

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

Docket No. SDWA-08-2023-0008

In the Matter of:)
)
XTO Energy Inc.)
)
Respondent.)
)
Proceedings under Section 1423)
of the Safe Drinking Water Act)
42 U.S.C. 300h-2)

**COMPLAINT AND
NOTICE OF OPPORTUNITY
FOR HEARING**

INTRODUCTION

1. This Complaint and Notice of Opportunity for Hearing is filed pursuant to sections 1423(a)(2) and (c)(2) of the Public Health Service Act, also known as the Safe Drinking Water Act (Act). 42 U.S.C. §§ 300h-2(a)(2) and (c)(2). The EPA regulations authorized by the Act are set out in parts 144-148 of Title 40 of the Code of Federal Regulations (40 C.F.R. parts 144-148), and violations of the EPA regulations constitute violations of the Act. This proceeding is governed by 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. Complainant is Suzanne J. Bohan, Director, Enforcement and Compliance Assurance Division, EPA Region 8, who has been duly delegated the authority to initiate this action.
3. Complainant alleges that XTO Energy Inc. (Respondent), has violated the Act and proposes the issuance of an administrative order requiring the assessment of a civil penalty.

NOTICE OF OPPORTUNITY FOR A HEARING

4. Pursuant to 42 U.S.C. § 300h-2(c)(3) and 40 C.F.R. § 22.15, Respondent has the right to a public hearing before a presiding officer to contest any material fact in this Complaint, the appropriateness of the proposed penalty, or to present the grounds for any legal defense it may have.

5. To contest the Complaint and assert Respondent's right to a hearing, Respondent must file a written answer (and one copy) with the Region 8 Hearing Clerk (RHC). Pursuant to 40 C.F.R. § 22.5(a)(1), the EPA's Region 8 Presiding Officer has authorized use of the EPA's email as the Region's electronic filing system (EFS), in addition to those methods already authorized by the Part 22 Rules for the filing of documents with the RHC. An answer being filed with the RHC using the EFS is to be emailed to: love.shea@epa.gov, within 30 calendar days (see 40 C.F.R. §22.15(a)) of receiving this Complaint. The caption of the email must contain the following information: "In the Matter of XTO Energy Inc," include the EPA Docket No. referenced in this Complaint, and "Administrative Complaint." In the alternative, filings may be mailed within 30 calendar days (see 40 C.F.R. § 22.51(a)) of receiving this Complaint to the following address:

Shea Love, Regional Hearing Clerk
U.S. EPA Region 8 (8ORC)
1595 Wynkoop Street
Denver, CO 80202-1129

The answer must clearly admit, deny or explain the factual allegations of the Complaint, the grounds for any defense, any disputed facts, and Respondent's specific request for a public hearing. Please see section 22.15(b) of the Rules of Practice for a complete description of what must be in the answer. **FAILURE TO FILE AN ANSWER AND REQUEST FOR HEARING WITHIN 30 CALENDAR DAYS MAY WAIVE RESPONDENT'S RIGHT TO CONTEST THE ALLEGATIONS OR PROPOSED PENALTY, AND RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF THE PENALTY PROPOSED IN THE COMPLAINT, OR UP TO THE MAXIMUM AUTHORIZED BY THE ACT.**

QUICK RESOLUTION

6. Respondent may pay the penalty amount proposed in this Complaint at which point the EPA shall resolve this proceeding. This quick resolution shall follow the procedures set forth in 40 C.F.R. § 22.18 and take place after the close of the public comment period as specified in § 22.45(c)(3). Such action to make payment need not contain any response to, or admission of, the allegations in this Complaint. Such action to make payment constitutes a waiver of Respondent's right to contest the allegations and to appeal the final order.

SETTLEMENT NEGOTIATIONS

7. The 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, please contact Mia Bearley, Enforcement Attorney, at bearley.mia@epa.gov. **Please note that calling Ms. Bearley or**

requesting a settlement conference does NOT delay the running of the 30-day period for filing an answer and/or requesting a hearing.

GENERAL ALLEGATIONS

The following general allegations apply to all times relevant to this action, and to each count of this Complaint:

8. Respondent is incorporated in the State of Delaware and has in the past conducted oil and gas production and injection activities in the State of Utah. Respondent's corporate address is 22777 Springwoods Village Parkway, Spring, Texas 77389. In 2011, XTO Energy Inc. merged with ExxonMobil and is a subsidiary of ExxonMobil.
9. Respondent is a "person" within the meaning of section 1401(12) of the Act, 42 U.S.C. § 300f(12).
10. Pursuant to section 1422 of the Act, 42 U.S.C. § 300h-1(e), and 40 C.F.R. § part 147 subpart TT, section 147.2253, the EPA administers the Underground Injection Control (UIC) program for Class II injection wells in Indian country within the State of Utah. Therefore, for purposes of 42 U.S.C. § 300h-2(a)(2), the EPA has jurisdiction and primary enforcement authority for Class II injection wells in Indian country in Utah. The effective date of the program is November 25, 1988, and the program requirements are located at 40 C.F.R. parts 124, 144, 146, 147, and 148.
11. Class II underground injection wells under the jurisdiction of the EPA are authorized to operate either under an EPA-issued permit or under a rule. To be eligible to operate under rule-authorization, a UIC well must be a Class II enhanced oil recovery well and must have been such a well at the time the EPA UIC program became effective. See 40 C.F.R. part 144, subpart C. All other Class II wells must be authorized by an EPA-issued permit.
12. Respondent was the permit holder of the three injection wells (Three Wells) that are the subject of this Complaint and was responsible for complying with the UIC permit conditions. These Three Wells are Class II injection wells, as defined in 40 C.F.R. § 144.6(b). Further, the Three Wells are located in Uintah County, Utah, within the exterior boundaries of the Uintah & Ouray Indian Reservation. The names of the Three Wells, issuing dates of the three permits (Three Permits) and approximate wellhead locations of the Three Wells are shown below.
 - RBU 4-22F Well: EPA Permit No. UT21123-07612, issued to Respondent on November 12, 2008 (RBU 4-22F Well)
 - Latitude 39.937765, Longitude -109.656612

- HCU 1-28F Well: EPA Permit No. UT21124-07613, issued to Respondent on November 12, 2008
 - Latitude 39.923405, Longitude -109.662702
 - RBU 13-11F Well: EPA Permit No. UT20961-06292, transferred to Respondent on March 11, 2009
 - Latitude 39.954765, Longitude -109.642191
13. The Three Wells penetrate known or possible underground sources of drinking water (USDW), including, but not limited to the Uinta Formation and the Green River Formations. A USDW is defined in 40 C.F.R. § 144.3. The purpose of the UIC program is to protect USDWs.

PERMIT REQUIREMENTS

14. Upon the issuance or transfer of the Three Permits referenced in paragraph 12, Respondent became the “Permittee” under the terms of each permit.
15. Each of the Three Permits, at part III(E)(1), requires the permittee to comply with the permit and states that any non-compliance is a violation of the Act. Each permit contains this statement:

“The Permittee must comply with all conditions of this Permit. Any non-compliance constitutes a violation of the Safe Drinking Water Act (SDWA) and is grounds for enforcement action All violations of the SDWA may subject the Permittee to penalties and/or criminal prosecution as specified in Section 1423 of the SDWA.”

16. Each of the Three Permits, at part III(B)(3), contains the requirement describing how to transfer the permit to a different party with proper notice (Notice). Each permit reads:

“Under 40 CFR 144.38, this Permit is transferable provided the current Permittee notifies the Director at least thirty (30) days in advance of the proposed transfer date (EPA Form 7520-7) and provides a written agreement between the existing and new Permittees containing a specific date for transfer of Permit responsibility, coverage and liability between them. The notice shall adequately demonstrate that the financial responsibility requirements of 40 CFR 144.52(a)(7) will be met by the new Permittee. The Director may require modification or revocation and reissuance of the Permit to change the name of the Permittee and incorporate such other requirements as may be necessary under the Safe Drinking Water Act; in some cases, modification or revocation and reissuance is mandatory.”

17. Each of the Three Permits, at part II(B), addresses well mechanical integrity including demonstration of mechanical integrity at each well and follow up actions required when a mechanical integrity failure occurs. Each permit reads:

“The Permittee is required to ensure each injection well maintains mechanical integrity at all times.”

Each of the Three Permits defines mechanical integrity as

“(a) there is no significant leak in the casing, tubing, or packer (Part I); and (b) there is no significant fluid movement into an underground source of drinking water through vertical channels adjacent to the injection well bore (Part II).”

Each of the Three Permits reads:

“If a well fails to demonstrate mechanical integrity during a test, or a loss of mechanical integrity becomes evident during operation (such as presence of pressure in the [tubing-casing annulus], water flowing at the surface, etc.), the Permittee shall notify the Director within 24 hours (see Part III(E)(11)(e) of this permit), and the well shall be shut-in within 48 hours unless the Director requires immediate shut-in. Within five days, the Permittee shall submit a follow-up written report that documents test results, repairs undertaken or a proposed remedial action plan. Injection operations shall not be resumed until after the well has successfully been repaired and demonstrated mechanical integrity, and the [EPA] Director has provided approval to resume injection.”

FINDINGS OF FACT

18. On July 1, 2020, Respondent sold the Three Wells to Utah Gas Corporation (UGC) without providing Notice to the EPA pursuant to each permit at part III(B)(3), as described in paragraph 16.
19. On December 17, 2020, the EPA sent a courtesy reminder email to all Class II injection well operators in EPA Region 8, including Respondent, to comply with annual reporting requirements under each permit and to provide the proper advance notice of any permit transfers.
20. On December 21, 2020, in response to EPA’s reminder, Respondent provided the EPA with an email notice of transfer. Specifically, Respondent’s email attached an August 21, 2020 “sundry notice” of sale filed with the Utah Department of Oil, Gas and Mining, and the U.S. Bureau of Land Management. This attachment indicated that Respondent had, on July 1, 2020, sold several hundred wells including the Three Wells.

21. The Three Permits, at part III(B)(3), require the Respondent to notify the EPA at least 30 days in advance of a proposed transfer date. Pursuant to Respondent's July 1, 2020, sale date of the Three Wells, the deadline for Respondent to provide advance notice of the transfer to the EPA was June 1, 2020, not December 21, 2020.
22. The Three Permits, at part III(B)(3), require Respondent's Notice to include the following three items: (a) EPA Form 7520-7 (Application to Transfer Permit/Ownership); (b) a written agreement between Respondent and the new Permittee (UGC) containing a specific date for transfer of permit responsibility, coverage and liability between them; and (c) a demonstration that UGC would meet the financial responsibility to plug and abandon the wells under 40 C.F.R. section 144.52(a)(7). None of these required items were included in Respondent's December 21, 2020, email.
23. On December 22, 2021, a year later, UGC emailed a notice to the EPA that the RBU 4-22F Well, referenced in paragraph 12, had lost mechanical integrity. In response, on January 6, 2022, the EPA emailed a notice of non-compliance to UGC, with a copy to Respondent, referring both recipients to the mechanical integrity requirements in the permit at part II(B). Respondent failed to provide the required notice of the loss of mechanical integrity as required by the Three Permits. Respondent further failed to conduct repairs of the RBU 4-22F Well.
24. The EPA's January 6, 2022, notice of non-compliance provided Respondent with a reminder that failure to properly transfer permits is non-compliant with the transfer provisions of the Three Permits.
25. On March 9, 2022, the EPA emailed another notice of non-compliance to both UGC and Respondent, again providing notice of the failure to properly and timely transfer the Three Permits. The letter pointed out that Respondent remained the permit-holder and was liable for permit compliance. The letter also requested copies of any communication, beyond what had already been supplied, which might supplement the EPA's record that Respondent had provided proper notice of the transfer of the Three Permits. To date Respondent has not provided further evidence of its efforts to comply with the advance notice requirements to transfer the Three Permits.
26. On March 15, 2022, UGC emailed the EPA attaching an EPA Form 7520-7 signed by both Respondent and UGC, requesting transfer of the Three Permits from Respondent to UGC. The email also attached an "Assignment and Bill of Sale" dated July 29, 2020 (July 29, 2020 ABS). This July 29, 2020 ABS describes terms of the sale of the various properties and rights that were transferred from Respondent to UGC. In section 1.1(h), the July 29, 2020 ABS "*grants, bargains, sells, conveys, assigns, transfers, sets over, and delivers...to the extent that they may be assigned, all Permits that are used or held for use in connection with the ownership or operation of the other Assets.*" This document appears to

acknowledge that certain Permits cannot be “assigned” by Respondent to UGC. This is true of the Three Permits because EPA must administer the permit modifications to assign a new permittee.

27. During the morning of March 16, 2022, Respondent hosted a virtual meeting with EPA’s Nathan Wiser, UIC Enforcement Section, to discuss EPA’s requirements for proper transfer of the Three Permits to UGC. During this meeting, Respondent’s Scott Jacoby stated that a June 11, 2020, Purchase and Sale Agreement (June 11, 2020 Purchase Agreement) between Respondent and UGC, contains terms and conditions that allow UGC to repair and maintain the Three Wells. During the afternoon of March 16, 2022, Respondent sent Mr. Wiser a letter (March 16, 2022 Letter) asserting UGC’s authority to repair and maintain the Three Wells. The June 11, 2020 Purchase Agreement has not been shared with the EPA.
28. Respondent’s March 16, 2022 Letter claims that the June 11, 2020 Purchase Agreement allows UGC to repair and maintain the Three Wells, thereby fulfilling Respondent’s obligation for the proper transfer of the Three Permits pursuant to part III(B)(3). However, neither the July 29, 2020 ABS nor the March 16, 2020 Letter provide advance Notice to EPA with the required EPA Form 7520-7; provide a specific date for transfer of responsibility, coverage and liability for the Three Permits; or demonstrate UGC’s financial responsibility. As such, Respondent’s documentation provided to the EPA failed to demonstrate that it had properly transferred the Three Permits and UGC had not received the necessary authorization to fully operate the Three Wells.

During the March 16, 2022, meeting, Mr. Wiser reiterated that Respondent, not UGC, remained the permittee of this Well and was responsible for complying with permit requirements.
29. On March 22, 2022, UGC established and, via email, submitted to the EPA an acceptable financial instrument to satisfy the financial responsibility requirements for the Three Permits.
30. On March 29, 2022, the EPA transferred the Three Permits from Respondent to UGC. The EPA transferred the Three Permits after the requisite transfer documents were provided.
31. To date, Respondent has neither complied with the transfer provisions of the Three Permits nor properly maintained mechanical integrity for the RBU 4-22F Well. Instead, UGC submitted the documents needed to transfer the Three Permits and restored mechanical integrity to the RBU 4-22F.

**VIOLATION
COUNT I
Failure to Properly Transfer Permits**

32. The Three Permits require, as described in paragraph 16, that Respondent, as the current Permittee/transferor, provide the EPA with at least 30 days advance Notice of a proposed transfer. Respondent sold the Three Wells to UGC, the attempted new Permittee/transferee, on July 1, 2020. Notice was due on June 1, 2020. Respondent did not provide Notice by the due date.
33. The Three Permits require Respondent's Notice to include EPA Form 7520-7. Respondent did not provide the EPA with this form.
34. The Three Permits require Respondent's Notice to include a written agreement between the transferring parties, containing a specific date for transfer of permit responsibility, coverage and liability between them. Respondent did not provide the EPA with a written agreement containing this information.
35. The Three Permits require Respondent's Notice to include a demonstration that the transferee will meet the financial responsibility to plug and abandon the wells under 40 C.F.R. section 144.52(a)(7). Respondent did not provide the EPA with a demonstration that transferee UGC met financial responsibility requirements.
36. Respondent failed to properly transfer Three Permits, as it did not fulfill the requirements set forth in each of the permits. This violation began 30 days prior to July 1, 2020, the date Respondent sold the Three Wells to UGC. The violation remained ongoing until March 29, 2022, when UGC provided all appropriate information to the EPA and the EPA transferred the Three Permits to UGC.
37. Respondent's failure to comply with the requirement to properly and timely transfer the Three Permits constitute a violation of part III(B)(3) of each of the Three Permits, the regulations at 40 C.F.R. § 144.38 and part C of the Act.

**VIOLATION
COUNT II
Failure to Address Loss of Mechanical Integrity at Well RBU 4-22F**

38. UGC reported that Respondent's RBU 4-22F Well lost mechanical integrity on or about December 22, 2021. The EPA permit UT21123-07612 for this Well requires that mechanical integrity must be maintained at all times. EPA records contain no information that Respondent provided notice of the loss of mechanical integrity nor described any action Respondent took to repair the RBU 4-22F well after it lost mechanical integrity.
39. The EPA permit UT21123-07612 for this Well requires the permittee to notify the EPA if a loss of mechanical integrity becomes evident or if the Well fails to

demonstrate mechanical integrity. Respondent provided no notification to the EPA that the Well had lost mechanical integrity on or about December 22, 2021.

40. Respondent's failure to notify the EPA of the RBU 4-22F Well's loss of mechanical integrity and to repair it are violations of the EPA permit UT21123-07612. The duration of this violation extends from December 22, 2021, the date the RBU 4-22F well failed a mechanical integrity test, to March 29, 2022, the date the EPA issued the permit transfer from Respondent to UGC.

COMPLIANCE AND CIVIL PENALTY ASSESSMENT

41. The Act, as amended, authorizes the Administrator of the EPA to issue orders to require compliance with the Act and assess civil penalties for the violations alleged in this Complaint. 42 U.S.C. §§ 300h-2(a)(2) and (c)(2). The Act authorizes civil administrative penalties of not more than \$5,000 for each day of violation, up to a maximum civil administrative penalty of \$125,000. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, requires the EPA to adjust statutory penalty amounts to account for inflation. The EPA's Civil Monetary Penalty Inflation Adjustment Rule adjusts the above-listed civil administrative penalties to \$13,508 for each day of violation, up to a maximum civil administrative penalty of \$337,725. 88 Fed. Reg. 989 (Jan 6, 2023).
42. The Act requires the EPA to consider the following factors when assessing a civil penalty: the seriousness of the violation, the economic benefit resulting from the violation, any history of such violations, any good-faith efforts to comply, the economic impact on Respondent, and other matters as justice may require. 42 U.S.C. §300h-2(c)(4)(B).
43. Complainant has considered the statutory penalty factors with respect to the violation alleged in this Complaint. Pursuant to the specific facts of this case, the EPA proposes that Respondent pay a total civil penalty of **\$39,255** for the violation alleged in this Complaint.

PAYMENT OF PENALTY

44. Respondent's payment of the penalty shall be made using any method provided on the following website, <https://www.epa.gov/financial/makepayment>. Further, Respondent shall:
 - (a) identify each payment with this Complaint's Docket Number; and
 - (b) within 24 hours of payment, mail "proof of payment" (as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made in the amount due, and identified with this Complaint's Docket Number) to:

Nathan Wiser, SDWA Enforcement Section
U.S. EPA Region 8 (8ENF-W-SD)
1595 Wynkoop Street
Denver, CO 80202-1129
Email: wiser.nathan@epa.gov

and

Shea Love, Regional Hearing Clerk
U.S. EPA Region 8 (8ORC-IO)
1595 Wynkoop Street
Denver, CO 80202-1129
Email: love.shea@epa.gov

45. The provisions of this Complaint shall apply to and be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns.
46. As part of this proceeding, the EPA shall provide the public with notice of this Complaint to allow a reasonable opportunity for citizens to comment on the matter, as well as the opportunity for such citizens to present evidence in the event a hearing is held. 42 U.S.C. § 300h-2(c)(3).
47. The Presiding Officer is not bound by the penalty proposed by the EPA, and may assess a penalty above the proposed amount, up to \$337,725, as authorized in the Act, as amended.
48. This Complaint does not constitute a waiver, suspension, or modification of the requirements of any applicable provision of the Act or the UIC regulations implementing the Act, which remain in full force and effect. Issuance of this Complaint is not an election by the EPA to forego any civil or any criminal action otherwise authorized under the Act.

By:

X

Suzanne J. Bohan, Director

Enforcement and Compliance Assurance Division
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, Colorado 80202