

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
Dallas, Texas 75270

FILED

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In the Matter of

Performance Energy Resources, LLC

Respondent.

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REGIONAL HEARING CLERK  
EPA REGION VI

Docket No. SDWA-06-2021-1106

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**STATUTORY AUTHORITY**

The following findings are made, and 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 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 Energy Resources, LLC (Respondent) is a company 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 Southeast Quarter of Section 02, Township 26 North, Range 10 East, Osage County, Oklahoma, designated as Well No. 102 and EPA Inventory Number OS6025000 (the 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 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. § 147.2903(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 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.
7. On December 7, 2004, EPA Underground Injection Control (UIC) Final Permit 06S1261P6025 (the permit) was issued to the Respondent authorizing injection through Well No. 2, located in the Southeast Quarter of Section 02, Township 26 North, Range 10 East, Osage Mineral Reserve, Osage County, Oklahoma. The permit assigned Well No. 2, EPA Inventory Number OS6025000 (the well). On December 7, 2004, 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 well have mechanical integrity and demonstrate mechanical integrity every five (5) years thereafter.
10. On September 6, 2015, the well was due for its mechanical integrity test (MIT), which Respondent failed to conduct.
11. On April 11, 2018, EPA sent a Notice of Violation (NOV) to Respondent. The NOV required the well successfully demonstrate MIT within sixty days. To date, 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(b) and Part I.B. of the permit by maintaining the 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.

#### **SECTION 1423(c) COMPLIANCE ORDER**

13. 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:
  - a. Cease use of the well for the unauthorized underground injection of fluids, and
  - b. Take one of the following actions:
    - i. Repair the 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 of the date of receipt of a Final Administrative Order; or
    - ii. Complete proper plugging and abandonment in accordance with 40 C.F.R. § 147.2905, within ninety (90) days of a Final Order; or
    - iii. Convert the wells to production and send copies of Osage 139 forms to the Osage ENR Office within thirty (30) days of a Final Order.

14. 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 of a Final 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

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

15. Respondent may request a hearing to contest the issuance of this Section 1423(c) Compliance Order, pursuant to Section 1423(c)(3)(A) of the Act, 42 U.S.C. § 300h-2(c)(3)(A). Such hearing shall not be subject to section 554 or 556 of Title 5 but shall provide a reasonable opportunity to be heard and to present evidence.

16. A request for a hearing must be made within thirty (30) days of the date of receipt of this Proposed Administrative Order. If you would like to request a hearing on this Order, submit the hearing request to the Regional Hearing Clerk (6ORC); U.S. Environmental Protection Agency, Region 6; 1201 Elm Street, Suite 500; Dallas, Texas 75270-2102.

17. Should a hearing be requested, members of the public who commented on the issuance of this Order during the public comment period would have a right to be heard and present evidence at a hearing under Section 1423(c)(3)(C) of the Act, 42 U.S.C. § 300h-2(c)(3)(C).

#### **GENERAL PROVISIONS**

18. This 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.

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

20. Violation of the terms of this 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 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 Order under Section 1423(b)(1) and (2) of the Act, 42 U.S.C. § 300h-2(b)(1) and (2).

#### **TAX IDENTIFICATION**

21. 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. § 162-21(b)(2), performance of Actions identified under Section 1423(c) Compliance Order is restitution, remediation, or actions required to come into compliance with the law.

#### **SETTLEMENT**

22. EPA encourages all parties against whom an administrative order is 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. 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 Order, please contact David Aguinaga, of my staff, at (214) 665-6439.

**EFFECTIVE DATE**

23. If this action is settled without a formal hearing, it will become final with the issuance of a Final Administrative Order thirty (30) days after the issued date of this Proposed Order, pursuant to Section 1423(c)(6) of the Act, 42 U.S.C. § 300h-2(c)(6).

July 9, 2021

Date



Digitally signed by CHERYL SEAGER  
DN: c=US, o=U.S. Government, ou=Environmental  
Protection Agency, cn=CHERYL SEAGER,  
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Date: 2021.07.09 12:31:32 -0500

Cheryl T. Seager, Director  
Enforcement and  
Compliance Assurance Division

**CERTIFICATE OF SERVICE**

I certify that the foregoing 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](mailto:vaughn.lorena@epa.gov)

File Stamped Copy  
Transmitted via Email:

Complainant:  
[Chang-Vaughan.Ellen@epa.gov](mailto:Chang-Vaughan.Ellen@epa.gov); [Aguinaga.david@epa.gov](mailto:Aguinaga.david@epa.gov)

Respondent:  
Mr. Scott DuCharme  
Performance Energy Resources, LLC  
97 State Highway 123  
P.O. Box 628  
Barnsdall, OK 74002  
[sducharme@ppcooil.com](mailto:sducharme@ppcooil.com)

Ms. Robin Phillips, Superintendent  
Bureau of Indian Affairs, Osage Agency  
P.O. Box 1539  
Pawhuska, OK 74056  
[Robin.phillips@bia.gov](mailto:Robin.phillips@bia.gov)

Ms. Jann Hayman, Director  
Osage Nation Environmental and  
Natural Resources Department  
100 W. Main, Suite 304  
Pawhuska, OK 74056  
[jannhayman@osagenation-nsn.gov](mailto:jannhayman@osagenation-nsn.gov)

Dated: July 15, 2021

Signed David Aguinaga