

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6

FILED

IN THE MATTER OF

Performance Energy Resources, LLC  
Barnsdall, Oklahoma

Respondent

§ DOCKET NO. SDWA-06-2011-1109  
§  
§  
§ Proceeding to Assess a  
§ Civil Penalty under Section 1423(c)  
§ of the Safe Drinking Water Act  
§  
§ ADMINISTRATIVE COMPLAINT

2011 AUG 30 AM 9:51  
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 (“the 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 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 Performance Energy Resources, 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 limited liability 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 a “new Class II well” as those terms are defined at 40 C.F.R. § 147.2902. The injection well is identified as well number 31 (“well”). The well is also identified by EPA inventory number OS5105, and is located in the Northwest Quarter of Section 25, Township 25 North, Range 11 East, Woolaroc Field, 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.

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. § 147.2916 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.

6. On April 10, 1986, the EPA issued UIC permit number 06S12611P5105 (“permit”) to convert the well to underground injection use. The permit was transferred to Respondent on June 2, 2010. The permit requires the Respondent to maintain mechanical integrity of the well

and to obtain written authorization to inject before using the well for underground injection of fluids.

7. Regulations at 40 C.F.R. §§ 147.2916 and 147.2925(a) and condition II.B of the permit require the permittee to comply with all permit conditions, except as authorized by an emergency permit (described at 40 C.F.R. § 147.2906). Respondent did not have an emergency permit for violations described in this Complaint.

8. Regulations at 40 C.F.R. § 147.2920(b) and condition II.E.1 of the permit require that each well authorized by permit 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 an "Underground Source of Drinking Water" ("USDW") through vertical channels adjacent to the well bore. The term USDW is defined at 40 C.F.R. § 147.2902.

9. On June 2, 2008, Respondent's representative verified to the EPA that the well did not have mechanical integrity of the casing, tubing, and packer as required by regulations at 40 C.F.R. § 147.2920(b). A mechanical integrity test conducted according to procedures at 40 C.F.R. § 147.2920(b)(1)(i) on July 25, 2008, also indicated that the well did not have mechanical integrity of the casing, tubing, or packer.

10. Therefore, Respondent violated regulations at 40 C.F.R. §§ 147.2916, 147.2920(b) and 147.2925(a), and condition II.E.1 of the permit by operating the well without mechanical integrity of the casing, tubing, and packer.

11. On July 10, 2008, authorization to inject for the well was terminated due to the fact that the well did not have mechanical integrity.

12. An inspection by a representative of the Osage Nation on July 25, 2008, and annual reports submitted to the EPA by Respondent on October 10, 2008, October 28, 2009, and November 2, 2010, indicated that the well was not being used for underground injection.

13. On January 6, 2011, a representative of the Osage Nation observed that the well was being used for underground injection of fluids.

14. Therefore, Respondent violated 40 C.F.R. §§ 147.2916 and 147.2925(a) and Condition II.B of the permit on January 6, 2011, by using the well for underground injection of fluids without obtaining a separate, written "Authorization to Inject" from the EPA.

### **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 eight thousand dollars (\$8,000.00).

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. FAILURE TO FILE AN ANSWER**

17. 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.

18. 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).

19. 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.

20. 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

21. The Respondent shall also send a copy of its Answer to this Complaint to the following EPA attorney assigned to this case:

Mr. Efren Ordoñez (6RC-EW)  
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.

§§ 22.05 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.

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.

#### **V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

23. 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.

24. 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. 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).

#### **VI. SETTLEMENT**

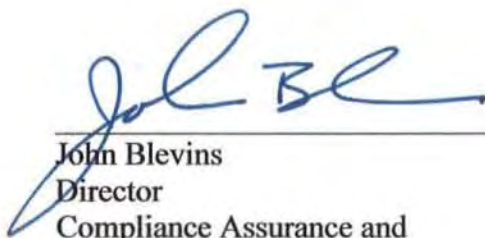
25. EPA encourages all parties against whom civil penalties are proposed to pursue the possibility of settlement through informal meetings with EPA. Regardless of whether a formal hearing is requested, Respondent may confer informally with EPA about the alleged violations or the amount of the proposed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

26. 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.

27. 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.

8.25.11  
Date

  
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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      Mr. J. Scott DuCharme  
return receipt requested:      Performance Energy Resources, LLC  
P.O. Box 628  
Barnsdall, OK 74002

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. Efren Ordoñez (6RC-EW)  
Office of Regional Counsel  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

Dated: August 30, 2011

Jackie Allen