

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6

FILED  
2018 NOV 27 AM 9:08

In the Matter of  
  
Diamond 3S, LLC,  
Sand Springs, Oklahoma  
  
Respondent

§ Docket No. SDWA-06-2018-1102  
§  
§ MOTION FOR DEFAULT  
§  
§  
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§  
§

**MOTION FOR DEFAULT**

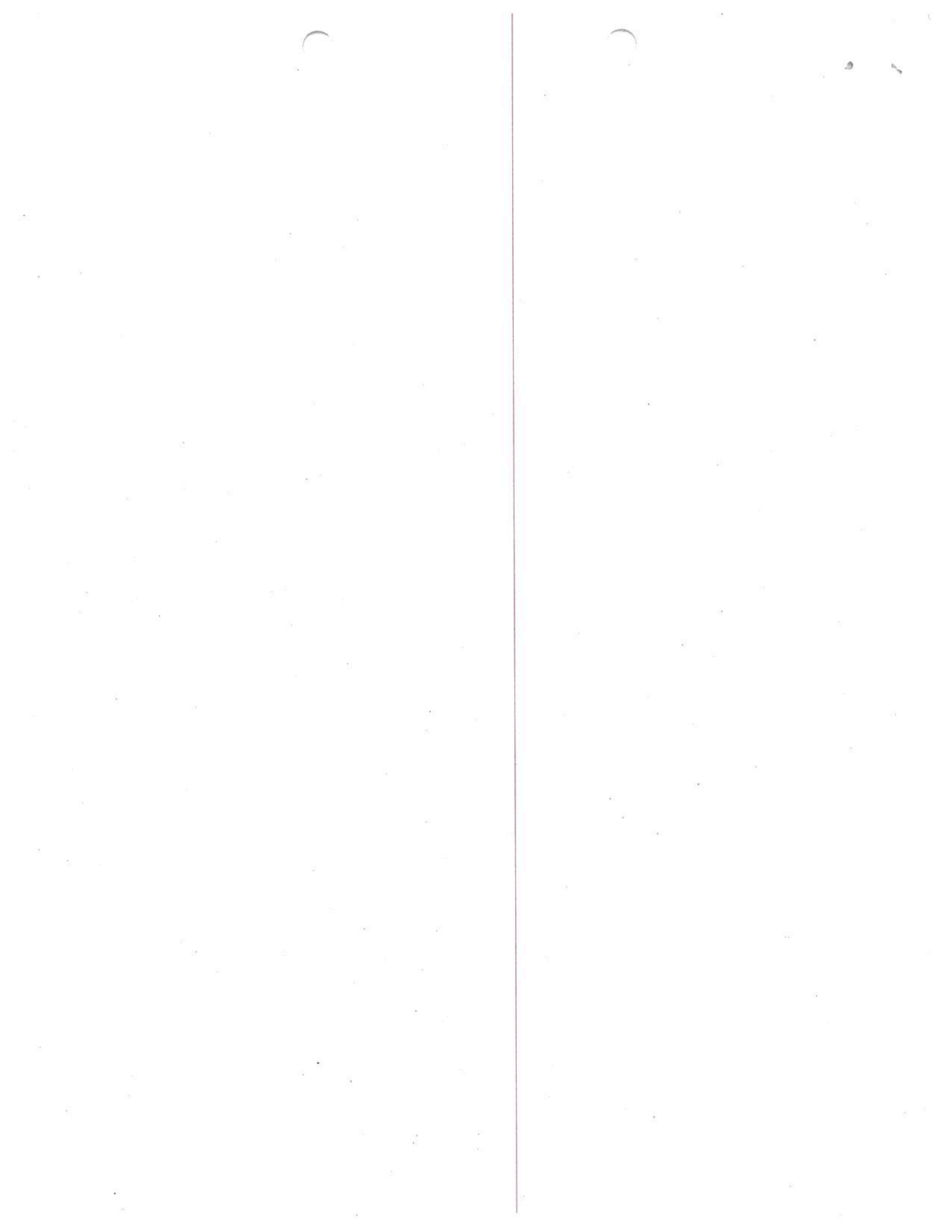
COMES NOW COMPLAINANT, the Director of the Compliance Assurance and Enforcement Division, United States Environmental Protection Agency, Region 6 (“EPA”), by and through its attorney, in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Rules of Practice”), 40 C.F.R. §§ 22.1 through 22.52, hereby moves the Court to enter a default order pursuant to 40 C.F.R. §22.17, granting judgment in favor of Complainant as to all parts of the proceeding. In support thereof, Complainant states the following:

**JURISDICTION**

1. This is a proceeding to assess a Civil Penalty under Section 1423(c) of the Safe Drinking Water Act (“SDWA”), 42 U.S.C. § 300h-2(c) and is governed by Subpart I of the Rules of Practice, 40 C.F.R. §§ 22.50 through 22.52. In accordance with 40 C.F.R. § 22.51, Complainant’s Motion for Default shall be ruled upon by the Regional Judicial Officer (“RJO”).

**FACTUAL BACKGROUND**

2. Diamond 3S, LLC (“Respondent”) is a limited liability company registered in Oklahoma. The Oklahoma Secretary of State lists Respondent’s status as “in existence” under the “Business Entities Search All,” (link: <https://www.sos.ok.gov/corp/corpinquiryFind.aspx>, search “Diamond 3S, LLC”) and Respondent’s Registered Agent as Diamond 3S, LLC, 20102 West Coyote Trail,



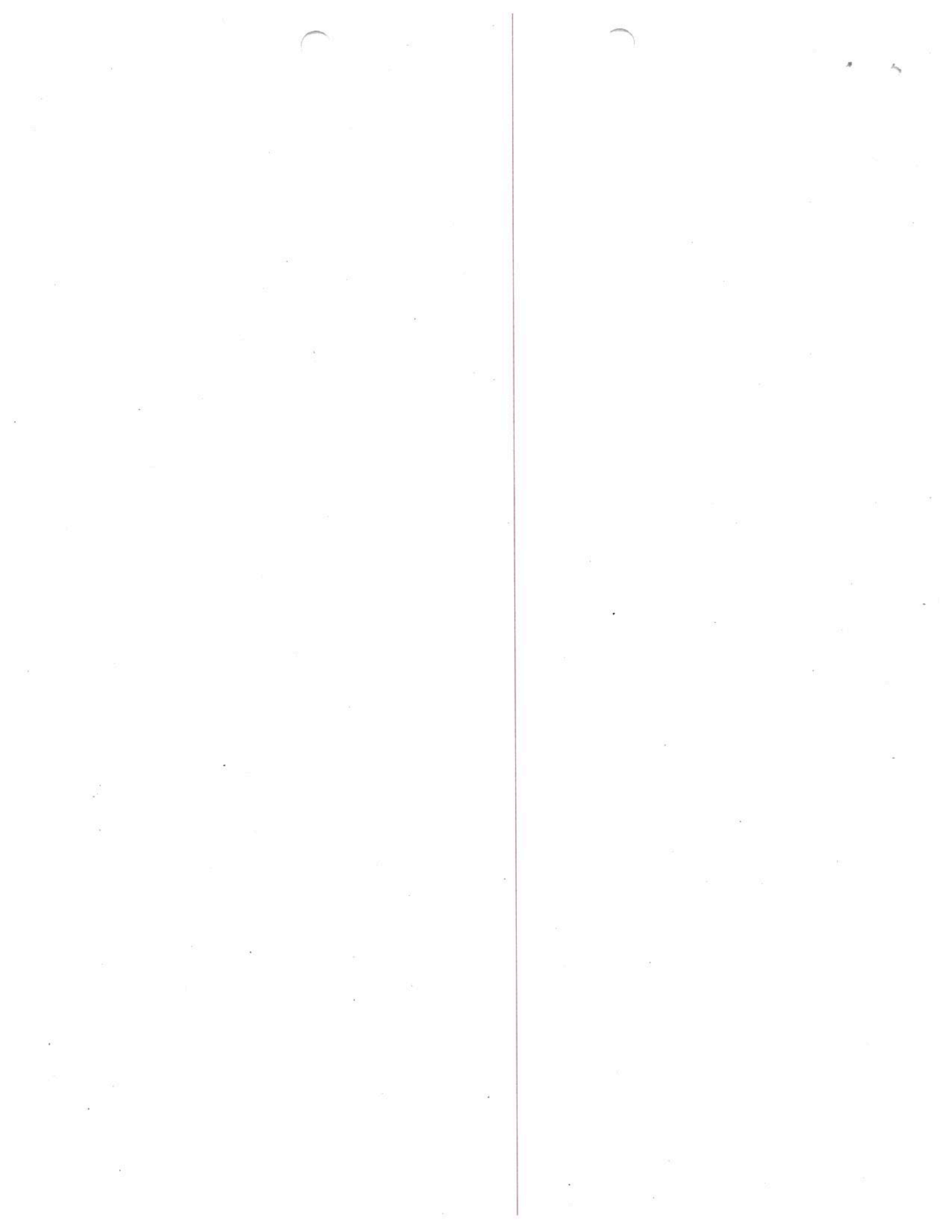
Sand Springs, Oklahoma, 74063. Ex. 1 (Oklahoma Secretary of State, Business Entity Detail (search "Diamond 3S"))).

3. Complainant filed the Administrative Complaint in this matter on June 13, 2018, the contents of which are incorporated herein by reference. Ex. 2 (Administrative Complaint, SDWA-06-2018-1102 ("Complaint")). The Complaint alleged that Respondent maintained an injection well in a manner that could allow fluids containing contaminants to move through the well bore into an Underground Source of Drinking Water in violation of regulations 40 CFR §§ 147.2903(b), 147.2905 and 147.2909 Ex. 2 (Complaint ¶¶ 1–12, 14–17). The Complaint proposed to assess a penalty of Six Thousand Dollars (\$6000.00). Ex. 2 (Complaint ¶ 15.). The Complaint described Respondent's right to file an Answer or a Request for Hearing, and noted that a Default Order may be sought if Respondent fails to file an Answer. Ex. 2 (Complaint ¶¶ 18–22).

4. According to the "green card" return receipt, Respondent received the Complaint on June 16, 2018. Ex. 3 (Return Receipt, Article No. 70051820000374541151). As of the date of this filing, Respondent has not filed an Answer to the Complaint or a Request for Hearing in this matter, nor has Respondent attempted to admit, deny or explain any factual allegation contained in the Complaint.

5. Complainant attempted to contact and contacted Respondent via telephone and e-mail on numerous occasions, however, Respondent has failed to provide the requested response or information.

6. On May 29, 2019, Complainant sent Respondent a "warning letter" notifying Respondent of the intent to file a Motion for Default in this matter unless Respondent; 1.) either repairs the Kennedy #5 well so it can pass a Mechanical Integrity Test; or 2.) Plugs and abandons the well, and pays a fine in the amount of \$6000 within 30 days of receipt of the "warning letter". Ex. 4 (Ltr. from Jerry Saunders, EPA, to Ryan Summers, Diamond 3S, LLC (May 29, 2019) ("warning letter")). In the warning letter, Complainant noted that any Motion for Default would seek resolution of the proceeding and assessment of the full penalty sought in the Complaint.



7. According to the “green card” return receipt, Respondent received the warning letter on June 3, 2019. Ex. 5 (Return Receipt, Article No. 70051820000374501926). As of the date of this filing, Respondent has neither filed an Answer to the Complaint nor contacted Complainant in response to the warning letter.

8. Complainant has exhausted all available options to contact Respondent regarding this matter in order to avoid seeking a Default Order.

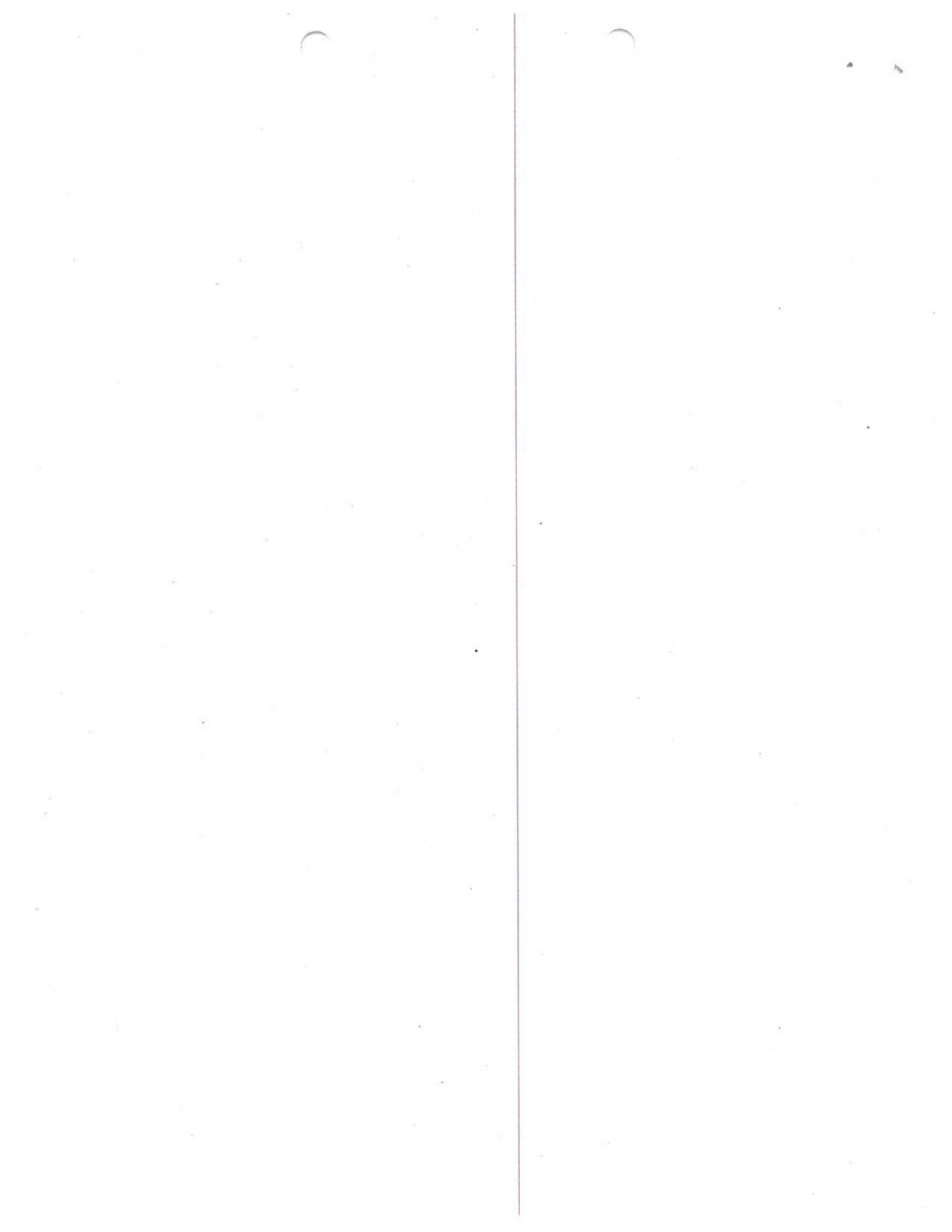
#### LEGAL AUTHORITY

9. A party may be found to be in default upon failure to file a timely answer to a Complaint. 40 C.F.R. § 22.17(a). An answer must be filed within thirty days after service of a Complaint and shall admit, deny or explain each factual allegation contained in the Complaint. 40 C.F.R. § 22.15(a), (b). Failure of a respondent to admit, deny or explain any material factual allegation constitutes an admission of the allegation. 40 C.F.R. § 22.15(d).

10. A Motion for Default may seek resolution of all or part of the proceeding. 40 C.F.R. § 22.17(a). When the Presiding Officer finds that default has occurred, he shall issue a Default Order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why a default order shall not be issued. 40 C.F.R. § 22.17(c). The relief proposed in the Complaint or the Motion for Default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the statute authorizing the proceeding at issue. *Id.*

#### MOTION FOR DEFAULT ORDER

Pursuant to 40 C.F.R. § 22.17, Complainant moves the Presiding Officer to enter a Default Order that resolves this matter in full and assesses the full penalty sought in the Complaint. Pursuant to 40 C.F.R. § 22.17(d), any penalty assessed shall become due and payable by Respondent without further proceedings thirty days after the Default Order becomes final.



DATED this 26 day of November, 2019.

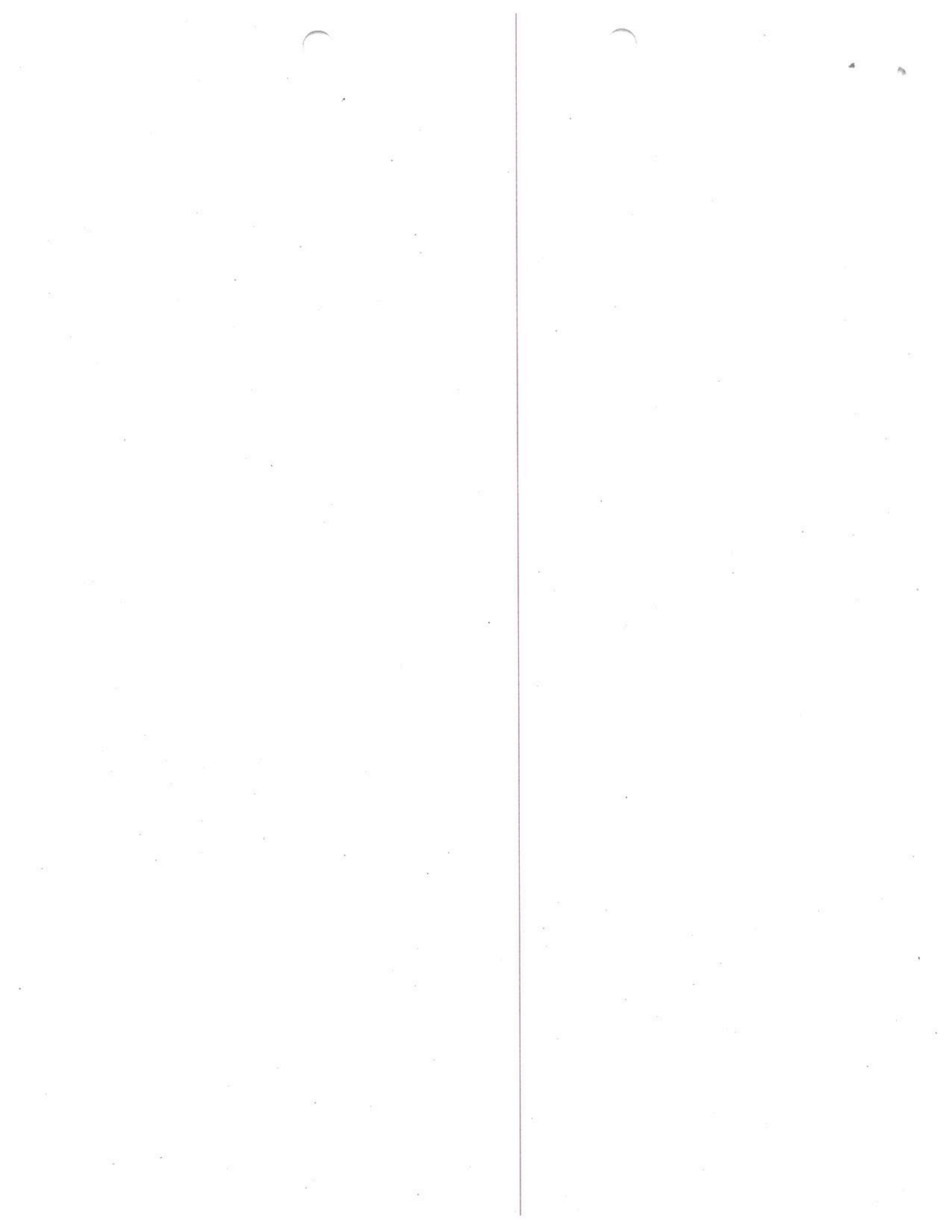
RESPECTFULLY SUBMITTED,



Earle A. 'Rusty' Herbert

Earle A. "Rusty" Herbert  
Enforcement Counsel (6ORCEW)  
U.S. EPA, Region 6  
10625 Fallstone Road  
Houston, Texas 77099  
Tel.: (281) 983-2218  
Fax: (281) 983-2169

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CERTIFICATE OF SERVICE

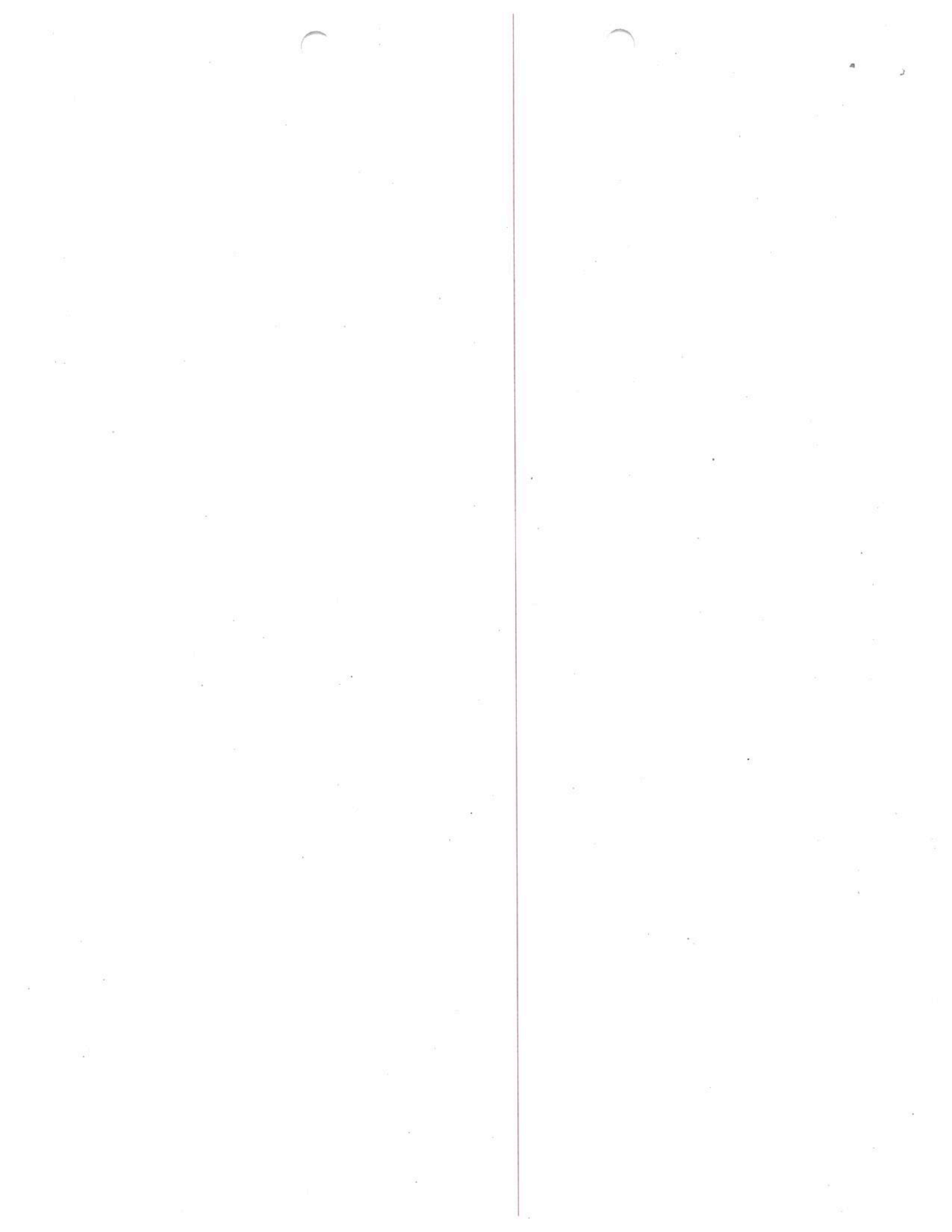
I certify that the original of the foregoing MOTION FOR DEFAULT was hand-delivered to and filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270, and a true and correct copy was sent to the following on this

27th day of November, 2019, in the following manner:

VIA FIRST CLASS U.S. MAIL:

Ryan Summers  
Diamond 3S, LLC  
20102 West Coyote Trail  
Sand Springs, OK 74063

  
Matthew R. Lipp



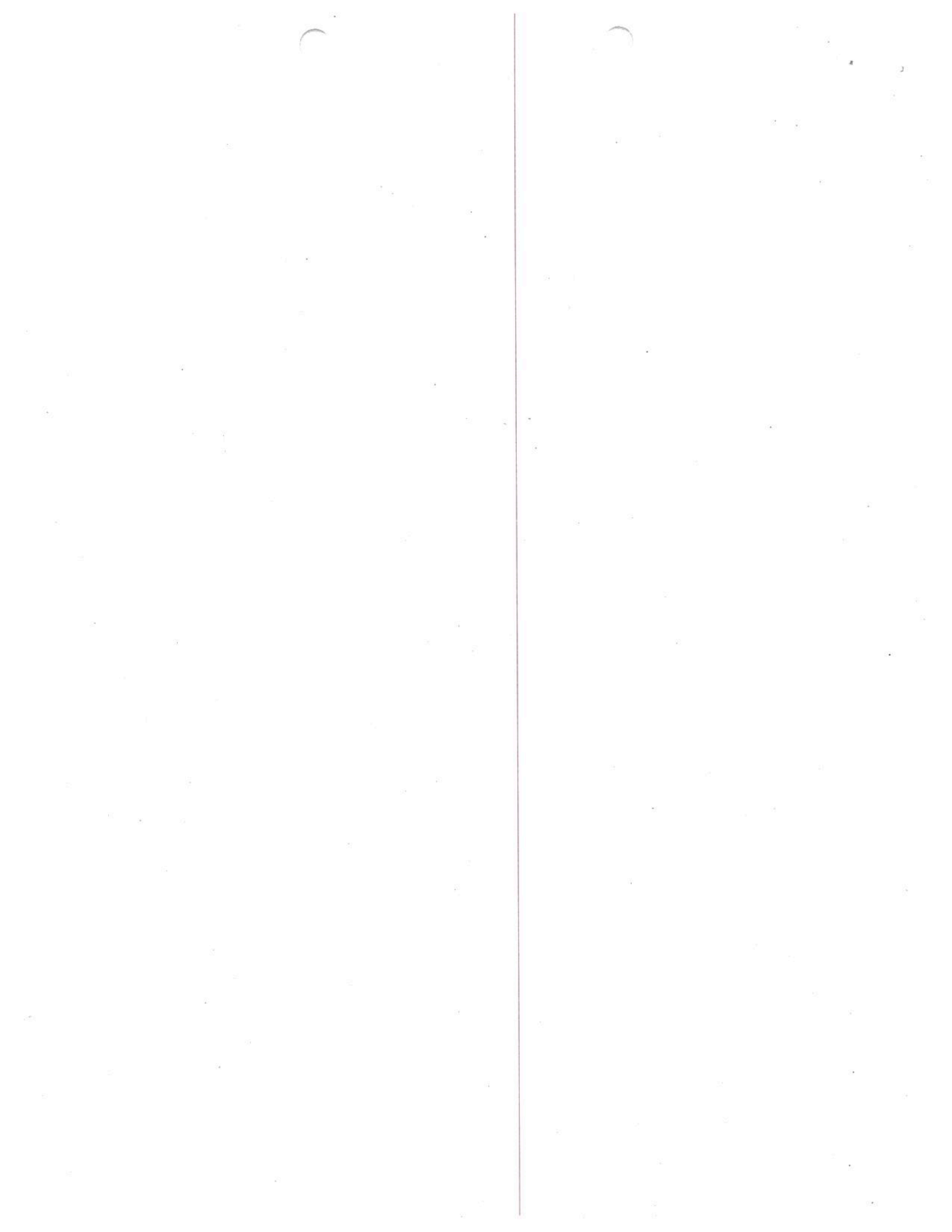
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6

IN THE MATTER OF	§	DOCKET NO. SDWA-06-2018-1102
	§	
Diamond 3S, LLC	§	
Sand Springs, Oklahoma	§	DEFAULT ORDER
An Oklahoma Corporation	§	
	§	
Respondent	§	
	§	
	§	

INITIAL DECISION AND DEFAULT ORDER

This proceeding was initiated by the Director of the Compliance Assurance and Enforcement Division, Region 6, United States Environmental Protection Agency (hereinafter, "Complainant" or "EPA") in order to assess an administrative penalty in the amount of \$6,000.00 against Diamond 3S, LLC ("Respondent") for violations of the Safe Drinking Water Act ("SDWA"). The proceeding is governed by the procedures set forth in the revised Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination and Suspension of Permits set forth at 40 Code of Federal Regulations ("CFR") part 22, including the Supplemental Rules for Administrative Proceedings not Governed by the Administrative Procedures Act (collectively, the "Rules of Practice").

Section 22.1(a) of the CFR provides that a "party may be found to be in default... upon failure to comply with the information exchange requirements of § 22.19(a) or an order of the Presiding Officer." Therefore, based on the Rules of Practice, the record in this proceeding, and the reasons set forth below, this shall constitute my Initial Decision pursuant to 40 CFR § 22.17(c). I find Respondent in default and order (1) assessment of



the full amount of the \$6,000.00 penalty the Complainant sought against Respondent; and  
(2) Respondent must plug the well according to the regulations found at 40 CFR § 147.2905; or repair the well so that it can demonstrate mechanical integrity of the casing, tubing, and packer in accordance to procedures set forth at 40 CFR § 147.2912(a)(1)(i).

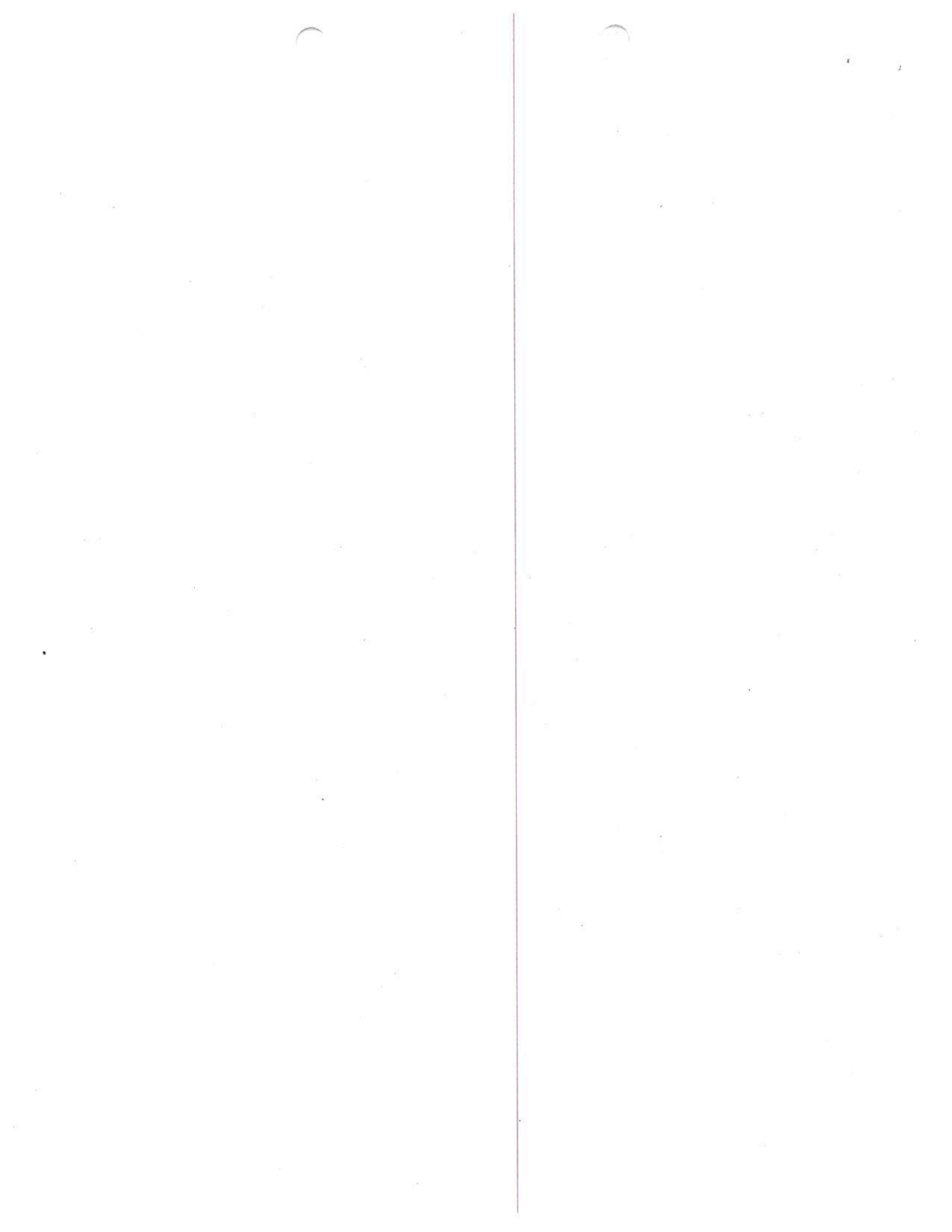
## **I. BACKGROUND AND PROCEDURAL HISTORY**

On June 13, 2018, Complainant filed an Administrative Complaint against Respondent in this matter for maintaining its injection well, identified as Kennedy 5 or EPA inventory number OS4348000 ("Well"), in a manner that could allow fluids to move into an Underground Source of Drinking Water ("USDW"). Respondent failed to file its Answer under the Rules of Practice. Respondent did not request a hearing contesting the proposed penalty amount or the proposed injunctive relief. EPA repeatedly reached out to the Respondent to settle the matter. There have been numerous phone calls and emails in-regards to this matter. On December 19, 2018, the EPA also granted to the Respondent an unopposed Motion for an extension of time to answer the Complaint which gave the Respondent until February 18, 2019 to file its Answer, which was never done.

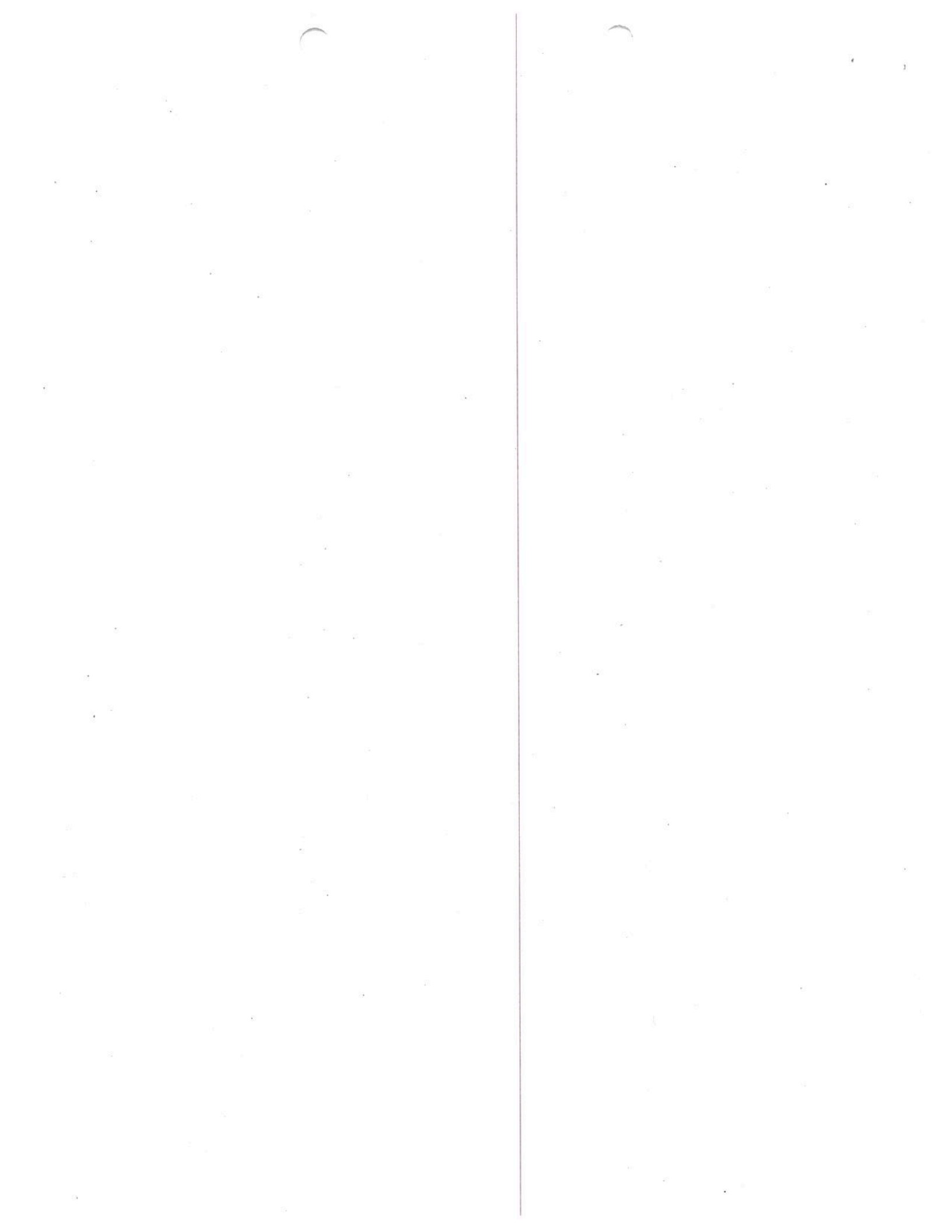
## **II. FINDINGS OF FACT**

Pursuant to 40 CFR §§ 22.17(c) and 22.27(a), and based on the entire record, I make the following findings of fact:

1. Respondent is a limited liability company and a partnership doing business in the state of Oklahoma.



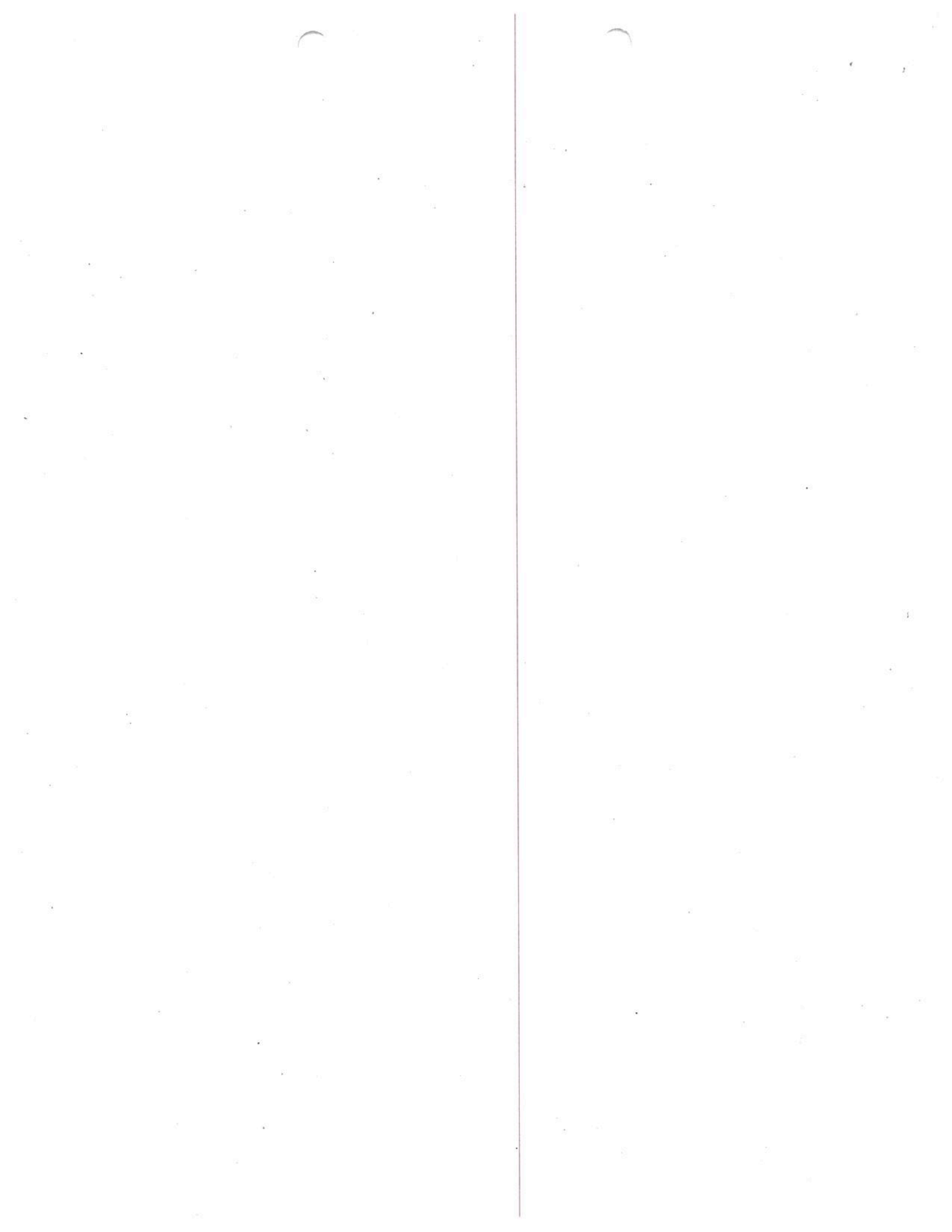
2. At all relevant times, Respondent owned or operated the Well, which is classified as an "existing Class II well," as defined at 40 CFR § 147.2902. The Well is located in the Northeast Quarter of Section 1, Township 24 North, Range 7 East, Osage County Oklahoma.
3. Because Respondent is an "owner or operator" of the Well within the meaning of 40 CFR § 122.2, as authorized by Section 1421 of the SDWA, 42 U.S.C. § 300h, Respondent is subject to the underground injection control requirements set forth at 40 CFR Part 147, Subpart GGG.
4. Unless authorized by rule or permit, underground injection is prohibited under the Underground Injection Control ("UIC") program. 40 CFR § 147.2903(a).
5. Existing injection 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. 40 CFR § 147.2909.
6. The Well at issue is authorized as such pursuant to 40 CFR § 147.2909, and Respondent must therefore comply with 40 CFR §§ 147.2903, 147.2905, 147.2907, and 147.2910 through 147.2915.
7. 40 CFR § 147.2905 requires the plugging of an injection well within one year after injection termination, and sets forth specific administrative and technical requirements necessary to achieve proper plugging. The EPA Regional Administrator may extend the time to plug if no fluid movement into an underground source of drinking water ("USDW") will occur and the operator has presented a viable plan for utilizing the well within a reasonable time thereafter. 40 CFR § 147.2905.
8. An owner or operator of such a well must not construct, operate, maintain, convert, plug, or abandon any injection well, or conduct any other injection activity, in a manner that





allows the movement of fluid containing any contaminant into an USDW, if the presence of that contaminant may cause the violation of any primary drinking water regulation or may otherwise adversely impact the health of persons. 40 CFR § 147.2903(b).

9. Regulations at 40 CFR § 147.2912(a) require each well authorized by rule to have mechanical integrity. A well has mechanical integrity if there are no significant leaks in the casing, tubing, or packer and there is no significant fluid movement into a USDW through vertical channels adjacent to the well bore.
10. On February 29, 2016, Respondent conducted a mechanical integrity test (“MIT”) inspection of the well, testing the mechanical integrity of the casing, tubing, and packer of the well according to procedures set forth at 40 CFR § 147.2912(a)(1)(i). The MIT indicated that the well did not have mechanical integrity of the casing, tubing, or packer.
11. On March 8, 2016, the EPA notified the Respondent that the well did not have mechanical integrity and required the Respondent to cease use of the well for fluid injection and to disconnect injection pipelines from the well.
12. On April 18, 2018, an EPA inspector inspected the well and observed the static fluid level in the well to be at the surface. The inspector also observed the surface pressure on the tubing to be 355 pounds per square inch (“psi”). This static fluid level is above the USDWs in the well. A static fluid level above the base of USDWs along with a surface pressure of 355 psi indicates that fluids could be moving through the well into USDWs.
13. On June 26, 2019, EPA notified the public of the filing of the Complaint at <https://www.epa.gov/publicnotices> and has afforded the public thirty (30) days 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). The public notice comment period expired on July 27,



2018, and the EPA did not receive any comments from the public on the proposed Complaint.

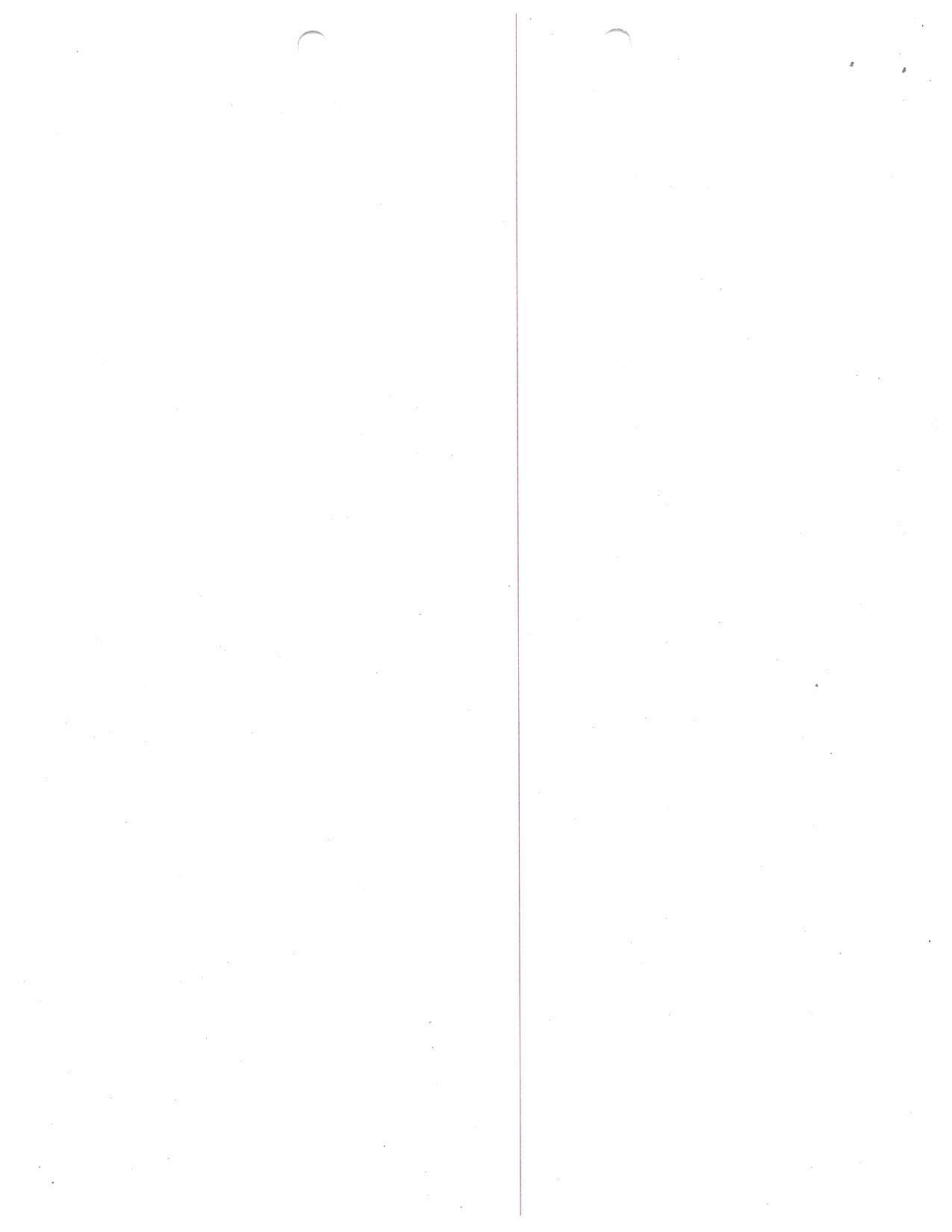
### III. PENALTY DISCUSSION

Pursuant to 40 CFR § 22.27(b), the "Presiding Officer shall determine the amount of the recommended civil penalty based on the evidence in the record and in accordance with any penalty criteria set forth in the (SDWA). The Presiding Officer shall consider any civil penalty guidelines issued under the (SDWA)." This determination shall consider (1) the seriousness of the violation, (2) the economic benefit (if any) resulting from the violation, (3) any history of such violations, (4) any good faith efforts to comply with the applicable requirements, (5) the economic impact of the penalty on the violator, and (6) such other matters as justice may require.

#### 1. Seriousness of the Violation

The seriousness of a violation depends upon the facts and circumstances in each case. In this case there was a high static fluid level observed in an injection well that did not have mechanical integrity. The static fluid level was observed to be at the surface and the pressure gauge at the surface showed a pressure of 355 psi. This means that the well was under pressure and that there was more of a probability that this excessive pressure could force well fluids or contaminated fluids (fluids high in total dissolved solids 'TDS') into USDWs. A contamination of an USDW could lead to severe human and/or environmental harm and a loss of use of a potential drinking water source.

Respondent failed to repair the well so that it would have the proper mechanical integrity to protect USDWs from contamination. If the Respondent did not want to repair the well and



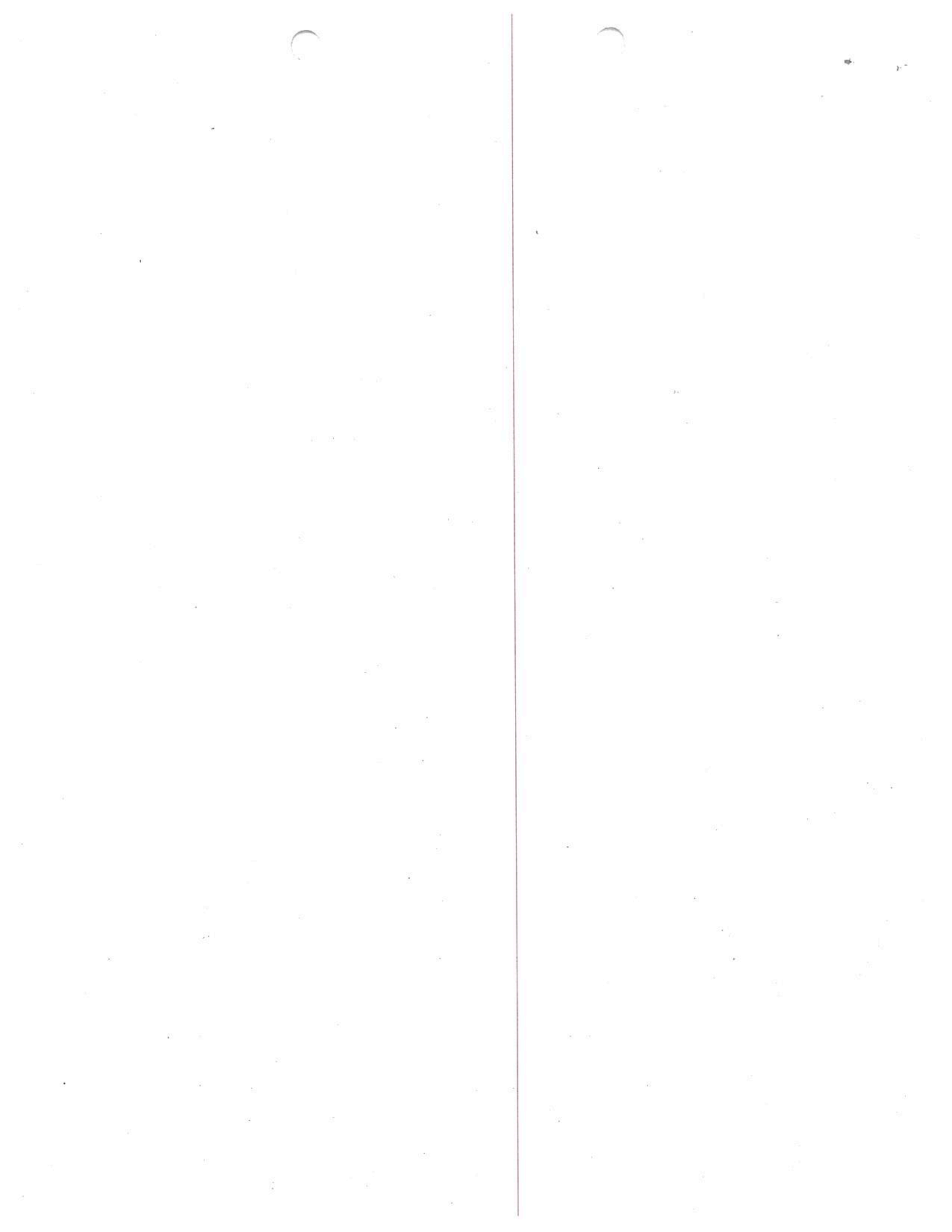
demonstrate its mechanical integrity then the well could have been plugged and abandoned in a manner that would prevent the movement of contaminated fluids into an USDW.

## **2. Economic Benefit**

The Economic Benefit is the avoided or delayed costs for noncompliance. The EPA applied an economic benefit amount to the penalty for neglecting to complete the required corrective action measures. The economic benefit amount was calculated using the BEN computer program. BEN requires the input of three different expenditures associated with the avoided non-compliance(s) and the dates associated with these expenditures. BEN also requires the date associated with non-compliance and the date when the well was back into compliance. For this case BEN calculated the economic benefit to be \$1,296. This avoidance of expenditures potentially put Respondent at an advantage over other similar members of the regulated community who invested the appropriate time and resources to stay in compliance with the law. Respondent made no efforts to repair the well so the well would be able to successfully demonstrate mechanical integrity nor did the Respondent make efforts to properly plug and abandon the well.

## **3. History of Violations**

The respondent had previously been issued an Administrative Order for the same type of violation in the same well. A previous inspection conducted by an EPA representative on March 18, 2016 found that the wells static fluid level was at the surface. An Administrative Order was issued on September 22, 2017, citing the March 18, 2016 violation finding that the Respondent was maintaining an injection well in a manner that could allow for the movement of contaminated fluids into an USDW. The Respondent made no efforts to comply with the



September 22, 2017 Administrative Order. Therefore, the Respondent has a history of violations.

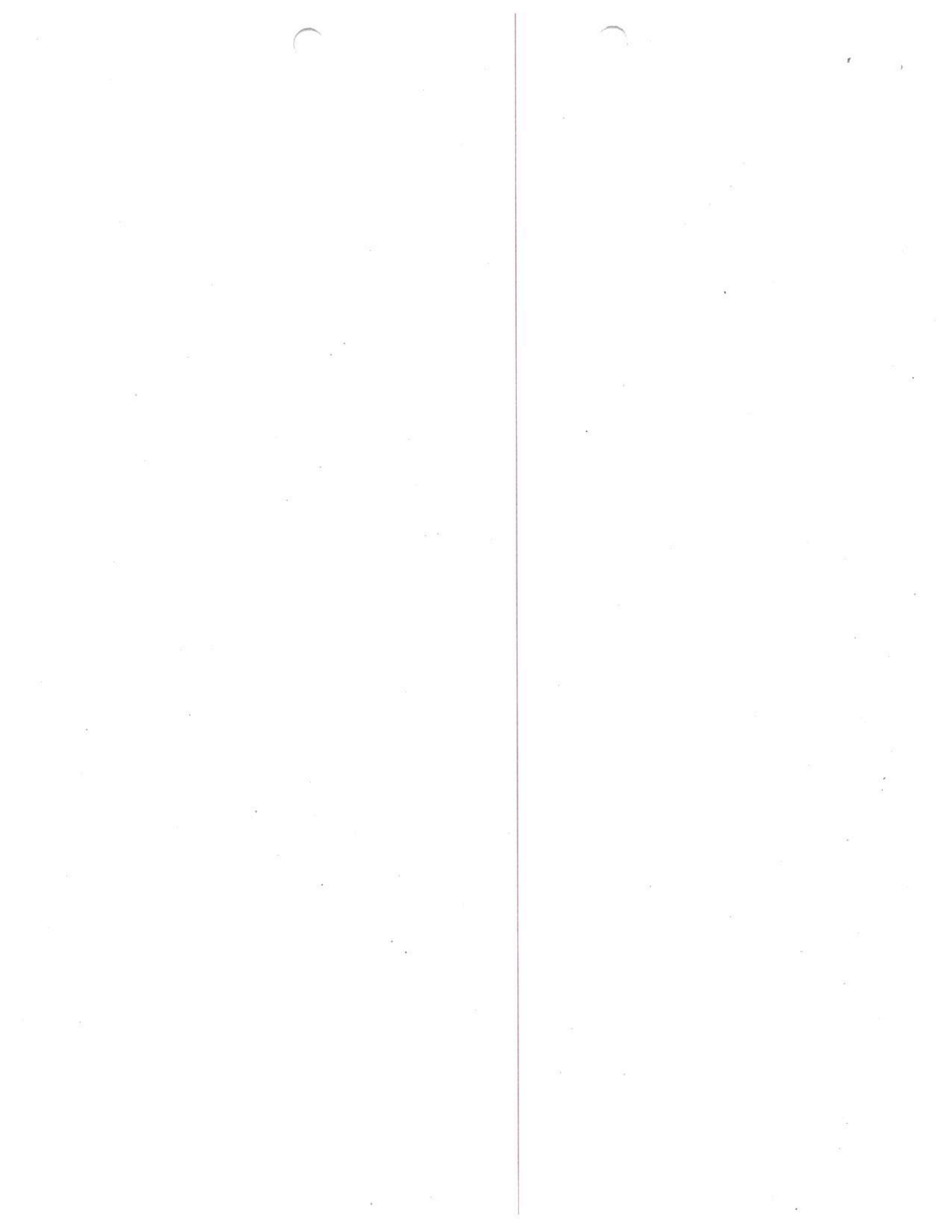
#### **4. Good Faith Efforts to Comply**

Respondent has not made any good faith efforts to remedy the violation and bring the well back into compliance with the SDWA which has resulted in a history of non-compliance and negligence. The Respondent made no efforts to respond to the September 22, 2017 Administrative Order and has neglected to repair the well and bring it into compliance with the SDWA. The Respondent continued to violate the SDWA as documented during an April 18, 2018 inspection. During the inspection the EPA inspector again observed a high static fluid level in the same well, resulting in an Administrative Complaint to which the Respondent has not complied.

#### **5. Economic Impact on the Violator**

The Respondent has indicated an inability to pay the fine. The only documentation the Respondent provided was tax returns from the following years: 2015, 2016, and 2017. The tax returns were analyzed using the ABEL software, with the following output:

- ABEL estimated a 94% probability that Diamond 3S, LLC can currently afford a \$6,000 penalty after meeting total Pollution Control Expenditures of \$15,289.
- ABEL estimated a 70% probability that Diamond 3S, LLC could afford to pay a penalty of \$246,464 after meeting total Pollution Control Expenditures of \$15,289.
- The ABEL estimate is based only on cash flow the firm is projected to generate in the next 5 years. (Additional ability to pay could follow from an examination of unnecessary expenses, assets unrelated to business operations, and/or other sources.)
- EPA typically employs the 70% probability level for determining ability to pay,





but the litigation team must ultimately determine the appropriate cutoff for the case.

- For the payment schedule (which does not affect the ability to pay), 3 Yearly payments (at a 6.9% interest rate) of \$2,134.83 are the equivalent of the lump-sum affordable amount.

- Depreciation is a high percentage of cash flow: verify reinvestment rate's appropriateness.

Note that the owners may be individually liable for this partnership's liabilities.

From ABEL's outputs above, ABEL estimates a 94% probability that the Respondent can afford to pay the \$6,000 penalty. Therefore, the EPA does not choose to use this factor to reduce the penalty.

#### 6. Other Matters as Justice May Require

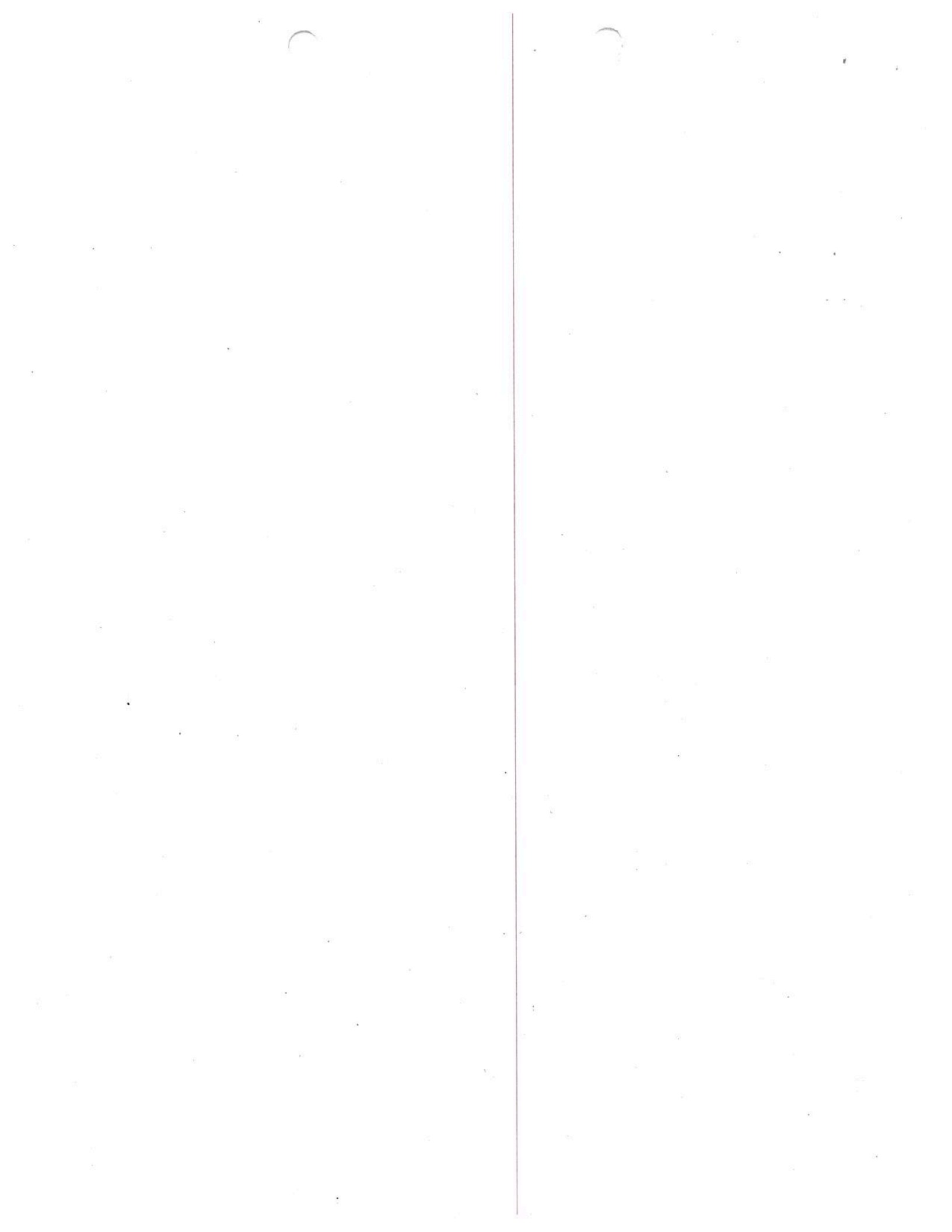
At this time there are no known matters for this factor.

Pursuant to 40 CFR § 22.17(c), the "relief proposed in the complaint...shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the [SDWA]." Complainant proposes to assess a total civil penalty of \$6,000 for the violations set forth in the Complaint. After carefully considering the statutory factors and the entire record in this case, I find the civil penalty proposed is consistent with the record in this matter and the SDWA.

#### IV. DEFAULT ORDER

Respondent is hereby **ORDERED** to comply with all the terms herein, including:

1. Plug the Well according to regulations found at 40 CFR § 147.2905; or repair the well so that it can demonstrate mechanical integrity of the casing, tubing, and packer in accordance with procedures set forth at 40 CFR § 147.2912(a)(1)(i).
2. Respondent is assessed a civil penalty in the amount of \$6,000.



- a. Payment of the full amount of the civil penalty assessed shall be made within thirty (30) days after this default order becomes final under 40 CFR § 22.27(c) by submitting a certified check or cashier's check payable to Treasurer, United States of America, and mailed to:

Regional Hearing Clerk  
EPA – Region 6  
P.O. Box 360582M  
Pittsburgh, PA 15251

A transmittal letter identifying the subject case and the EPA docket number, plus Respondent's name and address, shall accompany the check.

- b. Respondent shall mail a copy of the check to:

Lorena S. Vaughan  
Regional Hearing Clerk (6RC)  
Region 6  
1201 Elm Street, Suite 500  
Dallas, TX 75270-1201

3. This Default Order constitutes an Initial Decision, as provided in 40 CFR § 22.17(c). This Initial Decision shall become a final order 45 days after its service upon the parties and without further proceedings unless (1) a party appeals the initial decision to the Environmental Appeals Board if done so within thirty (30) days from the date of service provided in the certificate of service accompanying this order, (2) a party moves to set aside the Default Order, or (3) the Environmental Appeals Board elects, *sua sponte*, to review the initial decision on its own initiative. 40 CFR §§ 22.27(c), 22.30(a).

SO ORDERED, this \_\_\_\_ day of November, 2019.

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THOMAS RUCKI  
REGIONAL JUDICIAL OFFICER

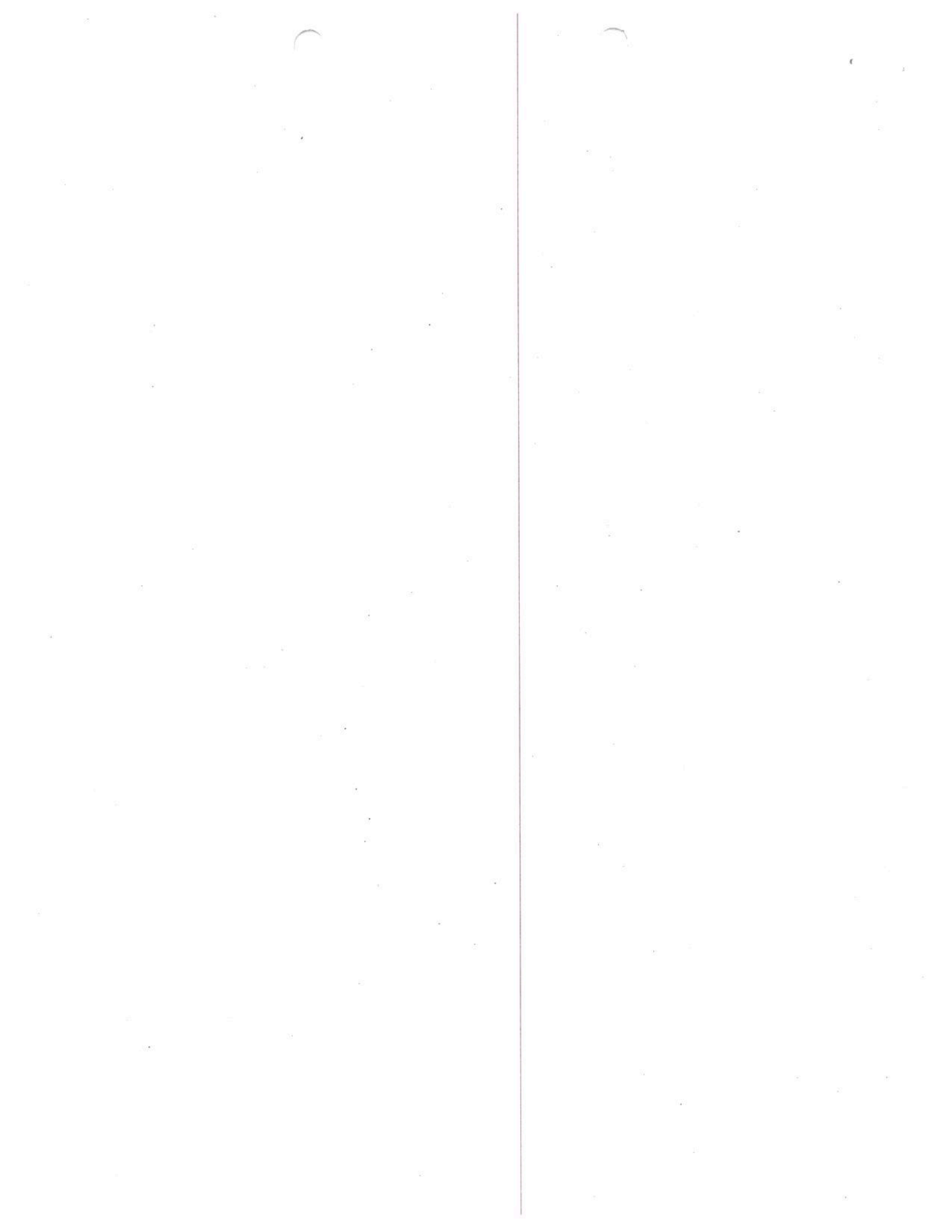
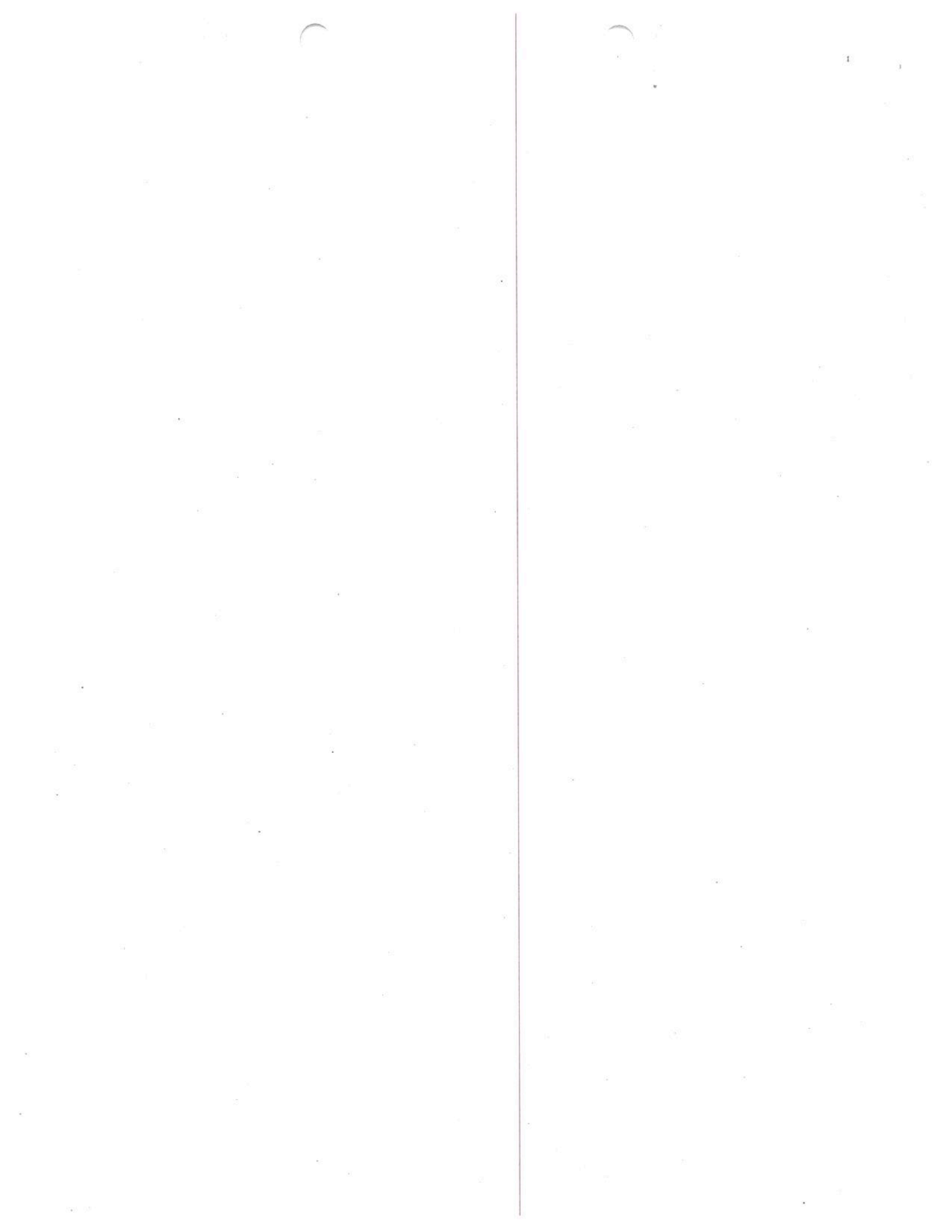


Exhibit List For Diamond 3S, LLC – SDWA-06-2018-1102

1. Diamond 3S, LLC Oklahoma Secretary of State obtained from <https://www.sos.ok.gov/corp/corplnquiry/Find.aspx>
2. June 13, 2019, Administrative Complaint Docket No. SDWA-06-2018-1102
3. June 16, 2018, certified mail delivery confirmation for complaint obtained from www.usps.com
4. May 29, 2019, warning letter/settlement demand letter
5. June 3, 2019, copies of signed "green card" front and back
6. June 3, 2019, certified mail delivery confirmation for warning letter/settlement demand letter obtained from www.usps.com
7. February 29, 2016, mechanical integrity inspection report
8. April 18, 2018, inspection report





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6

1445 ROSS AVENUE, SUITE 1200  
DALLAS, TEXAS 75202-2733

3 JUN 2018

3 JUN :

CERTIFIED MAIL-RETURN RECEIPT REQUESTED: 7005 1820 0003 7454 1151

Mr. Joel Summers  
Diamond 3S, LLC  
20102 West Coyote Trail  
Sand Springs, OK 74063

Re: Administrative Complaint  
Docket Number: SDWA-06-2018-1102

Dear Mr. Summers:

Enclosed is an Administrative Complaint (Complaint) issued to Diamond 3S, LLC, for violation of the Safe Drinking Water Act. The violation was identified during our review of files we maintain on the referenced well. The violation was for maintaining Well No. Kennedy 5 (the well) in a manner which could allow contaminants to flow through the well bore into underground sources of drinking water. The enclosed Complaint proposes to assess a monetary penalty of six thousand dollars (\$6,000.00) and to order Diamond 3S, LLC to plug the well or to repair the well so it can demonstrate its mechanical integrity according to Environmental Protection Agency (EPA) regulations.

You have the right to request a hearing regarding the violations alleged in the Complaint and the proposed penalty. Please refer to the enclosed Part 22, "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," for information regarding hearing and settlement procedures. Note that should you fail to request a hearing within thirty days of your receipt of this Complaint, you will waive your right to such a hearing and may be subject to the compliance terms and assessed a penalty without further proceedings. Whether or not you request a hearing, we invite you to confer with us informally. If you choose not to request a hearing, we will review any comments on the Complaint received from you and the public and determine whether the Complaint will become final.

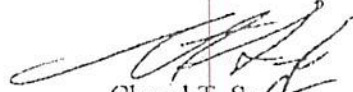
Also enclosed is an "Information Sheet" relating to the Small Business Regulatory Enforcement Fairness Act and a "Notice of Registrant's Duty to Disclose" relating to the disclosure of environmental legal proceedings to the Securities and Exchange Commission. EPA is committed to ensuring compliance with the requirements of the Underground Injection Control program, and my staff will assist you in any way possible.

Re: Administrative Complaint  
Diamond 3S, LLC

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If you have any questions or wish to discuss the possibility of a settlement of this matter, please contact Mr. Matthew Rudolph, of my staff, at (214) 665-6434.

Sincerely,



Cheryl T. Seeger  
Director  
Compliance Assurance and  
Enforcement Division

Enclosures

cc: w/complaint      Regional Hearing Clerk (6RC-D)

Ms. Jani Hayman, Director  
Osage Nation Environmental and  
Natural Resources Department  
100 W. Main, Suite 304  
Pawhuska, OK 74056

Ms. Robin Phillips, Superintendent  
Bureau of Indian Affairs  
Osage Agency  
P.O. Box 1539  
Pawhuska, OK 74056



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

FILED

REGION 6

2019 JUN 13 AM 9:22

IN THE MATTER OF  
  
Diamond 3S, LLC  
Sand Springs, Oklahoma  
  
Respondent

§ DOCKET NO. SDWA-06-2018-1902  
§  
§  
§ Proceeding to Assess a  
§ Civil Penalty under Section 1423(c)  
§ of the Safe Drinking Water Act  
§  
§ ADMINISTRATIVE COMPLAINT

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 ("the Act"), 42 U.S.C. § 300h-2(c). The Administrator of EPA delegated the authority to issue this Complaint to the Regional Administrator of EPA Region 6 (herein "RA"), who further 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 Procedure Act, 40 C.F.R. §§ 22.50 through 22.52.

The EPA has primary enforcement responsibility for underground injection within the meaning of Section 1422(e) of the Act, 42 U.S.C. § 300h-1(e), 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 Diamond 3S, LLC ("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

1. Respondent is a company 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 an "injection well" which is an "existing Class II well" as those terms are defined at 40 C.F.R. § 147.2902. The injection well is identified as the Kennedy 5 ("the well"). The well is also identified by EPA inventory number OS4348000, and is located in the Northeast Quarter of Section 1, Township 24 North, Range 7 East, Osage County, Oklahoma.

3. Because Respondent owned or operated an injection well, 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.

### Authorization Status

4. Regulations at 40 C.F.R. § 147.2903(a) require that any underground injection is prohibited except as authorized by rule or authorized by a permit issued under the UIC program. The construction or operation of any well required to have a permit is prohibited until the permit has been issued. The term "permit" is defined at 40 C.F.R. § 147.2902.

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. The well is authorized by rule in accordance with 40 C.F.R. § 147.2909.

7. Regulations at 40 C.F.R. § 147.2905 require an injection well to be plugged within one year after termination of injection. The RA may extend the time to plug if no fluid movement into an "Underground Source of Drinking Water" ("USDW") will occur and the operator has presented a viable plan for using the well within a reasonable time. The term USDW is defined at 40 C.F.R. § 147.2902.

Regulations at 40 C.F.R. § 147.2905 also set out administrative and technical requirements to be followed when plugging an injection well.

8. Regulations at 40 C.F.R. § 147.2903(b) require that no owner or operator construct, operate, maintain, convert, plug, or abandon any injection well, or conduct any other injection activity, in a manner that allows the movement of fluid containing any contaminant into a USDW, if the presence of that contaminant may cause the violation of any primary drinking water regulation or may otherwise adversely affect the health of persons.

9. Regulations at 40 C.F.R. § 147.2912(a) require each well authorized by rule to have mechanical integrity. A well has mechanical integrity if there are no significant leaks in the casing, tubing, or packer and there is no significant fluid movement into a USDW through vertical channels adjacent to the well bore.

10. On February 29, 2016, Respondent tested the mechanical integrity of the casing, tubing, and packer of the well ("MIT") according to procedures set forth at 40 C.F.R. § 147.2912(a)(1)(i). The MIT indicated that the well did not have mechanical integrity of the casing, tubing, or packer.

11. On March 8, 2016, the EPA notified the Respondent that the well did not have mechanical integrity and required the Respondent to cease use of the well for fluid injection and to disconnect injection pipelines from the well.

12. On April 18, 2018, an EPA inspector inspected the well and observed the static fluid level in the well to be at the surface. The inspector also observed the surface pressure on the tubing to be 355 pounds per square inch ("psi"). This static fluid level is above the USDWs in the well. A static fluid level above the base of USDWs along with a surface pressure of 355 psi indicates that fluids could be moving through the well into USDWs. The inspector also observed that the injection pipeline was connected to well.

13. Therefore, Respondent violated regulations at 40 C.F.R. §§ 147.2903(b), 147.2905, and 147.2909 by maintaining an injection well in a manner that could allow fluids containing contaminants to move through the well bore into USDWs.

14. EPA has notified the public of the filing of this Complaint at [www.epa.gov/publicnotices](http://www.epa.gov/publicnotices) and has 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, EPA will consider any comments filed by the public.

### III. PROPOSED PENALTY

15. 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 six thousand dollars (\$6,000.00).

16. 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.

### IV. COMPLIANCE ORDER

17. 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 the Respondent to take one of the following actions within ninety (90) days of the effective date of a Final Order:

- a. Plug the well according to regulations at 40 C.F.R. § 147.2905; or
- b. Repair the well so that it can demonstrate mechanical integrity of the casing, tubing, and packer in accordance to procedures set forth at 40 C.F.R. § 147.2912(a)(1)(i).

### V. FAILURE TO FILE AN ANSWER

18. 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.

19. 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).

20. 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.

21. Respondent must send its Answer to this Complaint, including any request for 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

22. 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.

23. 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

24. 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.

25. Any request for 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.

26. 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

27. EPA encourages all parties against whom civil penalties are 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 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. Matthew Rudolph, of my staff, at 214-665-6434.

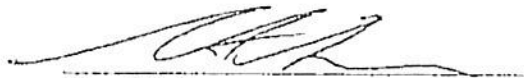
28. If this action is settled without a formal hearing and issuance of an opinion by the Presiding Officer pursuant to 40 C.F.R. § 22.27, this action will be concluded by issuance of a Consent Agreement and Final Order ("CAFO") pursuant to 40 C.F.R. § 22.18(b). The issuance of a CAFO would waive the Respondent's right to a hearing on any matter stipulated to therein or alleged in the Complaint. Any person who commented regarding this Complaint would be notified and given an additional thirty (30) days to petition EPA to set aside any such CAFO and to hold a hearing on the issues raised in the

Complaint. Such a petition would be granted and a hearing held only if the evidence presented by the petitioner's comment is material and was not considered by EPA in the issuance of the CAFO.

29. 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.

6-12-18

Date



Cheryl T. Scager  
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: Mr. Joel Summers  
Diamond 3S, LLC  
20102 West Coyote Trail  
Sand Springs, OK 74063

Copy: Ms. Jann Hayman, Director  
Osage Nation Environmental and  
Natural Resources Department  
100 W. Main, Suite 304  
Pawhuska, OK 74056

Ms. Robin Phillips, Superintendent  
Bureau of Indian Affairs  
Osage Agency  
P.O. Box 1539  
Pawhuska, OK 74056

Mr. Rusty Herbert (6RC-EW)  
U.S. EPA, Region 6  
10625 Fallstone Road  
Houston, TX 77099

Dated: 13 JUN 2018

*Jackie Allen*





Quick Tools

Mail & Ship

Track & Manage

Postal Store

Business

International

Help

# USPS Tracking

Tracking

FACs

Track Another Package

Tracking Number: 70051820000374511151

Remove

### Status

**Delivered**

Your item was delivered to an individual at the address at 4:49 pm on June 10, 2015 in SAND SPRINGS, OK 74063

June 10, 2015 3:44:49 pm  
Delivered, Left with individual  
SAND SPRINGS, OK 74063

Get Updates



Delivered



Text & Email Updates



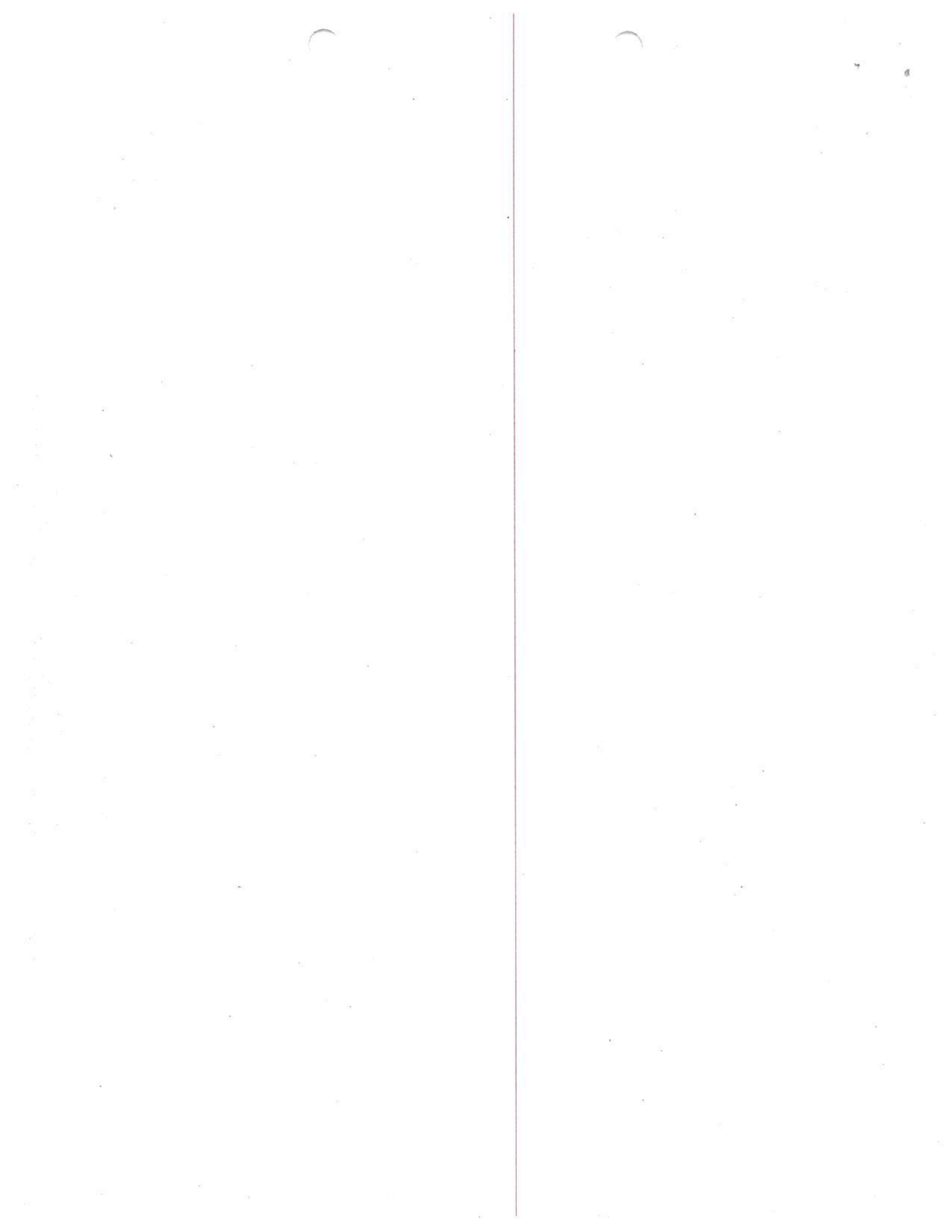
Tracking History



Product Information



See Less



## Entity Summary Information

Select the buttons below to file or place an order.

To view Entity Details there will be a \$5.00 charge and you will need to click on **VIEW ENTITY DETAILS** button at the bottom of the page.

If you are ordering documents such as a "Certificate of Good Standing" or "copies" you will need to click on the **ORDER DOCUMENTS** button at the bottom of the page.

If you are filing a legal document such as a trade name, amendment, annual certificate, etc., you will need to click on **FILE A DOCUMENT** button at the bottom of the page.

### DIAMOND 3S, LLC

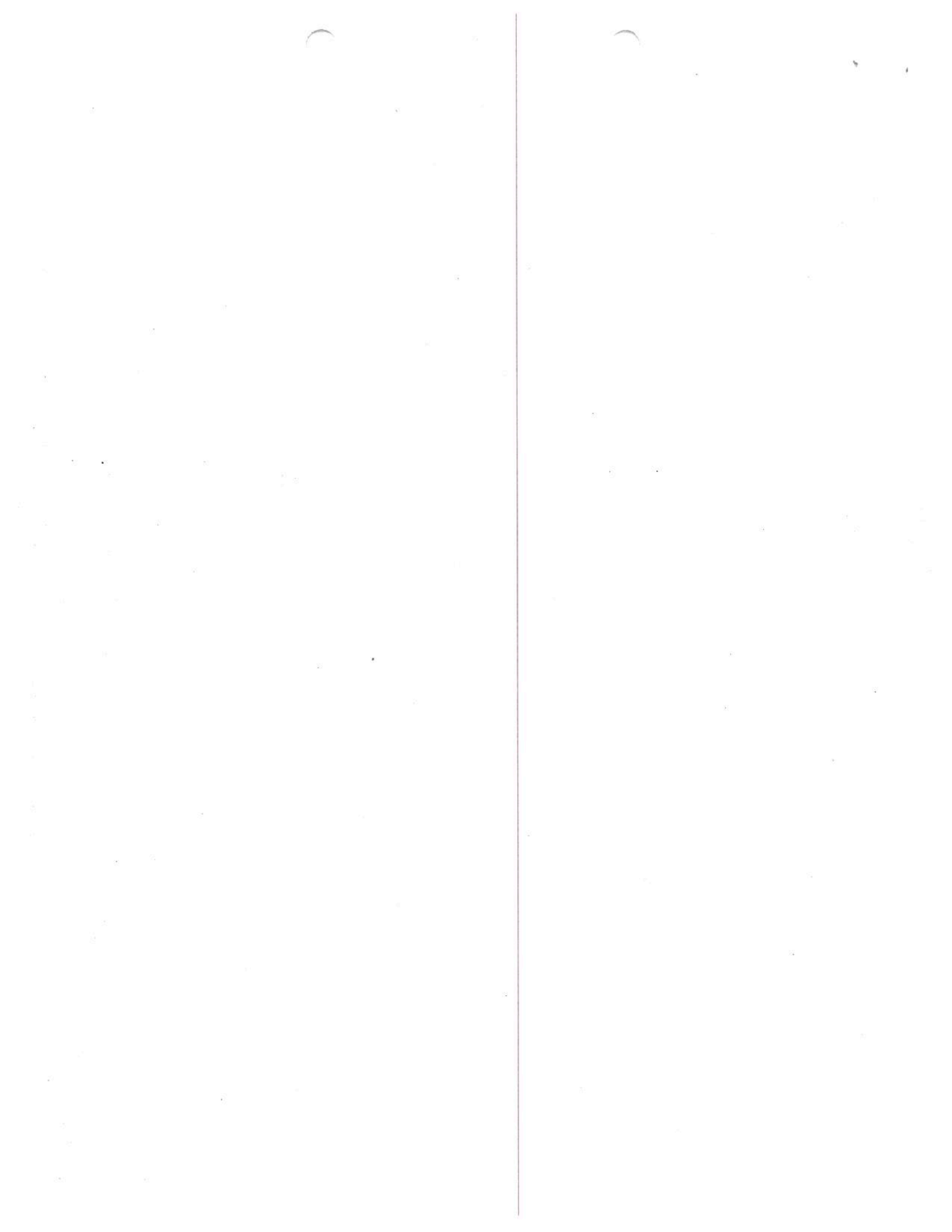
#### Details

Filing Number:	3512404249
Name Type:	Legal Name
Status:	In Existence
Corp type:	Domestic Limited Liability Company
Jurisdiction:	Oklahoma
Formation Date:	10 May 2013

#### Registered Agent Information

Name:	DIAMOND 3S, LLC
Effective:	10 May 2013
Address:	20102 WEST COYOTE TRAIL
City, State , ZipCode:	SAND SPRINGS OK 74063

[View Entity Detail](#) [File a Document](#) [Order Documents](#) [New Search](#)



Well Inspection

Scan Code: 30

Osage Nation / Environmental Protection Agency

P. O. Box 1495  
Pawhuska, OK 74056

Inspector: Rick L. Davis Dt/Tm Inspected: 4/18/2018 1:26:00 PM Duration: \_\_\_\_\_  
Operator Representative: \_\_\_\_\_ Dt Scheduled: \_\_\_\_\_ Dt Op Notified \_\_\_\_\_

General Well Data and Inspection Information

Operator: DIAMOND 3S LLC Inventory No.: OS4348 API Well No. 35-113-26134-00-00  
20102 W. COYOTE TRAIL Well Name/No.: KENNEDY 5 5 Status: \_\_\_\_\_  
SAND SPRINGS, OK 74063 Location: NE 1 24N 7E 660E - 660N Well Type: EOR  
Phone: (918) 625-3080 Field Nm: \_\_\_\_\_ Lat/Lng: 36.591692, -96.499126 G

INCIDENT INSPECTION

Purpose: Compliance Responsible Company at Time of Inspection: DIAMOND 3S LLC  
Inspect No.: iCVM1812746276 Notification Type: \_\_\_\_\_  
Incident No.: \_\_\_\_\_ Date Letter Sent to Owner: \_\_\_\_\_ Extension Date: \_\_\_\_\_  
Comply No.: \_\_\_\_\_ Date Remedy Required: \_\_\_\_\_ Date Passed: \_\_\_\_\_

Pressures / Conditions

Date Last MIT: 2/29/2016 Test Result: \_\_\_\_\_ Casing: 4.500 in. Tubing: 2.380 in. USDW: 305 ft subsurf

Monitoring Device Elected: \_\_\_\_\_  
Monitoring Device: \_\_\_\_\_  
FLM Canister Pressure: \_\_\_\_\_  
Lease Status: InActive  
Barrel Monitor Hooked Up?: \_\_\_\_\_  
Barrel Fluid Level (%): \_\_\_\_\_  
Flowline Hooked Up?: Y  
Injecting?: MR YN

	Tubing	Annulus	
Fittings:	<u>Y</u>	<u>N</u>	<b>AUTHORIZED</b>
Actual Pressure:	<u>355</u>		Max Pressure: <u>615</u>
How Determined?:	<u>UIC</u>		Min Req Press: _____
Static Fluid Level:	_____		Max Rate: _____
How Determined?:	_____		
Injection Rate (bpd):	_____		How Rate Determined? _____

Comments

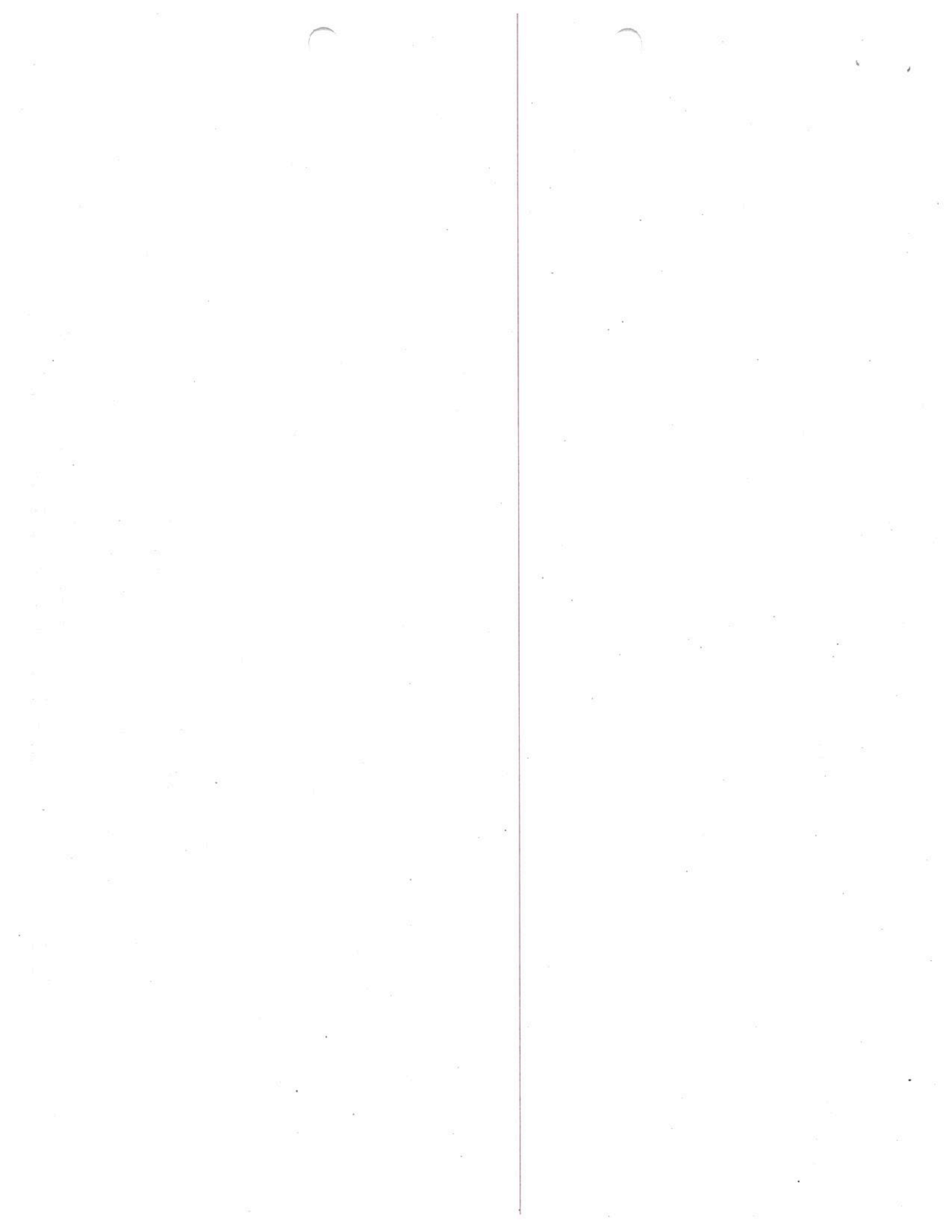
valve closed on well, opened valve and had 355psi at surface. Stock tank valves on annulus, good for only 50psi, very dangerous.

Evaluation: Name: Matthew R. Dolph Date: 5/8/2018

Inspection Results: 8 Follow-up: L Reason: SEC

Violation Code: BD Frequency: NK Received Date: 5/7/2018

Rick informed me fluid level was at the surface and the well was not injecting 5/7/2018



Mechanical Integrity Test Results

SCAN CODE: 28

Casing or Annulus Pressure Test

Osage Nation / Environmental Protection Agency  
 P.O. Box 1495  
 Pawhuska, OK 74056

Inspector: J. Andrew Yates Test Date: 02/29/2016 Test Time: 11:00 AM  
 Operator Representative: JOEL SUDMERS Date Report Sent to Operator: \_\_\_\_\_

General Well Data

Operator: DIAMOND 3S LLC - 1552 Inventory Number: OS4348  
20102 W. COYOTE TRAIL API Well No.: 35-113-26134-00-00  
SAND SPRINGS, OK 74063 Well Name/No.: KENNEDY 5  
 Location: NE 1 24N 7E 660N - 660E  
 Phone: (918) 625-3030 Field name: \_\_\_\_\_  
 Injection Interval: 2403 - 2409 USDW Bot: 305 Well Type: EOB  
 Annulus Fluid Type: \_\_\_\_\_ Concentric Pkr: \_\_\_\_\_ Packer Depth: 2200 Casing: 4.500 in. Tubing: 2.380 in.

Tubing and Annulus Pressure Test Results

Type of MIT: SAPT Test Reason: #Name?  
 Inj. Status: N Inj. Rate: 450 bpd Tubular Lining: Plastic Time Since Ann Filled: \_\_\_\_\_ Hrs  

Time	Tubing Pressure	Time	Annulus Pressure
Pre-Test:	400		0
Initial:	400		200
Mid:	400		140
Final:			

Flowback	Pressure	Volume
High:	psi	ml
Mid:	psi	ml
Low:	psi	ml
End:	psi	ml
Total Volume:		0 ml

Casing/Tubing Annulus Monitoring

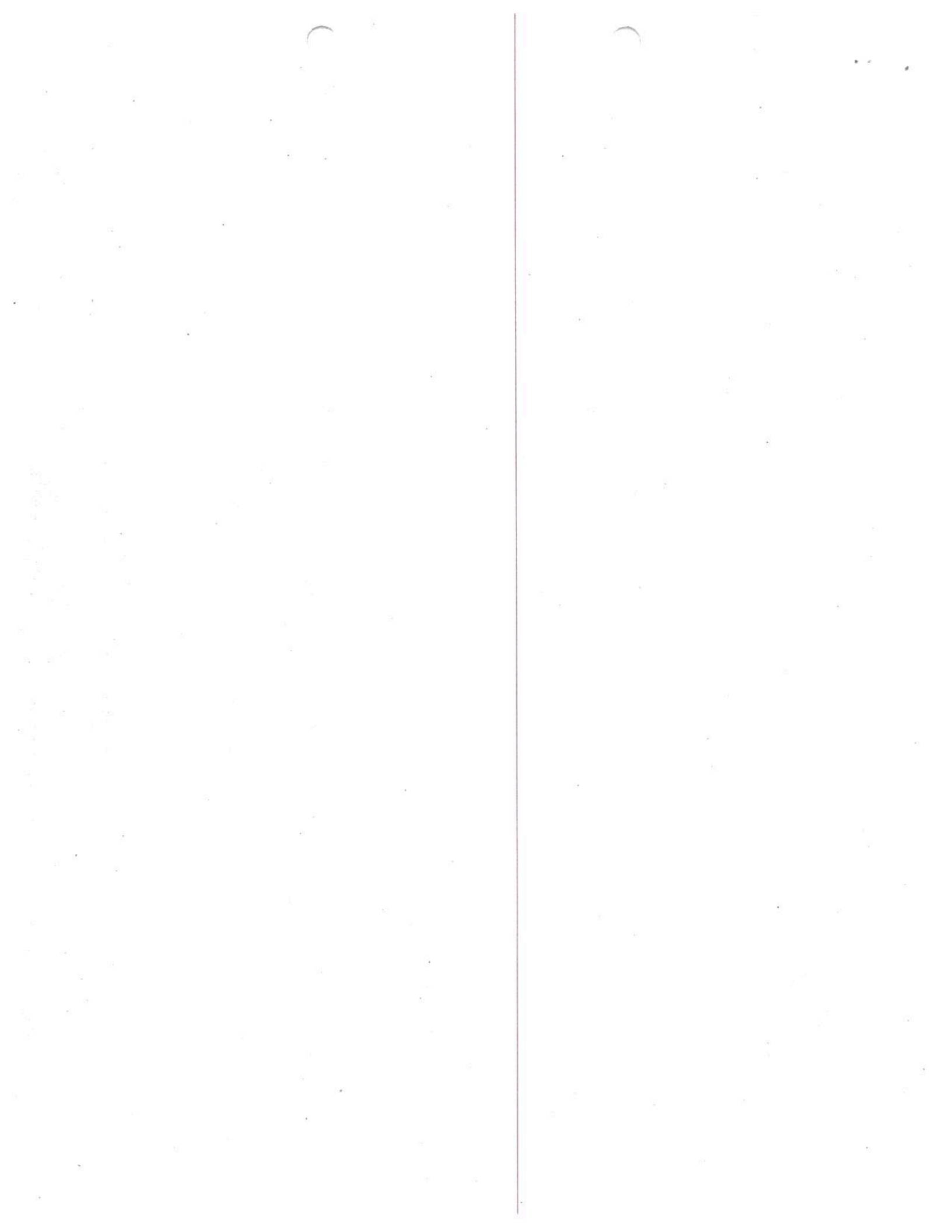
Device: \_\_\_\_\_  
 Fluid Level: \_\_\_\_\_ Annulus Pres: \_\_\_\_\_ psi  
 Test Result: Failure  
 Failure Type: \_\_\_\_\_  
 Failure Cause: \_\_\_\_\_  
 Repair Due: \_\_\_\_\_  
 Engineer Signature: Rick L. Davis  
 Review Date: 03/08/2016

ADA Pressure Test - Required Test Pressure  
 (Fluid Column Ht \* Specific Gravity \* .433 / 42 Wt Fac = Required Test Pressure)

	Tubing	Annulus
Depth to Top Perf/Open Hole:	ft	ft
Depth to Fluid Level:	ft	ft
Fluid Column Height:	ft	ft
Specific Gravity of Fluid:	1.06	1.06
Nitrogen Weight Factor:		
Required Test Pressure:	psi	psi

Additional Comments for Mechanical Integrity Test

TRIED THREE TIMES W/ SAME RESULTS





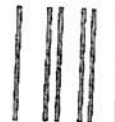
SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	A. Signature X <i>[Signature]</i> <div style="float: right;"> <input type="checkbox"/> Agent  <input type="checkbox"/> Addressee         </div>	
1. Article Addressed to: <i>Mr. Ryan Summers            Diamond 35, LLC            20102 West Coyote Trail            Sand Springs, Oklahoma 74063</i>	B. Received by (Printed Name)	C. Date of Delivery
2. Article Number <i>(Transfer from service label)</i>	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.C.D.	
	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
	Article Number: <b>7005 1820 0003 7450 1926</b>	

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-11


TULSA  
 UNITED STATES POSTAL SERVICE  
 03 JUN '10  
 PM 11



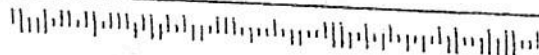
First-Class Mail  
 Postage & Fees Paid  
 USPS  
 Permit No. G-10

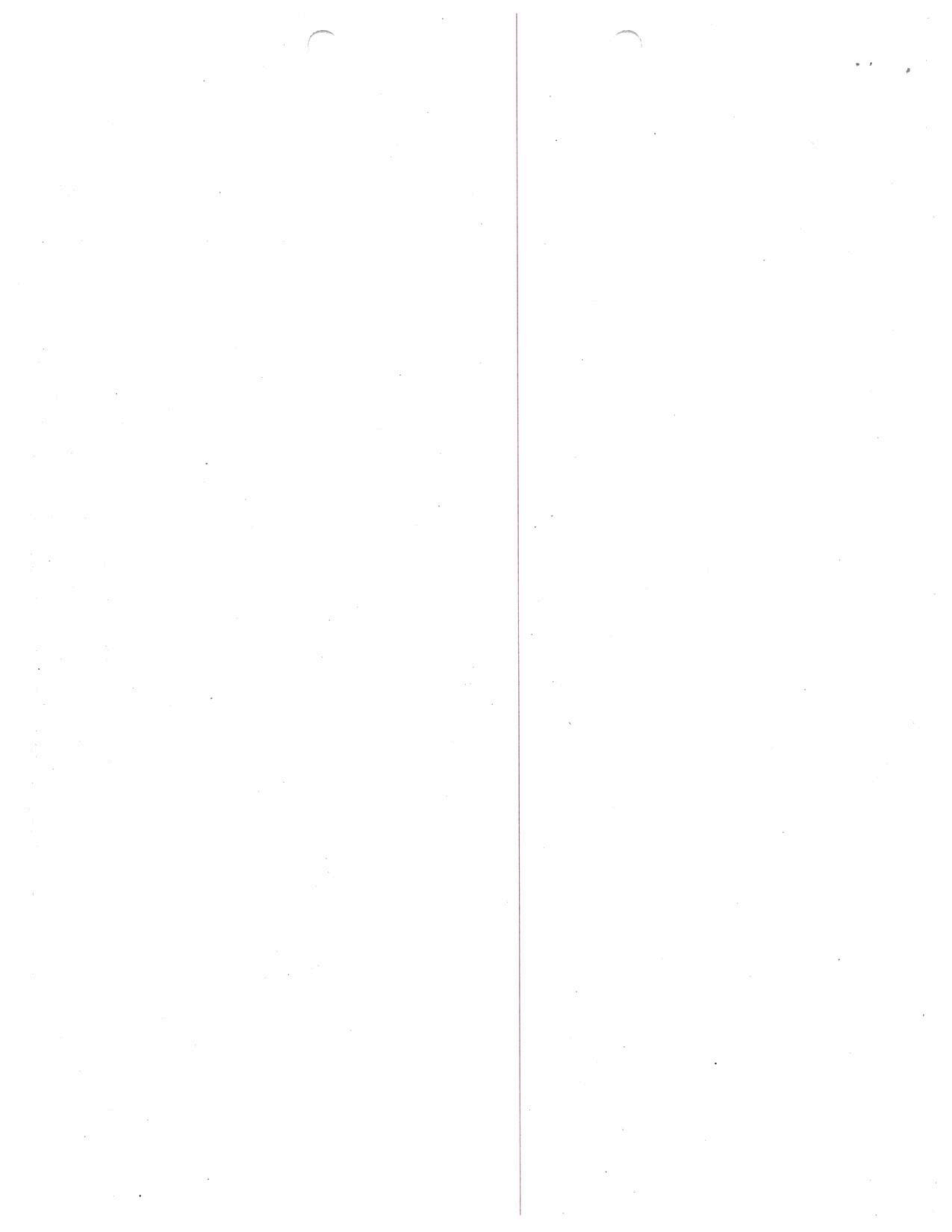
◦ Sender: Please print your name, address, and ZIP+4 in this box ◦

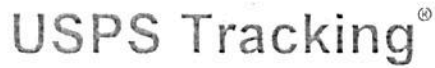
*Mr. Matt Rudolph*



EPA Region 6 (6EN-WF)  
 Water Enforcement Branch  
 1445 Ross Ave., Ste. 1200  
 Dallas, TX 75202-2733







FAQs (<https://www.usps.com/faqs/uspstracking-faqs.htm>)

Track Another Package +

Tracking Number: 70051820000374501926

Remove

Your item was delivered at 9:15 am on June 3, 2019 in SAND SPRINGS, OK 74063.

### Delivered

June 3, 2019 at 9:15 am  
Delivered  
SAND SPRINGS, OK 74063

Feedback

---

Tracking History

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Product Information

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See Less

## Can't find what you're looking for?

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FAQs (<https://www.usps.com/faqs/uspstracking-faqs.htm>)

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**Sign Up**

**([https://reg.usps.com/entreg/RegistrationAction\\_input?](https://reg.usps.com/entreg/RegistrationAction_input?app=UspsTools&appURL=https%3A%3A)**

**\*NOTE: Black and white (grayscale) images show the outside, front of letter-sized envelopes and mailpieces that are processed through USPS automated equipment.**

Feedback



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
1445 ROSS AVENUE, SUITE 1200  
DALLAS, TEXAS 75202-2733

May 29, 2019

CERTIFIED MAIL—RETURN RECEIPT REQUESTED: 70005 1820 0003 7450 1926

Mr. Ryan Summers  
Diamond 3S, LLC  
20102 West Coyote Trail  
Sand Springs, OK 74063

Re: Settlement of Administrative Complaint Docket Number: SDWA-06-2018-1102

<u>Inventory No.</u>	<u>Well No.</u>	<u>Location-Osage County, Oklahoma</u>
OS4348000	Kennedy #5	NE/4 Sec. 01, T 24N, R 07E

Dear Mr. Summers:

On February 29, 2016 the above referenced injection well failed a mechanical integrity test (MIT). A Notice of Violation was mailed to Diamond 3S, LLC on March 3, 2016 communicating this MIT failure and required Diamond 3S, LLC to submit to EPA plans for future use for this well.

On March 18, 2016, the above referenced well was inspected by the Environmental and Natural Resources Department of the Osage Nation and during the inspection the inspector observed a static fluid level above the underground source of drinking water (USDW). This is known as "a high fluid level". A high fluid level in a well without mechanical integrity is maintaining a well in a manner that could allow fluids containing contaminants to move through the well into a USDW. On April 1, 2016, a Notice of Violation was mailed to Diamond 3S, LLC communicating this high fluid level observation and requiring Diamond 3S, LLC to correct it.

On August 25, 2016, a letter was mailed to Diamond 3S, LLC for failing to respond to the EPA's request to correct the high fluid level.

On May 23, 2017 a proposed Administrative Order (AO), Docket Number SDWA-06-2017-1106 was mailed to Diamond 3S, LLC., which referenced the February 29, 2016 MIT failure and the March 18, 2016 high fluid level. EPA found that the Kennedy #5 well was being used in a manner that could allow for fluids to move through the well into a USDW (40 CFR §§ 147.2903(b) and 147.2916). The AO also proposed actions needing to be performed by Diamond 3S, LLC to bring the well into compliance with the Safe Drinking Water Act. No response was received from Diamond 3S, LLC on the proposed AO. The proposed AO became a final AO on September 22, 2017 giving Diamond 3S, LLC 120 days to comply and perform the corrective actions listed in the AO.

On April 18, 2018, the Kennedy # 5 well was inspected again by an EPA inspector. During the inspection, the inspector observed a static fluid level above the base of the USDW, which indicated a high fluid level.

On June 13, 2018, an Administrative Penalty Order (Complaint), Docket Number SDWA-06-2018-1102 was proposed to Diamond 3S, LLC referencing the February 29, 2016 MIT failure and the April 18, 2018 high fluid level. EPA concluded the Kennedy #5 well was being used in a manner that could allow for fluids to move through the well bore into USDWs (40 CFR §§ 147.2903(b) and 147.2916).

To date, EPA has not received any information from Diamond 3S, LLC or observed any actions performed by Diamond 3S, LLC in regards to the compliance with the final AO, Docket Number SDWA-06-2017-1106, or the proposed Complaint, Docket Number SDWA-06-2018-1102.

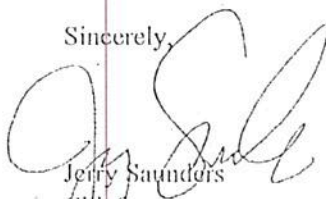
EPA is requesting to reach final settlement of the proposed Complaint with Diamond 3S, LLC within 30 days of the receiving this letter. The current terms of this settlement include:

1. Diamond 3S, LLC either repairing the Kennedy #5 well so it can pass a MIT; or plug and abandon the Kennedy #5 well;
2. And, to pay a fine, as appropriate, in the amount of \$6,000.

If a settlement cannot be reached between EPA and Diamond 3S, LLC a request will be made by EPA to seek a default judgement in favor of the EPA related to the Complaint.

If you have any questions on this matter, please contact Mr. Matthew Rudolph, of my staff, at (214) 665-6434 or Mr. Rusty Herbert, EPA attorney, at (281) 983-2218.

Sincerely,



Jerry Saunders  
Chief  
Water Enforcement Branch

cc: Ms. Jann Hayman, Director  
Osage Nation Environmental and Natural Resources Department  
100 W. Main, Suite 304  
Pawhuska, Oklahoma 74056

Ms. Robin Phillips, Superintendent  
Osage Agency, Bureau of Indian Affairs  
P.O. Box 1539  
Pawhuska, Oklahoma 74056

IN THE MATTER OF:

Diamond 3S, LLC

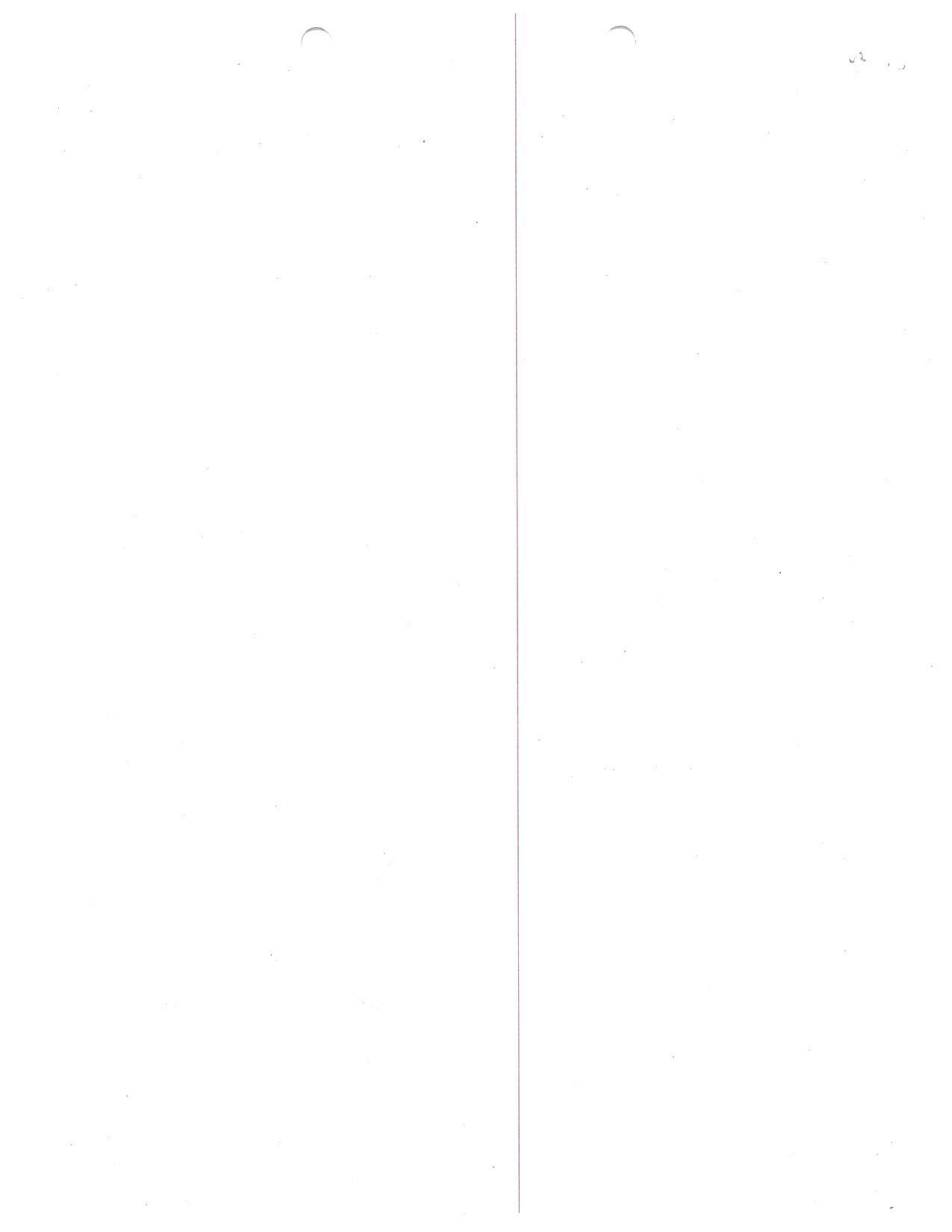
Respondent

)  
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Docket No. CWA-06-2018-1102

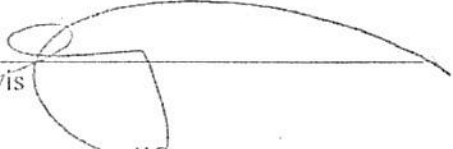
**DECLARATION OF RICK DAVIS**

1. I, Rick Davis, make the following statement truthfully from personal knowledge, under penalty of perjury, in accord with 28 U.S.C. § 1746.
2. I make this statement in my capacity as an environmental engineer employed in the Energy Sector Compliance Section of the Enforcement and Compliance Division (Division) of the United States Environmental Protection Agency, Region 6 (“EPA”).
3. I joined the Division in May 1991. My job duties are that of an inspector. As such, I am responsible for doing underground injection control (UIC) inspections under the Safe Drinking Water Act (SDWA) on various injection wells. I am also responsible for reviewing and evaluating mechanical integrity test (MIT) inspections witnessed by myself and the Osage Nation inspectors. Part of my evaluation process is to make the determination if the injection well demonstrated the proper mechanical integrity during the inspection and to grade the results as either “Acceptable” or “Failure”.
4. On March 8, 2016, I reviewed and evaluated an inspection report of an MIT that was conducted by an Osage Nation’s inspector on the Kennedy #5 well on February 29, 2016. I evaluated the well’s mechanical integrity as “Failure” since the well failed to hold pressure during the test.





5. On April 18, 2018, I inspected the Kennedy # 5 well and observed that the well's static fluid level in the tubing was at the surface. I determined with a the UIC pressure gauge, a liquid filled brass 600 pound gauge, that the pressure on the tubing was 355 PSIG.

  
Rick Davis

Executed this 28<sup>th</sup> day of August 2019 in TULSA, Oklahoma.

Subscribed and sworn to before me, the undersigned Notary Public,

This 28<sup>th</sup> day of August, 2019

