground sources of drinking water (USDW) are not endangered. Section 1421 of the SDWA requires EPA to administer UIC programs in States or on Indian Lands that do not have approved State UIC programs. Regulation of the UIC Class II Program has not been delegated to the Assiniboine & Sioux Tribes on the Fort Peck Indian Reservation; 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 Class II injection well which is the subject of this complaint (Koda Was-Te #1 well), is permitted to the Tribes and is located in the East Benrud Oil Field, in the southeast quarter of the northwest quarter of Section 36 of Township 31 North, Range 47 East, Roosevelt County, Montana. A Class II injection well, pursuant to 40 C.F.R. 144.6 and 146.5, is a well that injects fluids (a) brought to the surface in connection with natural gas storage operations, or conventional oil or natural gas production, (b) for enhanced recovery of oil or natural gas, or (c) for the storage of hydrocarbons which are liquid at standard pressure and temperature. The well subject to this complaint is a salt water disposal well, injecting into the Nisku Formation for the purpose of disposing of produced wastewater from nearby oil production wells.