



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 ELM STREET, SUITE 500
DALLAS, TEXAS 75270-2102

April 27, 2022

TRANSMITTED VIA E-MAIL

Mr. Scott DuCharme
Performance Operating Company, LLC
P.O. Box 628
Barnsdall, OK 74002
sducharme@ppcooil.com

Re: Final Administrative Order
Well Number: 35-1W
EPA Inventory ID: OS6384000
Docket Number: SDWA-06-2021-1127

Dear Mr. DuCharme:

Attached is a Final Administrative Order (Final Order) issued by the United States Environmental Protection Agency (EPA), Performance Operating Company, LLC (Respondent) for violation of the Safe Drinking Water Act (SDWA). The Final Order requires the Respondent to comply with the regulatory requirements specified in the Final Order. EPA requests that the Respondent immediately confirm receipt of this e-mail and the attached Final Order by a response e-mail to aguinaga.david@epa.gov.

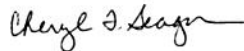
The violation of the SDWA was identified through a review of files that EPA maintains on the referenced injection well. The violation was for failing to successfully demonstrate mechanical integrity and maintaining the injection well in a manner that could allow the movement of fluid that contains contaminants into an underground source of drinking water (USDW). The Final Order does not assess a monetary penalty; however, it does require compliance with SDWA requirements and specifies deadlines for compliance. The Final Order requires the Respondent to comply with certain SDWA regulatory requirements. Please be aware that failure to comply with the Final Order may subject the Respondent, to additional enforcement action by EPA, including the initiation of legal proceedings to seek monetary penalties. The effective date of the Final Order is thirty (30) days after issuance unless an appeal is taken pursuant to Section 1423(c)(6) of the SDWA, 42 U.S.C. §300h-2(c)(6).

The SDWA provides that you may file an appeal of the Final Order with the United States District Court for the District of Columbia or the district in which the violations occurred. Such appeal must be filed within 30 days after the Final Order is issued. If you file an appeal, you must simultaneously send a copy of the appeal by certified mail to the Administrator of EPA and to the United States Attorney General.

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. The 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.

If you have any questions regarding this matter, please contact David Aguinaga at (214) 665-6439.

Sincerely,

 Digitally signed by CHERYL SEAGER
Date: 2022.04.27 15:32:25 -05'00'

Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division

Attachments

ec: Ms. Jann Hayman, Osage Nation Department of Natural Resources Director
jannhayman@osagenation-nsn.gov

Ms. Robin Phillips, Osage Agency BIA Superintendent
robin.phillips@bia.gov

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
Dallas, Texas 75270

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REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of

Performance Operating Company, LLC

Respondent.

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Docket No. SDWA-06-2021-1127

FINAL ADMINISTRATIVE ORDER

STATUTORY AUTHORITY

The following findings are made, and Final Administrative Order issued, under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 1423(c) of the Safe Drinking Water Act (the Act), 42 U.S.C. § 300h-2(c). The authority to issue this Final Administrative Order has been delegated by the Administrator to the Regional Administrator of EPA Region 6 who further delegated such authority to the Director of the Enforcement and Compliance Assurance Division. The EPA has primary enforcement responsibility for underground injection within the meaning of Section 1422(c) of the Act, 42 U.S.C. § 300h-1(c), to ensure that owners or operators of Class II injection wells within Osage County, Oklahoma, comply with the requirements of the Act.

FINDINGS

1. Performance Operating Company, LLC (Respondent) is a limited liability corporation doing business in the State of Oklahoma and, therefore, is a “person,” within the meaning of Section 1401(12) of the Act, 42 U.S.C. § 300f(12).
2. At all times relevant to the violations alleged herein, Respondent owned or operated an “injection well” which is a “Class II well” as those terms are defined at 40 C.F.R § 147.2902. The injection well is located in the Northwest Quarter of Section 35, Township 28 North, Range 09 East, Osage County, Oklahoma, designated as Well No. 35-1W and EPA Inventory Number OS6384000 (the injection well).

3. Respondent is subject to underground injection control (UIC) program requirements set forth 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 injection well required to have a EPA UIC 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. § 147.2903(b) provide that no owner or operator shall 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 underground sources of drinking water, if the presence of that contaminant may cause the violation of any primary drinking water regulation under 40 C.F.R. Part 142 or may otherwise adversely affect the health of persons.
6. 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 an EPA UIC 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.
7. On December 28, 2012, EPA Underground Injection Control (UIC) Final Permit 06S1261P6384 (“the permit”) was issued to the Respondent and the permit became effective.
8. Regulations at 40 C.F.R. § 147.2925(a) require the permittee to comply with all permit conditions, except as authorized by an emergency permit (described at 40 C.F.R. § 147.2906).
9. Regulations at 40 C.F.R. § 147.2920(b) and Part I.B of the UIC permit require that the injection well successfully demonstrate mechanical integrity within one year of the date of the effective date of the permit and every five years thereafter.

10. On August 24, 2017, the injection well was due for its mechanical integrity test (MIT) and failed to conduct it.

11. On March 9, 2019, EPA sent a Notice of Violation to Respondent (NOV). The NOV required the injection well successfully demonstrate a MIT within sixty days. EPA has not received notice of a successful demonstration of mechanical integrity.

12. Therefore, Respondent violated regulations set forth at 40 C.F.R. §§ 147.2903(b), 147.2920 and Part I.B. of the permit by maintaining the injection well in a manner that could allow the movement of fluid that contains contaminants into an USDW and by failing to successfully demonstrate mechanical integrity.

13. Pursuant to Section 1423(c)(3)(A) of the Act, 42 U.S.C. § 300h-2(c)(3)(A), on September 13, 2021, EPA issued a Proposed Administrative Order to Respondent and provided Respondent an opportunity to request a hearing on the Proposed Administrative Order.

14. On January 26, 2022, EPA provided public notice of its proposal to issue an order for compliance in this matter in accordance with Section 1423(c)(3)(B) of the Act, 42 U.S.C. §300h-2(c)(3)(B).

15. Respondent did not request a hearing and EPA did not receive any public comments on the Proposed Administrative Order.

SECTION 1423(c) COMPLIANCE ORDER

16. Based on the foregoing findings, EPA Region 6 hereby orders Respondent to:

- a. Cease use of the injection well for the unauthorized underground injection of fluids,
and
- b. Take one of the following actions:
 - i. Repair the injection well and successfully demonstrate mechanical integrity according to regulations at 40 C.F.R. § 147.2920 and Part I.B. of the permit

within ninety (90) days after the effective date of this Final Administrative Order; or

- ii. Complete proper plugging and abandonment in accordance with 40 C.F.R. § 147.2905, within ninety (90) days after the effective date of this Final Administrative Order; or
- iii. Convert the injection well to production use within thirty (30) days after the effective date of this Final Administrative Order, send copies to the Osage ENR Office and Respondent shall complete conversion to production within ninety (90) days after the effective date of this Final Administrative Order.

17. Submit copies of completed plugging reports or completed work reports showing conversion to production and BIA Osage Agency Forms 139 within one-hundred twenty (120) days after the effective date of this Final Administrative Order to:

David Aguinaga
Aguinaga.david@epa.gov
U.S. Environmental Protection Agency
Water Enforcement Branch (ECDWE)
1201 Elm Street, Suite 500
Dallas, TX 75270-2102

GENERAL PROVISIONS

18. Respondent may appeal this Final Administrative Order to Federal District Court pursuant to Section 1423(c)(6) of the Act, 42 U.S.C. § 300h-2(c)(6).

19. This Final Administrative Order does not constitute a waiver, suspension, or modification of the requirements of 40 C.F.R. Parts 144, 146, and 147, Subpart GGG, which remain in full force and effect.

20. Issuance of this Final Administrative Order is not an election by EPA to forego any civil or criminal action otherwise authorized under the Act.

21. Violation of the terms of this Final Administrative Order after its effective date or date of final judgment as described in Section 1423(c)(6) of the Act, 42 U.S.C. § 300h-2(c)(6), may subject Respondent to further enforcement action, including a civil action for enforcement of this Final Administrative Order under Section 1423(b) of the Act, 42 U.S.C. § 300h-2(b), and civil and criminal penalties for violations of the compliance terms of this Final Administrative Order under Section 1423(b)(1) and (2) of the Act, 42 U.S.C. § 300h-2(b)(1) and (2).

TAX IDENTIFICATION

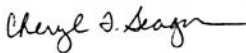
22. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2), performance of Paragraphs 16 and 17 is restitution, remediation, or actions required to come into compliance with the law.

EFFECTIVE DATE

23. This Final Administrative Order becomes effective thirty (30) days after issuance unless an appeal is taken pursuant to Section 1423(c)(6) of the Act, 42 U.S.C. § 300h-2(c)(6).

April 27, 2022

Date



Digitally signed by CHERYL
SEAGER
Date: 2022.04.27 15:27:44
-05'00'

Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division

CERTIFICATE OF SERVICE

I certify that the foregoing Final Administrative Order was sent to the following persons, in the manner specified, on the date below:

Signed Original E-mailed: Regional Hearing Clerk (R6ORC)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270
vaughn.lorena@epa.gov

File Stamped Copy
Transmitted via Email: Mr. Scott Ducharme
Performance Operating Company, LLC
P.O. Box 628
Barnsdall, OK 74002
sducharme@ppcooil.com

Electronic Copy: Ellen Chang-Vaughn
David Aguinaga
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270
Chang-Vaughan.Ellen@epa.gov;
aguinaga.david@epa.gov

Robin Phillips, Superintendent
Bureau of Indian Affairs, Osage Agency
P.O. Box 1539
Pawhuska, OK 74056
Robin.phillips@bia.gov

Jann Hayman, Director
Osage Nation Department of Natural Resources
100 W. Main, Suite 304
Pawhuska, OK 74056
jannhayman@osagenation-nsn.gov

Dated: May 1, 2022

Signed David Aguinaga