



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

Ref: 8ENF-UFO

SEP 28 2011

CERTIFIED MAIL – 7009-3410-0000-2594-1740
RETURN RECEIPT REQUESTED

CT Corporation System, Registered Agent
Whiting Oil and Gas Corporation
314 E. Thayer Avenue
Bismarck, ND 58501

Re: Proposed Penalty Complaint
and Notice of Opportunity for Hearing
Docket No. **SDWA-08-2011-0080**

Registered Agent:

Enclosed is a Proposed Penalty Complaint and Notice of Opportunity for Hearing (complaint) issued by the Environmental Protection Agency (EPA) as authorized by the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300h-2. The document alleges that Whiting Oil and Gas Corporation (Whiting) has violated the SDWA and proposes the assessment of a civil penalty. Please note that there are deadlines in the complaint that must be met. Whiting has thirty (30) calendar days from the date it receives the complaint to file an answer to dispute its contents.

Also note that under the Part 22 Rules of Practice enclosed herein, Whiting may send in a check for the amount proposed to settle the proceeding, without the need for a settlement agreement, once the required public notice period has occurred. 40 C.F.R. §§ 22.18; 22.45.

If you have any technical questions, contact Sarah Roberts at the above address (with the mail code 8ENF-UFO) or by phone at (303) 312-7056. For legal questions, the attorney assigned to this matter is Jim Eppers, who can be reached at the above address (with the mail code 8ENF-L) or by phone at (303) 312-6893. We urge your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew M. Gaydosh", with a long horizontal line extending to the right.

Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures:

Proposed Penalty Complaint
and Notice of Opportunity for Hearing
Part 22 Rules of Practice
Public Notice

cc: The Honorable Tex Hall, Chairman
Three Affiliated Indian Tribes
404 Frontage Road
New Town, ND 58763-9404

Joe Gillies Jr., Environmental Director
Environmental Division
Three Affiliated Indian Tribes
204 W. Main
New Town, ND 58763-9404

Brent A. Miller, Whiting Oil and Gas Corporation
1700 Broadway
Suite 2300
Denver, CO 80290-2301

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

REGION 8

Docket No. SDWA-08-2011-0080

2011 SEP 28 AM 11:29

FILED
EPA REGION VIII
SEP 28 2011

In the Matter of:)
Whiting Oil and Gas Corporation)
Respondent.)

**PROPOSED PENALTY
COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING**

INTRODUCTION

1. This Proposed Compliance Order, Penalty Complaint, and Notice of Opportunity for Hearing (complaint) is authorized by Congress in section 1423 of the Public Health Service Act, commonly known as the Safe Drinking Water Act (the Act), 42 U.S.C. § 300h-2. The Environmental Protection Agency (EPA) regulations authorized by the Act are set out in part 144 of title 40 of the Code of Federal Regulations (C.F.R.), and violations of the permits or EPA regulations constitute violations of the Act. The rules for this proceeding are the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits (Rules of Practice)," 40 C.F.R. Part 22, a copy of which is enclosed.
2. The undersigned EPA official has been properly delegated the authority to issue this complaint.
3. EPA alleges that Whiting Oil and Gas Corporation (Respondent) has violated certain regulations in 40 C.F.R. Part 144 and therefore the Act, as more fully explained below.

NOTICE OF OPPORTUNITY FOR A HEARING

4. Respondent has the right to a public hearing before a presiding officer within the Agency to (1) disagree with any fact alleged by EPA in the complaint, (2) state the grounds for any legal defense or (3) disagree with the appropriateness of the proposed penalty.
5. To disagree with the complaint and assert Respondent's right to a hearing, Respondent must file a written answer (and one copy) with the Regional Hearing Clerk (1595 Wynkoop Street (8RC); Denver, Colorado 80202) within thirty (30) calendar days of receiving this complaint. The answer must clearly admit, deny or explain the factual allegations of the complaint, the grounds for any defense, the facts Respondent may dispute, and Respondent's specific request for a public hearing. Please see section 22.15 of the Rules of Practice for a complete description of what must be in the answer.

FAILURE TO FILE AN ANSWER AND REQUEST A HEARING WITHIN THIRTY (30) CALENDAR DAYS MAY WAIVE RESPONDENT'S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR PROPOSED PENALTY, AND MAY RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF PENALTY UP TO THE MAXIMUM AUTHORIZED BY THE ACT.

QUICK RESOLUTION

6. Respondent may resolve this proceeding at any time by paying the penalty amount proposed in the complaint. Such payment need not contain any response to, nor admission of, the allegations in the complaint. Such payment constitutes a waiver of Respondent's right to contest the allegations and to appeal the final order. See section 22.18 of the Rules of Practice for a full explanation of the quick resolution process.

SETTLEMENT NEGOTIATIONS

7. EPA encourages discussing whether cases can be settled through informal settlement conferences. If Respondent wants to pursue the possibility of settling this matter, or has any other questions, contact the attorney listed at the end of this complaint. **Please note that calling the attorney or requesting a settlement conference does NOT delay the running of the thirty (30) day period for filing an answer and requesting a hearing.**

GENERAL ALLEGATIONS

The following general allegations apply to all times relevant to this action and to each violation alleged in this complaint:

8. Respondent, Whiting Oil and Gas Corporation, is a corporation doing business in the State of North Dakota.

9. Respondent is a "person" as defined in the Act, and is therefore subject to the requirements of the statute and its implementing regulations. 42 U.S.C. § 300f (12).

10. Respondent owned and/or operated the Hendrickson 42-28 well at all times relevant to this complaint

11. The Hendrickson 42-28 well is located in the Lucky Mound oilfield in township 150 north, section 28, range 89 west, in McLean County, North Dakota within the exterior boundary of the Ft. Berthold Reservation.

12. The Hendrickson 42-28 well is a "Class II Injection Well" as defined by 40 C.F.R. §§144.80 and 146.5.

13. Due to Respondent's ownership and/or operation of the Hendrickson 42-28 well, Respondent is subject to applicable requirements of 40 C.F.R. §§124, 144 and 146.

14. Respondent is authorized to operate the Hendrickson 42-28 well by EPA permit number ND20817-04354 (EPA UIC permit). Respondent is required to comply with all conditions in the permit at all times.

15. The EPA UIC permit for this well, at part II(D)(4) requires the annual submission of observed injection pressure for each month calculated from weekly observations of wellhead injection pressure.

16. Title 40 of the Code of Federal Regulations, Section 144.32(b) requires that submitted reports must be signed by a responsible corporate officer and that the signing authority asserts that the reported information is true, accurate and complete.

17. Due to the nature of injection operations, some wellhead injection pressure variation is expected through time.

18. EPA noted a lack of data variation of wellhead injection pressure reported and certified by Whiting in annual monitoring reports from 2002 to 2009 for the Hendrickson 42-28 well, as well as the discrepancy between the zero (0) pounds per square inch gauge reported (by Whiting) maximum annulus pressure values and pressure measurements of 125 and 140 pounds per square inch gauge taken by EPA inspectors in June 2006 and September 2009 respectively.

19. EPA sent a Notice of Violation on March 8, 2010 to Whiting identifying injection pressure reporting inaccuracies on the annual monitoring reports from 2002 to 2009.

20. Whiting responded to EPA with a letter received April 6, 2010 admitting that the values reported and certified by Whiting on the 2002 to 2009 annual monitoring reports did not reflect recorded pressures measured at the wellhead. Whiting stated that the record of observed injection pressures would be reported on future annual monitoring reports.

21. EPA noted the lack of data variation of wellhead injection pressure reported and certified by Whiting in the 2010 annual monitoring report for the Hendrickson 42-28 well.

22. EPA sent a Notice of Violation identifying injection pressure reporting inaccuracies to Whiting on May 5, 2011.

23. Whiting responded to EPA with a letter received April 6, 2010 admitting that the values reported on the 2010 annual monitoring report did not reflect recorded pressures measured at the wellhead.

24. Failing to annually submit observed injection pressure for each month calculated from weekly observations of wellhead injection pressure that is true, accurate and complete and then falsely reporting wellhead injection pressure are violations of the EPA UIC permit for the Hendrickson 42-28 well at part II(D)(4) and Title 40 of the Code of Federal Regulations, Section 144.32(b). Whiting therefore violated its permit, the regulations, and the Act.

PROPOSED CIVIL PENALTY

25. For an administrative proceeding, the Act authorizes a civil penalty assessment of up to \$7,500 per day, for each violation of the Act, up to a maximum of \$177,500. 42 U.S.C. § 300h-2(c)(1). The Act requires EPA to take into account appropriate factors in assessing a civil penalty, including the seriousness of the violations, the economic benefit resulting from the violations, any history of such violations, any good-faith efforts to comply with the requirements, the economic impact on the violator, and such other matters as justice may require. Taking such factors into account, EPA proposes the assessment of a civil penalty of \$151,250 for violations described in paragraph 24 of this complaint.

26. As required by the Act, prior to the assessment of a civil penalty, EPA will provide public notice of the proposed penalty, and reasonable opportunity for the public to comment on the matter and present evidence in the event a hearing is held 42 U.S.C. § 300h-2 (c)(3)(B).

27. Respondent's payment of the penalty shall be made by money order or certified check made payable to "Treasurer, United States of America" and mailed to the following address:

U.S. EPA - Region 8
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

A copy of the check shall be sent simultaneously to the following address:

Technical Enforcement Program
ATTN: Sarah Roberts (8ENF-UFO)
U.S. EPA - Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

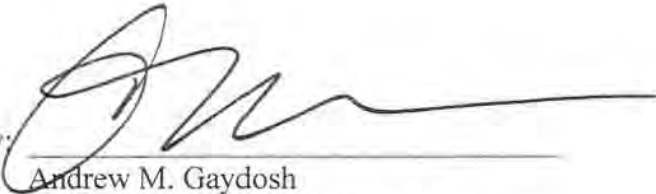
and

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

28. To discuss settlement or ask any questions you may have about this case or process, please contact Jim Eppers, Senior Enforcement Attorney, at (303) 312-6893, or the address below.

United States Environmental Protection Agency
Region 8, Office of Enforcement, Compliance and
Environmental Justice
1595 Wynkoop Street (ENF-L)
Denver, CO 80202

Date: 9/28/2011

By: 
Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

In the Matter of: **Whiting Oil and Gas Corporation**
Docket No.: **SDWA-08-2011-0080**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the Proposed Penalty Complaint, Notice of Opportunity for Hearing and Public Notice were hand-carried to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street; Denver, Colorado 80202-1129, and that a true copy of the same with the Consolidated Rules of Practice (40 C.F.R. Part 22) and was sent via Certified Mail to:

CT Corporation System, Registered Agent
Whiting Oil and Gas Corporation
314 E. Thayer Avenue
Bismarck, ND 58501

9/28/11
Date

Judith M. McTernan

**U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA)
PUBLIC NOTICE
OPPORTUNITY FOR PUBLIC COMMENT ON
PROPOSED PENALTY COMPLAINT
AND
NOTICE OF OPPORTUNITY FOR HEARING
AGAINST
PETROGLYPH OPERATING COMPANY, INC.
FOR FAILURE TO COMPLY WITH
UNDERGROUND INJECTION CONTROL (UIC) REGULATIONS
AND EPA UIC PERMITS**

PURPOSE OF PUBLIC NOTICE

The purpose of this notice is to solicit written comments on a Proposed Penalty Complaint and Notice of Opportunity for Hearing (complaint) [Docket No. **SDWA-08-2011-0080**] that Region 8 of the United States Environmental Protection Agency (EPA) has issued to Petroglyph Operating Company, Inc., for alleged violations at twenty five (5) water injection wells in the Antelope Creek oilfield and located within the exterior boundary of the Uintah and Ouray Indian Reservation in Duchesne County, Utah. The complaint alleges violations of the Safe Drinking Water Act (SDWA), the regulations, and EPA UIC permits detailing the requirements of the SDWA's Underground Injection Control (UIC) program. These regulations govern the injection of fluids that may endanger an underground source of drinking water (USDW). The complaint alleges that the company failed to properly operate a salt water disposal well. The complaint proposes a civil penalty of \$127,650 for the alleged violations.

EPA desires to receive written comments from any interested party having knowledge of the alleged violations or who can provide any information useful to ensure that the complaint is appropriate. EPA will review and consider all comments received, and will thereafter determine whether the comments, if any, justify the modification or withdrawal of the complaint.

BACKGROUND

Part C of the SDWA (40 U.S.C. §300h *et seq*) requires EPA to regulate underground injection of fluid through wells to assure that underground sources of drinking water (USDWs) are not endangered. Section 1421 of the SDWA (40 U.S.C. §300h) requires EPA to administer UIC programs in States or Indian Reservations that do not have approved UIC programs. Regulation of the UIC Class II Program has not been delegated to the Ute Indian Tribe, therefore, EPA administers the program in accordance with title 40 of the Code of Federal Regulations (40 C.F.R.) parts 124, 144, 146, 147, and 148.

Twenty five Class II water disposal injection wells, which are the subject of this complaint, are located in the Antelope Creek oilfield in township 5 south, sections 4, 5, 8, 9, 16, 18, 19, 21, 28, 29, 30, range 3 west, in Duchesne County, Utah within the exterior boundary of the Uintah and Ouray Indian Reservation. A Class II injection well, pursuant to 40 C.F.R. § 146.5, is a well that injects fluids which are brought to the surface in connection with conventional oil or natural gas production.

The complaint alleges that Petroglyph Operating Company, Inc., the owner and/or operator of the 25 wells, violated EPA UIC permits, UIC regulations and the Act by exceeding permitted maximum injection pressures and is subject to appropriate penalties.

PUBLIC COMMENTS

Written comments on the complaint are encouraged and will be accepted at the address listed below for a period of thirty (30) calendar days after the publication of this notice. Written comments submitted by the public, as well as information submitted by Petroglyph Operating Company, Inc., will be available for public review as part of the Administrative Record, subject to the provisions of law restricting the disclosure of confidential information. Petroglyph Operating Company, Inc., may request a hearing. Any person submitting written comments will be notified of and has a right to participate in such a hearing. The complaint and the Administrative Record are available for review between 9:00 a.m. and 4:00 p.m. at the address listed below. Any person wishing to view the Administrative Record or receive a copy of this public notice should call Sarah Roberts in the Technical Enforcement Program, EPA Region 8, at (303) 312-7056 before visiting EPA Region 8 offices. Please submit written comments to:

Tina Artemis (8RC)
Regional Hearing Clerk
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, Colorado 80202

THE DECISION

EPA will review and consider all public comments received on the public notice and will thereafter determine whether the comments, if any, justify the modification or withdrawal of the complaint. If the complaint is revised, copies shall be provided to all parties and to all members of the public who have commented.



Sandra A. Stavnes, Director
UIC/FIFRA/OPA Technical Enforcement Program
Office of Enforcement, Compliance and Environmental Justice
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202

§21.13

approve or disapprove the State issued statement, in accordance with the requirements of §21.5.

(2) The Regional Administrator will periodically review State program performance. In the event of State program deficiencies the Regional Administrator will notify the State of such deficiencies.

(3) During that period that any State's program is classified as deficient, statements issued by a State shall also be sent to the Regional Administrator for review. The Regional Administrator shall notify the State, the applicant, and the SBA of any determination subsequently made, in accordance with §21.5, on any such statement.

(i) If within 60 days after notice of such deficiencies has been provided, the State has not taken corrective efforts, and if the deficiencies significantly affect the conduct of the program, the Regional Administrator, after sufficient notice has been provided to the Regional Director of SBA, shall withdraw the approval of the State program.

(ii) Any State whose program is withdrawn and whose deficiencies have been corrected may later reapply as provided in §21.12(a).

(g) Funds appropriated under section 106 of the Act may be utilized by a State agency authorized to receive such funds in conducting this program.

§21.13 Effect of certification upon authority to enforce applicable standards.

The certification by EPA or a State for SBA Loan purposes in no way constitutes a determination by EPA or the State that the facilities certified (a) will be constructed within the time specified by an applicable standard or (b) will be constructed and installed in accordance with the plans and specifications submitted in the application, will be operated and maintained properly, or will be applied to process wastes which are the same as described in the application. The certification in no way constitutes a waiver by EPA or a State of its authority to take appropriate enforcement action against the owner or operator of such facilities for violations of an applicable standard.

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION/TERMINATION OR SUSPENSION OF PERMITS

Subpart A—General

- Sec. 22.1 Scope of this part. 22.2 Use of number and gender. 22.3 Definitions. 22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment. 22.5 Filing, service, and form of all filed documents; business confidentiality claims. 22.6 Filing and service of rulings, orders and decisions. 22.7 Computation and extension of time. 22.8 Ex parte discussion of proceeding. 22.9 Examination of documents filed.

Subpart B—Parties and Appearances

- 22.10 Appearances. 22.11 Intervention and non-party briefs. 22.12 Consolidation and severance.

Subpart C—Prehearing Procedures

- 22.13 Commencement of a proceeding. 22.14 Complaint. 22.15 Answer to the complaint. 22.16 Motions. 22.17 Default. 22.18 Quick resolution; settlement; alternative dispute resolution. 22.19 Prehearing information exchange; prehearing conference; other discovery. 22.20 Accelerated decision; decision to dismiss.

Subpart D—Hearing Procedures

- 22.21 Assignment of Presiding Officer; scheduling the hearing. 22.22 Evidence. 22.23 Objections and offers of proof. 22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard. 22.25 Filing the transcript. 22.26 Proposed findings, conclusions, and order.

Subpart E—Initial Decision and Motion to Reopen a Hearing

- 22.27 Initial decision. 22.28 Motion to reopen a hearing.