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**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6**

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REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of:	§	DOCKET NO. SDWA-06-2018-1107
	§	
Ole Crow Operating Company, LLC a Texas Corporation	§	CONSENT AGREEMENT AND
	§	FINAL ORDER
Respondent	§	
	§	
Inventory Nos. OK0007 and OK0031	§	Pursuant to 40 C.F.R. § 22.13(b)

I. PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the United States Environmental Protection Agency (“EPA”) pursuant to Section 1423(c) of the Safe Drinking Water Act (“Act”), 42 U.S.C. § 300h-2(c). This CAFO is issued to simultaneously commence and conclude this proceeding to assess a civil penalty in accordance with 40 C.F.R §§ 22.13(b) and 22.18(b)(2) and (3), as described 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.

2. EPA has primary enforcement responsibility for underground injection within the meaning of Section 1422(e) of the Act, 42 U.S.C. § 300h-1(e), to ensure that owners or operators of Class II injection wells within certain Indian Lands in the State of Oklahoma comply with the requirements of the Act.

3. EPA and Ole Crow Operating, LLC (“Respondent”) (collectively “Parties”) agree that settlement of the relevant matters without litigation will save time and resources, that it is in the public’s interest, and that the entry of this CAFO is the most appropriate means of resolving such matters. Compliance with all the terms and conditions of this CAFO resolves only those violations specified in this CAFO.

4. Respondent admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific Findings of Fact and Conclusions of Law contained in this CAFO. This CAFO states a claim(s) upon which relief may be granted.

5. Respondent expressly waives any right to contest the factual allegations or conclusions of law contained in this CAFO and waives its right to appeal the Final Order set forth herein.

6. 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.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

7. Respondent is a company licensed to do business in Texas and is doing business in Oklahoma, and as such, Respondent is a "person," as that term is defined at Section 1401(12) of the Act, 42 U.S.C. § 300f (12).

8. At all times relevant to the violations alleged herein ("relevant time period"), Respondent owned or operated "injection wells," which are "existing Class II wells" as those terms are defined at 40 C.F.R. § 146.3. The injection wells are known as the Wook #1 well ("Well No. 1"), identified by EPA inventory number OK0031, and the Wook #3 well ("Well No. 3"), identified by EPA inventory number OK0007. Well No. 1 and Well No. 3 ("the wells") are located on the Wook Lease within the Comanche Nation of Oklahoma in the Southwest Quarter of Section 01, Township 04 South, Range 11 West in Cotton County, Oklahoma.

9. Because Respondent owned or operated injection wells on Comanche Nation of Oklahoma land, Respondent is subject to Regulations at 40 C.F.R Parts 144 and 146 and 40

C.F.R. Part 147, Subpart III, which are authorized under Section 1421 of the Act, 42 U.S.C. § 300h.

10. Regulations at 40 C.F.R. § 144.28(a) provide that any non-compliance with the applicable requirements of 40 C.F.R Part 144, Subparts B and C, constitutes a violation of the Act and is grounds for enforcement action.

11. Regulations at 40 C.F.R § 144.11 state that any underground injection is prohibited, except as authorized by rule or authorized by permit issued under the UIC program. On May 1, 1989, the wells were administered to the UIC program. The wells were constructed as enhanced recovery wells, and authorization by rule was granted accordance with 40 C.F.R. §144.22(a).

12. Regulations at 40 C.F.R. §§ 144.28(c) and 146.10 require an injection well to be plugged within two years 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. § 144.3.

13. Regulations at 40 C.F.R. § 144.22 prohibit the operator of an injection well from injecting into a well after notification from EPA that EPA determined that an injection well lacks mechanical integrity. 40 C.F.R. § 146.8 provides the requirements for demonstrating mechanical integrity.

14. Regulations at 40 C.F.R. § 144.12 prohibit the operator of an injection well from operating, maintaining or conducting any other injection activity in a manner that allows the movement of fluids into USDWs.

15. On July 26, 2016, an EPA inspector visited the wells and performed mechanical integrity tests on Well No. 1 and Well No. 3. Both wells failed to demonstrate mechanical integrity.

16. By letter dated September 15, 2016, EPA notified Respondent that Well No. 1 and Well No. 3 failed to demonstrate mechanical integrity and ordered Respondent to cease injection of underground fluid until mechanical integrity is successfully demonstrated.

17. By letter dated March 7, 2017, EPA acknowledged that Well No. 1 and Well No. 3 were inactive and approved Respondent's request to maintain the wells in a temporary abandonment status while awaiting mechanical integrity testing.

18. On February 7, 2018, an EPA inspector visited the wells and observed that Well No. 1 was being used for the underground injection of fluids and that Well No. 3 was equipped with tubing connected to the well head and had the ability to inject.

19. Respondent violated 40 C.F.R. § 144.22(c) by using Well No. 1 for the unauthorized injection of fluids and violated 40 C.F.R. § 144.12 by maintaining Well No. 3 in a manner that may allow the movement of fluids into zones of USDWs in the area of the well.

20. EPA notified the public of the filing of this proposed CAFO at <https://www.epa.gov/publicnotices> and afforded the public thirty (30) days to comment on the proposed penalty as required by Section 1423(c)(3)(B) of the Act, 42 U.S.C. § 300h-2(c)(3)(B). At the expiration of the notice period, EPA will consider any comments filed by the public.

III. TERMS OF SETTLEMENT

A. COMPLIANCE ORDER

21. Based on the foregoing Findings, and pursuant to the authority of Section 1423(c) of the Act, 42 U.S.C. § 300h-2(c), EPA Region 6 hereby orders Respondent to:

- a. Cease use of Well No. 1 for the unauthorized underground injection of fluids and disconnect Well No. 1 and Well No. 3 from injection lines and the well heads, and
- b. If Respondent plans to use Well No. 1 and Well No. 3 for the underground injection of fluids;
 - 1) Apply for an EPA Region 6, Underground Injection Control permit, and
 - 2) Repair the wells and demonstrate mechanical integrity according to regulations at 40 C.F.R. § 146.8(b)(1) within ninety (90) days of the effective date of a Final Order, or;
- c. If Respondent does not plan to use Well No. 1 and Well No. 3 for the underground injection of fluids, take one of the following actions:
 - 1) Plug the wells according to regulations at 40 C.F.R. § 147.3108; or
 - 2) Convert the wells to production use within ninety (90) days of the effective date of a Final Order.

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 Section III.A.21. b-c. is restitution or required to come into compliance with the law.

B. PENALTY PROVISIONS

22. Based on the foregoing Findings of Fact and Conclusions of Law and considering the relevant criteria pursuant to Section 1423(c)(4)(B) of the Act, 42 U.S.C. § 300h-2(c)(4)(B), EPA, Region 6 hereby proposes that Respondent shall pay to the United States a civil penalty in the amount of six thousand five hundred dollars (\$6,500.00) to settle the violations specified in this CAFO. Payment shall be made within thirty (30) days of the effective date of this CAFO by mailing a cashier's check or certified check, payable to "Treasurer of the United States," to one of the following addresses:

- a. Mailing a bank check, a cashier's check or certified check, payable to "Treasurer of the United States," to one of the following addresses:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

b. Wire Transfer to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
"D68010727 Environmental Protection Agency"

c. Overnight mail (Express, FedEx, DHL, etc.) to:

U.S. Bank
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone 314-418-1028

d. ACH Payments to:

U.S. Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Acct. Number: 310006
Environmental Protection Agency
CTX Format Transaction Code 22 – Checking
Physical location of U.S. Treasury facility:
5700 Rivertech Ct.
Riverdale, MD 20737

e. Payment by Credit Card, Debit Card, or Checking Account

(only up to \$24,999.99)

Online: www.pay.gov

Follow these steps to make a payment:

1. You do not need a user name and password or account.
2. Enter SF0 1.1 in the form search box on the top left side of the screen.
3. Open the form and follow the on-screen instructions.
4. Select type of payment from the "Type of Payment" drop down menu.
5. Based on your selection, the corresponding line will open and no longer be shaded gray.

Enter the docket number, invoice number or other corresponding information into the field.

“In the Matter of Ole Crow Operating Company, LLC, Docket No. CWA-06-2018-1107” should be clearly marked on the check to ensure credit for payment.

23. Respondent shall send simultaneous notice of payment, including a copy of the check, to each of the following:

- (1) Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
- (2) Chief, Water Resources Section (6EN-WR)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
- (3) Chief, Water Legal Branch (6RC-EW)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent’s adherence to these procedures will ensure proper credit when payment is received by EPA.

24. 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.

25. 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 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, pursuant to 40 C.F.R. § 13.11(b).

26. EPA will also assess a fifteen dollar (\$15.00) administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional fifteen dollars (\$15.00) for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent (6%) per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days, pursuant to 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent, pursuant to 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

27. Pursuant to Section 1423(c)(7) of the Act, 42 U.S.C. § 300h-2(c)(7), any person who fails to pay, on a timely basis, a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including, but not limited to, attorneys' fees and costs incurred by the United States for collection proceedings and interest at currently prevailing rates from the date this Order is effective. In such a collection action, the validity, amount, and appropriateness of the penalty assessed by this CAFO, and the terms of this CAFO shall not be subject to review.

C. GENERAL PROVISIONS

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

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

29. 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 Respondent's permits or other requirements of the Act.

30. In any action to enforce this CAFO, Respondent shall not assert as a defense any act or failure to act by any of its officers, directors, employees, agents, servants, contractors, subcontractors, successors or assigns.

31. 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. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorneys' fees under the Equal Access to Justice Act, 5 U.S.C. § 504, as amended by the Small Business Regulatory Enforcement Fairness Act (P.L. 104-121), and any regulations promulgated pursuant to those Acts.

32. 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:



For Ole Crow Operating Company, LLC

10/2/18

Date

10-18-18

Date



Cheryl T. Seager
Director
Compliance Assurance and
Enforcement Division

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 Final Order 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 Final Order shall resolve only those causes of action alleged in the CAFO. Nothing in this Final Order 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 that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Issuance Date: 10/24/18



Thomas Rucki
Regional Judicial Officer
EPA, Region 6

CERTIFICATE OF SERVICE

I certify that the foregoing Complaint was sent to the following persons, in the manner specified, on the date below:

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: Mr. Tim Fitzgerald Ole Crow Operating Company, LLC
P.O. Box 4072
Wichita Falls, TX 76309-0072

Copy: Mr. Jim Ashley, Petroleum Engineer
BLM Oklahoma Field Office
201 Stephenson Parkway, Suite 1200
Norman OK 73072

Ms. Rose Roberson
Bureau of Indian Affairs
Anadarko Agency
P.O. Box 309
Anadarko, OK 73005

Comanche Nation of Oklahoma
Assistant Director: Lynn Schonchin
P.O. Box 908
Lawton, OK 73502

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

Dated: 25 OCT 2018


