

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

2013 JUN 24 AM 8:49

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:

Advantage Resources, Inc.
1775 Sherman Street, Ste. 1700
Denver, CO 80203

Respondent.

) Docket No. ~~SDWA-08-2013-0040~~

) **COMBINED COMPLAINT AND**
) **CONSENT AGREEMENT**

) Simultaneous Commencement and
) Conclusion of a Proceeding Pursuant to
) Section 1423 (c) of the Public Health Service
) Act, commonly known as the Safe Drinking
) Water Act and 40 C.F.R. § 22.13(b)

Complainant, United States Environmental Protection Agency, Region 8 (EPA), and Respondent, Advantage Resources, Inc. (Advantage), by their undersigned representatives, hereby consent and agree as follows:

AUTHORITY

1. This proceeding is subject to EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. Part 22. This Combined Complaint and Consent Agreement (CCCA) is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. section 22.13(b) and executed pursuant to 40 C.F.R. sections 22.18(b)(2) and (3).
2. This CCCA is authorized by Congress in section 1423(c) of the Public Health Service Act, commonly known as the Safe Drinking Water Act (Act). 42 U.S.C. § 300h-2(c).
3. Pursuant to section 1422 of the Act, 42 U.S.C. § 300h-1, and 40 C.F.R. Part 147, Subpart TT, section 147.2253, EPA administers the Underground Injection Control (UIC) program for Class II wells on Indian lands within the State of Utah. The effective date of the program is

November 25, 1988. Class II underground injection wells under the jurisdiction of the EPA are authorized to operate either under an EPA-issued permit or under a rule.

GENERAL ALLEGATIONS

4. Respondent is a corporation organized under the laws of the State of Colorado and authorized to do business in the State of Utah. The registered agent for Respondent is C T Corporation System located at 1108 E. South Union Ave., Midvale, UT 84047.
5. Respondent is a "person" within the meaning of section 1401 of the Act, 42 U.S.C. § 300f (12), and therefore subject to the requirements of the Act.
6. Respondent is authorized to operate the Federal 42-6X-8-25, the East Red Wash Federal 4-6-8-25, and the Amerada Guinand Federal 1-8-25 wells by EPA permit #s UT20653-03751, UT20653-04224, and UT20653-04225 respectively (permits).
7. The Federal 42-6X-8-25, the East Red Wash Federal 4-6-8-25, and the Amerada Guinand Federal 1-8-25 wells are "Class II Injection Wells" as defined by 40 C.F.R. sections 144.80 and 146.5.
8. At all times relative to this CCCA, Respondent owned and/or operated the permitted and temporarily abandoned Federal 42-6X-8-25, the permitted and temporarily abandoned Amerada Guinand Federal 1-8-25, and the permitted active East Red Wash Federal 4-6-8-25 enhanced recovery injection wells.
9. The Federal 42-6X-8-25 and the East Red Wash Federal 4-6-8-25 wells are located in the Coyote Canyon Oilfield in Township 8 South, Range 25 East, Section 6, Uintah County, Utah, on Indian lands within the exterior boundaries of the Uintah and Ouray Indian Reservation. The

Amerada Guinand Federal 1-8-25 well is located in the Coyote Canyon Oilfield in Township 8 South, Range 25 East, Section 7, Uintah County, Utah, on Indian lands within the exterior boundaries of the Uintah and Ouray Indian Reservation.

10. At all times relative to this CCCA, Respondent, as owner and/or operator of the Federal 42-6X-8-25, the East Red Wash Federal 4-6-8-25, and the Amerada Guinand Federal 1-8-25 wells, was subject to applicable UIC Class II program requirements located at 40 C.F.R. Parts 124, 144 and 146.

11. 40 C.F.R. Subpart E sets forth permit conditions that are applicable to all UIC wells. 40 C.F.R. section 144.51(a) requires the permittee to comply with all conditions of the permit.

12. Mechanical integrity tests (MITs) demonstrate that there is no movement of fluids into or between underground sources of drinking water associated with any injection wells. A failed mechanical integrity test indicates a leak in the well that may cause fluid migration into or between underground sources of drinking water.

13. Mechanical integrity is demonstrated when a well is subjected to and passes a MIT by pressurizing the annulus of the well for a specified amount of time with no significant leak. 40 C.F.R. § 146.8.

14. 40 C.F.R. section 144.52(a)(6) and Part II.E.3 of the permit require the owner or operator of a well that has had a cessation of operations for two years to plug and abandon the well or demonstrate non-endangerment of underground sources of drinking water (USDWs), such as performing a mechanical integrity test, of temporarily abandoned permitted wells at least once every two years.

15. The East Red Wash Federal 4-6-8-25 well and the Amerada Guinand Federal 1-8-25 are temporarily abandoned and have been shut in since at least January 2002.
16. The East Red Wash Federal 4-6-8-25 well was tested for mechanical integrity on September 8, 2008, and the Amerada Guinand Federal 1-8-25 well was tested for mechanical integrity on June 19, 2008.
17. Pursuant to 40 C.F.R. section 144.52(a)(6), plugging and abandonment or demonstration of non-endangerment of USDWs was required for the East Red Wash Federal 4-6-8-25 well on or before September 8, 2010, and for the Amerada Guinand Federal 1-8-25 well on or before June 19, 2010.
18. 40 C.F.R. section 146.23(b)(3) and Part II. C. 3 in the permit referenced in Paragraph 6, *supra*, require mechanical integrity testing of active permitted wells in accordance with 40 C.F.R. section 146.8 at least once every five years.
19. The Federal 42-6X-8-25 well was tested for mechanical integrity on June 3, 2004.
20. An MIT was required for the Federal 42-6X-8-25 well on or before June 3, 2009, in accordance with 40 C.F.R. section 146.23(b)(3) and the permit.
21. On September 12, 2011, EPA notified Respondent of both the failure to conduct MITs and the failure to notify EPA of losses of mechanical integrity for the Federal 42-6X-8-25, East Red Wash Federal 4-6-8-25, and the Amerada Guinand Federal 1-8-25 wells, and required compliance with the respective permits, referenced in Paragraph 6, *supra*, within ninety (90) days.
22. On September 13, 2011, Respondent provided the EPA with copies of the failed July 28, 2011 MITs that had been conducted but not reported to the EPA for the Federal

42-6X-8-25, the East Red Wash Federal 4-6-8-25, and the Amerada Guinand Federal 1-8-25 wells.

23. Pursuant to Part III. E.10. (c) of the respective permits, if loss of mechanical integrity becomes evident during operation, the permittee is required to notify EPA within 24 hours.

24. Section 144.51(q) of 40 C.F.R. imposes a duty on the owner or operator of a class II UIC well to establish and to maintain mechanical integrity in accordance with 40 C.F.R. section 146.8.

25. On November 5, 2012, Respondent notified EPA that the three wells subject to this CCCA were sold to Wold Oil Properties, Inc. on June 15, 2012.

26. Wold Oil Properties subsequently converted the Federal 42-6X-8-25 and the Amerada Guinand Federal 1-8-25 wells to production wells in March 2013. A pressure test on well 42-6x-8-25 confirmed mechanical integrity when subjected to pressures from the subsurface on March 15, 2013. Pressure monitoring records indicate that the injection formation does not transmit pressure onto the Amerada Federal 1-8-25 well and therefore, prior injection activities will not pose a threat to underground sources of drinking water subsequent to the well conversion to a production well.

27. In accordance with 40 C.F.R. section 144.38 and the respective permits at Part III. B., Respondent failed to inform EPA of the sale of the three wells until November 5, 2012.

28. On November 14, 2012, the East Red Wash Federal 4-6-8-25 well passed a mechanical integrity test following a well repair work over.

29. Paragraphs 1 through 29 of this Agreement are re-alleged and incorporated herein by reference into each of the counts below.

COUNT 1
Failure to perform MIT at least every 5 years

30. Respondent's failure to perform an MIT for the Federal 42-6X-8-25 well on or before June 3, 2009, constitutes a violation of 40 C.F.R. section 146.23(b)(3) and Part II. C. 3 of the permit, and the Act for the period June 3, 2009 through July 28, 2011.

COUNTS 2 and 3
**Failure to plug, abandon, or demonstrate non-endangerment
to USDWs at least every 2 years**

31. Respondent's failure to plug and abandon or demonstrate non-endangerment to USDWs for the East Red Wash Federal 4-6-8-25 well on or before September 8, 2010, constitutes a violation of 40 C.F.R. section 144.52(a)(6), Part II.E.3 of the respective permit, and the Act for the period September 8, 2010 through July 28, 2011.

32. Respondent's failure to plug and abandon or demonstrate non-endangerment to USDWs for the Amerada Guinand Federal 1-8-25 well on or before June 19, 2010, constitutes a violation of 40 C.F.R. section 144.52(a)(6), Part II.E.3 of the respective permit, and the Act for the period June 19, 2010 through July 28, 2011.

COUNT 4
Failure to notify EPA within 24 hours of loss of MIT

33. Respondent's failure to notify EPA within 24 hours of loss of mechanical integrity for the Federal 42-6X-8-25, the East Red Wash Federal 4-6-8-25, and the Amerada Guinand Federal 1-8-25 wells is a violation of 40 C.F.R. section 144.51(a), Part III. E.10 (c) of the respective permit, and the Act for the period between July 29, 2011 and September 13, 2011.

COUNT 5

Failure to maintain mechanical integrity

34. Respondent's failure to maintain mechanical integrity for the Federal 42-6X-8-25 and the Amerada Guinand Federal 1-8-25 wells constitutes a violation of 40 C.F.R. §144.51(q), Part II.E.3 of the respective permit, and the Act for at least the period of July 28, 2011 to November 28, 2012.

COUNT 6

Failure to notify EPA of the sale of wells

35. Respondent's failure to notify EPA of the sale of the Federal 42-6X-8-25, East Red Wash Federal 4-6-8-25, and the Amerada Guinand Federal 1-8-25 wells constitutes a violation of 40 C.F.R. section 144.38, Part III. B. of the respective permits, and the Act for at least the period of June 15, 2012 to November 5, 2012.

CIVIL PENALTY

36. For an administrative proceeding, the Act authorizes a civil penalty assessment up to \$7,500 per day for each violation of the Act, up to a maximum of \$177,500. 42 U.S.C. § 300h-2(c)(1). The Act requires the EPA to take into account appropriate factors in assessing a civil penalty, including the seriousness of the violations, the economic benefit resulting from the violations, any history of such violations, any good-faith efforts to comply with the requirements, the economic impact on the violator, and such other matters as justice may require. Taking such factors into account, the EPA proposes the assessment of a civil penalty of fifty eight thousand three hundred ninety one dollars (\$58,391) for the violations alleged in Paragraphs 30 through 35.

37. Respondent consents, for the purpose of settlement, to the issuance of a final order in this matter and agrees to pay the civil penalty of fifty eight thousand three hundred ninety one dollars

(\$58,391) as follows:

- a. Payment is due within thirty (30) calendar days from the date written on the Final Order, issued by the Regional Judicial Officer that adopts this CCCA. 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 the bank described below. Payments received by 11:00 AM EST are processed on the same day, those received after 11:00 AM are processed on the next business day.
- b. The payment shall be made by remitting a cashier's or certified check, referencing the name and docket number of this case, for this amount, payable to "**Environmental Protection Agency,**" to:

**US checks by regular mail
US postal service mail:**

US EPA Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

**Federal Express, Airborne,
or other commercial carrier:**

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Wire transfers:

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

On Line Payment:

WWW.PAY.GOV
Enter sfo 1.1 in the search field
Open form and complete required fields.

Copies of the check or wire transfer shall be simultaneously sent to:

Sarah Roberts
U.S. EPA Region 8 (8ENF-UFO)
1595 Wynkoop Street
Denver, CO 80202-1129

and

Tina Artemis, Regional Hearing Clerk
U.S. EPA Region 8 (8RC)
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 payment due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. section 3717, and will continue to accrue until the payment is received in full (i.e., on the 1st late day, 30 days of interest accrues).
- d. In addition to the accrual of interest specified in (c) above, a handling charge of fifteen dollars (\$15.00) shall be assessed on the 31st day from the date of the Final Order, and each subsequent 30-day period that the penalty, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if the penalty payment is not received within ninety (90) days of the due date (i.e., the 121st day from the date the Final 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. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

PUBLIC NOTICE

38. As required by the Act, prior to the final assessment of a civil penalty, the EPA will provide public notice of the proposed penalty, and reasonable opportunity for the public to comment on the matter, and present evidence in the event a hearing is held. 42 U.S.C. § 300h-2 (c)(3)(B).

GENERAL PROVISIONS

39. Payment of the penalty in this manner does not relieve Respondent of its obligation to comply with the requirements of the Act. Payment of the penalty in this manner shall constitute consent by Respondent to the assessment of the proposed penalty.

40. Failure by Respondent to comply with any of the terms of this CCCA shall constitute a breach of the CCCA 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.

41. Nothing in this 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 Respondent's failure to perform pursuant to the terms of this CCCA.

42. Respondent neither admits nor denies the allegations contained in this CCCA.

43. Respondent waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in this CCCA.

44. This CCCA, upon incorporation into a final order, applies to and is binding upon the EPA, and upon Respondent, its successors and assigns. Any change in ownership or corporate status by Respondent including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this Agreement. This CCCA contains all terms of the settlement agreed to by the parties.

45. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CCCA and to bind Respondent to its terms and conditions.

46. The parties agree to submit this CCCA to the Regional Judicial Officer, with a request that it be incorporated into a final order.

47. Each party shall bear its own costs and attorney fees in connection with this matter.

48. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CCCA, including any right of judicial review.

49. This CCCA, 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 in this Agreement.

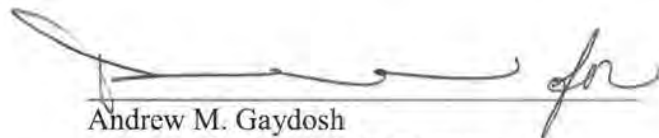
ADVANTAGE RESOURCES, INC.
Respondent.

Date: 6/18/2013



**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8**
Office of Enforcement, Compliance
and Environmental Justice, Complainant.

Date: 6/21/13



Andrew M. Gaydosh
Assistant Regional Administrator