

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6

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REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of § Docket No. SDWA-06-2018-1103
§
Flagship Oil, LLC §
§
Osage County, Oklahoma §
§
Respondent § CONSENT AGREEMENT
§ AND
§ FINAL ORDER
§
Proceedings under Section §
1423(c) of the Safe Drinking §
Water Act, 42 U.S.C. § 300h-2(c) §

I. STATUTORY AUTHORITY

This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) pursuant to Section 1423, 42 U.S.C. § 300h-2(c), of the Safe Drinking Water Act (“Act”). The Administrator of EPA delegated the authority to issue this CAFO to the Regional Administrator of EPA, who further delegated this authority to the Director of the Compliance Assurance and Enforcement Division. This CAFO is issued in accordance with 40 C.F.R. § 22.18, as set forth in 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.

II. CONSENT AGREEMENT

1. EPA and Flagship Oil, LLC (“Respondent”) (collectively “Parties”) agree that settlement of this matter without litigation will save time and resources, that it is in the public interest, and that the entry of this CAFO is the most appropriate means of resolving this matter. Compliance with all terms of this CAFO resolves only those violations alleged herein.

2. Respondent admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in this CAFO. This CAFO states a claim upon which relief may be granted.

3. Respondent expressly waives any right to a hearing regarding penalty assessment or any other issue of law or fact relevant to this proceeding. Respondent further waives all defenses which have been or could have been raised pertaining to the violations alleged herein and waives the right to judicial review of this administrative penalty assessment.

4. Before the taking of any testimony, and without adjudication of any issue of law or fact, the Parties agree to the terms of this CAFO and to its issuance. Respondent consents to the assessment and payment of a civil penalty in the amount and by the method stated below.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

5. At all times relevant to the violations alleged herein (“relevant time period”), Respondent was an individual, and as such, is a “person,” within the meaning of Section 1401(12) of the Act, 42 U.S.C. § 300f (12).

6. During the relevant time period, Respondent owned or operated an “injection well” which is a “new Class II well” as those terms are defined at 40 C.F.R. § 147.2902. The well is known as the Turkey Creek 10 (“Well No. 10”) and is identified by EPA inventory number OS8310. Well No. 10 is located on the Osage Mineral Reserve in the Southeast Quarter of Section 24, Township 22 North, Range 10 East, Osage County, Oklahoma.

7. 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.

8. Pursuant to 40 C.F.R. § 147.2916, operators of new Class II wells (wells that were constructed or converted to injection use after the effective date of the Osage underground injection control program) must apply for and comply with the applicable permit issued by the EPA. Owners or operators of a well authorized by a permit must comply with provisions set forth in 40 C.F.R. §§ 147.2916, 147.2903, 147.2907, and 147.2918 through 147.2928.

9. 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.

10. Regulations at 40 C.F.R. § 147.2905 require an injection well to be plugged within one year after termination of injection and set out administrative and technical requirements to be followed when plugging an injection well. The Regional Administrator may extend the time to plug if no fluid movement into an “Underground Source of Drinking Water” (“USDW”) will occur and the operator has presented a viable plan for utilizing the well within a reasonable time. The term USDW is defined at 40 C.F.R. § 147.2902.

11. On July 6, 2017, an Osage Nation representative inspected Well No. 10 and observed Well No. 10 being used for the underground injection of fluids.

12. Well No. 10 was not authorized by rule in accordance with 40 C.F.R. § 147.2909 nor was it authorized by a permit in accordance with 40 C.F.R. § 147.2916 on the date of the violation specified in this CAFO.

13. Respondent’s March 26, 2018, correspondence disclosed that Well No. 10 is a water supply well, that the well was used for the underground injection of fluids in 2014, 2015, 2016 and 2017.

IV. PENALTY ORDER

14. Based on the foregoing stipulations, EPA Region 6, having taken into account the factors used for assessment of civil penalties found in Section 1423(c) of the Act, 42 U.S.C. § 300h-2(c), hereby orders and Respondent agrees to pay to the United States a civil penalty in the amount of eight thousand four hundred dollars (\$8,400.00) plus interest to settle the violations alleged in the Complaint (SDWA-06-2018-1103) issued on May 31, 2018. Respondent sent full payment amount in response to the Complaint. A check was received by EPA Region 6, Regional

Hearing Clerk (6RC-D) on or about June 26, 2018. The Region 6 Regional Hearing Clerk has forwarded the payment to the EPA Cincinnati Finance Center.

15. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

16. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States that are not paid by the due date and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. See 40 C.F.R. § 13.11(b).

17. If all or part of a payment is overdue, EPA will impose a late-payment handling charge of fifteen dollars (\$15.00), with an additional delinquent notice charge of fifteen dollars (\$15.00) for each subsequent thirty (30)-day period. EPA will also apply a six percent (6%) per annum penalty on any principal amount not paid within ninety (90) days of the due date. Penalties under other Federal statutes for failure to make timely payment may also apply.

18. Failure by Respondent to pay the penalty assessed according to the terms of this CAFO in full, by its due date, may subject Respondent to a civil action to collect the assessed penalty and any accrued interest or penalties.

19. In the event a collection action is necessary, Respondent shall pay, in addition to any applicable penalty, fees, and interest described herein, all reasonable costs and expenses, including legal expenses and court costs, incurred by the United States for enforcement and collection proceedings for nonpayment of the amounts agreed hereunder. In any such collection action, the

validity, amount, and appropriateness of the penalty, and the terms of this CAFO, shall not be subject to review.

V. COMPLIANCE ORDER

20. Pursuant to Section 1423(c) of the Act, 42 U.S.C. § 300h-2(c), EPA orders and Respondent consents to take one the following actions and provide evidence of compliance:

- a. If Respondent plans to use Well No. 10 for the underground injection of fluids;
 - 1) Apply for an EPA Region 6, Underground Injection Control permit;
 - 2) Repair the well and demonstrate mechanical integrity according to regulations at 40 C.F.R. §§ 146.8(b)(1), 147.2920 and the UIC Permit issued within ninety (90) days of the effective date of this Final Order; or
- b. If Respondent does not intend to complete the EPA UIC Permit process and does not intend to use Well No. 10 for the injection of fluids, take one of the following actions:
 - 1) Plug the well according to regulations at 40 C.F.R. § 147.2905;
 - 2) Convert the well to production use within ninety (90) days of the effective date of this Final Order.

21. *For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of the actions listed above in Paragraph 20 is restitution or required to come into compliance with the law.*

VI. GENERAL PROVISIONS

22. To execute this Agreement, Respondent shall sign and forward this copy of the CAFO, with original signature, to:

Mr. Tucker Henson
Office of Regional Counsel (6RC-EW)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

23. Issuance of this CAFO does not relieve Respondent from responsibility to comply with all requirements of the Act and the requirements of any permits issued thereunder, nor does it constitute a waiver by EPA of its right to enforce compliance with the requirements of any applicable permits or other requirements of the Act by actions under the authority of the Act,

except as to any requirement to pay any penalty or perform any corrective action not described herein for the violations alleged herein.

24. The provisions of this CAFO shall be binding upon Respondent, its officers, directors, managers, agents, representatives, employees, successors and assignees. Each party agrees to bear its own costs and attorneys' fees in this matter, except to the extent that Respondent may be responsible for reasonable costs and expenses of enforcement and collection proceedings for failure to comply with the terms of this CAFO.


25. Each undersigned representative of the Parties to this agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this agreement and to execute and legally bind that party to it.

In recognition and acceptance of the foregoing:



Janet Mahan
Flagship Oil, LLC

10/3/18
Date



for Cheryl T. Seager
Director
Compliance Assurance and
Enforcement Division

10/26/18
Date

FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This CAFO shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO shall resolve only those causes of action alleged in the CAFO. Nothing in this CAFO shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers', agents', servants', employees', successors', or assigns') obligation to comply with all applicable Federal, State, and local statutes and regulations, including the regulations subject to this action. Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the CAFO. This CAFO shall become effective thirty (30) days after the issuance date specified below pursuant to Section 1423(c) of the Safe Drinking Water Act.

Issuance Date:

10/30/18

Thomas Rucki, Regional Judicial Officer
EPA, Region 6

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of October, 2018, the original of the foregoing Consent Agreement and Final Order was hand-delivered to the Regional Hearing Clerk, U.S. EPA, Region 6 (6RC-D), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and that a true and correct copy was placed in the United States mail, by certified mail, return receipt requested, addressed to the following:

Original hand-delivered: Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Copy by certified mail,
return receipt requested: Ms. Janet Mahan
Flagship Oil, LLC
13506 West 155th Place North
Skiatook, OK 74070

Copy by mail: Bureau of Indian Affairs, Osage Agency
P.O. Box 1539
Pawhuska, OK 74056

Osage Nation ENR Department
P.O. Box 1495
Pawhuska, OK 74056

Copy hand-delivered: Tucker Henson (6RC-EW)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Dated: 10/30/2018

Jackie Allen