



EPA Docket No. III-90-045-DE

regulatory jurisdiction over the Respondent in connection with certain of the Kinley Facility wells.

STATUTORY BACKGROUND

The objective of the SDWA is to protect public health by assuring a continuing supply of high-quality drinking water. The SDWA established mechanisms for the regulation of public drinking water supply systems, for designation of wellhead protection areas and sole source aquifers, and for the protection of underground sources and potential sources of drinking water from underground injection of hazardous wastes, oil and gas extraction wastes and other fluids. This latter program, under Part C of the SDWA, "Protection of Underground Sources of Drinking Water," is the statutory mechanism for Underground Injection Control (UIC), a system of requirements for the design, construction, operation and monitoring of underground injection wells.

Section 1423 of the SDWA, 42 U.S.C. § 300h-2, provides for administrative, civil judicial and criminal enforcement actions against persons subject to UIC program requirements found to be in violation of those requirements. (Only willful violations may result in criminal prosecution). Administrative enforcement by compliance order with or without penalty assessment (\$125,000 maximum assessment) is provided for in subsection 1423(c) of the SDWA, 42 U.S.C. § 300h-2 (c), which distinguishes between UIC activities related to oil and gas production or extraction (\$5,000 per day maximum penalty) and UIC activities not related

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to oil and gas production or extraction (\$10,000 per day maximum penalty). Before issuance of an order under this subsection, EPA must give the person to whom it is to be directed written notice of the proposed order and the opportunity to request, within 30 days of receipt of the proposed order, a hearing on the order's terms. Subsection 1423(c)(3)(A) of the SDWA, 42 U.S.C. § 300h-2(c)(3)(A). EPA must also provide public notice of, and a reasonable opportunity to comment on, any proposed order. Subsection 1423(c)(3)(B) of the SDWA, 42 U.S.C. § 300h-2(c)(3)(B).

PROCEDURAL BACKGROUND

On June 29, 1990 the Water Management Division Director of EPA's Region III issued a Notice of Violation, Intent to Issue Administrative Order with Penalty and Opportunity to Request a Hearing, in the form of a cover letter and proposed Administrative Order, alleging that Respondent was in violation of SDWA, 42 U.S.C. §§ 300 et seq., and the Underground Injection Control (UIC) regulations, 40 C.F.R. Parts 144, 146 and 147. Acting under Section 1423(c)(2) of the SDWA, 42 U.S.C. § 300h-2(c)(2), the Division Director (Complainant) proposed to issue a final Administrative Order requiring Respondent to comply with the SDWA and the UIC regulations and assessing a civil penalty of \$3,000 for the violations alleged in the proposed Administrative Order.

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Respondent requested a hearing and EPA's Regional Administrator designated the Presiding Officer under the GUIDANCE. After some preliminary correspondence indicated substantial likelihood of a negotiated settlement, the Presiding Officer informed the parties that if they could jointly represent to him that an agreement in principle to settle the matter had been reached and would be reduced to writing, he would stay the proceeding. The parties engaged in a prehearing exchange of information in accordance with the schedule set by the Presiding Officer, conducted settlement negotiations, and reported the status of those negotiations as directed by the Presiding Officer.

On March 20, 1992 counsel for Complainant filed a Notice of Agreement in Principle and Motion for Stay of Proceedings, reporting that earlier that day the parties had reached an agreement in principle to settle the matter and seeking a stay in the proceeding while the agreement is reduced to a properly executed settlement document. Counsel for Respondent confirmed the agreement and supported the Motion for Stay in a telephone conversation with the Presiding Officer on March 31, 1992. The Presiding Officer granted the stay by Order dated March 31, 1992.

Three years later the parties had not completely settled the matter, nor had they reported a breakdown of the March 20, 1992 settlement in principle. On March 2, 1995, the Presiding Officer issued an Order to Show Cause, affording the parties an

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opportunity to explain why the case should not be scheduled for hearing. Both parties filed submissions in response to the Show Cause Order, and the stay was not lifted. On April 28, 1995, counsel for Complainant moved to Withdraw the Proposed Order, and counsel for Respondent confirmed his non-opposition to the Motion in a letter the same day. Thus, the Motion to Withdraw was unopposed.

The Presiding Officer has granted the Motion to Withdraw, and has forwarded a copy of his Order on Motion to Withdraw Proposed Order, together with his recommendation, to me for final action. This Order of Withdrawal implements the Presiding Officer's Order on Motion to Withdraw, and terminates this proceeding.

ORDER

On the basis of the administrative record and the applicable law, including § 144.111 of the GUIDANCE, the Proposed Order, Docket No. III-90-045-DS, is hereby WITHDRAWN.

JUDICIAL REVIEW

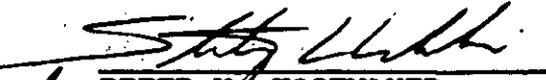
Respondent has the right to judicial review of this ORDER. Under subsection 1423(c)(6) of the SDWA, 42 U.S.C. § 300h-2(c)(6), Respondent may file an appeal of this ORDER with the United States District Court for the District of Columbia or with the United States District Court for the Western District of Pennsylvania. Such an appeal may only be filed within the 30-day period beginning on the date this ORDER is issued, and Respondent

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must send a copy of the appeal to the Administrator and a copy to the Attorney General of the United States by certified mail.

IT IS SO ORDERED.

DATE: **MAY 31 1995**

  
**PETER H. KOSTMAYER**  
Regional Administrator

Prepared by: Benjamin Kalkstein, Presiding Officer