

2017 SEP 12 PM 3: 12



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

SEP 12 2017

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Todd Suckow
Red Jacket Energy, LLC
7793 Pittsburgh Avenue NW
North Canton, OH 44720-6947

Re: Administrative Order for Red Jacket Energy, LLC
Brown Farm Underground Injection Facility
Municipalities of Otto and Keating
McKean County, Pennsylvania
Docket No. SDWA-03-2017-0173DS

Dear Mr. Suckow:

On January 12, 2017, the Pennsylvania Department of Environmental Protection (PADEP) issued a Notice of Violation to Red Jacket Energy, LLC, for improperly abandoning production wells at the above-captioned Facility.

On August 9, 2017, a Public Notice was issued for an Administrative Order for Red Jacket Energy, LLC, Docket No. SDWA-03-2017-0173DS (Order), for violations of the Underground Injection Control (UIC) program at the Facility's enhanced recovery wells in McKean County, Pennsylvania. Specifically, Red Jacket did not maintain oil and gas production in conjunction with the injection of produced fluids as required by their rule authorized status and the UIC regulations. In accordance with the Safe Drinking Water Act (SDWA), the proposed Order was public-noticed for 30 days and Red Jacket was offered the opportunity to request a hearing or informal meeting. We did not receive any comments. A request for a hearing was made in a letter to EPA from Red Jacket dated August 21, 2017. However, after an informal conference with EPA, Red Jacket decided to cancel that request in a letter dated August 30, 2017.

Therefore, at this time EPA is finalizing the enclosed Administrative Order. The Order requires Respondent to cease and desist injection of fluids into injection wells W1, W2, W3, W4, W5, W9, W13 and W14; and maintain oil production operations to continue to be classified as enhanced recovery by bringing production wells 083-23805, 083-22129, and 083-25839 back into compliance. If Red Jacket decides to cease operations, all rule authorized injection wells

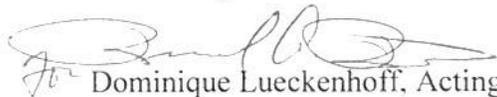
must be plugged and abandoned in accordance with EPA and PADEP regulatory requirements.

The Administrative Order also requires that Red Jacket complete and submit a detailed Compliance Plan within 30 days for EPA's review and approval. However, after reviewing the Red Jacket letter to EPA dated August 30, 2017 which outlines the steps that Red Jacket is taking to re-plug the abandoned well in accordance with UIC regulations, the EPA has decided to waive the requirement for a Compliance Plan. Red Jacket must complete all remedial work within one hundred and twenty (120) days of the Effective Date of the Administrative Order and provide EPA with a report chronicling the steps taken to comply with the UIC regulations. In addition, please provide photographic evidence of the ongoing and completed work.

Failure to comply with the provisions of the attached Order may subject Red Jacket to further enforcement action, including a civil action with penalties. We strongly urge you to take prompt action to address these issues.

This Administrative Order shall become effective 30 days from the date of issuance. If you have any questions pertaining to this matter, please contact Kevin Rowsey of my staff at (215) 814-5463.

Sincerely,



Dominique Lueckenhoff, Acting Director
Water Protection Division

Enclosure

cc: Richard Neville, PADEP

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 ARCH STREET
PHILADELPHIA, PENNSYLVANIA 19103-2029

IN THE MATTER OF:

Red Jacket Energy, LLC
7793 Pittsburg Ave., NW
North Canton, OH 44720-6947

Respondent

Facility located at:
Brown Farm Underground Injection Facility
Municipalities of Otto and Keating
McKean County, PA

**ADMINISTRATIVE ORDER
FOR COMPLIANCE**

Docket No. SDWA-03-2017-0173DS
Proceedings Pursuant to Section
1423(c) of the Safe Drinking Water
Act, 42 U.S.C. § 300h-2(c).

I. STATUTORY AUTHORITY

1. This Administrative Order for Compliance (“Order”) is issued pursuant to section 1423(c)(2) of the Safe Drinking Water Act (“Act”), 42 U.S.C. § 300h-2(c)(2).
2. The authority to issue an order pursuant to section 1423(c)(2) of the Act has been vested in the Administrator of the United States Environmental Protection Agency (“EPA” or “the Agency”). The Administrator of EPA has delegated the authority to take these actions to the Regional Administrator of EPA, Region III, who has redelegated these authorities to the Director of the Water Protection Division, EPA Region III.

II. STATUTORY AND REGULATORY FRAMEWORK

3. Part C of the Safe Drinking Water Act, Sections 1421 – 1429, 42 U.S.C. §§ 300h – 300h-8, sets forth the regulations for the Underground Injection Control (“UIC”) program.
4. Section 1421 of SDWA, 42 U.S.C. § 300h, requires that U.S. EPA promulgate regulations, which shall include inspection, monitoring, recordkeeping and reporting requirements, for State underground injection control (“UIC”) programs that prevent endangerment to drinking water sources by underground injection.
5. Section 1422(b) of the SDWA, 42 U.S.C. § 300h-1(b), provides that States, upon receipt

of U.S. EPA's approval of a proposed UIC program, may implement a Federally-enforceable UIC program in that State and obtain primacy enforcement responsibility of that program. Section 1422(c) of the SDWA, 42 § 300h-1(c) further provides that, in states that have not obtained primacy, EPA is to prescribe an applicable UIC program in that State.

6. Pursuant to Sections 1421 and 1422 of SDWA, 42 §§ 300h and 300h-1, respectively, EPA has promulgated regulations for state underground injection control (UIC) programs at 40 C.F.R. Parts 144 through 147. The program for the Commonwealth of Pennsylvania is 40 C.F.R. Part 147, Subpart NN, 40 C.F.R. §§ 147.1951- 1955, and became effective on June 25, 1984.
7. Federal regulations at 40 C.F.R. §144.6 define six classes of injection wells. Class II wells allow for the injection of fluids which are brought to the surface in connection with conventional oil or natural gas production, specifically, 40 C.F.R. § 144.6(b) describes a Class II UIC well as a well "which injects fluids: (2) For enhanced recovery of oil or natural gas..."
8. Oil and/or gas production wells are regulated by the Commonwealth of Pennsylvania Department of Environmental Protection. Production wells are used to extract oil and/or gas from underground formations.
9. UIC Class II disposal wells (II-D) are wells that inject brine not in conjunction with a production operation. In general, II-D wells are subject to more stringent regulation due to the high amount of pressure injected into the underground formation. Pressure builds up over time and allows for the pressure in the formation to potentially rise to the level which would allow for fluid to migrate upward potentially endangering an Underground Source of Drinking Water (USDW). For this reason, II-D wells may not be rule authorized; II-D wells are only authorized by permit.
10. UIC Class II enhanced recovery wells (II-R) are used to assist oil and gas production by injecting produced brines (and other chemicals) into previously depleted production zones to displace oil and/or gas and drive it to a production wellbore. Regulation of II-R wells is not as stringent as II-D wells and they may be authorized by rule. Extraction of oil and gas during enhanced recovery operations relieves pressure in the injection formation. However, when the production factor is removed from II-R operations, USDW endangerment due to formation over-pressurization becomes a concern.
11. 40 C.F.R. Part 144, Subpart C sets forth the regulations that apply to UIC wells authorized by rule. 40 C.F.R. § 144.21(a) provides that "[a]n existing Class II (except enhanced recovery and hydrocarbon storage) ... injection well is authorized by rule if the owner or operator injects into the existing well within one year after the date at which a UIC program authorized under the Act becomes effective for the first time or inventories the well pursuant to the requirements of § 144.26. An owner or operator of a well which is authorized by rule pursuant to this section shall rework, operate, maintain, convert, plug, abandon or inject into the well in compliance with applicable regulations."

12. "Owner or operator" is defined in 40 C.F.R. § 144.3 to mean "the owner or operator of any "facility or activity" subject to regulation under the UIC program.
13. "Person" is defined in section 1401(12) of the Act, 42 U.S.C. § 300f(12), to mean "an individual, corporation, company, association, partnership, State, municipality, or Federal agency (and includes officers, employees, and agents of any corporation, company, association, State, municipality, or Federal Agency)."
14. "Facility or activity" is defined in 40 C.F.R § 144.3, in pertinent part, to mean "any UIC 'injection well,'... that is subject to regulation under the UIC program."
15. "UIC" is defined in 40 C.F.R. § 144.3 to mean "the Underground Injection Control program under Part C of the Safe Drinking Water Act, including an 'approved State program.'"
16. "Injection well" is defined in 40 C.F.R. § 144.3 to mean "a 'well' into which 'fluids' are being injected."
17. "Fluid" is defined in 40 C.F.R. § 144.3 to mean "any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state."
18. "Well" is defined in 40 C.F.R. § 144.3, in pertinent part, to mean "[a] bored, drilled, or driven shaft whose depth is greater than the largest surface dimension..."
19. 40 C.F.R. § 144.21(e) specifies that "[t]he owner or operator of a well authorized under this section shall comply with the applicable requirements of § 144.28 and part 147 of this chapter no later than one year after authorization."
20. 40 C.F.R. § 144.28 states that "[t]he following requirements apply to the owner or operator of a Class I, II or III well authorized by rule under this subpart, as provided by §§ 144.21(e) and 144.22(d)." 40 C.F.R. § 144.28(a) specifies that "[t]he owner or operator shall comply with all applicable requirements of this subpart and subpart B of this part. Any noncompliance with these requirements constitutes a violation of the Safe Drinking Water Act and is grounds for enforcement action..."
21. 40 C.F.R. § 144.28(c) requires the owner or operator of a Class II UIC well to "prepare, maintain, and comply with a plan for plugging and abandonment of the well or project that meets the requirements of § 146.10 of this chapter and is acceptable to the Director" and, pursuant to paragraph (2)(i) of that subsection, "submit the plan, on a form provided by the Regional Administrator, no later than one year after the effective date of the UIC program in the state."
22. 40 C.F.R. § 144.28(d)(1) requires that the owner and operator of a Class II well "demonstrate and maintain financial responsibility and resources to close, plug and abandon the underground injection operation in a manner prescribed by the Director

- until: (i) The well has been plugged and abandoned in accordance with an approved plugging and abandonment plan pursuant to §§ 144.28(c) and 146.10 and submission of a plugging and abandonment report has been made pursuant to § 144.28(k)...” 40 C.F.R. § 144.28(d)(2) states that “[f]or EPA-administered programs, the owner or operator shall submit such evidence no later than one year after the effective date of the UIC program in the State.”
23. 40 C.F.R. § 144.28(f)(2) specifies that “[t]he owner or operator of a Class I, II or III injection well authorized by rule shall establish and maintain mechanical integrity as defined in § 146.8 of this chapter until the well is properly plugged in accordance with an approved plugging and abandonment plan pursuant to §§ 144.28(c) and 146.10, and a plugging and abandonment report pursuant to § 144.28(k) is submitted, or until the well is converted in compliance with § 144.28(j).”
24. 40 C.F.R. § 144.28(f)(3) provides that “[w]hen the Director determines that a Class I (non-hazardous), II or III injection well lacks mechanical integrity pursuant to § 146.8 of this chapter, the Director shall give written notice of his determination to the owner or operator. Unless the Director requires immediate cessation, the owner or operator shall cease injection into the well within 48 hours of receipt of the Director’s determination. The Director may allow plugging of the well in accordance with the requirements of § 146.10 of this chapter, or require the owner or operator to perform such additional construction, operation, monitoring, reporting and corrective action as is necessary to prevent the movement of fluid into or between USDWs caused by the lack of mechanical integrity. The owner or operator may resume injection upon receipt of written notification from the Director that the owner or operator has demonstrated mechanical integrity pursuant to § 146.8 of this chapter.
25. Section 1423(c)(2) of the Act, 42 U.S.C. § 300h-2(c)(2), authorizes the Administrator of the EPA, in any case in which the Administrator is authorized to bring a civil action under section 1423 with respect to any regulation or other requirement of Part C of the Act (pertaining to Protection of Underground Source of Drinking Water) relating to the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production, to issue an order either assessing a civil penalty, or requiring compliance with such regulation or other requirement, or both.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

26. Respondent, Red Jacket Energy, is a corporation that is registered to do business in the Commonwealth of Pennsylvania since October 10, 2014 with a registered address of 71 Main Street, Bradford, PA 16701 and is therefore a “person” within the meaning of 40 C.F.R. §141.2.
27. In June of 2015, Red Jacket purchased the Brown Farm Facility, PAS2R923AMCK, an underground injection, Class II, rule authorized, enhanced recovery facility located at in the municipalities of Otto and Keating in McKean County, Pennsylvania (“Facility”).

The lease included eight rule authorized injection wells. The lat/long for the pressure plant in the middle of the well field is 41° 53' 43.638" N 78° 30' 56.5668" W. A topographic map of the Site is attached hereto as Exhibit "A".

28. On April 19, 2016, the injection wells were tested for mechanical integrity pursuant to 40 C.F.R. § 146.8, using the water-in-annulus test. Five of the eight wells passed the test (W1, W3, W4, W9, and W13), two wells failed because of issues with injection string (W2, W14), and one well was not placed back into operation because of its proximity to a stream (W5). Respondent slated two of the wells, W2 and W14 for repair, and W5 for permanent plugging and abandonment.
29. On February 8, 2017, representatives of U.S. EPA and PADEP inspected the abandoned production wells (Well no. 083-23805, 083-22129, and 083-25839), injection wells W14, W2, and W5, as well as a potentially leaking production well (Well no. 083-25298 "PLPW"). PLPW well was found to have elevated conductivity readings indicating that it was improperly plugged and therefore has the potential for injected fluids to endanger underground sources of drinking water.
30. In order to continue as a rule authorized enhanced recovery operation, there must be oil and gas production in conjunction with the injection of produced fluids pursuant to 40 C.F.R. § 144.22. At present, none of Respondent's wells within the rule authorized facility are in production.
31. On January 12, 2017, PADEP issued a notice of violation to Respondent for improperly abandoning production wells at the facility. Given that fluids are still being injected, the facility is no longer classified as an enhanced recovery project and should be classified as unpermitted Class II disposal wells. Respondent was operating and continues to operate unpermitted Class II disposal wells in violation of 40 C.F.R. § 144.28.
32. Respondent has failed to comply with 40 C.F.R. § 144.28(f)(2) by maintaining the mechanical integrity of W2, W14, and has failed to properly plug and abandon W5 pursuant to 40 C.F.R. § 146.10.

IV. ORDER FOR COMPLIANCE

Therefore, this 12th day of September, 2017, Respondent is hereby ORDERED, pursuant to this Section to take the following actions in order to comply with the section or requirement of the SDWA cited above:

33.

- a. Upon the effective date of this AO, Respondent shall cease and desist injection of fluids into injection wells W1, W2, W3, W4, W5, W9, W13, and W14, or maintain the oil production operations at wells 083-23805, 083-22129, 083-25839 (Production Wells) to continue to be classified as an enhanced recovery facility by bringing the production wells back into compliance, as depicted on the Site map attached hereto as Exhibit "B".
- b. Should any of the Production Wells (Well no. 083-23805, 083-22129, and 083-25839) not be brought back into production, Respondent shall apply for a Class II disposal permit.

34. If Respondent decides to cease operations, all rule authorized injection wells must be plugged and abandoned in accordance with EPA and PADEP regulatory requirements, including 40 C.F.R. §144.28(c).

35. Respondent shall submit a detailed Compliance Plan for properly plugging PLPW for EPA's review and approval within 30 days of the Effective Date of this AO. The Compliance Plan must describe the actions that will be taken consistent with 40 C.F.R. §144.28(c). Respondent must demonstrate to EPA that PLPW would not act as a conduit of fluid migration into underground sources of drinking water. Demonstration of non-endangerment must be provided prior to resuming operation of rule authorized injection wells.

1. After review of the Compliance Plan, EPA will: a) approve the Plan, in whole or in part; b) approve the Plan upon specified conditions; c) require modification of the Plan to cure any deficiencies; d) disapprove the Plan, in whole or in part; or e) any combination of the above. If EPA disapproves all or part of the Compliance Plan, Respondent shall, within fourteen (14) days of receipt of EPA's disapproval, correct the deficiencies and resubmit the Compliance Plan for approval.
2. Upon approval of the Compliance Plan (either with or without conditions or modifications by EPA), Respondent shall implement the Compliance Plan as approved or modified by EPA. All remedial work shall be completed within one-hundred and twenty (120) days of EPA's approval of the Plan.

V. GENERAL PROVISIONS

36. The following certification must accompany each submission by Respondent pursuant to this Order and must be signed by a Representative of Respondent authorized to sign on behalf of Respondent:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed

to assure that qualified personnel properly gather and evaluate the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

37. Respondent’s compliance with the terms of this Order shall not relieve Respondent of their obligation to comply with all applicable provisions of the SDWA or any other Federal, State or local law or regulation nor shall it be a ruling on, or determination of, any issue related to any federal, state or local permit. This Order does not constitute a waiver, suspension or modification of the requirements of 40 C.F.R. Parts 144, 146 and 148 which remain in full force and effect.
38. Violation of the Order after its effective date may subject Respondent to a civil action in a United States district court with (1) penalties up to \$54,789 per day per violation as authorized in section 1423(b) of the Act, 42 U.S.C. § 300h-2(b), and as modified by EPA’s 2017 Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. § 19.4; and (2) if such violation is willful, in addition to or in lieu of a civil penalty, to imprisonment for not more than three years, or a fine in accordance with Title 18, or both.
39. Issuance of this Order is not an election by EPA to forego any civil or criminal action otherwise authorized by the SDWA. EPA reserves the right to seek any remedy available under the law that it deems appropriate to address the violations described herein. Compliance with this Order shall not be a defense to any action commenced pursuant to such authorities. Failure to comply and/or respond to this Order, or providing misleading or false information, may subject you to civil and/or criminal sanctions pursuant to, 33 U.S.C. § 1319.

VI. OPPORTUNITY TO CONFER

40. Pursuant to section 1423(c)(3)(A) and (B) of the Act, 42 U.S.C. § 300h-2(c)(3)(A) and (B), the EPA is providing public notice and an opportunity to comment on the Order prior to issuing the Final Order, and notifies Respondent of their opportunity to request a hearing on the Order. Any request for a hearing by Respondent shall be made within thirty (30) calendar days of the date this Order is received by Respondent, and must be directed to the person and address specified in paragraph 42 of this Order.

VII. JUDICIAL REVIEW

41. Respondent may seek federal judicial review of this Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

VIII. NOTICE OF INTENT TO COMPLY

42. Within ten (10) days of the effective date of this Order, Respondent shall submit to EPA a Notice of Intent to Comply with the Order. The Notice shall be submitted to:

Kevin Rowsey
Ground Water & Enforcement Branch
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103
(215) 814-5463

IX. EFFECTIVE DATE

43. This Order will be considered issued upon filing with the Regional Hearing Clerk in Region III. Pursuant to Section 300h-2(c)(3)(B) and (D), 42 U.S.C. §§ 1423(2)(c)(3)(B) and (D) this Order will become effective thirty (30) days after issuance unless an appeal is filed by Respondent within thirty (30) days from the date of issuance.

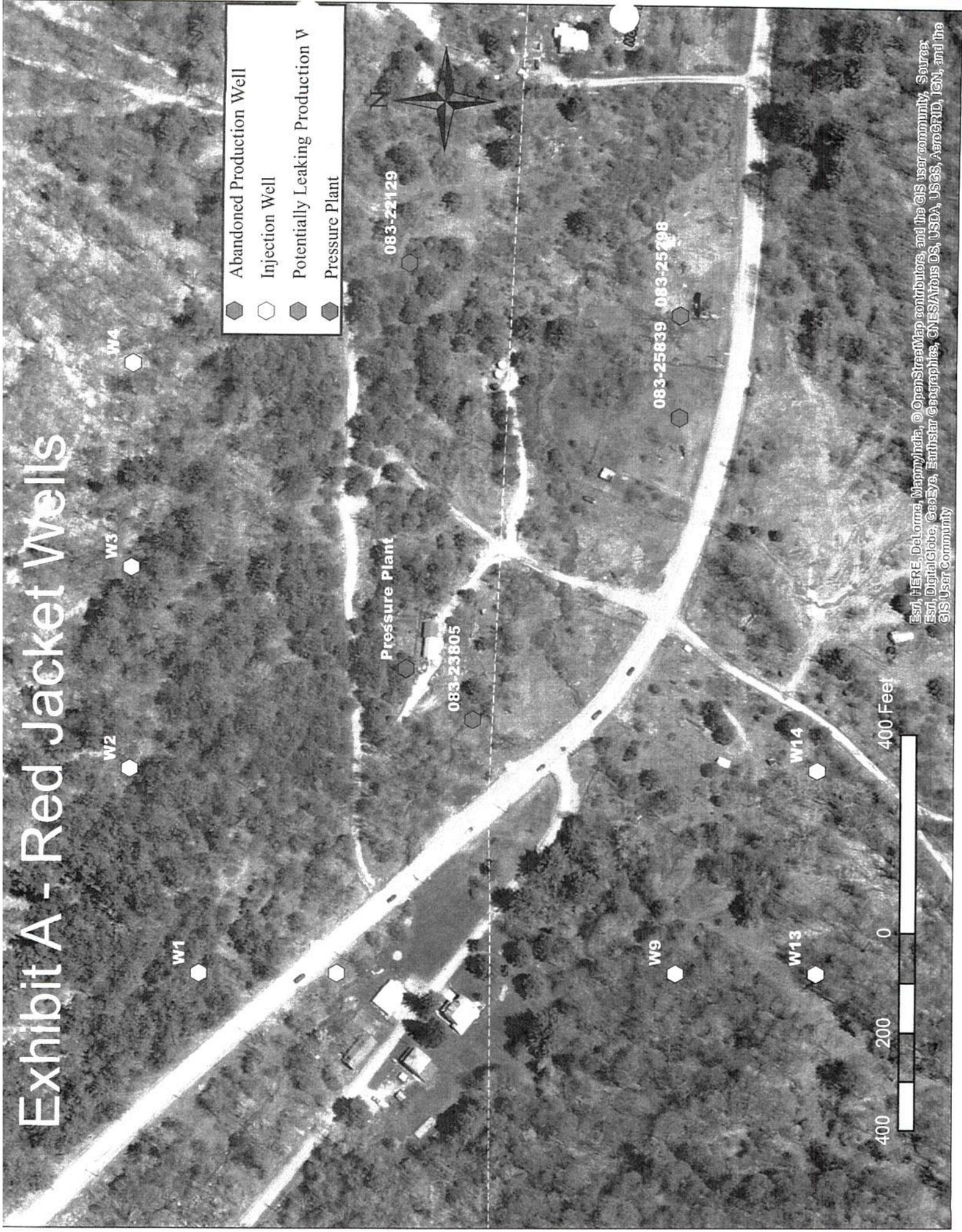
Date:

9/12/2017



for Dominique Lueckenhoff, Acting Director
Water Protection Division
U.S. EPA Region III

Exhibit A - Red Jacket Wells



Esri, HERE, DeLorme, MapmyIndia, © OpenStreetMap contributors, and the GIS user community, Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Exhibit B - Red Jacket Wells

W4

W3

W2

W1

W5

Pressure Plant

083-23805

083-22129

W9

083-25839 083-25298

W13

W14

	Abandoned Production Well
	Injection Well
	Potentially Leaking Production Well
	Pressure Plant



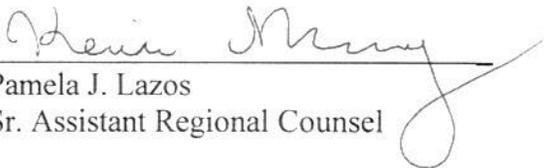
Sources: Esri, HERE, DeLorme, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), MapmyIndia, NGCC, © OpenStreetMap contributors, and the GIS User Community, Esri, HERE, DeLorme, MapmyIndia, © OpenStreetMap contributors, and the GIS user community

CERTIFICATE OF SERVICE

I certify that I caused to be sent the original Administrative Order for Compliance to the following by certified mail, return receipt requested, after filing the original with the Regional Hearing Clerk:

Todd Suckow
Red Jacket Energy, LLC
7793 Pittsburg Avenue NW
North Canton, OH 44720-6947

Date: 9/13/2017

for 
Pamela J. Lazos
Sr. Assistant Regional Counsel