



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
1445 ROSS AVENUE, SUITE 1200  
DALLAS TX 75202-2733

MAY 25 2018

CERTIFIED MAIL-RETURN RECEIPT REQUESTED: 7005 1820 0003 7458 3656

Ms. Janet Mahan  
Flagship Oil, LLC  
13506 West 155<sup>th</sup> Place North  
Skiatook, OK 74070

Re: Notice of Proposed Administrative Complaint and Opportunity to Request a Hearing  
Docket Number: SDWA-06-2018-1103

Dear Ms. Mahan:

Enclosed is an Administrative Complaint (Complaint) issued to you for a violation of the Safe Drinking Water Act. The violation was identified during a July 6, 2017 inspection of the injection well referenced in the Complaint. The violation was for an unauthorized injection of fluids into Well No.10. The enclosed Complaint proposes to assess a monetary penalty of eight thousand four hundred dollars (\$8,400.00) and orders Flagship Oil, LLC to 1) cease use of the referenced well for fluid injection and plug the well; or 2) convert the well to production use; or 3) submit an Environmental Protection Agency Underground Injection Control permit application.

You have the right to request a hearing regarding the violation alleged in the Complaint and the proposed penalty. Please refer to the enclosed Part 22, "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," for information regarding hearing and settlement procedures. Note that should you fail to request a *hearing within thirty (30) days* of your receipt of this Complaint, you will waive your right to such a hearing and may be subject to the compliance terms and assessed penalty without further proceedings. Whether or not you request a hearing, we invite you to confer with us informally. If you choose not to request a hearing, we will review any comments on the Complaint received from you and the public and determine whether the Complaint will become final.

Also enclosed is an "Information Sheet" relating to the Small Business Regulatory Enforcement Fairness Act and a "Notice of Registrant's Duty to Disclose" relating to the disclosure of environmental legal proceedings to the Securities and Exchange Commission. The Environmental Protection Agency is committed to ensuring compliance with the requirements of the Underground Injection Control program and my staff will assist you in any way possible.

Re: Flagship Oil, Inc.  
SDWA-06-2018-1103

If you have any questions, or wish to discuss the possibility of a settlement of this matter, please contact Mr. David Aguinaga, of my staff, at (214) 665-6439.

Sincerely,



Cheryl T. Seager  
Director  
Compliance Assurance and  
Enforcement Division

Enclosures

cc: BIA, Minerals Branch  
P.O. Box 1539  
Pawhuska, OK 74056

Osage Nation ENR Department  
100 West Main St., Suite 304  
Pawhuska, OK 74056

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY** 31 AM 9:57  
**REGION 6**

REGIONAL HEARING CLERK  
EPA REGION VI

IN THE MATTER OF:

Flagship Oil, LLC  
Osage County, Oklahoma

Respondent

§ DOCKET NO. SDWA-06-2018-1103  
 §  
 §  
 §  
 § Proceeding to Assess a  
 § Civil Penalty under Section 1423(c)  
 § of the Safe Drinking Water Act  
 §  
 § ADMINISTRATIVE COMPLAINT

**I. STATUTORY AUTHORITY**

This Complaint is issued under the authority vested in the Administrator of 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). The Administrator of EPA delegated the authority to issue this Complaint to the Regional Administrator of EPA Region 6, who delegated the authority to the Director of the Compliance Assurance and Enforcement Division of EPA Region 6 (“Complainant”). This Complaint is issued in accordance with 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, including rules related to administrative proceedings not governed by Section 554 of the Administrative Procedure Act, 40 C.F.R. §§ 22.50 through 22.52.

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 Osage County, Oklahoma comply with the requirements of the Act.

Based on the following Findings of Fact and Conclusions of Law (“Findings”), Complainant finds that Flagship Oil, LLC (“Respondent”) violated the Act and the regulations promulgated under the Act and should be ordered to pay a civil penalty.

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Respondent is a corporation, 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).

2. At all relevant times, 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 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.

3. 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.

4. 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.

5. Regulations at 40 C.F.R. § 147.2916 require the owner or operator of a new Class II injection well, or any other Class II well required to have a permit in the Osage Mineral Reserve, to comply with the requirements of 40 C.F.R. §§ 147.2903, 147.2907, and 147.2918 through 147.2928.

6. Regulations at 40 C.F.R. § 147.2905 require an injection well to be plugged within one year after termination of injection. 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. Regulations at 40 C.F.R. § 147.2905 also set out administrative and technical requirements to be followed when plugging an injection well.

7. On July 06, 2017, an Osage Nation representative inspected Well No. 10 and observed that Well No. 10 was being used for the underground injection of fluids.
8. Well No. 10 is not authorized by rule in accordance with 40 C.F.R. § 147.2909.
9. In a March 26, 2018 statement, Respondent declared that Well No. 10 was used for the underground injection of fluids in 2015 (17,900 barrels), 2016 (4,800 barrels) and 2017 (1,700 barrels).
10. Respondent does not have a permit to construct or operate Well No. 10 for underground injection.
11. Therefore, Respondent violated 40 C.F.R. § 147.2903(a) by using Well No. 10 for the underground injection of fluids without the proper authorization.
12. EPA has notified the public of the filing of this Complaint at [www.epa.gov/publicnotices](http://www.epa.gov/publicnotices) and has afforded the public thirty (30) days in which to comment on the Complaint and 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. PROPOSED PENALTY**

13. 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 proposes to assess against Respondent a penalty of eight thousand four hundred dollars (\$8,400.00).
14. The proposed penalty amount has been determined based on the statutory factors specified in Section 1423(c)(4)(B) of the Act, 42 U.S.C. § 300h-2(c)(4)(B), which include such factors as the seriousness of the violation; the economic benefit 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.

### **IV. COMPLIANCE ORDER**

15. 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. Immediately cease use of Well No. 10 for the unauthorized underground injection of fluids; and
- b. Take one of the following actions:
  - 1) Plug Well No. 10 according to regulations at 40 C.F.R. § 147.2905;
  - 2) Convert Well No. 10 to production use within ninety (90) days of the effective date of a Final Order; or
  - 3) Apply for an EPA Region 6, Underground Injection Control permit to inject fluids in the Osage Mineral Reserve for Well No. 10 within ninety (90) days of the effective date of a Final Order if Respondent plans to use Well No. 10 for the underground injection of fluids.

#### **V. FAILURE TO FILE AN ANSWER**

16. If Respondent wishes to deny or explain any material allegation listed in the above Findings or to contest the amount of the penalty proposed, Respondent must file an Answer to this Complaint within thirty (30) days after service of this Complaint whether or not Respondent requests a hearing as discussed below.

17. The requirements for such an Answer are set forth at 40 C.F.R. § 22.15 (copy enclosed). Failure to file an Answer to this Complaint within thirty (30) days of service of the Complaint shall constitute an admission of all facts alleged in the Complaint and a waiver of the right to a hearing. Failure to deny or contest any individual material allegation contained in the Complaint will constitute an admission as to that finding or conclusion under 40 C.F.R. § 22.15(d).

18. If Respondent does not file an Answer to this Complaint within thirty (30) days after service of this Complaint, a Default Order may be issued against Respondent pursuant to 40 C.F.R. § 22.17. A Default Order, if issued, would constitute a finding of liability and could make the full amount of the penalty proposed in this Complaint due and payable by Respondent without further proceedings thirty (30) days after a final Default Order is issued.

19. Respondent must send its Answer to this Complaint, including any request for a hearing, and all other pleadings to:

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

20. The Answer must be signed by Respondent, Respondent's counsel, or other representative on behalf of Respondent and must contain all information required by 40 C.F.R. §§ 22.5 and 22.15, including the name, address, and telephone number of Respondent and Respondent's counsel. All other pleadings must be similarly signed and filed.

21. Complainant has specified that the administrative procedures specified in 40 C.F.R. Part 22, Subpart I shall apply to this matter, and the administrative proceedings shall not be governed by Section 554 of the Administrative Procedure Act.

#### **VI. NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

22. Respondent may request a hearing to contest the issuance of this Complaint or to contest the appropriateness of the amount of the penalty, pursuant to Section 1423(c)(3)(A) of the Act, 42 U.S.C. § 300h-2(c)(3)(A). The procedures for hearings are set out at 40 C.F.R. Part 22 (copy enclosed), including 40 C.F.R. §§ 22.50 through 22.52.

23. Any request for a hearing should be included in an Answer to this Complaint; however, as discussed above, Respondent must file an Answer meeting the requirements of 40 C.F.R. § 22.15 in order to preserve the right to a hearing or to pursue other relief.

24. Should a hearing be requested, members of the public who commented on the issuance of this Complaint during the public comment period would have a right to be heard and to present evidence at a hearing under Section 1423(c)(3)(C) of the Act, 42 U.S.C. § 300h-2(c)(3)(C).


#### **VII. SETTLEMENT**

25. EPA encourages all parties against whom civil penalties are proposed to pursue the possibility of settlement through informal meetings with the EPA. Regardless of whether a formal hearing is requested, Respondent may confer informally with the EPA about the alleged violations or the amount of the proposed penalty. Respondent may wish to appear at any informal conference or formal hearing personally, by counsel or other representative, or both. To request an informal conference on the matters described in this Complaint, please contact Mr. David Aguinaga, of my staff, at 214-665-6439.

26. If this action is settled without a formal hearing and issuance of an opinion by the Presiding Officer pursuant to 40 C.F.R. § 22.27, this action will be concluded by issuance of a Consent Agreement and Final Order (“CAFO”) pursuant to 40 C.F.R. § 22.18(b). The issuance of a CAFO would waive Respondent's right to a hearing on any matter stipulated to therein or alleged in the Complaint. Any person who commented regarding this Complaint would be notified and given an additional thirty (30) days to petition EPA to set aside any such CAFO and to hold a hearing on the issues raised in the Complaint. Such a petition would be granted and a hearing held only if the evidence presented by the petitioner's comment is material and was not considered by EPA in the issuance of the CAFO.

27. Neither assessment nor payment of a penalty in resolution of this action will affect Respondent's continuing obligation to comply with all requirements of the Act, the applicable regulations and permits, and any separate Compliance Order issued under Section 1423(c) of the Act, 42 U.S.C. § 300h-2(c), including one relating to the violations alleged herein.

5-25-18  
Date

  
Cheryl T. Seager  
Director  
Compliance Assurance and  
Enforcement Division



**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: Ms. Janet Mahan  
Flagship Oil, LLC  
13506 West 155th Place North  
Skiatook, OK 74070

Copy: 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  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

Dated: 31 MAY 2018

  
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