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EPA Docket No. SDWA-03-2011-0160-DU

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

| | | |
|-------------------------|---|----------------------------------|
| IN THE MATTER OF: |) | Docket No. |
| |) | SDWA-03-2011-0160-DU |
| |) | |
| Swamp Angel Energy, LLC |) | CONSENT AGREEMENT |
| 2414 N. Woodlawn |) | AND FINAL ORDER |
| Suite 160 |) | |
| Wichita, KS 67220-3900 |) | Proceeding under Section |
| |) | 1423(c) of the Safe Drinking |
| Respondent |) | Water Act, 42 U.S.C. § 300h-2(c) |

I. STATUTORY AND REGULATORY AUTHORITY

1. This Consent Agreement and Final Order (“CAFO”) is entered into by the Director of the Water Protection Division, United States Environmental Protection Agency (“EPA”), Region III (“Complainant”) and Swamp Angel Energy, LLC (“Swamp Angel” or “Respondent”), pursuant to Section 1423(a) and (c) of the Safe Drinking Water Act (“SDWA”), 42 U.S.C. § 300h-2(a) and (c), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits*, 40 C.F.R. Part 22. Pursuant to 40 C.F.R. 22.14(a)(6), Respondent is hereby notified that the procedures set forth at 40 C.F.R. Part 22 Subpart I apply to this proceeding.
2. The parties have agreed that this CAFO resolves Complainant’s civil claims pertaining to violations of the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*, and the Underground Injection Control (“UIC”) regulations promulgated under SDWA Sections 1421 and 1422, specifically 40 C.F.R. § 144.11, as alleged in a Proposed Administrative Order and Complaint with Opportunity to Request a Hearing filed on June 6, 2011 (“the Complaint”). The parties having agreed to settlement of Respondent’s alleged SDWA violations, this CAFO concludes this action pursuant to 40 C.F.R. § 22.18(b). The EPA Administrator has delegated the authority to take these actions to the Regional Administrator for EPA, Region III, who in turn delegated the authority to the Water Protection Division Director of EPA, Region III (“Director”).
3. Pursuant to Section 1423(c)(2) of the SDWA, 42 U.S.C. § 300h-2(c)(2), as amended by the Debt Collection Improvement Act of 1996 (codified at 28 U.S.C. § 2461) and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19

(effective January 12, 2009), the EPA Administrator is authorized to issue an order requiring compliance and/or assessing administrative penalties against any person who has violated an applicable UIC program requirement. For violations of the UIC program requirements, such as these pertaining to Class II injection wells, which occurred between March 15, 2004 and January 12, 2009, the Administrator may assess a penalty amount that is up to \$6,500 per day for each violation, and a total penalty amount that is up to \$157,500.

II. FINDINGS OF FACT AND JURISDICTION

4. For purposes of this CAFO, Respondent neither admits nor denies the factual allegations contained in Paragraphs 7 through 25 of the Complaint.
5. Respondent admits the jurisdictional allegations in the Complaint and in this CAFO.
6. Respondent agrees not to contest, in any administrative or judicial forum, EPA's jurisdiction to issue, enter into, and enforce this CAFO.

III. CONCLUSIONS OF LAW

7. Section 1421(a) of the SDWA, 42 U.S.C. § 300h(a), directs the Administrator to promulgate regulations for state UIC programs. Section 1421(b) of the SDWA, 42 U.S.C. § 300h(b), lists minimum requirements for state UIC programs.
8. Section 1421(b)(1)(A) of the SDWA, 42 U.S.C. § 300h(b)(1)(a), states that the UIC regulations "shall prohibit . . . any underground injection in such State which is not authorized by a permit issued by the state"
9. The UIC regulations at 40 C.F.R. § 144.11 state that "[a]ny underground injection, except into a well authorized by rule or except as authorized by permit issued under the UIC program, is prohibited."
10. Section 1422(c) of the SDWA, 42 U.S.C. § 300h-1(c), requires EPA to administer the UIC program in states that do not have primary enforcement responsibility ("primacy").
11. The Commonwealth of Pennsylvania has not acquired primacy of the UIC program. Therefore, effective June 25, 1984, EPA Region III began direct implementation of the UIC program in Pennsylvania. *See* 40 C.F.R. § 147.1951.
12. Section 1423(a)(2) of the SDWA, 42 U.S.C. § 300h-2(a)(2), states that "whenever the Administrator finds during a period which a State does not have primary enforcement responsibility for underground water sources that any person subject to any requirement of any applicable underground injection control program . . . is violating such

requirements, the Administrator shall issue an order . . . requiring the person to comply with such a requirement”

13. Swamp Angel is a corporation and therefore a “person” within the meaning of Section 1401(12) of the Act, 42 U.S.C. § 300f(12).
14. As described in Paragraphs 15 through 25 of the Complaint, EPA has alleged Respondent violated the SDWA, 42 U.S.C. § 300f, *et seq.*, and the UIC regulations promulgated under SDWA Sections 1421 and 1422, specifically 40 C.F.R. § 144.11, and is therefore liable to the United States for a civil penalty in accordance with the same.

IV. SPECIFIC PROVISIONS

15. Based upon the foregoing and having taken into account the nature, circumstances, extent and gravity of the violations, Respondent’s ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require pursuant to the authority of Section 1423(c) of the Act, 42 U.S.C. § 304-2(c), EPA HEREBY ORDERS AND Respondent CONSENTS to pay a civil penalty in the amount of fifty-four thousand three hundred twenty-four U.S. Dollars and thirty-four U.S. Cents (\$54,324.34) in full and final settlement of EPA’s claims for civil penalties for the violations alleged herein and in the Complaint.
16. EPA further HEREBY ORDERS AND Respondent CONSENTS to plug the “Old Glory” well pursuant to the plan attached to this CAFO as Appendix A, which plan is hereby incorporated by reference as if fully set forth herein. Any and all costs incurred in carrying out that plugging plan shall be paid by Swamp Angel in addition to the civil penalty in the amount of fifty-four thousand three hundred twenty-four U.S. Dollars and thirty-four U.S. Cents (\$54,324.34) identified in Paragraph 15.
17. Respondent shall pay the total administrative civil penalty of fifty-four thousand three hundred twenty-four U.S. Dollars and thirty-four U.S. Cents (\$54,324.34) for the violations alleged herein and in the Complaint within thirty (30) days of the effective date of this CAFO pursuant to 40 C.F.R. § 22.31(c). Payment shall be made by one of the following methods set forth below.

- (a) By check or certified check made payable to "United States Treasury" and sent via one of the following methods:

By regular mail:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
Contact: Heather Russell (513-487-2044)

By overnight delivery:

U.S. Bank
Government Lock Box 979077
US EPA, Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101
Contact: 314-418-1028

If the check is drawn on a bank with no U.S.A. branches, it shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

- (b) By wire transfer to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33
33 Liberty Street
New York, NY 10045
(Field Tag 4200 of the wire transfer message should read:
"D 68010727 Environmental Protection Agency")

- (c) By Automated Clearinghouse (ACH) transfer for receiving U.S. currency (also known as REX or remittance express) to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact for ACH: John Schmid (202-874-7026)
for REX: 1-866-234-5681

- (d) By on line (internet) payment through the On Line Payment Option, available through the Department of Treasury. This payment option can be accessed from:

WWW.PAY.GOV
Enter sfo 1.1 in the search field
Open form and complete required fields.

Additional payment guidance is available at:
http://www.epa.gov/ocfo/finservices/make_a_payment.htm

18. All payments by Swamp Angel shall reference Swamp Angel's name and address, and the Docket Number of this action (i.e., SDWA 03-2011-0160-DU).
19. Respondent shall send notice of such payment, including a copy of the check, receipt, or other evidence of payment, to each of the following:

Regional Hearing Clerk (3RC00)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

-and-

Ms. Kelly Gable (3RC20)
Office of Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

-and-

Mr. Roger Reinhart (3WP22)
Ground Water & Enforcement Branch
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

20. The penalty specified in Paragraph 15 above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of federal taxes.
21. Failure to pay any portion of the penalty assessed by this CAFO as directed may subject Swamp Angel to a collection action under Section 1423(c)(7) of the SDWA, 42 U.S.C. § 300h-2(c)(7). The validity, amount and appropriateness of the penalty are not subject to review in a collection proceeding. *Id.*
22. The following notice concerns interest and late penalty charges that will accrue in the event that any portion of the civil penalty is not paid as directed:

Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. 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).

The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). A penalty charge of no more than six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

V. GENERAL PROVISIONS

23. For the purposes of this proceeding, Respondent consents to the assessment of the stated civil penalty, to the issuance of the compliance or corrective action activities specified in this CAFO, and to any other conditions specified in this CAFO.
24. The provisions of this CAFO shall be binding upon the Respondent, its officers, principals, directors, authorized representatives, employees, successors and assigns. Action or inaction of any persons, firms, contractors, employees, agents, or corporations acting under, through, or for Respondent shall not excuse any failure of Respondent to fully perform its obligations under this CAFO.
25. Each party to this action shall bear its own costs and attorney fees.
26. The parties agree that settlement of this matter is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.
27. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO, or one or more of its terms and conditions, is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Regional Administrator or his designee, then the entire CAFO shall be null and void.
28. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law and ordinance, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit. This CAFO does not waive, extinguish, modify, or otherwise affect Respondent's obligation to comply with all applicable provisions of the SDWA, 42 U.S.C. §§ 300f *et seq.*, or of any regulations promulgated thereunder, or the requirements of 40 C.F.R. § 147.1950-1955, which remain in full force and effect.
29. This CAFO resolves only the civil claims for the specific violations alleged in the Complaint and in this CAFO. This CAFO shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
30. EPA reserves the right to commence action against any person, including Respondent, in response to any condition that EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in 40 C.F.R. § 22.18(c).

31. EPA reserves any rights and remedies available to it under the SDWA, 42 U.S.C. §§ 300f *et seq.*, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO following its filing with the Regional Hearing Clerk. Nothing in this CAFO shall be construed as prohibiting, altering, or in any way eliminating the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violations of this CAFO or of the statutes and regulations upon which this CAFO is based or for Respondent's violation of any applicable provision of law administered and enforced by EPA.
32. Entry of this CAFO is a final settlement of all civil violations alleged in the Complaint and in this CAFO. EPA shall have the right to institute a new and separate action to recover additional civil penalties for the claims made in the Complaint and this CAFO if EPA obtains evidence that the information and/or representations of Respondent are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action, civil or criminal, the EPA may have under law or equity in such event.
33. Violations of the terms of this CAFO after its effective date may subject Respondent to a civil action in a United States district court with penalties up to \$37,500 per day of violation as authorized in Sections 1423(b) of the SDWA, 42 U.S.C. § 300h-2(b).
34. The undersigned representative of Respondent certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

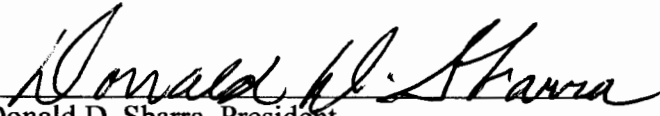
VI. WAIVER OF RIGHTS TO HEARING AND APPEAL

35. Respondent hereby expressly waives its right to a hearing, pursuant to Section 1423(c)(3)(A) of the SDWA, 42 U.S.C. § 300h-2(c)(3)(A), on any issue of law or fact in this matter and consents to issuance of this CAFO without adjudication.
36. Respondent also hereby expressly waives its right to appeal this CAFO.

VII. EFFECTIVE DATE

37. This CAFO shall become final and effective, absent a petition for review, thirty (30) days after it is lodged with the Regional Hearing Clerk, pursuant to SDWA Section 1423(c), 42 U.S.C. § 300h-2(c).

FOR RESPONDENT SWAMP ANGEL ENERGY, LLC:

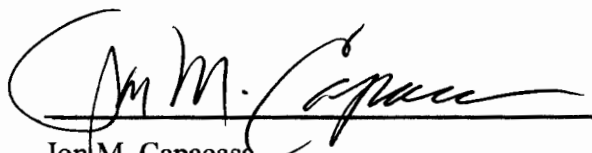

Donald D. Sbarra, President
Swamp Angel Energy, LLC

Issued this 15 day of Aug., 2012.

EPA Docket No. SDWA-03-2011-0160-DU

SO ORDERED, pursuant to 33 U.S.C. § 1319(g), and 40 C.F.R. Part 22,

this 24th day of August, 2012.

A handwritten signature in black ink, appearing to read "Jon M. Capacasa", written over a horizontal line.

Jon M. Capacasa
Director, Water Protection Division
U.S. EPA Region III

CERTIFICATE OF SERVICE

I hereby certify that on this day, I caused to be filed with the **Regional Hearing Clerk**, EPA Region III, the original fully-executed Consent Agreement and Final Order, and that copies of the same were sent to the following individuals in the manner described below:

By hand delivery:


Regional Judicial Officer Renee Sarajian
EPA Region III
1650 Arch Street
Philadelphia, PA 19103

By first class, certified mail, return receipt requested:

Mr. Donald D. Sbarra
President
Swamp Angel Energy, LLC
2414 N. Woodlawn, Suite 160
Wichita, KS 67220-3900

Matthew L. Wolford, Esq.
638 West 6th Street
Erie, PA 16507
Counsel for Swamp Angel Energy, LLC

Date: 8/24/2012



Ms. Kelly Gable
Assistant Regional Counsel
U.S. EPA Region III