

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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FILED
EPA REGION VIII
HEARING CLERK

In the Matter of:

Miocene Oil & Gas, Ltd. and
Miocene Oil Company, LLC

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CONSENT AGREEMENT

Docket No. SDWA-08-2007-0058

Complainant, United States Environmental Protection Agency, Region 8 (“EPA” or “Complainant”), and Miocene Oil & Gas, Ltd. and Miocene Oil Company, LLC, (collectively “Respondents”) by their undersigned representatives, hereby consent and agree as follows:

PRELIMINARY STATEMENT

1. EPA has jurisdiction over this matter pursuant to section 1423(c) of the Safe Drinking Water Act (“Act”), as amended, 42 U.S.C. § 300h-2(c). The Environmental Protection Agency (EPA) Underground Injection Control Program regulations authorized by the statute are set out in 40 C.F.R. part 144, and violations of the statute, permits or EPA regulations constitute violations of the Act. The rules for this proceeding are 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 (“Rules of Practice”),” 40 C.F.R. part 22, a copy of which has been provided to Respondents.
2. This Consent Agreement is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
3. For the purposes of this proceeding, Respondents admit the jurisdictional allegations only and neither admit nor deny any of the non-jurisdictional and specific factual allegations contained in this Consent Agreement.
4. Respondents report that there are disputes between them and Summer Night Oil Company, LLC, and its members, concerning the contractual rights, obligations, and other legal duties arising out of their business relationships involving the UIC well Anderson # 27-1, which disputes are the subject to litigation in the Montana state courts, and which disputes may be the subject of further legal actions involving Respondents and Summer Night Oil Company, LLC, or its members. Except as provided in paragraph 3 above, nothing in this Consent Agreement is intended to constitute a binding determination or admission of any issues of law or fact that are, or may be, in dispute as between the Respondents, Summer Night Oil Company, LLC, or their members.

5. Respondents waive their rights to a hearing or appeal before any tribunal, to contest any issue of law or fact set forth in this Consent Agreement.
6. Complainant asserts that settlement of this matter is in the public interest, and the parties agree that entry of this Consent Agreement without further litigation and without adjudication of any issue of fact or law, is the most appropriate means of resolving this matter at the least cost and expense to the Respondents and the EPA.
7. This Consent Agreement, upon incorporation into a final order, applies to and is binding upon EPA and upon Respondents, and Respondents' officers, directors, employees, agents, successors and assigns. Any change in ownership or corporate status of Respondents including, but not limited to, any transfer of assets or real or personal property shall not alter Respondents' responsibilities under this agreement.
8. This Consent Agreement contains all terms of the settlement agreed to by the parties.

GENERAL ALLEGATIONS

9. The following general allegations apply to all times relevant to this action, and to each count of this Consent Agreement:
10. Miocene Oil & Gas, Ltd. is a Colorado corporation. Miocene Oil Company, LLC, is a Colorado limited liability company. Both Respondents maintain their principal office at 1660 Lincoln Street, Suite 2530, Denver, Colorado 80264-2901.
11. Respondents are "persons" within the meaning of Section 1401(12) of the Act, 42 U.S.C. § 300f(12).
12. Pursuant to section 1422 of the Act, 42 U.S.C. § 300h-1, and 40 C.F.R. part 147 subpart BB, section 147.1351, EPA administers the Underground Injection Control (UIC) program for Class II wells in Indian Country within the State of Montana. The effective date of the program is June 25, 1984. The program requirements are located at 40 C.F.R. parts 124, 144, 146, 147, and 148.
13. Class II salt water disposal wells under EPA's jurisdiction must be authorized to operate under an EPA-issued permit.
14. The UIC well Anderson # 27-1 ("the well") is a Class II salt water disposal well.
15. The well is located in Township 33 North, Range 48 East, in the NW quarter of the NW quarter of Section 27, 660 feet from the North line, 660 feet from the East line, in the Nielson Coulee Oil Field in Daniels County, Montana, within the exterior boundary of the Fort Peck Indian Reservation, and therefore is located in Indian Country.

16. The well penetrates underground sources of drinking water (USDWs), as defined in 40 C.F.R. § 144.3, including but not limited to the Fort Union, Fox Hills/Hell Creek, and Judith River Formation aquifers.

COUNT 1

17. 40 C.F.R. § 144.11 provides that “[a]ny underground injection, except into a well authorized by rule or permit issued by the UIC program, is prohibited.”
18. Pursuant to 42 U.S.C. § 300h-2(c), as amended by the Civil Monetary Penalty Inflation Rule, 69 Fed. Reg. 7121 (February 13, 2004), EPA may issue an Order assessing penalties of not more than \$6,500 for each day of violation, up to a maximum penalty of \$157,500 for violations of 40 C.F.R. §144.11.
19. On May 25, 2004, EPA issued EPA Permit No. MT20956-06196 (“permit”) to Summer Night Oil Company, LLC (“Summer Night”), for salt water disposal in the well.
20. The permit authorizes Summer Night to construct and operate the well, subject to specified terms and conditions.
21. By letter dated March 15, 2005, EPA authorized Summer Night to inject into the well and made minor modifications to the permit.
22. Summer Night utilized Respondents’ consulting services to operate the well on behalf of Summer Night.
23. On May 13, 2005, Respondent Miocene Oil & Gas, Ltd entered into a lease from the landowner allowing for the injection of salt water into the well.
24. Respondent Miocene Oil & Gas Ltd employed Respondent Miocene Oil Company, LLC to conduct the day to day field operations of underground injection into the well.
25. On July 25, 2005, UIC permittee Summer Night sent an e-mail to Respondents releasing them from their consulting services related to the well, including injection activities authorized only by Summer Night’s UIC permit.
26. At no time has EPA issued a permit to either Respondent to inject into the well.
27. Notwithstanding UIC permittee Summer Night’s release of Respondents’ services, Respondents injected waste salt water into the well on August 26, 2005, in November and December 2005, and until January 31, 2006. A total of 71 days of injection occurred in that time period, with a total cumulative injection volume of approximately 24,628 barrels.

28. Respondents' injections into the well for 71 days between August 26, 2005 and January 31, 2006 constitute at least 71 violations of 40 C.F.R. § 144.11.

COUNT 2

29. Section 1445 of the Act, 42 U.S.C. § 300j-4, and 40 C.F.R. § 144.27 provide EPA with authority to issue information request letters for UIC matters ("information request").
30. Section 1445(c) of the Act, as amended by the Civil Monetary Penalty Inflation Rule, 69 Fed. Reg. 7121 (February 13, 2004), provides that whoever fails or refuses to comply with an EPA information request shall be subject to a civil penalty of up to \$32,000.
31. On December 26, 2006, EPA sent an information request letter to Respondent Miocene Oil Company, LLC seeking information regarding its involvement with injection at the well, etc., and allowing fifteen calendar days from receipt for a written response.
32. Respondent Miocene Oil Company, LLC received EPA's December 26, 2006 information request on December 27, 2006.
33. Although Respondent Miocene Oil Company, LLC's written response was due to EPA by January 11, 2007, it was not received until February 16, 2007, thirty five days late.
34. By responding thirty five days late to EPA's information request, Respondent Miocene Oil Company, LLC failed to comply with the terms of the information request, in violation of 42 U.S.C. § 300j-4, and 40 C.F.R. § 144.27.

COUNT 3

35. Section 1445 of the Act, 42 U.S.C. § 300j-4, and 40 C.F.R. § 144.27 provide EPA with authority to issue information request letters for UIC matters ("information request").
36. Section 1445(c) of the Act, as amended by the Civil Monetary Penalty Inflation Rule, 69 Fed. Reg. 7121 (February 13, 2004), provides that whoever fails or refuses to comply with an EPA information request shall be subject to a civil penalty of up to \$32,000.
37. On December 26, 2006, EPA sent an information request letter to Respondent Miocene Oil & Gas, Ltd seeking information regarding its involvement with injection at the well, etc., and allowing fifteen calendar days from receipt for a written response.
38. Respondent Miocene Oil & Gas, Ltd received EPA's December 26, 2006 information request on December 28, 2006.
39. Although Respondent Miocene Oil & Gas, Ltd's written response was due to EPA by January 12, 2007, it was not received until February 26, 2007, forty five days late.

40. By responding forty five days late to EPA's information request, Respondent Miocene Oil and Gas, Ltd failed to comply with the terms of the information request, in violation of 42 U.S.C. § 300j-4, and 40 C.F.R. § 144.27.

TERMS AND CONDITIONS

41. Respondents consent and agree to pay a civil penalty in the amount of **\$28,000.00** in the manner described below in this paragraph:
- a. Payment is due within 30 calendar days from the date written on the final order, issued by the Regional Judicial Officer, that adopts this consent agreement. If the due date falls on a weekend or legal federal holiday, then the due date becomes the next business day. The date the payment is made is considered to be the date processed by Mellon Bank described below. Payments received by 11:00 A.M. EST are processed on the same day, those received after 11:00 A.M. are processed on the next business day.
- b. The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case; for the amount, payable to "Treasurer, United States of America," to:

Regular Mail:

Mellon Bank
Lockbox 360859
Pittsburgh, PA 15251-6859

Federal Express, Airborne, or other commercial carrier:

U.S. EPA, 360859
Mellon Client Service Center Rm 154-0670
500 Ross Street
Pittsburgh, PA 15251-6859

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

ABA = 021030004
TREAS NYC/CTR/
BNF=/AC-68011008

A copy of the check shall be sent simultaneously to:

Nathan Wisner
Environmental Scientist
U.S. EPA Region 8 (ENF-UFO)
1595 Wynkoop Street
Denver, CO 80202-1129

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

c. In the event payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (i.e., on the 1st late day, 30 days of interest accrues).

d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 31st day from the date of the final consent order, and each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (i.e., the 121st day from the date the final consent order is signed). Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.

e. Respondents agree that the penalty shall never be claimed as a federal or other tax deduction or tax credit.

42. Nothing in this Consent Agreement shall relieve Respondents of the duty to comply with the Safe Drinking Water Act and its implementing regulations.
43. Failure by Respondents to comply with any of the terms of this Consent Agreement shall constitute a breach of the consent agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.
44. Nothing in this Consent Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondents' failure to perform pursuant to the terms of this Consent Agreement.

45. The undersigned representatives of Respondents certify that he/she is fully authorized to enter into the terms and conditions of this Consent Agreement and to bind the party he/she represents to the terms and conditions of this Consent Agreement.
46. In accordance with 40 C.F.R. § 22.45, EPA will provide public notice of this action.
47. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.
48. Each party shall bear its own costs and attorney fees in connection with this matter.
49. This Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged herein.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8
Complainant**

Date: 05/30/2007

By: Eddie A. Sierra
Eddie Sierra
Acting Assistant Regional Administrator
Office of Enforcement, Compliance &
Environmental Justice

Date: 5-24-07

By: T. Sitz
Thomas E. Sitz
Enforcement Attorney

Miocene Oil and Gas, Ltd.

Date: 5-24-07

By: [Signature]
Manuel J. Muñoz, President

Miocene Oil Company, LLC.

Date: 5-24-07

By: 
Manuel J. Muñoz, President

IN THE MATTER OF: Miocene Oil & Gas, Ltd and Miocene Oil Company, LLC
DOCKET NUMBER: SDWA-08-2007-

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the Consent Agreement and Proposed Final Order were hand-carried to:

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

a true copy was hand-carried to:

Elyana R. Sutin
Regional Judicial Officer (8RC)
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

and a true copy was sent via first class mail to:

William A. Paddock, Esq.
Counsel for Miocene Oil & Gas, Ltd and
Miocene Oil Company, LLC
Carlson, Hammond & Paddock. L.L.C.
1700 Lincoln Street, Suite 3900
Denver, CO 80203-4539

Date: June 4, 2007

By: Judith McTernan
Judith McTernan