



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

MAY 04 2009

Ref: 8ENF-UFO

CERTIFIED MAIL 7005-0390-0000-4848-5948
RETURN RECEIPT REQUESTED

CT Corporation System, Registered Agent
El Paso Production Oil and Gas Company
50 West Broadway, 8th Floor
Salt Lake City, Utah 84101-2020

Re: UNDERGROUND INJECTION
CONTROL PROGRAM (UIC)
Penalty Complaint and Notice of
Opportunity for Hearing

Dear Registered Agent:

The enclosed document is a Penalty Complaint and Notice of Opportunity for Hearing ("complaint") for violations of the Safe Drinking Water Act (SDWA). Please carefully read the complaint soon, since it describes El Paso Production Oil and Gas Company's (El Paso's) rights and responsibilities in this matter as well as EPA's authority, the factual basis of the violations, and the background for the proposed penalty. EPA is enclosing a copy of the Rules of Practice that govern these proceedings, a required Public Notice associated with this complaint and an information sheet about the Small Business Regulatory Enforcement Fairness Act. The Small Business Regulatory Enforcement and Fairness Act (SBREFA) may apply to El Paso. Enclosed is a small business information sheet, outlining compliance assistance resources available to small businesses and small governments, in case these are relevant to you. SBREFA does not eliminate El Paso's responsibility to comply with the Act or this Complaint.

El Paso is required to take action within thirty (30) calendar days of your receipt of this complaint to avoid the possibility of having a default judgment entered against El Paso that could impose the penalty amount proposed in the complaint.

Whether or not El Paso requests a hearing, we encourage an informal conference with EPA concerning the alleged violations in an effort to negotiate a settlement. El Paso may wish to appear at an informal conference and/or be represented by legal counsel. To arrange for such a conference, El Paso should contact Jim Eppers, Enforcement Attorney, Legal Enforcement Program, at the number provided below. Request for such a conference does not extend the thirty (30) calendar day period during which a request for hearing must be submitted. Public

Notice of EPA's complaint and the opportunity to provide written comments on the complaint is being provided pursuant to section 1423 (c)(3)(B) of the SDWA, 42 U.S.C. § 300h-2(c)(3)(B). Should a hearing be held, any person who comments on the complaint has a right to participate in the hearing.

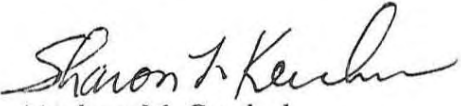
If El Paso has technical questions relating to this matter, the person most knowledgeable on my staff is Nathan Wiser, UIC Enforcement Team, Technical Enforcement Program, at 1-800-227-8917 ext. 6211 or (303) 312-6211. For all legal questions, the person most knowledgeable on my staff is Jim Eppers at 1-800-227-8917 ext. 6913 or (303) 312-6913. Mr. Wiser and Mr. Eppers can also be reached at the following addresses:

Nathan Wiser (Mail Code 8ENF-UFO)
Environmental Scientist
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, Colorado 80202, or

Jim Eppers (Mail Code 8ENF-L)
Enforcement Attorney
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, Colorado 80202.

We urge El Paso's prompt attention to this matter.

Sincerely,


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

Enclosures:

Complaint with Notice of Opportunity for Hearing
Public Notice
Small Business Regulatory Enforcement Fairness Act fact sheet
40 CFR Part 22 Rules of Practice

cc: (with all enclosures)

Curtis Cesspooch, Chairman
Uintah & Ouray Business Committee
P.O. Box 190
Fort Duchesne, Utah 84026

Ferron Secakuku, Natural Resources Director
Ute Indian Tribe
P.O. Box 190
Fort Duchesne, Utah 84026

Gil Hunt
Utah Division of Oil, Gas and Mining
P.O. Box 145801
Salt Lake City, Utah 84114

1 UNITED STATES
2 ENVIRONMENTAL PROTECTION AGENCY 2009 MAY -4 AM 10: 54
3 REGION 8
4 Docket No. SDWA-08-2009-0045
5

6 In the Matter of:)
7)
8 El Paso Production Oil)
9 and Gas Company,)
10) PENALTY COMPLAINT AND NOTICE
11 Respondent.) OF OPPORTUNITY FOR HEARING
12) (COMPLAINT)
13 Proceedings under Section 1423(c))
14 of the Safe Drinking Water Act)
15 42 U.S.C. 300h-2(c))
16

17 INTRODUCTION
18

- 19 1. This civil administrative enforcement action is authorized by Congress in section
20 1423(c) of the Public Health Service Act, also known as the Safe Drinking Water
21 Act (SDWA or the Act). 42 U.S.C. § 300h-2(c). The Environmental Protection
22 Agency (EPA) regulations authorized by the statute are set out in title 40 of the
23 Code of Federal Regulations (C.F.R.), parts 144-148, and violations of the statute,
24 permits or EPA regulations constitute violations of the Act. The rules for this
25 proceeding are the "Consolidated Rules of Practice Governing the Administrative
26 Assessment of Civil Penalties, Issuance of Compliance or Corrective Action
27 Orders and the Revocation, Termination or Suspension of Permits" (Rules of
28 Practice), 40 C.F.R. part 22, a copy of which is enclosed.
29
- 30 2. The undersigned EPA official has been properly delegated the authority to issue
31 this action.
32
- 33 3. EPA alleges that El Paso Production Oil and Gas Company (hereinafter referred
34 to as Respondent or "El Paso") has violated the regulations, and therefore the Act,
35 and proposes the assessment of a civil penalty, as more fully explained below.
36

37 NOTICE OF OPPORTUNITY FOR A HEARING
38

- 39 4. Respondent has the right to a public hearing before a presiding officer within the
40 Agency to (1) disagree with any fact alleged by EPA in the complaint, (2) state
41 the grounds for any legal defense, and/or (3) disagree with the appropriateness of
42 the proposed penalty.
43
- 44 5. To disagree with the complaint and assert its right to a hearing, Respondent must
45 file a written answer (and one copy) with the Region 8 Hearing Clerk at the
46 following address within 30 calendar days of receiving this complaint:

1
2
3 Region 8 Hearing Clerk
4 1595 Wynkoop Street (Mail code 8RC)
5 Denver, Colorado 80202

6 The answer must clearly admit, deny or explain the factual allegations of the
7 complaint, the grounds for any defense, the facts in dispute, and a specific request
8 for a public hearing. See 40 C.F.R. § 22.15(b) of the Rules of Practice for a
9 complete description of what must be in the answer. **FAILURE TO FILE AN
10 ANSWER AND REQUEST FOR HEARING WITHIN 30 CALENDAR
11 DAYS MAY WAIVE RESPONDENT'S RIGHT TO DISAGREE WITH
12 THE ALLEGATIONS OR PROPOSED PENALTY, AND RESULT IN A
13 DEFAULT JUDGMENT AND ASSESSMENT OF THE PENALTY
14 PROPOSED IN THE COMPLAINT, OR UP TO THE MAXIMUM
15 AUTHORIZED BY THE ACT.**

16
17 **QUICK RESOLUTION**
18

- 19 6. Respondent may resolve this proceeding at any time by paying the penalty
20 amount proposed in the complaint. Such action to make payment need not
21 contain any response to, or admission of, the allegations in the complaint. Such
22 action to make payment constitutes a waiver of Respondent's right to contest the
23 allegations and to appeal the final order. See 40 C.F.R. § 22.18 of the Rules of
24 Practice for a full explanation of the quick resolution process.

25
26 **SETTLEMENT NEGOTIATIONS**
27

- 28 7. EPA encourages discussing whether cases can be settled through informal
29 settlement conferences. If Respondent wants to pursue the possibility of settling
30 this matter, or has any other questions, contact the attorney listed at the end of this
31 complaint. **Please note that calling the attorney or requesting a settlement
32 conference does NOT delay the running of the 30 day period for filing an
33 answer and requesting a hearing referenced in paragraph 5.**

34
35 **GENERAL ALLEGATIONS**
36

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

- 39
40 8. Pursuant to section 1422 of the Act, 42 U.S.C. § 300h-1, and 40 C.F.R.
41 §147.2253, EPA administers the Underground Injection Control (UIC) program
42 for all Classes of injection wells within the Uintah & Ouray Indian Reservation,
43 including Class II wells. The effective date of the program is November 25,
44 1988. The program requirements are located at 40 C.F.R. parts 124, 144, 146,
45 147, and 148.
46

1 9. The specific wells subject to this complaint and their locations are:
2

Well Name	EPA Permit No.	Well Type	Field and County	Location (Uintah Base Line and Meridian)
Ute Tribal #26-1	UT20780-04280	Enhanced Oil Recovery	Leland Bench field, Uintah Co.	T4S, R1E, Section 26, SE/4, NE/4
Ute Tribal #1	UT20678-02555	Salt Water Disposal	Cedar Rim field, Duchesne Co.	T3S, R6W, Section 18, NW/4, NW/4

3
4 The Class II wells subject to this action include an enhanced oil recovery well and
5 a salt water disposal injection well. The purpose of the enhanced oil recovery
6 well is to increase the oil production from the southeast end of the Leland Bench
7 oil field. The purpose of the salt water disposal well is to dispose of produced
8 brine brought to the surface in connection with crude oil production. Both wells
9 inject into the subsurface as follows: the Ute Tribal #26-1 well injects between
10 4943 and 6495 feet below surface and the Ute #1 well injects between 4290 and
11 4340 feet below surface. The wells are located in Uintah and Duchesne Counties,
12 Utah.

13
14 10. The Ute Tribal #26-1 well is authorized under permit number UT20780-04280,
15 which has no expiration, and which was issued by EPA on August 14, 1996. This
16 permit was initially issued to Snyder Oil Corporation, also known as Sante Fe
17 Snyder Corporation (both referred to as "Snyder"). Effective September 1, 1999,
18 Snyder sold this well to Coastal Oil & Gas Corporation ("Coastal"). Effective
19 March 9, 2001, Coastal changed its name to El Paso Production Oil & Gas
20 Company. Effective April 1, 2008, El Paso sold this well to Finley Resources,
21 Inc.

22
23 11. The Ute Tribal #1 well is authorized by rule, bearing EPA identification number
24 UT20678-02555. On December 30, 1992, EPA received a UIC permit application
25 from Held By Production, Inc. ("HBP") for this well and to date has made no
26 final permit determination. Pursuant to 40 C.F.R. §144.21(b), this well continues
27 to be authorized-by-rule. The regulations governing Class II injection wells
28 authorized-by-rule are 40 C.F.R. §144.28 and §§146.21 through 144.24.

29
30 12. Since HBP applied for a UIC permit, the Ute Tribal #1 well's control has
31 transferred several times. Both HBP and Quintana Minerals Corporation
32 ("Quintana") were working interest owners in this well. Effective December 1,
33 1995, Quintana assigned its working interest to North Plains Corporation ("North
34 Plains"). Effective March 1, 1996, both HBP and North Plains sold their
35 respective interest in the well to Barrett Resources Corporation ("Barrett").
36 Effective January 1, 2000, Barrett sold the well to Coastal, which then changed its
37 name to El Paso effective March 9, 2001.

1 13. Respondent is a corporation which is in good standing and doing business in the
2 State of Utah. Respondent's local field office address is 17790 West 3750 North,
3 Altamont, Utah 84001, with telephone number (435) 454-3394.
4

5 14. Respondent is a "person" within the meaning of section 1401(12) of the Act,
6 42 U.S.C. § 300f(12) and 40 C.F.R. § 144.3.
7

8 15. Pursuant to 40 C.F.R. §§ 144.3 and 146.3, "Director," as used in 40 C.F.R. parts
9 124, 144 and 146 and as applied in this matter, means the Regional Administrator
10 of EPA Region 8 or his or her authorized representative.
11

12 16. 40 C.F.R. Part 144, Subpart E includes additional conditions applicable to all UIC
13 permits. 40 C.F.R. Part 144, Subpart C includes all conditions applicable to wells
14 authorized-by-rule. The UIC permit for the Ute Tribal #26-1 well is applicable to
15 Respondent, who must comply with all permit conditions. The authorization-by-
16 rule regulations that govern the Ute #1 well are applicable to Respondent. Any
17 permit or regulatory noncompliance constitutes a violation of the Act, and is
18 grounds for enforcement action. 40 C.F.R. § 144.51(a), 40 C.F.R. § 144.28(a).
19

20 17. The wells which are the subject of this complaint penetrate one or more
21 underground sources of drinking water (USDWs). The permit application for the
22 Ute Tribal #1 well states that the USDW base is located at 1,284 feet below
23 surface at its location. The 1987 Utah Department of Natural Resources and U.S.
24 Geological Survey Technical Publication 92 "Open-File Report 87-394, entitled
25 "*Base of moderately saline groundwater in the Uintah Basin, Utah*" identifies that
26 a USDW is present at the location of the Ute Tribal #26-1 well between the
27 surface and approximately 1,000 feet below surface.
28

29 18. The wells subject to this complaint, when averaged over the past seven years,
30 inject at the following rates:
31

32	Ute Tribal #26-1 well -	6,014 barrels per month; and
33	Ute #1 well -	54,256 barrels per month,

34
35 where one barrel equals 42 U.S. gallons.
36

37 The wells subject to this complaint inject produced brine having total dissolved
38 solids content, as reported for the most recent reporting year, as follows:
39

40	Ute Tribal #26-1 well -	40,867 mg/liter; and
41	Ute #1 well -	7,411 mg/liter,

42
43 where the secondary drinking water standard for total dissolved solids is 500
44 mg/liter, pursuant to 40 C.F.R. § 143.3.
45

- 1 19. The regulation at 40 C.F.R. §144.28(g)(2)(iv)(A) requires Respondent to
 2 demonstrate mechanical integrity of the Ute Tribal #1 well at least once every five
 3 years. Part II(C)(2)(a) of UIC permit number UT20870-04280, requires
 4 Respondent to demonstrate mechanical integrity of the Ute Tribal #26-1 well at
 5 least every five years.
 6
 7 20. Respondent's mechanical integrity demonstration history for these two wells is
 8 summarized in the table below:
 9

Well Name	Previous mechanical integrity demonstration date	Most recent mechanical integrity demonstration date	No. of days mechanical integrity demonstration overdue
Ute Tribal #26-1	December 3, 2001	December 21, 2008	749
Ute Tribal #1	April 25, 2000	Sold to Finley on April 1, 2008	1072

- 10
 11
 12 21. See Attachment A to this complaint where these violations are summarized and
 13 labeled with the letter "A." Attachment A is incorporated into this complaint.
 14

15 **COUNT 1**

- 16
 17 22. Respondent is in violation of part II(C)(2)(a) of UIC permit number UT20870-
 18 04280 and 40 C.F.R. § 144.28(g)(2)(iv)(A), by failing to demonstrate mechanical
 19 integrity at least once every five years for wells Ute Tribal #26-1 and Ute
 20 Tribal #1, respectively. The durations of the Respondent's violations are shown
 21 in the table in paragraph 20 and in attachment A. EPA has not received the
 22 mechanical integrity demonstration for the Ute Tribal #26-1 well. That well was
 23 sold to Finley Resources, Inc. effective April 1, 2008, which, for duration
 24 purposes, is used as the ending date for El Paso's overdue mechanical integrity
 25 demonstration violation for that well.
 26

27 **PROPOSED ORDER WITH ADMINISTRATIVE CIVIL PENALTY**

- 28
 29 23. The Act, as amended, and 40 C.F.R. part 19, authorize the assessment of a civil
 30 penalty of up to \$11,000 for each day of violation up to a maximum penalty of
 31 \$157,500. 42 U.S.C. § 300h-2(c)(2). The Act requires EPA to take into account
 32 the following factors in assessing a civil penalty: the seriousness of the violations,
 33 the economic benefit resulting from the violations, Respondent's prior compliance
 34 history of such violations, any good-faith efforts to comply, the economic impact
 35 on Respondent, and other factors that justice may require. 42 U.S.C. § 300h-
 36 2(c)(4)(B).
 37
 38
 39

1 24. In light of the statutory factors and the specific facts of this case, EPA calculates
2 and proposes that **Respondent be required to comply with its UIC permit**
3 **requirements within a reasonable schedule and to pay a total penalty of**
4 **\$26,469 (twenty-six thousand four hundred sixty-nine dollars)** for the
5 violations alleged above, as explained below:
6

7 Seriousness of the Violation
8

9 The Respondent's injection wells inject fluids that pose a threat to USDWs. Not
10 only is the total dissolved solids content in the injected fluid unfit for human
11 consumption, but oilfield brine often contains dangerously high levels of benzene,
12 toluene, ethylbenzene, and xylenes. It is because these injected fluids pose a risk
13 to USDWs that Class II injection wells must be regularly monitored and tested for
14 mechanical integrity. During the time these wells went overdue for their
15 mechanical integrity demonstration, more than 6 million gallons of fluid was
16 injected into the Tribal #26-1 well and more than 81 million gallons of fluid was
17 injected into the Tribal #1 well. Failing to detect a leak owing to overdue
18 mechanical integrity demonstrations can result in a significant volume of injected
19 fluid released into one or more USDWs. For these reasons, EPA considers these
20 violations to be serious.
21

22 Economic Benefit
23

24 EPA believes Respondent enjoyed an economic benefit by delaying expenditure
25 to demonstrate mechanical integrity as described in Count 1. EPA estimates
26 Respondent has enjoyed an economic benefit for these two counts totaling **\$144**
27 **(one hundred forty-four dollars)**, which is included as part of the proposed
28 penalty.
29

30 Prior Compliance History
31

32 EPA has not taken a prior formal enforcement action against Respondent for
33 violations of the UIC program regulations. EPA made no adjustment to the
34 proposed penalty based on this factor.
35

36 Good-Faith Efforts to Comply
37

38 EPA sent a notice of violation to Respondent, dated December 4, 2008, describing
39 these violations. Respondent described in a December 11, 2008 email that it had
40 sold the Ute Tribal #26-1 well to Finley Resources, Inc. That same email also
41 stated that Respondent planned to demonstrate mechanical integrity of the Ute
42 Tribal #1 well prior to December 31, 2008, which it did. Based on the quick
43 response from Respondent once it was reminded of these requirements, EPA
44 made a downward change to the penalty amount.
45
46

1 ONLINE PAYMENTS:
2

3 www.pay.gov

4 Enter SFO 1.1 in the "search public forms" field

5 Open form and enter the information
6

7 A copy of said check shall be mailed simultaneously to the following addresses:
8

9 Nathan Wiser (8ENF-UFO)
10 Environmental Scientist
11 U.S. EPA - Region 8
12 1595 Wynkoop Street
13 Denver, Colorado 80202-1129, and
14

15 Tina Artemis
16 Regional Hearing Clerk (8RC)
17 U.S. EPA Region 8
18 1595 Wynkoop Street
19 Denver, CO 80202-1129.
20

- 21 26. The provisions of this complaint shall apply to and be binding upon Respondent,
22 its officers, directors, agents, servants, employees, and successors or assigns.
23
- 24 27. As required by the Act, prior to the assessment of a civil penalty, EPA will
25 provide public notice of the proposed penalty, and reasonable opportunity for
26 people to comment on the matter, and present evidence in the event a hearing is
27 held. 42 U.S.C. § 300h-2(c)(3)(B).
28
- 29 28. The presiding officer is not bound by the penalty proposed by EPA, and may
30 assess a penalty above the proposed amount, up to \$11,000 for each day of
31 violation, up to a maximum penalty of \$157,500. 42 U.S.C. § 300h-2(c)(2).
32
- 33 29. This complaint does not constitute a waiver, suspension, or modification of the
34 requirements of any applicable provision of the Act or the UIC regulations
35 implementing the Act, which remain in full force and effect. Issuance of this
36 complaint is not an election by the EPA to forego any civil or any criminal action
37 otherwise authorized under the Act.
38
- 39 30. To discuss settlement or ask any question you may have about this case or
40 process, please contact Jim Eppers, Enforcement Attorney, at the address below:
41
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U.S. EPA, Region 8 (8ENF-L)
Office of Enforcement, Compliance and Environmental Justice
1595 Wynkoop Street
Denver, Colorado 80202
(303) 312-6893.

Issued this 29th day of April, 2009.

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

Well Name	EPA ID No.	Type of Violation	Date Violation Began	Date Violation Ended	Violation duration in days	Violation duration in months
Ute Tribal #26-1	UT20780-04280	A. Fail to timely demonstrate mechanical integrity	12/3/2006	12/21/2008	749	25
Ute #1	UT20678-02555	A. Fail to timely demonstrate mechanical integrity	04/25/2005	04/01/2008	1072	36

CERTIFICATE OF SERVICE
Docket No. SDWA-08-2009-

I hereby certify that the original and a true copy of the Penalty Complaint and Notice of Opportunity for Hearing bearing the above-referenced Docket number were hand-carried to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado, and that a true copy of the same was sent via Certified Mail Return Receipt Requested mail to:

CT Corporation System, Registered Agent
El Paso Production Oil and Gas Company
50 West Broadway, 8th Floor
Salt Lake City, Utah 84101-2020

Dated: 5/4/09

By: Judith McTernan
Judith McTernan