

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

IN THE MATTER OF

Mr. Clay S. Wilson
Pawhuska, OK

Respondent

§ DOCKET NO. SDWA-06-2011-1104

§

§

§ Proceeding to Assess a

§ Civil Penalty under Section 1423(c)

§ of the Safe Drinking Water Act

§

§ ADMINISTRATIVE COMPLAINT

FILED

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REGIONAL HEARING CLERK
EPA REGION VI

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 the 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 Procedures Act, 40 C.F.R. §§ 22.50 through 22.52.

The EPA has primary enforcement responsibility for underground injection within the meaning of Section 1421(d) of the Act, 42 U.S.C. § 300h(d), 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 Mr. Clay Wilson ("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

General Provisions

1. Respondent is an individual doing business in the State of Oklahoma, 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 "injection wells" which are "Class II wells" as those terms are defined at 40 C.F.R. § 147.2902. The injection wells are located on the Osage Mineral Reserve in Osage County, Oklahoma. Respondent's Class II wells included in this Administrative Order (collectively, "Wells") are described below:

Well No.	Inventory No.	Location				Field	Hereinafter Referred to As:
		Quarter	Section	Township	Range		
6	OS2024	Southwest	10	25 North	9 East	Pawhuska	"Well No. 6"
1	OS5541	Northeast	7	26 North	8 East	Drummond Ranch	"Well No. 1"

3. Because Respondent owned or operated injection wells on the Osage Mineral Reserve, 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) prohibit any underground injection except as authorized by a permit or rule issued under the UIC program and prohibit the construction or operation of any well required to have a permit until the permit has been issued.

Well No. 6 Authorized by Rule

5. Regulations at 40 C.F.R. § 147.2909 provide that existing injection wells (wells authorized by the Bureau of Indian Affairs and constructed or completed on or before the effective date of the Osage UIC program) are authorized by rule. Owners or operators of wells authorized by rule must comply with provisions of 40 C.F.R. §§ 147.2903, 147.2905, 147.2907, and 147.2910 through 147.2915.

6. Well No. 6 is an “Existing Class II well” as that term is defined at 40 C.F.R. § 147.2902.

7. Well No. 6 is authorized by rule in accordance with 40 C.F.R. § 147.2909.

Well No. 1 Authorized by Permit

8. 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.

9. Well No. 1 is a “New Class II well” as that term is defined at 40 C.F.R. § 147.2902.

10. On October 29, 1991, the EPA issued UIC permit number 06S1261P5541 (“permit”) to convert Well No.1 to an injection well. The permit was transferred to Respondent on June 12, 2006.

11. Regulations at 40 C.F.R. § 147.2925(a) and condition II.B. of the permit require Respondent to comply with all permit conditions except as authorized by an emergency permit. Respondent did not have an emergency permit for violations described in this Complaint.

Failure to Submit Annual Reports

12. Regulations at 40 C.F.R. §§ 147.2909 and 147.2913(b) require the operator of a well authorized by rule to monitor the injection pressure and rate at least monthly and to report monitoring results to the EPA annually.

13. Respondent has not submitted an annual operations report for Well No. 6 for the period from October 2009 through September 2010.

14. Therefore, Respondent violated regulations at 40 C.F.R. §§ 147.2909 and 147.2913(b) by failing to submit an annual operations report for Well No. 6 for the period from October 2009 through September 2010.

15. The permit requires Respondent to monitor injection rate and pressure at least once per month. In addition, the permit requires Respondent to monitor monthly produced volume (oil and water) from the Number 1 Drummond Well located in the Northwest Quarter of Section 7, Township 26 North, Range 8 East and to monitor the static fluid level in Well No. 1 at least once per year. Finally, the permit requires Respondent to report monitoring results to the EPA annually.

16. Respondent has not submitted an annual operations report for Well No. 1 for the period from October 2009 through September 2010.

17. Therefore, Respondent violated regulations at 40 C.F.R. §§ 147.2916, 147.2922(b), and 147.2925(a) by failing to submit an annual operations report for Well No. 1 for the period from October 2009 through September 2010.

18. The EPA notified the public of the filing of this Complaint and 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, the EPA considered comments filed by the public.

III. PROPOSED PENALTY

19. 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 one thousand dollars (\$1,000.00).

20. 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.

21. Payment shall be made by one of the following methods within thirty (30) days of the effective date of this document to one of the following addresses:

- a. By mailing a bank check, cashier's check, or certified check payable to "Treasurer, United States," to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

- b. By wire transfer to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 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"

c. By overnight mail (Express, FedEx, DHL, etc.) to:

U.S. Bank
1005 Convention Plaza
SL-MO-C2GL
St. Louis, MO 63101
314-418-4087

d. By credit card payments to:

<https://www.pay.gov/paygov/>
(enter sfo 1.1 in the search field)

“In the Matter of Mr. Clay S. Wilson, Docket No. SDWA-06-2011-1104” should be clearly marked on the check or other remittance to ensure proper credit is given when payment is received.

22. Respondent shall send simultaneous notices of such payment, including a copy of the check or instrument of payment, to the following:

- a. Water Resources Section (6EN-WR)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
- b. Chief, Water Enforcement Legal Branch (6RC-EW)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
- c. Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

23. Respondent agrees not to claim, or attempt to claim, a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

24. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, the EPA will assess interest and late payment penalties on outstanding debts owed to the

United States and a charge to cover the costs of processing and handling a delinquent claim.

Interest on the civil penalty assessed in this Complaint will begin to accrue thirty (30) days after the effective date of the Complaint and will be recovered by the EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue.

25. The EPA will also assess a fifteen dollar (\$15.00) administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional fifteen dollars (\$15.00) for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent (6%) per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. Other penalties for failure to make a payment may also apply.

26. Failure by Respondent to pay the penalty assessed according to the terms of this Complaint in full, by its due date, may subject Respondent to a civil action to collect the assessed penalty and any accrued interest or penalties.

27. In the event a collection action is necessary, Respondent shall pay, in addition to any applicable penalties, fees, and interest described herein, all reasonable costs and expenses, including legal expenses and court costs, incurred by the United States for enforcement and collection proceedings for non-payment of the amounts agreed hereunder. In any such collection action, the validity, amount, and appropriateness of the penalty, and the terms of this Complaint, shall not be subject to review.

IV. COMPLIANCE ORDER

28. 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 submit the required annual operations reports for the Wells for the period from October 2009 through September 2010. The required reports shall be submitted to the EPA at the address shown below within thirty (30) days after the effective date of this Order. The report for Well No. 1, otherwise identified by Inventory No. OS5541, shall also include the results of a fluid level measurement in the tubing of this well after a shut-in period of at least twenty-four (24) hours and monthly production (oil and water) from the Number 1 Drummond Well located in the Northwest Quarter of Section 7, Township 26 North, Range 8 East. Report forms are included in Appendix A of this Order.

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

V. FAILURE TO FILE AN ANSWER

29. 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.

30. 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).

31. 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.

32. 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

33. 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.

34. 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 Practice Act.

VI. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

35. 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.

36. 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.

37. 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

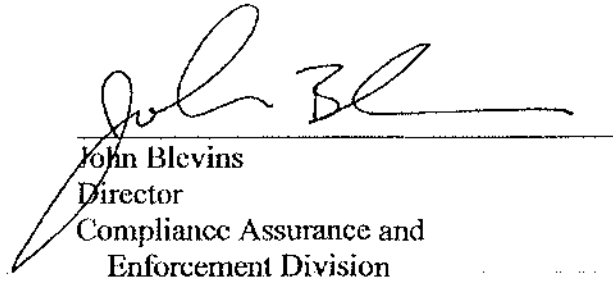
38. The EPA encourages all parties against whom civil penalties are proposed to pursue the possibility of settlement through informal meetings with the EPA. Regardless of whether a formal hearing is requested, Respondent may confer informally with the EPA about the alleged violations or the amount of 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. Ronald Van Wyk, of my staff, at 214-665-6459.

39. 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 will waive the Respondent's right to a hearing on any matter stipulated to therein or alleged in the Complaint. Any person who commented regarding this Complaint will be notified and given an additional thirty (30) days to petition the EPA to set aside any such CAFO and to hold a hearing on the issues raised in the Complaint. Such a petition will be granted and a

hearing held only if the evidence presented by the petitioner's comment is material and was not considered by the EPA in the issuance of the CAFO.

40. 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.

4.22.11
Date



John Blevins
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: Mr. Clay S. Wilson
P.O. Box 1212
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

Copy hand-delivered: Mr. Russell Murdock (6RC-EW)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Dated: _____

4/29/11

