

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
Dallas, Texas 75270

FILED

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REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of

Petromerica Operating, LLC

Respondent.

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Docket No. SDWA 06-2021-1140

PROPOSED ADMINISTRATIVE ORDER

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. Petromerica Operating, 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 Northeast Quarter of Section 13, Township 23 North, Range

10 East, Osage County, Oklahoma, designated as Well No. 14-A and EPA Inventory Number OS5427000 (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 February 26, 1990, EPA Underground Injection Control (UIC) Final Permit 06S1262P5427 (the permit) was issued to the Respondent authorizing injection through Well No. 14-A, located in the Northwest Quarter of Section 13, Township 23 North, Range 10 East, Osage

Mineral Reserve, Osage County, Oklahoma. The permit assigned Well No. 14-A, EPA OS5427000. On February 26, 1990 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.

10. On August 1, 2017, the well failed a mechanical integrity test. To date, the well has not successfully demonstrated mechanical integrity.

11. On April 17, 2018, EPA mailed a letter to Respondent notifying Respondent that EPA determined that the well did not have mechanical integrity. The letter informed Respondent of the potential violations of the Act and the UIC program and that EPA can pursue enforcement actions in response to these violations. The letter also provided the Respondent an opportunity to confer with EPA regarding this matter.

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 underground source of drinking water (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 receipt of a Final Order; or
- iii. Convert the well to production use and send copies of Osage 139 forms to the Osage ENR Office within thirty (30) days of receipt 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 120 days of receipt 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).

TAX IDENTIFICATION

18. 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 SDWA Section 1423(c) Compliance Order is restitution, remediation, or required to come into compliance with the law.

GENERAL PROVISIONS

19. 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.

20. Issuance of this 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 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).

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.

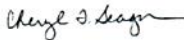
Respondent may wish to appear at any informal conference or formal hearing personally, by counsel or other representative, or both. To request an informal conference on the matters described in this Order, please contact David Aguinaga, of my staff, at (214) 665-6439.

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 23, 2021

Date



Digitally signed by CHERYL SEAGER
DN: cn=U.S. Govt, o=U.S. Government,
ou=Environmental Protection Agency,
en=CHERYL SEAGER,
c=US, email=19205300.100.1+68001003651793
Date: 2021.07.23 14:01:02 -0500

Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division

CERTIFICATE OF SERVICE

I certify that that a true and correct copy of the foregoing Administrative Compliance Order was delivered to the Regional Hearing Clerk, U.S. EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270-2102, and that a true and correct copy was sent this day in the following manner to the addressees:

Copy via Email to Complainant:
chang-vaughan.ellen@epa.gov

Copy via Email to Respondent:
grammarkey@aol.com

Original eMailed: Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270
vaughn.loreana@epa.gov

Copy by certified mail
return receipt requested: Mr. Scott DuCharme
Performance Energy Resources, LLC
97 State Highway 123
P.O. Box 628
Barnsdall, OK 74002
sducharme@ppcooil.com

Copy: Ms. Robin Phillips, Superintendent
Bureau of Indian Affairs, Osage Agency
P.O. Box 1539
Pawhuska, OK 74056
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

Dated: July 27, 2021

Signed DAMON
MCELROY

Digitally signed by DAMON MCELROY
DN: c=US, o=U.S. Government,
ou=Environmental Protection Agency,
cn=DAMON MCELROY,
0.9.2342.19200300.100.1.1+68001003655653
Date: 2021.07.26 14:19:23 -0500