

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY FILED
REGION 6 2012 MAY 14 PM 2: 21

IN THE MATTER OF

Osage Energy Resources, LLC
Pawhuska, Oklahoma

Respondent

§ DOCKET NO. SDWA-06-2012-115
§
§
§ Proceeding to Assess a
§ Civil Penalty under Section 1423(c)
§ of the Safe Drinking Water Act
§
§ ADMINISTRATIVE COMPLAINT

I. STATUTORY AUTHORITY

This Complaint is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) pursuant to Section 1423(c) of the Safe Drinking Water Act (“Act”), 42 U.S.C. § 300h-2(c). The Administrator of the EPA delegated the authority to issue this Complaint to the Regional Administrator of EPA Region 6, who further delegated the authority to the Director of the Compliance Assurance and Enforcement Division of EPA Region 6 (“Complainant”). This Complaint is issued in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits,” 40 C.F.R. §§ 22.1 through 22.52, including rules related to administrative proceedings not governed by Section 554 of the Administrative Procedures Act, 40 C.F.R. §§ 22.50 through 22.52.

The EPA has primary enforcement responsibility for underground injection within the meaning of Section 1422(e) of the Act, 42 U.S.C. § 300h-1(e), to ensure that owners or operators of Class II injection wells within Osage County, Oklahoma comply with the requirements of the Act.

Based on the following Findings of Fact and Conclusions of Law (“Findings”), Complainant finds that Osage Energy Resources, LLC (“Respondent”) violated the Act and the regulations promulgated under the Act and should be ordered to pay a civil penalty.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is a limited liability company doing business in the State of Oklahoma, and as such, Respondent is a “person” as that term is defined at Section 1401(12) of the Act, 42 U.S.C. § 300f(12).

2. At all relevant times, Respondent owned or operated “injection wells” which are “new Class II wells” as those terms are defined at 40 C.F.R. § 147.2902. The injection wells are located in the Quapaw Field, Osage County, Oklahoma. Respondent’s Class II wells included in this Administrative Order (collectively “wells”) are described below:

Well No.	Inventory No.	Location				Hereinafter Referred to as
		Quarter	Section	Township	Range	
7P	OS5300	Northwest	23	25 North	11 East	“Well No. 7P”
2-P	OS5469	Southwest	14	25 North	11 East	“Well No. 2-P”

3. Because Respondent owned or operated injection wells, Respondent is subject to underground injection control (“UIC”) program requirements 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. § 147.2916 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.

6. Regulations at 40 C.F.R. §§ 147.2916 and 147.2925(a) and condition II.B of each issued permit require the permittee to comply with all permit conditions, except as authorized by

an emergency permit (described at 40 C.F.R. § 147.2906). Respondent did not have an emergency permit for violations described in this Complaint.

Well No. 7P

7. On June 27, 1988, the EPA issued UIC permit number 06S1262P5300 (“Permit OS5300”) to convert Well No. 7P to an injection well. Permit OS5300 was transferred to Respondent on October 6, 2008. Condition I.B.1 of permit OS5300 requires the permittee to demonstrate mechanical integrity of Well No. 7P prior to the start of injection and every five years thereafter.

8. Regulations at 40 C.F.R. § 147.2920(b) and condition II.E.1 of Permit OS5300 require that Well No. 7P have mechanical integrity. A well has mechanical integrity if there are no significant leaks in the casing, tubing, or packer and there is no significant fluid movement into an “Underground Source of Drinking Water” (“USDW”) through vertical channels adjacent to the well bore. The term USDW is defined at 40 C.F.R. § 147.2902.

9. On March 2, 2012, an Osage Nation representative inspected Well No. 7P and observed that Well No. 7P was being used for underground injection of fluids.

10. The most recent mechanical integrity demonstration on Well No. 7P was on September 12, 1988. On March 4, 2012, Respondent told a representative of the Osage Nation that Well No. 7P did not have mechanical integrity and a mechanical integrity test had not been conducted.

11. Therefore, Respondent violated the regulations at 40 C.F.R. §§ 147.2916, 147.2920(b) and 147.2925(a), and condition II.E.1 of Permit OS5300 by operating Well No. 7P without mechanical integrity of the casing, tubing, and packer. Respondent violated the regulations at 40 C.F.R. §§ 147.2916, 147.2920(b) and 147.2925(a), and condition I.B.1 of the

Permit OS5300 by operating Well No. 7P without demonstrating mechanical integrity at least every five years.

Well No. 2-P

12. On November 16, 1990, the EPA issued UIC permit number 06S1261P5469 (“Permit OS5469”) to convert Well No. 2-P to an injection well. Permit OS5469 requires separate authorization to inject for Well No. 2-P in order for Well No. 2-P to be used for underground injection of fluids.

13. On November 16, 1990, authorization to inject was issued for Well No. 2-P. That authorization to inject was effective until terminated. Authorization to inject for Well No. 2-P was terminated on January 20, 2012.

14. On March 14, 2012, a representative of the Osage Nation observed that Well No. 2-P was being used for underground injection of fluids.

15. Therefore, Respondent violated regulations at 40 C.F.R. §§ 147.2916 and 147.2925(a), and Permit OS5469 by operating Well No. 2-P for underground injection of fluids after termination of authorization to inject for Well No. 2-P.

III. PROPOSED PENALTY

16. 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 proposes to assess against Respondent a penalty of six thousand dollars (\$6,000.00).

17. The proposed penalty amount has been determined based on the statutory factors specified in Section 1423(c)(4)(B) of the Act, 42 U.S.C. § 300h-2(c)(4)(B), which include such factors as the seriousness of the violation; the economic benefit resulting from the violation; any

history of such violations; any good-faith efforts to comply with the applicable requirements; the economic impact of the penalty on the violator; and such other matters as justice may require.

IV. FAILURE TO FILE AN ANSWER

18. If Respondent wishes to deny or explain any material allegation listed in the above Findings or to contest the amount of the penalty proposed, Respondent must file an Answer to this Complaint within thirty (30) days after service of this Complaint whether or not Respondent requests a hearing as discussed below.

19. The requirements for such an Answer are set forth at 40 C.F.R. § 22.15 (copy enclosed). Failure to file an Answer to this Complaint within thirty (30) days of service of the Complaint shall constitute an admission of all facts alleged in the Complaint and a waiver of the right to a hearing. Failure to deny or contest any individual material allegation contained in the Complaint will constitute an admission as to that finding or conclusion under 40 C.F.R. § 22.15(d).

20. If Respondent does not file an Answer to this Complaint within thirty (30) days after service of this Complaint, a Default Order may be issued against Respondent pursuant to 40 C.F.R. § 22.17. A Default Order, if issued, would constitute a finding of liability, and could make the full amount of the penalty proposed in this Complaint due and payable by Respondent without further proceedings thirty (30) days after a final Default Order is issued.

21. Respondent must send its Answer to this Complaint, including any request for hearing, and all other pleadings to:

Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

22. The Answer must be signed by Respondent, Respondent's counsel, or other representative on behalf of Respondent and must contain all information required by 40 C.F.R. §§ 22.05 and 22.15, including the name, address, and telephone number of Respondent and Respondent's counsel. All other pleadings must be similarly signed and filed. Complainant has specified that the administrative procedures specified in 40 C.F.R. Part 22, Subpart I, shall apply to this matter, and the administrative proceedings shall not be governed by Section 554 of the Administrative Practice Act.

V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

23. Respondent may request a hearing to contest the issuance of this Complaint or to contest the appropriateness of the amount of the penalty, pursuant to Section 1423(c)(3)(A) of the Act, 42 U.S.C. § 300h-2(c)(3)(A). The procedures for hearings are set out at 40 C.F.R. Part 22 (copy enclosed), including 40 C.F.R. §§ 22.50 through 22.52.

24. Any request for hearing should be included in an Answer to this Complaint; however, as discussed above, Respondent must file an Answer meeting the requirements of 40 C.F.R. § 22.15 in order to preserve the right to a hearing or to pursue other relief.

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

VI. SETTLEMENT

26. EPA encourages all parties against whom civil penalties are 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 or

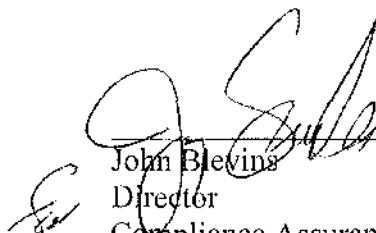
the amount of the proposed penalty. Respondent may wish to appear at any informal conference or formal hearing personally, by counsel or other representative, or both. To request an informal conference on the matters described in this Complaint, please contact Mr. Ronald Van Wyk, of my staff, at 214-665-6459.

27. If this action is settled without a formal hearing and issuance of an opinion by the Presiding Officer pursuant to 40 C.F.R. § 22.27, this action will be concluded by issuance of a Consent Agreement and Final Order ("CAFO") pursuant to 40 C.F.R. § 22.18(b). The issuance of a CAFO would waive the Respondent's right to a hearing on any matter stipulated to therein or alleged in the Complaint. Any person who commented regarding this Complaint would be notified and given an additional thirty (30) days to petition EPA to set aside any such CAFO and to hold a hearing on the issues raised in the Complaint. Such a petition would be granted and a hearing held only if the evidence presented by the petitioner's comment is material and was not considered by EPA in the issuance of the CAFO.

28. Neither assessment nor payment of a penalty in resolution of this action will affect Respondent's continuing obligation to comply with all requirements of the Act, the applicable regulations and permits, and any separate Compliance Order issued under Section 1423(c) of the Act, 42 U.S.C. § 300h-2(c), including one relating to the violations alleged herein.

MAY 11 2012

Date



John Blevins
Director
Compliance Assurance and
Enforcement Division

