

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In The Matter Of:) Docket No. SDWA-05-2019-0002
)
Dart Oil & Gas Corporation) Proceeding under Section 1423(c) of the
Mason, Michigan) Safe Drinking Water Act,
) 42 U.S.C. § 300h-2(c)
Respondent.)



CONSENT AGREEMENT AND FINAL ORDER

I. STATUTORY AUTHORITY

1. This is an administrative action commenced and concluded under Section 1423(c) of the Safe Drinking Water Act (SDWA), 42 U.S.C. §300h-2(c), and Sections 22.13(b), 22.18(b)(2) and (3), and 22.45 of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. The authority to take action under Section 1423(c) of SDWA, 42 U.S.C. § 300h-2(c), is delegated to the Administrator of the U.S. Environmental Protection Agency (EPA). The Administrator of EPA delegated the authority to issue this Complaint to the Regional Administrator of EPA Region 5, who delegated the authority to the Director of the Water Division (Complainant).

3. Complainant is initiating this administrative action for the assessment of penalties under Section 1423(a)(2) of SDWA, 42 U.S.C. § 300h-2(a)(2), which provides that any person found to be in violation of any requirement of an applicable Underground Injection Control (UIC) program in a state that does not have primacy may be assessed a civil penalty pursuant to Section 1423(c)(2) of SDWA, 42 U.S.C. § 300h-2(c)(2).

4. Pursuant to section 1422 of SDWA, 42 U.S.C. § 300h-1, and EPA's regulations at 40 C.F.R. § 147.1151, EPA has primary enforcement responsibility for the UIC program in the

State of Michigan to ensure that owners or operators of injection wells within Michigan comply with the requirements of SDWA.

5. Pursuant to SDWA, 42 U.S.C. § 300f *et seq.*, and EPA's implementing regulations at 40 C.F.R. Parts 124, 144, 146 and 147, under permit MI-039-2R-A002, EPA authorized Dart Oil & Gas Corporation of Mason, Michigan, to operate Class II injection wells in Crawford County, Michigan, which include the Helveston 4-25 and Rodden 3-25 wells.

6. Pursuant to 40 C.F.R. § 144.51(a), a permittee must comply with all conditions of this Permit and noncompliance constitutes a violation of SDWA.

7. Dart Oil & Gas Corporation (Respondent) is a corporation doing business in Michigan and as such, is a "person" as that term is defined at Section 1401(12) of SDWA, 42 U.S.C. § 300f(12), and EPA's UIC regulations at 40 C.F.R. § 144.3.

II. JURISDICTION AND WAIVER OF RIGHT TO HEARING

8. For purposes of this administrative proceeding only, Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the remaining allegations in this CAFO.

9. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO including, but not limited to, its right to request a hearing under 40 C.F.R. § 22.15(c) and Section 1423(c)(3) of SDWA, 42 U.S.C. § 300h-2(c)(3); its right to seek federal judicial review of the CAFO pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06; any right to contest the allegations in this CAFO; and its right to appeal this CAFO under Section 1423(c)(6) of SDWA, 42 U.S.C. § 300h-2(c)(6). Respondent also consents to the issuance of this CAFO without further adjudication.

10. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

11. Respondent consents to the terms of this CAFO, including the assessment of the civil penalty specified below.

III. ALLEGATIONS

12. At all times relevant to this Complaint, Respondent was authorized to inject into two Class II injection wells located in Michigan, Crawford County under permit No. MI-039-2R-A002 (“the Permit”), and known as Helveston 4-25 and Rodden 3-25 (the “Wells”).

13. The Permit authorizes the underground injection for the purpose of enhanced recovery of oil from the Wells, subject to the terms and conditions set forth in the Permit.

14. At all times relevant to this Complaint, Respondent owned and operated the Helveston 4-25 and Rodden 3-25 wells and was thus subject to conditions in the Permit and the UIC program requirements set forth at 40 C.F.R. Parts 124, 144, 146, 147, and 148.

15. Section G(1)(iv) of the Permit required Respondent to maintain positive pressure on the annulus on all active wells included in the permit.

16. From May 1, 2012 through June 1, 2017 the annulus pressure at the Helveston 4-25 and Rodden 3-25 wells was zero pounds per square inch gauge (psig).

17. Each day Respondent failed to maintain a positive pressure on the annulus of the Helveston 4-25 and Rodden 3-25 wells as required by Section G(1)(a)(iv) of the Permit is a violation of the Permit and SDWA.

18. Section G(2)(c) of the Permit required Respondent to monitor the nature of the injection fluids quarterly and to monitor the specific gravity of the injection fluid monthly.

19. Section G(3)(b) of the Permit required Respondent to report quarterly on the nature of the injection fluid and monthly on the specific gravity of the injection fluid for each active well.

20. Respondent did not submit the quarterly fluid analysis reports to EPA for the first, second, and third quarters of 2014.

21. Respondent's failure to submit a complete and accurate quarterly analyses report for the injection fluid for the Helveston 4-25 and Rodden 3-25 wells constitutes a violation of the Permit and SDWA.

22. Respondent failed to submit specific gravity report to EPA for the month of September 2015 for the Helveston 4-25 and Rodden 3-25 wells.

23. Respondent's failure to submit specific gravity measurements for the Helveston 4-25 and Rodden 3-25 wells constitutes a violation of the Permit and SDWA.

IV. CIVIL PENALTY

24. Under Section 1423(c)(2) of SDWA, 42 U.S.C. § 300h-2(c)(2), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$7,500 for each day of violation, up to a maximum administrative penalty of \$177,500 for SDWA violations occurring after January 12, 2009 through December 6, 2013, \$7,500 for each day of violation, up to a maximum administrative penalty of \$187,500 for SDWA violations occurring after December 6, 2013 through November 2, 2015, and \$11,181 for each day of violation, up to a maximum administrative penalty of \$279,536 for SDWA violations occurring after November 2, 2015.

25. Section 1423(c)(4)(B) of SDWA, 42 U.S.C. 300h-2(c)(4)(B), requires the Administrator to take into account the seriousness of the violation, the economic benefit (if any) 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, when assessing a civil penalty for violations of SDWA.

26. Based upon the facts alleged in this CAFO, the factors listed in Section 1423(c)(4)(B) of SDWA, 42 U.S.C. 300h-2(c)(4)(B), EPA's UIC Program Judicial and

Administrative Order Settlement Penalty Policy (September 1993) (EPA's UIC Penalty Policy), and Respondent's good faith and cooperation in resolving this matter, EPA has determined that an appropriate civil penalty to settle this action is \$68,472.

27. Within 30 days of the effective date of this CAFO, Respondent must pay a \$68,472 civil penalty by any of the following ways with Respondent's name and the docket number of this CAFO indicated on the check or description field of the electronic payment:

- (a) sending a cashier's or certified check, payable to "Treasurer, United States of America," along with a transmittal letter to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

- (b) sending a cashier's or certified check, payable to "Treasurer, United States of America," along with a transmittal letter to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

- (c) electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045

- (d) ACH electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22-checking

- (e) on-line payment through www.pay.gov. Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

28. At the time of payment, Respondent must also send copies of the notice of payment and transmittal letter to the following addresses:

Timothy Elkins (WU-16J)
Underground Injection Control Branch
Water Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Nicole Wood-Chi (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

29. This civil penalty is not deductible for federal tax purposes.

30. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, Respondent must pay the following on any amount due under this CAFO which is not paid within 30 days after the CAFO is filed with the regional hearing clerk: interest accrued on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings; a \$15 handling charge fee each month that any portion of the penalty is more than 30 days past due; and 6% per year penalty on any principal amount 90 days past due.

V. GENERAL PROVISIONS

31. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: Wood.Nicole@epa.gov (for Complainant) and chenderson@dartoilandgas.com (for Respondent).

32. Full payment of the penalty as described in Paragraph 27 above, and full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations and facts alleged in this CAFO. Violation of this CAFO shall be deemed a violation of SDWA for purposes of Section 1423(b) of SDWA, 42 U.S.C. § 300h-2(b).

33. If Respondent does not pay timely the civil penalty, EPA may request the United States Department of Justice bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States' enforcement expenses for the collection action under Section 1423(c)(7) of SDWA, 42 U.S.C. § 300h-2(c)(7). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

34. Full compliance with this CAFO shall not in any case affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

35. This CAFO does not affect Respondent's responsibility to comply with SDWA and other applicable federal, state, or local laws and permits.

36. This CAFO constitutes a "previous violation" as that term is used in EPA's UIC Penalty Policy and to determine Respondent's "history of such violations" under SDWA section 1423(c)(4)(B), 42 U.S.C. § 300h-2(c)(4)(B).

37. The terms of this CAFO bind Respondent and its parent and subsidiaries.

38. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to the terms of this CAFO.

39. Each party agrees to bear its own costs and attorney fees in this action.

40. This CAFO constitutes the entire agreement between the parties.

41. The Consolidated Rules at 40 C.F.R. § 22.45 require Complainant to publish notice to the public no less than 40 days before the issuance of an order assessing a civil penalty.

The parties acknowledge and agree that final approval by EPA of this CAFO is subject to 40 C.F.R. § 22.45(c)(4) which sets forth requirements under which a person not a party to this proceeding may petition to set aside a consent agreement and final order on the basis that material evidence was not considered.

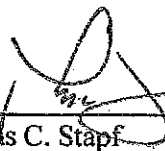
42. In accordance with 40 C.F.R. § 22.18(b)(3), 22.31(b), and 22.45, this CAFO shall be effective on the date the final order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or the Regional Administrator, is filed with the Regional Hearing Clerk.

Dart Oil & Gas Corporation, Respondent

By: Thomas C. Stapf


Its: Authorized Representative

11/16/2018
Date


Thomas C. Stapf *CSH*

United States Environmental Protection Agency, Complainant

11/28/18
Date


Linda Holst
Acting Division Director
Water Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: Dart Oil & Gas Corporation
Docket No. SDWA-05-2019-0002

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

By: _____ Date: _____
Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5