



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



IN THE MATTER OF

DOCKET NO. UIC-9-2004-0001

ANDREW SAIED
d. b. a. HART OIL AND GAS
FARMINGTON, NEW MEXICO

ORDER ON MOTION FOR
PARTIAL DEFAULT JUDGMENT

Proceedings under Section 1423(c)
of the Safe Drinking Water Act,
42 U.S.C. §300h-2(c)

INTRODUCTION

This Default Order is issued in a case brought under the authority of Section 1423(c) of the Safe Drinking Water Act, 42 U.S.C. § 300h-2(c) (“SDWA”). Complainant’s Findings and Proposed Administrative Order with Administrative Civil Penalty, filed on November 20, 2003, alleges that Respondent violated the Underground Injection Control regulations, 40 C.F.R. Parts 144-147, under the SDWA, 42 U.S.C. §§ 300f to 300j-26. Complainant is the Director of the Water Division for Region 9 of the Environmental Protection Agency (“EPA”).

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties at 40 C.F.R. Part 22 (“Consolidated Rules”), and based upon the record in this matter and the following Findings of Fact and Conclusions of Law, a Partial Default Order as to liability is entered against the Respondent, and the issue of an appropriate penalty is referred back to the Complainant for further action.

FINDINGS OF FACT

Pursuant to 40 C.F.R. § 22.17(c) and based upon the entire record in this matter, I make

the following findings of fact:

1. Andrew Saied (“Respondent”) is an individual person doing business as “Hart Oil and Gas.” Respondent has been the owner and operator of Hart Oil and Gas since September 1999.

2. At the present time, Respondent owns and operates eighteen (18) oil and gas related Class II injection wells in the Horseshoe Gallup Unit of San Juan County, New Mexico. Respondent previously owned and operated two (2) additional oil and gas related Class II injection wells in the Horseshoe Gallup Unit (Well Nos. 205 and 302), as well as two (2) oil and gas related Class II injection wells in the Many Rocks Gallup Unit of San Juan County, New Mexico (Well Nos. 215 and 223). In April 2003, Respondent plugged and abandoned these four (4) Class II wells. The twenty-two (22) Class II injection wells referred to in this Paragraph are identified in Attachment A.

3. The Horseshoe Gallup and Many Rocks Gallup Units are located on Indian Lands in the State of New Mexico.

4. Pursuant to Section 1422(c) of the SDWA, 42 U.S.C. §300h-1(c), and 40 C.F.R. Part 147 Subpart GG §147.1603, EPA administers the Underground Injection Control (“UIC”) program for Class I, II, III, IV, and V wells on Indian Lands in the State of New Mexico. This UIC program consists of the program requirements of 40 C.F.R. Parts 124, 144, 146, 147, and 148. The effective date of this UIC program is November 25, 1988.

5. Pursuant to 40 C.F.R. §144.22(a), a Class II enhanced recovery injection well in existence as of the date that a UIC program becomes effective for the first time is authorized by rule for the life of the well, if the owner or operator injects into the existing well within one year after the date that the UIC program becomes effective. The twenty-two (22) Class II injection

wells identified in Paragraph 2 above were in existence as of November 25, 1988, and a predecessor owner and operator injected into each of these wells prior to November 25, 1989. Under 40 C.F.R. §144.22(a), Respondent is authorized by rule to operate the twenty-two (22) Class II injection wells.

6. Pursuant to Section 1423(c) of the SDWA, EPA issued Findings and a Proposed Administrative Order With Administrative Civil Penalty (“1993 Order”), Docket No. UIC-AO-NAV93-01, to Hart Oil and Gas on September 2, 1993.

7. On October 24, 1995 EPA entered into a Consent Agreement and Final Order (“CA/FO”) with Hart Oil and Gas to resolve the 1993 Order. The CA/FO required Hart Oil and Gas to enter into a trust agreement to provide the necessary funds for plugging and abandoning all the injection wells subject to the CA/FO, including the twenty-two (22) Class II wells identified in Paragraph 2 above; to submit plugging and abandonment plans, notices, and reports in accordance with the requirements specified in 40 C.F.R. §144.28; to implement the plan for conducting mechanical integrity testing of the injection wells; and to submit annual monitoring reports for the injection wells within thirty (30) days after the beginning of each calendar year.

8. Pursuant to 40 C.F.R. §146.23(b)(3), Respondent is required to demonstrate mechanical integrity at least once every five (5) years during the life of the injection well.

9. Pursuant to 40 C.F.R. §144.28(f)(2), Respondent is required to establish and maintain mechanical integrity until the well is properly plugged in accordance with an approved plugging and abandonment plan and a plugging and abandonment report is submitted, or until the well is converted in compliance with 40 C.F.R. §144.28(j).

10. Pursuant to 40 C.F.R. §144.28(h)(2), Respondent is required to submit annual

reports to EPA summarizing the results of all monitoring, as described in 40 C.F.R. §144.28(g)(2).

11. Pursuant to 40 C.F.R. §144.28(d)(1), Respondent is required to maintain financial responsibility and resources to close, plug and abandon the underground injection operation in a manner prescribed by EPA. Respondent shall show evidence of such financial responsibility to EPA by the submission of a surety bond, or other adequate assurance, such as a financial statement. Pursuant to 40 C.F.R. §144.28(d)(3), EPA may require Respondent to submit a revised demonstration of financial responsibility if EPA has reason to believe that the original demonstration is no longer adequate to cover the cost of closing, plugging and abandoning the well.

12. On September 6, 2001, EPA sent a Notice of Violation (“NOV”) to Respondent citing several violations of the UIC regulations and the CA/FO. Specifically, the NOV stated that Respondent failed to: (i) perform mechanical integrity tests on certain injection wells; (ii) repair or plug and abandon two (2) wells (Well Nos. 215 and 302) that failed mechanical integrity tests in 1998 and 1997; (iii) submit Annual Disposal/Injection Well Monitoring Reports for all injection wells for calendar year 2000; and (iv) continue monthly payments to the trust fund established in 1995 pursuant to the CA/FO as a demonstration of financial responsibility for plugging and abandonment of all the injection wells subject to the CA/FO. The NOV ordered Respondent to immediately begin to come into compliance with the UIC regulations and the CA/FO by adhering to a series of enumerated procedures and requirements.

13. On December 20, 2001, EPA sent a letter to notify Respondent that the amount required to be placed in a trust fund pursuant to the 1995 CA/FO was no longer sufficient to plug

and abandon the injection wells subject to the CA/FO. The letter required Respondent to submit a financial instrument to EPA in the amount of \$131,400 by January 31, 2002, in order to satisfy the financial responsibility requirement under 40 C.F.R. §144.28(d).

14. On July 19, 2002 and August 12, 2002, representatives of EPA and the Navajo Nation EPA conducted joint inspections of several injection wells owned and operated by Respondent. The two (2) injection wells that previously failed mechanical integrity tests (Well Nos. 215 and 302) were not plugged at the time of the inspections.

15. In April 2003, Respondent plugged and abandoned four (4) injection wells (Well Nos. 205, 223, 215, and 302), including the two (2) injection wells that previously failed mechanical integrity tests (Well Nos. 215 and 302).

16. In April 2003, Respondent submitted annual monitoring reports for twenty-two (22) injection wells for calendar years 2001 and 2002.

17. In May 2003, Respondent performed overdue mechanical integrity tests on four (4) injection wells (Well Nos. 109, 124, 132, and 143). In June 2003, Respondent performed overdue mechanical integrity tests on eleven (11) injection wells (Well Nos. 101, 115, 117, 122, 123, 125, 127, 128, 134, 136, and 140). Seven (7) of the fifteen (15) injection wells (Well Nos. 109, 122, 123, 124, 125, 128, and 140) failed the mechanical integrity tests and were required to be repaired or plugged and abandoned. From January through March 2004, Respondent plugged and abandoned six (6) of these injection wells. In March 2004, Respondent performed additional mechanical integrity tests on Well Nos. 124 and 127, and then converted these wells to production wells, which are not subject to the UIC regulations.

18. In January 2004, Respondent plugged and abandoned two (2) injection wells

(Well Nos. 108 and 144), without first performing overdue mechanical integrity tests.

19. In March 2004, Respondent performed an overdue mechanical integrity test on one (1) injection well (Well No. 114).

20. On November 20, 2003, EPA issued Findings and Proposed Administrative Order With Administrative Civil Penalty ("2004 Order") in this matter.

21. The Respondent was served with the 2004 Order by certified mail, return receipt requested, on November 25, 2003.¹ Section 22.15 of the Consolidated Rules requires Respondent to file an Answer with the Regional Hearing Clerk within thirty (30) days after service of the administrative complaint. Respondent failed to file an answer prior to the expiration of this response period, which was December 26, 2003.

22. On February 3, 2004, the Respondent was served with a letter from EPA noting that no answer was yet received, and urging a response within fourteen (14) days.² In this letter, Respondent was warned that EPA may seek a default judgment as to liability in this matter unless the Respondent entered into a settlement with EPA that resolved the violations or asserted reasonable cause for the failure to respond. Respondent failed to file a response to the February 3, 2004 letter.

23. On July 8, 2004, the Complainant filed a Motion for Partial Default Judgement as to liability with the Regional Hearing Clerk. Respondent was served with this motion on July 13,

¹Complainant's Motion for Partial Default Order, Attachment A.

²Complainant's Motion for Partial Default Order, Attachment B.

2004. On July 28, 2004, Respondent timely filed a response to EPA's motion, acknowledging that he has owned Hart Oil and Gas since September, 1999, and asserting financial hardship. However, he did not specifically dispute liability for the UIC violations alleged in EPA's 2004 Order.

CONCLUSIONS OF LAW

Pursuant to 40 C.F.R. § 22.17 and based upon the entire record in this matter, I make the following conclusions of law:

24. Respondent is a "person" within the meaning of Section 1401(12) of the SDWA, 42 U.S.C. §300f(12).
25. The eighteen (18) oil and gas related injection wells owned and operated by Respondent are "Class II injection wells" as defined by 40 C.F.R. §§144.3, 144.6(b), 146.3, and 146.5(b).
26. Until May and June 2003, Respondent failed to perform required mechanical integrity tests on fifteen (15) injection wells (Well Nos. 101, 109, 115, 117, 122, 123, 124, 125, 127, 128, 132, 134, 136, 140, and 143), in violation of 40 C.F.R. §146.23(b)(3).
27. Until January 2004, Respondent failed to perform required mechanical integrity tests on two (2) injection wells (Well Nos. 108 and 144), in violation of 40 C.F.R. §146.23(b)(3).
28. Until March 2004, Respondent failed to perform a required mechanical integrity test on one (1) injection well (Well No. 114), in violation of 40 C.F.R. §146.23(b)(3).
29. Until April 2003, Respondent failed to repair or plug and abandon the two (2) injection wells that failed mechanical integrity tests (Well Nos. 215 and 302) in 1998 and 1997, in violation of 40 C.F.R. §144.28(f)(2).
30. Until January through March 2004, Respondent failed to repair and convert or

plug and abandon the seven (7) injection wells that failed mechanical integrity tests (Well Nos. 109, 122, 123, 124, 125, 128, and 140) in May and June 2003, in violation of 40 C.F.R. §144.28(f)(2).

31. Until April 2003, Respondent failed to submit annual monitoring reports for twenty-two (22) injection wells for calendar year 2001, in violation of 40 C.F.R. §144.28(h)(2).

32. Respondent failed to submit a supplemental financial instrument to EPA by January 31, 2002 in response to EPA's December 20, 2001 letter requesting a revised demonstration of financial responsibility, in violation of 40 C.F.R. §144.28(d).

33. Procedure for this case is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. The Consolidated Rules, 40 C.F.R. § 22.17(a), apply to motions for default, and provide in pertinent part:

(a) Default. A party may be found to be in default: after motion, upon failure to file a timely answer to the complaint; Default by respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the complaint and a waiver of respondent's right to contest such factual allegations.

(c) Default order. When the Presiding Officer finds that default has occurred, [s]he shall issue a default order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued.

34. The Complaint was lawfully and properly served upon Respondent in accordance with the Consolidated Rules, 40 C.F.R. § 22.5(b)(1).

35. Pursuant to 40 C.F.R. § 22.15(a), Respondent was required to file an answer to the Complaint no later than December 26, 2003.

36. Respondent failed to file a timely answer to the Complaint.

37. On July 16, 2004, Complainant moved for this Default Order in the manner prescribed by the Consolidated Rules, 40 C.F.R. § 22.17(a). At the time the default order was filed, Respondent had yet to file an answer to the Complaint.

38. Respondent is in default pursuant to the Consolidated Rules, 40 C.F.R. § 22.17(a).

39. In accordance with 40 C.F.R. § 22.17(a), the default in this case constitutes an admission by Respondent of all the facts alleged in the Administrative Complaint and a waiver by Respondent of a right to a hearing regarding these factual allegations. Respondent is thus held to have committed the violations alleged in the Administrative Complaint.

40. When the Presiding Officer finds that a default has occurred, she shall issue a Default Order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued. I find that nothing in the record, including the July 28, 2004 response to the Motion for Default, establishes good cause why a default order should not be issued. Accordingly, Complainant's Motion for Partial Default Judgement as to liability is GRANTED.

ORDER

Respondent, having been served with the Findings and Proposed Administrative Order With Administrative Civil Penalty and having failed to file a timely response, and having been

duly entered according to law on the motion of Complainant, this Order is hereby entered against Respondent.

IT IS THEREFORE ORDERED that Andrew Saied is liable, based on the violations of 40 C.F.R. Parts 144 and 146 outlined in Paragraphs 26 through 32 above, and pursuant to Section 1423(c)(2) of the SDWA, 42 U.S.C. §300h-2(c)(2), for civil penalties of up to \$5,500 for each day of violation, up to a maximum penalty of \$137,500. The matter of an appropriate

penalty is referred back to Complainant for further action.

Dated: _____

SIGNED
Joanna DeLucia
Regional Judicial Officer
E.P.A. Region 9

ATTACHMENT A

Current Operator: Andrew Saied d. b. a. Hart Oil and Gas
Field: Horseshoe Gallup Unit and Many Rocks Gallup Unit

Well Number	Well Location	Status
Horseshoe Gallup 101	Sec. 4-T31N-R17W	Plugged
Horseshoe Gallup 108	Sec. 10-T31N-R17W	Plugged
Horseshoe Gallup 109	Sec. 10-T31N-R17W	Plugged
Horseshoe Gallup 114	Sec. 10-T31N-R17W	Plugged
Horseshoe Gallup 115	Sec. 9-T31N-R17W	Plugged
Horseshoe Gallup 117	Sec. 10-T31N-R17W	Active
Horseshoe Gallup 122	Sec. 9-T31N-R17W	Plugged
Horseshoe Gallup 123	Sec. 9-T31N-R17W	Plugged
Horseshoe Gallup 124	Sec. 4-T31N-R17W	Production
Horseshoe Gallup 125	Sec. 4-T31N-R17W	Plugged
Horseshoe Gallup 127	Sec. 4-T31N-R17W	Production
Horseshoe Gallup 128	Sec. 4-T31N-R17W	Plugged
Horseshoe Gallup 132	Sec. 3-T31N-R17W	Active
Horseshoe Gallup 134	Sec. 9-T31N-R17W	Plugged
Horseshoe Gallup 136	Sec. 10-T31N-R17W	Active
Horseshoe Gallup 140	Sec. 9-T31N-R17W	Plugged
Horseshoe Gallup 143	Sec. 3-T31N-R17W	Active
Horseshoe Gallup 144	Sec. 10-T31N-R17W	Plugged
Horseshoe Gallup 205	Sec. 11-T31N-R17W	Plugged
Horseshoe Gallup 302	Sec. 5-T31N-R17W	Plugged
Many Rocks Gallup 215	Sec. 2-T31N-R17W	Plugged
Many Rocks Gallup 223	Sec. 1-T31N-R17W	Plugged

PROTECTION AGENCY

UNITED STATES ENVIRONMENTAL

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ANDREW SAIED

d. b. a. HART OIL AND GAS

ORDER ON MOTION FOR PARTIAL
DEFAULT
JUDGMENT

FARMINGTON, NEW MEXICO

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of the Safe Drinking Water Act,
42 U.S.C. §300h-2(c)

CERTIFICATE OF SERVICE

I certify that, on the date noted below, I caused to be mailed by certified mail, return receipt requested, a copy of the foregoing "Order on Motion for Partial Default Judgment" to the following address:

Andrew B. Saied
d. b. a. Hart Oil and Gas
P.O. Box 307
Farmington, New Mexico 87499

I filed the original and two copies of the foregoing "Motion for Partial Default Judgment" with the Regional Hearing Clerk, United States Environmental Protection Agency, Region IX.

Dated: _____
at San Francisco, California
