



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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Denver, CO 80202-1129
Phone 800-227-8917
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DEC 27 2016

Ref: 8ENF-L

CERTIFIED MAIL 7102 2210 0000 5367 9348
RETURN RECEIPT REQUESTED

Mr. Kerry W. Smith, President
Monument Global Resources, Inc.
12160 Abrams Rd, Suite 610
Dallas, Texas 75243-4533

Re: Proposed Administrative Order for Compliance; In the Matter of Monument Global Resources, Inc. and Kerry W. Smith, Respondents (EPA Docket No. **SDWA-08-2017-0007**)

Dear Mr. Smith:

Based on information provided by you on behalf of Monument Global Resources, Inc. (Monument Global) to the United States Environmental Protection Agency, and on inspections conducted by the EPA, we have concluded that Monument Global and Kerry W. Smith (Respondents) are in violation of the Safe Drinking Water Act (Act), 42 U.S.C. §§ 300f et seq., and the Underground Injection Control (UIC) regulations promulgated thereunder, as a result of Respondents' failure to maintain mechanical integrity for the Cache 15 Well (EPA Well No. CO20000-02357, API No. 05-083-05346) located in the Cache Oil Field, Montezuma County, Colorado, in the southeast ¼ of the northeast ¼ of Section 2, Township 34 North, Range 20 West, within the exterior boundary of the Ute Mountain Ute Reservation. Respondents have also failed to plug and abandon the Cache 15 Well after the EPA approved Respondents' plugging and abandonment plan, and have failed to establish and maintain required financial responsibility for the well.

As a result of the violations outlined above, the EPA is issuing the enclosed Proposed Administrative Order for Compliance (Order) to Respondents. The Order describes the actions that Respondents must take in order to achieve compliance with the Act and its implementing UIC regulations. Specifically, within thirty (30) days of the effective date of the enclosed Order, Respondents must plug and abandon the Cache 15 Well in accordance with the previously approved plugging and abandonment plan for the well, or as otherwise authorized in writing by the EPA.

As paragraph 51 of the enclosed Order indicates, pursuant to section 1423(c)(3)(A) and (B) of the Act, 42 U.S.C. § 300h-2(c)(3)(A) and (B), the EPA is providing public notice and an opportunity to comment on the Order prior to issuing the Final Order, and notifies Respondents of their opportunity to request a hearing on the Order. Any request for a hearing by Respondents must be made within thirty (30) calendar days of the date the Order is received by Respondents, and must be directed to the person and address specified in paragraph 47 of the Order.

Sections 1423(b) and (c) of the Act, 42 U.S.C. § 300h-2(b) and (c), also authorize the EPA to bring a judicial or administrative action to recover civil penalties for violations specified in those statutory provisions. The issuance of this Order does not preclude the EPA from subsequently initiating a judicial or administrative action against Respondents to recover penalties for the violations that are the subject of

the Order or for any other violations of the Act or the UIC regulations subject to statutory civil penalties. Violations of the Order after its effective date or the date of final judgment in the event of an appeal under section 1423(c)(6) of the Act, 42 U.S.C. § 300h-2(c)(6), may also subject Respondents, pursuant to Section 1423(b) of the Act, 42 U.S.C. § 300h-2(b), to (1) civil penalties of no more than \$53,907 for each day of violation, and (2) if such violation is willful, in addition to or in lieu of a civil penalty, to imprisonment for not more than 3 years, or a fine in accordance with Title 18, or both.

A Small Business Regulatory Enforcement and Fairness Act (SBREFA) information sheet is enclosed. The SBREFA sheet notifies small entities of their right to comment on regulatory enforcement activities and provides information on compliance assistance resources and tools available to small businesses. SBREFA does not eliminate Respondents' responsibility to comply with the Act or to respond to this Order.

If you have any questions relating to technical issues raised in this letter or the enclosed Order, please contact Gary Wang at (303) 312-6953, or at wang.gary@epa.gov. Please direct questions of a legal nature to Sheldon Muller, Senior Attorney, at (303) 312-6916, or at muller.sheldon@epa.gov.

Sincerely,



Suzanne J. Bohan
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

Enclosures

cc: The Honorable Manuel Heart, Chairman
Ute Mountain Ute Tribe

Scott Clow, Environmental Director
Ute Mountain Ute Environmental Programs Department
(w/ enclosures)

operator injects into the existing well within one year after the date at which a UIC program authorized under the Act becomes effective for the first time or inventories the well pursuant to the requirements of § 144.26. An owner or operator of a well which is authorized by rule pursuant to this section shall rework, operate, maintain, convert, plug, abandon or inject into the well in compliance with applicable regulations.”

6. “Owner or operator” is defined in 40 C.F.R. § 144.3 to mean “the owner or operator of any ‘facility or activity’ subject to regulation under the UIC program”

7. “Facility or activity” is defined in 40 C.F.R. § 144.3, in pertinent part, to mean “any UIC ‘injection well,’ . . . that is subject to regulation under the UIC program.”

8. “UIC” is defined in 40 C.F.R. § 144.3 to mean “the Underground Injection Control program under Part C of the Safe Drinking Water Act, including an ‘approved State program.’”

9. “Injection well” is defined in 40 C.F.R. § 144.3 to mean “a ‘well’ into which ‘fluids’ are being injected.”

10. “Fluid” is defined in 40 C.F.R. § 144.3 to mean “any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.”

11. “Well” is defined in 40 C.F.R. § 144.3, in pertinent part, to mean “[a] bored, drilled, or driven shaft whose depth is greater than the largest surface dimension”

12. 40 C.F.R. § 144.21(e) specifies that “[t]he owner or operator of a well authorized under this section shall comply with the applicable requirements of § 144.28 and part 147 of this chapter no later than one year after authorization.”

13. 40 C.F.R. § 144.6(b) describes a Class II UIC well as a well “which injects fluids: (1) Which are brought to the surface in connection with natural gas storage operations, or conventional oil or natural gas production”

14. The introductory language to 40 C.F.R. § 144.28 states that “[t]he following requirements apply to the owner or operator of a Class I, II or III well authorized by rule under this subpart, as provided by §§ 144.21(e) and 144.22(d).” 40 C.F.R. § 144.28(a) specifies that “[t]he owner or operator shall comply with all applicable requirements of this subpart and subpart B of this part. Any noncompliance with these requirements constitutes a violation of the Safe Drinking Water Act and is grounds for enforcement action”

15. 40 C.F.R. § 144.28(d)(1) requires that the owner and operator of a Class II well “demonstrate and maintain financial responsibility and resources to close, plug and abandon the underground injection operation in a manner prescribed by the Director until: (i) The well has been plugged and abandoned in accordance with an approved plugging and abandonment plan pursuant to §§ 144.28(c) and 146.10 and submission of a plugging and abandonment report has been made pursuant to § 144.28(k)” 40 C.F.R. § 144.28(d)(2) states that “[f]or EPA-administered programs, the owner or operator shall submit such evidence no later than one year after the effective date of the UIC program in the State.”

16. 40 C.F.R. § 144.28(c) requires the owner or operator of a Class II UIC well to “prepare, maintain, and comply with a plan for plugging and abandonment of the well or project that meets the requirements of § 146.10 of this chapter and is acceptable to the Director” and, pursuant to paragraph (2)(i) of that subsection, “submit the plan, on a form provided by the Regional Administrator, no later than one year after the effective date of the UIC program in the state.”

17. 40 C.F.R. § 144.28(f)(2) specifies that “[t]he owner or operator of a Class I, II or III injection well authorized by rule shall establish and maintain mechanical integrity as defined in § 146.8 of this chapter until the well is properly plugged in accordance with an approved plugging and abandonment plan pursuant to §§ 144.28(c) and 146.10, and a plugging and

abandonment report pursuant to § 144.28(k) is submitted, or until the well is converted in compliance with § 144.28(j).”

18. 40 C.F.R. § 144.28(f)(3) provides that “[w]hen the Director determines that a Class I (non-hazardous), II or III injection well lacks mechanical integrity pursuant to § 146.8 of this chapter, the Director shall give written notice of his determination to the owner or operator. Unless the Director requires immediate cessation, the owner or operator shall cease injection into the well within 48 hours of receipt of the Director's determination. The Director may allow plugging of the well in accordance with the requirements of § 146.10 of this chapter, or require the owner or operator to perform such additional construction, operation, monitoring, reporting and corrective action as is necessary to prevent the movement of fluid into or between USDWs caused by the lack of mechanical integrity. The owner or operator may resume injection upon receipt of written notification from the Director that the owner or operator has demonstrated mechanical integrity pursuant to § 146.8 of this chapter.”

19. Section 1423(c)(2) of the Act, 42 U.S.C. § 300h-2(c)(2), authorizes the Administrator of the EPA, in any case in which the Administrator is authorized to bring a civil action under section 1423 with respect to any regulation or other requirement of Part C of the Act (pertaining to Protection of Underground Sources of Drinking Water) relating to the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production, to issue an order either assessing a civil penalty, or requiring compliance with such regulation or other requirement, or both.

20. Section 1423(b) of the Act, 42 U.S.C. § 300h-2(b), authorizes civil actions against any person who violates any requirement of an applicable underground injection control program.

21. “Person” is defined in section 1401(12) of the Act, 42 U.S.C. § 300f(12), to mean

“an individual, corporation, company, association, partnership, State, municipality, or Federal agency (and includes officers, employees, and agents of any corporation, company, association, State, municipality, or Federal agency).”

III. FINDINGS OF FACT AND VIOLATION

22. Pursuant to 40 C.F.R. § 147.3000, the UIC program for Class II UIC wells on the lands of the Ute Mountain Ute Tribe is administered by the EPA, effective November 25, 1988. The program consists of program requirements of 40 C.F.R. Parts 124, 144, 146, 148, and additional requirements set forth in 40 C.F.R. Part 147, Subpart HHH (40 C.F.R. §§ 147.3000 – 147.3016).

23. At all relevant times, Respondent Monument Global Resources, Inc. (“Monument Global”) was a corporation organized under the laws of Delaware, and authorized to do business in Colorado. Monument Global’s principal office, as last reported to the Colorado Secretary of State’s Office, is located at 12160 N. Abrams Rd., Suite 610, Dallas, Texas 75243.

24. Monument Global’s registered agent, as last reported to the Colorado Secretary of State’s Office, is Northwest Registered Agent, LLC, 1942 Broadway Street, Suite 314C, Boulder, Colorado 80302.

25. At all relevant times, Respondent Kerry Smith was a shareholder and officer of Monument Global.

26. Monument Global and Kerry Smith are and were at all times relevant to this action “persons” within the meaning of section 1401(12) of the Act, 42 U.S.C. § 300f(12), and “owners or operators,” within the meaning of 40 C.F.R. § 144.3, of the Cache 15 Well (EPA Well No. CO20000-02357, API No. 05-083-05346) located in the Cache Oil Field, Montezuma County, Colorado, in the southeast ¼ of the northeast ¼ of Section 2, Township 34 North, Range 20 West, within the exterior boundary of the Ute Mountain Ute Reservation.

27. The Cache 15 Well began operation as an injection well on May 19, 1974 and, pursuant to 40 C.F.R. § 144.26, was authorized by rule as an existing injection well when an inventory record of the well was received by EPA on November 14, 1989.

28. The Cache 15 Well injects produced water generated from oil and gas production wells also owned and operated by Respondent, and is a Class II “UIC” “well” and “injection well,” and, therefore, a “facility or activity,” all within the meaning of 40 C.F.R. § 144.3.

29. Between September 18, 2013, and August 11, 2015, inspections conducted by the EPA, and information provided by Respondents, revealed, at a minimum, periodic losses of mechanical integrity in the Cache 15 Well.

30. On September 25, 2015, the EPA received annulus monitoring chart records from Respondents for the Cache 15 Well. The chart records measured annulus pressure history from August 11, 2015, to September 21, 2015. During that time, the chart records showed sharp, rapid spikes in annulus pressures, of up to 580 pounds per square inch (“psi”), followed by slow gradual pressure decreases. Additionally, the pressure in the annulus never decreased below 300 psi. The annulus pressure should be maintained at zero psi. The observation of the high pressures, as well as the observed pressure spikes in the annulus, is indicative of a loss of mechanical integrity.

31. To address the loss of mechanical integrity demonstrated by the annulus monitoring chart records for the Cache 15 Well referenced in paragraph 30 of this Order, the EPA sent a letter to Respondents on October 27, 2015, informing them that pursuant to 40 C.F.R. § 144.28(f)(2) they must establish and maintain mechanical integrity on the Cache 15 Well, and further advising Respondents that a loss of mechanical integrity is a violation of this requirement. Respondents received the letter on November 2, 2015.

32. The October 27, 2015, letter sent to Respondents directed them, pursuant to 40

C.F.R. § 144.28(f)(3), to immediately cease injection into the Cache 15 Well. The letter further directed that before injection into the well may resume, Respondents must demonstrate that the well has mechanical integrity and must have also received written authorization from the EPA. The letter further stated that “[d]ue to the history of mechanical integrity concern associated with this well, the EPA is requiring that both part I and II mechanical integrity be demonstrated for this well.” EPA guidance documents describing how to demonstrate part I and part II mechanical integrity were enclosed with the letter. Respondents received the letter on November 2, 2015.

33. The October 27, 2015, letter sent to Respondents also informed them that if they “choose to plug and abandon [the Cache 15 Well], a plugging and abandonment plan must be submitted to the EPA for approval prior to the plugging operation.” The letter also advised that “[f]ailure to comply with UIC regulations found at 40 C.F.R. Parts 144 and 146 constitutes one or more violations of the Safe Drinking Water Act, 42 U.S.C. § 300h. Such non-compliance may subject you to formal enforcement by the EPA”

34. On or about February 1, 2016, a representative of the EPA spoke with Tom Fox, an agent for Respondents, regarding the Cache 15 Well. Mr. Fox advised that the well had been shut in, but that none of the testing required by the October 27, 2015, EPA letter, had been performed on the well.

35. On March 1, 2016, Respondents submitted a plugging and abandonment plan to the EPA. After Respondents clarified some issues identified by the EPA, the EPA sent a letter to Respondents on March 21, 2016, approving the plan, and directing Respondents to complete and submit a plugging record (required by 40 C.F.R. § 144.28(k)) to the EPA within sixty days of plugging the well. Respondents received the letter on March 29, 2016. The letter was also sent to Respondents via email on March 22, 2016.

36. On July 13, 2016, the EPA advised Respondents via email that the EPA planned

to inspect the Cache 15 Well during the afternoon of July 19, 2016. The goal of the inspection was to determine whether the Cache 15 Well had been plugged and abandoned, since Respondents had neither informed the EPA that the well had been plugged and abandoned, nor submitted the plugging record required by 40 C.F.R. § 144.28(k) and the EPA's March 1, 2016, letter.

37. On July 19, 2016, the EPA inspected the Cache 15 Well. During the inspection, an EPA representative measured the annulus pressure on the Cache 15 Well and observed 262 psi pressure in the annulus. The high annulus pressure reaffirmed the ongoing loss of mechanical integrity for the Cache 15 Well.

38. Respondents have failed to maintain mechanical integrity for the Cache 15 Well, and have failed to plug and abandon that well.

39. Respondents have not submitted evidence to the EPA demonstrating that they have maintained, as required by 40 C.F.R. § 144.28(d), financial responsibility and resources to close, plug and abandon the Cache 15 Well.

40. The Cache 15 Well is a well authorized by rule and subject to the jurisdiction of the EPA.

41. Respondents have failed to comply with the requirement in 40 C.F.R. § 144.28(d), that they demonstrate and maintain financial responsibility and resources to close, plug and abandon the Cache 15 Well.

42. Respondents have failed to comply with the requirement in 40 C.F.R. § 144.28(f)(2) that they establish and maintain mechanical integrity, as defined in 40 C.F.R. § 146.8, for the Cache 15 Well until the well is properly plugged in accordance with an approved plugging and abandonment plan pursuant to 40 C.F.R. §§ 144.28(c) and 146.10, and a plugging and abandonment report pursuant to 40 C.F.R. § 144.28(k) is submitted, or until the well is

converted in compliance with 40 C.F.R. § 144.28(j).

IV. ORDER FOR COMPLIANCE

43. Based upon the foregoing FINDINGS OF FACT AND VIOLATION, and pursuant to the authority vested in the Administrator of the EPA pursuant to section 1423(c)(2) of the Act, 42 U.S.C. § 300h-2(c)(2), as properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8, it is hereby ORDERED:

44. Upon the effective date of this Order, Respondents shall continue to cease injection of fluids into the Cache 15 Well.

45. Within thirty (30) calendar days of the effective date of this Order, Respondents shall complete the plugging and abandonment of the Cache 15 Well. The plugging and abandonment shall be conducted in accordance with the plugging and abandonment plan approved by the EPA in the March 21, 2016, letter sent by the EPA to Respondents. If Respondents find it necessary to deviate from the plugging and abandonment plan approved by the EPA in the March 21, 2016, letter, they must obtain the prior written approval of the EPA. Seeking authorization for such deviation shall not extend the deadline set forth in this paragraph for plugging and abandoning the Cache 15 Well.

46. Within fourteen (14) calendar days of completing the plugging and abandonment of the Cache 15 Well, Respondents shall complete and submit the plugging record required by 40 C.F.R. § 144.28(k) to the EPA.

47. All information required to be submitted to the EPA pursuant to this Order shall be sent via email, and via U.S. mail or other carriers (e.g., FedEx, UPS, etc.), to:

Gary Wang
Mail Code: 8ENF-W-SDW
Underground Injection Control Enforcement

U.S. Environmental Protection Agency, Region 8
1595 Wynkoop St.
Denver, CO 80202-1129
Ph: 303-312-6469
Fax: 303-312-6953
Email: wang.gary@epa.gov

V. GENERAL PROVISIONS

48. This Order shall not relieve Respondents of their obligation to comply with all applicable provisions of federal, state or local law and ordinance, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. This Order does not constitute a waiver, suspension or modification of the requirements of 40 C.F.R. Parts 124, 144, 146, 147, and 148, which remain in full force and effect.

49. Violations of the Order after its effective date or the date of final judgment in the event of an appeal under section 1423(c)(6) of the Act, 42 U.S.C. § 300h-2(c)(6), may subject the Respondents to a civil action in a United States district court with (1) penalties up to \$53,907 per day of violation as authorized in section 1423(b) of the Act, 42 U.S.C. § 300h-2(b), and as modified by EPA's 2016 Civil Monetary Penalty Inflation Adjustment Rule, 81 Fed. Reg. 43091 (July 1, 2016), codified at 40 C.F.R. § 19.4; and (2) if such violation is willful, in addition to or in lieu of a civil penalty, to imprisonment for not more than 3 years, or a fine in accordance with Title 18, or both.

50. Issuance of this Order is not an election by the EPA to forgo any civil or judicial criminal action, or other administrative action, against Respondents for the violations set forth in this Order, or for any other violations of the Act, or any other laws administered by the EPA, pertaining to this and other facilities or activities owned and/or operated by Respondents, including those related to Respondents' compliance with section 311 of the Clean Water Act ("CWA") and the regulations promulgated pursuant to section 311(j) of the CWA. Specifically, the EPA may subsequently initiate an administrative or judicial action against Respondents for civil penalties and/or other relief for Respondents' failure to comply with Part C of the Act and its implementing regulations, and section 311 of the CWA and the

regulations promulgated pursuant to section 311(j) of the CWA at facilities and activities owned and/or operated by Respondents located in or near the Cache Oil Field or elsewhere.

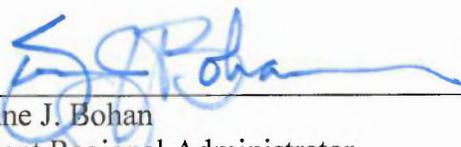
VI. OPPORTUNITY FOR HEARING; PUBLIC NOTICE

51. Pursuant to section 1423(c)(3)(A) and (B) of the Act, 42 U.S.C. § 300h-2(c)(3)(A) and (B), the EPA is providing public notice and an opportunity to comment on the Order prior to issuing the Final Order, and notifies Respondents of their opportunity to request a hearing on the Order. Any request for a hearing by Respondents shall be made within thirty (30) calendar days of the date this Order is received by Respondents, and must be directed to the person and address specified in paragraph 47 of this Order.

VII. EFFECTIVE DATE

52. This Order will be issued after a thirty (30) day comment period, execution by an authorized representative of the EPA, and filing with the regional hearing clerk. It will become final and effective upon issuance, or on the date of final judgment in the event of an appeal under section 1423(c)(6) of the Act, 42 U.S.C. § 300h-2(c)(6).

Dated this 27th day of December, 2016.



Suzanne J. Bohan
Assistant Regional Administrator
Office of Enforcement, Compliance,
and Environmental Justice
United States Environmental Protection Agency, Region 8