

U. S. ENVIRONMENTAL PROTECTION AGENCY-REGION 6
PROPOSED ADMINISTRATIVE ORDER AND INFORMATION DEMAND
In the Matter of Mr. Earl Yates, Respondent
Docket No. SDWA-06-2014-1109

FILED

2013 DEC 18 AM 9:16

REGULATORY CLERK
EPA REGION VI

STATUTORY AUTHORITY

SECTION 1423(c) COMPLIANCE ORDER

The following findings are made and Order issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Sections 1423(c) and 1445 of the Safe Drinking Water Act ("the Act"), 42 U.S.C. §§ 300h-2(c) and 300j-4. The authority to issue this Order has been delegated by the Administrator to the Regional Administrator of EPA Region 6 who further delegated such authority to the Director of the Compliance Assurance and Enforcement Division. The EPA has primary enforcement responsibility for underground injection within the meaning of Section 1422(c) of the Act, 42 U.S.C. § 300h-1(c), to ensure that owners or operators of Class II injection wells within Osage County, Oklahoma, comply with the requirements of the Act.

7. Based on the foregoing findings and under the authority of Section 1423(c) of the Act, 42 U.S.C. § 300h-2(c), it is hereby ordered that Respondent complete corrective actions to prevent fluids from moving through the well into USDWs within thirty (30) days after the effective date of this Order. Such corrective actions may include:

- a. Reducing the static fluid level in the well annulus to at least 478 feet subsurface;
- b. demonstrating that the well has mechanical integrity;
- c. plugging the well; or
- d. converting the well to production use.

FINDINGS

SECTION 1445 INFORMATION DEMAND

1. Respondent, Mr. Earl Yates, is a "person" within the meaning of Section 1401(12) of the Act, 42 U.S.C. § 300f(12).

8. Based on these findings and pursuant to the authority of Section 1445 of the Act, 42 U.S.C. § 300j-4, Respondent is required to submit a report of corrective actions completed according to Paragraph 7, to the address below, within forty-five (45) days after the effective date of this Order:

2. At all times relevant to the violation alleged herein, Respondent operated an injection well located in the Southwest Quarter of Section 19, Township 25 North, Range 10 East, Quapaw Field, Osage County, Oklahoma, designated as Well Number 4 and EPA Inventory Number OS6074 ("the well").

Mr. David Aguinaga
U.S. Environmental Protection Agency
Water Enforcement Branch (6EN-WR)
1445 Ross Avenue, Suite 1200
Dallas, TX 75202

3. Respondent is subject to underground injection control ("UIC") program requirements set forth at 40 C.F.R. Part 147, Subpart GGG, which are authorized under Section 1421 of the Act, 42 U.S.C. § 300h.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

4. EPA regulations require the operator of an "injection well," as defined at 40 C.F.R. § 147.2902, to maintain its injection well in a manner which will prevent contaminants from moving through the well bore into underground sources of drinking water ("USDWs"), pursuant to 40 C.F.R. §§ 147.2903(b), 147.2916, and 147.2925(a).

9. Respondent may request a hearing to contest the issuance of this Section 1423(c) Compliance Order, pursuant to Section 1423(c)(3)(A) of the Act, 42 U.S.C. § 300h-2(c)(3)(A). Submit the hearing request to the Regional Hearing Clerk (6RC-D); U.S. EPA, Region 6; 1445 Ross Avenue, Suite 1200; Dallas, Texas 75202, within thirty (30) days of the date of receipt of this Proposed Administrative Order.

5. Inspections on September 9, October 13 and November 15, 2011, November 27, 2012, and September 26, 2013, showed the static fluid level in the well to be 111, 121, 215, 254, and 211 feet subsurface, respectively. These fluid levels were above the base of USDWs at the well, which is 370 feet subsurface.

10. A request for hearing should be included in any response to this Order. Respondent must file a response in order to preserve the right to a hearing or to pursue other relief.

6. Therefore, Respondent violated regulations set forth at 40 C.F.R. §§ 147.2903(b), 147.2916, and 147.2925(a) by maintaining the well with a static fluid level in its annulus above the base USDWs.

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

GENERAL PROVISIONS

12. This Section 1423(c) Compliance Order and the Section 1445 Information Demand do not constitute a waiver, suspension, or modification of the requirements of 40 C.F.R. Part 147, Subpart GGG, which remain in full force and effect.

13. Issuance of this Section 1423(c) Compliance Order and the Section 1445 Information Demand is not an election by EPA to forego any civil or criminal action otherwise authorized under the Act.

14. Violation of the terms of this Section 1423(c) Compliance Order after its effective date or date of final judgment as described in Section 1423(c)(6) of the Act, 42 U.S.C. § 300h-2(c)(6), may subject Respondent to further enforcement action, including a civil action for enforcement of this Order under Section 1423(b) of the Act, 42 U.S.C. § 300h-2(b), and civil and criminal penalties for violations of the compliance terms of this Order under Section 1423(b)(1) and (2) of the Act, 42 U.S.C. § 300h-2(b)(1) and (2).

SETTLEMENT

15. EPA encourages all parties against whom an administrative order is proposed to pursue the possibility of settlement through informal meetings with EPA. Regardless of whether a formal hearing is requested, Respondent may confer informally with EPA about the alleged violations. 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 Order, please contact Mr. David Aguinaga, of my staff, at (214) 665-6439.


16. If this action is settled without a formal hearing, it will be concluded by issuance of a Final Order.

EFFECTIVE DATE

17. This Order becomes effective thirty (30) days after issuance unless an appeal is taken pursuant to Section 1423(c)(6) of the Act, 42 U.S.C. § 300h-2(c)(6).

12.12.13

Date



John E. Evins
Director
Compliance Assurance and
Enforcement Division

CERTIFICATE OF SERVICE

I certify that the foregoing Proposed Administrative Order 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 Mr. Earl Yates
return receipt requested: P.O. Box 691
 Pawhuska, OK 74056

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

Osage Nation Environmental and Natural Resources Department
P.O. Box 1495
Pawhuska, OK 74056

Dated: DEC 18 2013 *Jackie Allen*