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EPA REGION 6

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6

IN THE MATTER OF

Northcote Cleveland, LLC
Oklahoma City, OK

Respondent

§ DOCKET NO. SDWA-06-2024-1106
§
§
§ Proceeding to Assess a
§ Civil Penalty under Section 1423(c)
§ of the Safe Drinking Water Act
§
§ ADMINISTRATIVE COMPLAINT

I. STATUTORY AUTHORITY

This Complaint is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) pursuant to Section 1423(c) of the Safe Drinking Water Act (the Act), 42 U.S.C. § 300h-2(c). The Administrator of EPA delegated the authority to issue this Complaint to the Regional Administrator of EPA Region 6 (RA), who delegated the authority to the Director of the Enforcement and Compliance Assurance Division of EPA Region 6 (Complainant). This Complaint is issued in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," 40 C.F.R. §§ 22.1 through 22.52, including Rules related to administrative proceedings not governed by Section 554 of the Administrative Procedures Act, 40 C.F.R. §§ 22.50 through 22.52.

EPA has primary enforcement responsibility for underground injection within the meaning of Section 1422(e) of the Act, 42 U.S.C. § 300h-1(e), to ensure that owners or operators of Class II injection wells within Osage County, Oklahoma, comply with the requirements of the Act.

Based on the following Findings of Fact and Conclusions of Law (Findings), Complainant finds that Northcote Cleveland, LLC (Respondent) violated the Act and the regulations promulgated under the Act and should be ordered to pay a civil penalty.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is a corporation doing business in the State of Oklahoma, and as such, Respondent is a "person" as that term is defined at Section 1401(12) of the Act, 42 U.S.C. § 300f(12).

2. At all relevant times, Respondent owned or operated an "injection well" which is an "existing Class II well" as those terms are defined at 40 C.F.R. § 147.2902. The injection well is identified as well number NU-4-1 (well). The well is also identified by EPA inventory number OS0095000, and is located in the Northeast Quarter of Section 10, Township 25 North, Range 05 East, in Osage County, Oklahoma.

3. Because Respondent owned or operated an injection well, Respondent is subject to underground injection control (UIC) program requirements at 40 C.F.R. Part 147, Subpart GGG, which are authorized under Section 1421 of the Act, 42 U.S.C. § 300h.

4. Regulations at 40 C.F.R. § 147.2903(a) require that any underground injection is prohibited except as authorized by rule or authorized by a permit issued under the UIC program. The construction or operation of any well required to have a permit is prohibited until the permit has been issued. The term "permit" is defined at 40 C.F.R. § 147.2902.

5. Regulations at 40 C.F.R. § 147.2909 provide that existing injection wells (wells authorized by the Bureau of Indian Affairs and constructed or completed on or before the effective date of the Osage UIC program) are authorized by rule. Owners or operators of wells authorized by rule must comply with provisions of 40 C.F.R. §§ 147.2903, 147.2905, 147.2907, and 147.2910 through 147.2915.

6. Well No. NU-4-1 is authorized by rule in accordance with 40 C.F.R. § 147.2909.

7. Regulations at 40 C.F.R. § 147.2912(a) require each well authorized by rule to have mechanical integrity. A well has mechanical integrity if there are no significant leaks in the casing, tubing, or packer and there is no significant fluid movement into an "Underground Source of Drinking Water" (USDW) through vertical channels adjacent to the well bore. The term USDW is defined at 40 C.F.R. § 147.2902.

8. Regulations at 40 C.F.R. § 147.2905 require an injection well to be plugged within one year after termination of injection. The RA may extend the time to plug if no fluid movement into a USDW will occur and the operator has presented a viable plan for utilizing the well within a reasonable time. Regulations at 40 C.F.R. § 147.2905 also set out administrative and technical requirements to be followed when plugging an injection well.

9. A July 31, 2020, inspection report showed the well failed to demonstrate mechanical integrity and was being maintained with fluid at the surface.

10. On January 24, 2023, EPA issued a Proposed Administrative Compliance Order, SDWA-06-2023-1101 to Respondent for violations related to maintaining and operating the well in a manner that may contaminate a USDW.

11. Respondent's February 23, 2023 and October 10, 2023, Records of Communication indicated the well was plugged.

12. To date, EPA has not received a plugging plan from Respondent. Additionally, EPA has received confirmation from the Bureau of Indian Affairs (BIA) – Osage Agency that Respondent has not submitted a final plugging report for this well.

13. A March 31, 2023, inspection report indicted the well had not been plugged; the fluid level in the well tubing and annulus was equalized at the ground surface in an open casing;

the well was not connected, or injecting; and Respondent has not demonstrated mechanical integrity in the well.

14. On April 12, 2023, EPA issued a Final Administrative Compliance Order SDWA-06-2023-1101 to the Respondent for violations related to maintaining and operating the well in a manner that may contaminate a USDW.

15. To date, EPA has not received an adequate response from Respondent to comply with the Final Administrative Compliance Order, SDWA-06-2023-1101 which ordered Respondent to comply with UIC regulatory requirements in 40 C.F.R. Part 147, Subpart GGG.

16. To date, the well has not demonstrated mechanical integrity.

17. Therefore, Respondent violated regulations at 40 C.F.R. §§ 147.2905, 147.2909 and 147.2912(a)(1), by maintaining an injection well in a manner that could allow the movement of fluid that contains contaminants into an USDW.

III. PROPOSED PENALTY

18. Based on the foregoing findings, and pursuant to the authority of Section 1423(c) of the Act, 42 U.S.C. § 300h-2(c), EPA Region 6 hereby proposes to assess against Respondent a penalty of \$ 12,500.00.

19. The proposed penalty amount has been determined based on the statutory factors specified in Section 1423(c)(4)(B) of the Act, 42 U.S.C. § 300h-2(c)(4)(B), which include such factors as the seriousness of the violation; the economic benefit resulting from the violation; any history of such violations; any good-faith efforts to comply with the applicable requirements; the economic impact of the penalty on the violator; and such other matters as justice may require.

IV. COMPLIANCE ORDER

20. Based on the foregoing findings, and pursuant to the authority of Section 1423(c) of the Act, 42 U.S.C. § 300h-2(c), EPA Region 6 hereby orders Respondent to comply with the Final Administrative Order, SDWA-06-2023-1101 within thirty (30) days. The Final Administrative Compliance Order was filed on April 16, 2023 and became effective on May 16, 2023. The Final Administrative Compliance Order, SDWA-06-2023-1101 ordered the Respondent to:

- a. Cease use of the injection well for the unauthorized underground injection of fluids, and
- b. Take one of the following actions:
 - i. Repair the injection well and successfully demonstrate mechanical integrity according to regulations at 40 C.F. R. § 147.2912(a) within ninety (90) days after the effective date of the Final Administrative Compliance Order; or
 - ii. Complete proper plugging and abandonment in accordance with 40 C.F. R. § 147.2905, within ninety (90) days after the effective date of the Final Administrative Compliance Order; or
 - iii. Convert the injection well to production use within ninety (90) days after the effective date of the Final Administrative Compliance Order.
- c. Submit copies of the completed plugging reports or completed work reports showing conversion to production and BIA Osage Agency Form 139 within 120 days after the effective date of the Final Administrative Compliance Order to EPA.

21. Corrective action specified in paragraph 20 of this Order shall be considered complete when Respondent submits a report of work completed to EPA. To use this well for injection, the well must demonstrate mechanical integrity. Respondent must receive from EPA written authorization to inject prior to use of the well.

V. FAILURE TO FILE AN ANSWER

22. If Respondent wishes to deny or explain any material allegation listed in the above Findings or to contest the amount of the penalty proposed, Respondent must file an Answer to this Complaint within thirty (30) days after service of this Complaint whether or not Respondent requests a hearing as discussed below.

23. The requirements for such an Answer are set forth at 40 C.F.R. § 22.15. Failure to file an Answer to this Complaint within thirty (30) days of service of the Complaint shall constitute an admission of all facts alleged in the Complaint and a waiver of the right to a hearing. Failure to deny or contest any individual material allegation contained in the Complaint will constitute an admission as to that finding or conclusion under 40 C.F.R. § 22.15(d).

24. If Respondent does not file an Answer to this Complaint within thirty (30) days after service of this Complaint, a Default Order may be issued against Respondent pursuant to 40 C.F.R. § 22.17. A Default Order, if issued, would constitute a finding of liability, and could make the full amount of the penalty proposed in this Complaint due and payable by Respondent without further proceedings thirty (30) days after a final Default Order is issued.

25. Respondent must send its Answer to this Complaint, including any request for hearing, and all other pleadings to:

Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, Texas 75270

26. The Answer must be signed by Respondent, Respondent's counsel, or other representative on behalf of Respondent and must contain all information required by 40 C.F.R. §§ 22.05 and 22.15, including the name, address, and telephone number of Respondent and Respondent's counsel. All other pleadings must be similarly signed and filed.

27. Complainant has specified that the administrative procedures specified in 40 C.F.R. Part 22, Subpart I, shall apply to this matter, and the administrative proceedings shall not be governed by Section 554 of the Administrative Practice Act.

VI. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

28. Respondent may request a hearing to contest the issuance of this Complaint or to contest the appropriateness of the amount of the penalty, pursuant to Section 1423(c)(3)(A) of the Act, 42 U.S.C. § 300h-2(c)(3)(A). The procedures for hearings are set out at 40 C.F.R. Part 22, including 40 C.F.R. §§ 22.50 through 22.52.

29. Any request for hearing should be included in an Answer to this Complaint; however, as discussed above, Respondent must file an Answer meeting the requirements of 40 C.F.R. § 22.15 in order to preserve the right to a hearing or to pursue other relief.

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

VII. SETTLEMENT

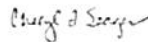
31. EPA encourages all parties against whom civil penalties are proposed to pursue the possibility of settlement through informal meetings with EPA. Regardless of whether a formal hearing is requested, Respondent may confer informally with EPA about the alleged violations or the amount of the proposed penalty. 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 Complaint, please contact Mr. David Aguinaga, of my staff, at 214-665-6439.

32. If this action is settled without a formal hearing and issuance of an opinion by the Presiding Officer pursuant to 40 C.F.R. § 22.27, this action will be concluded by issuance of a Consent Agreement and Final Order ("CAFO") pursuant to 40 C.F.R. § 22.18(b). The issuance of a CAFO would waive the Respondent's right to a hearing on any matter stipulated to therein or alleged in the Complaint. Any person who commented regarding this Complaint would be notified and given an additional thirty (30) days to petition EPA to set aside any such CAFO and to hold a hearing on the issues raised in the Complaint. Such a petition would be granted and a hearing held only if the evidence presented by the petitioner's comment is material and was not considered by EPA in the issuance of the CAFO.

33. Neither assessment nor payment of a penalty in resolution of this action will affect Respondent's continuing obligation to comply with all requirements of the Act, the applicable regulations and permits, and any separate Compliance Order issued under Section 1423(c) of the Act, 42 U.S.C. § 300h-2(c), including one relating to the violations alleged herein.

December 20, 2023

Date



Digitally signed by CHERYL
SEAGER
Date: 2023.12.20 10:56:11 -06'00'

Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division

CERTIFICATE OF SERVICE

I certify that the foregoing Complaint was sent to the following persons, in the manner specified, on the date below:

Signed Original (email): Regional Hearing Clerk (R6-D)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, Texas 5270
vaughn.lorena@epa.gov

File Stamped Copy
Transmitted via email: Mr. Cody Mather
Northcote Cleveland, LLC
1833 South Morgan Rd.
Oklahoma City, Oklahoma 73128
jc.mather@outlook.com

Electronic Copy: Ms. Kristine Talbot
U.S. EPA, Region 6
talbot.kristine@epa.gov

Mr. Adam Trumbly, Superintendent
Bureau of Indian Affairs, Osage Agency
adam.trumbly@bia.gov

Mr. Craig Walker, Director
Osage Nation Department of Natural Resources
cmwalker@osagenation-nsn.gov

Mr. Nicholas Doss, Chief
Bureau of Indian Affairs – Osage Agency
nicholas.doss@bia.gov

Dated: January 5, 2024 David Aguirre