

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

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§

Performance Energy Resources, LLC

Docket No. SDWA-06-2021-1150

Respondent

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**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. Performance Energy Resources, 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 NW Quarter of Section 23, Township 25 North, Range 06

East, Osage County, Oklahoma, designated as injection Well No. 1B and EPA Inventory Number OS6261000 (the injection 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 injection 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 injection 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 August 4, 2011, EPA issued UIC permit number 06S1261P6261 (the permit) for the injection well.

8. On August 4, 2011, the permit became effective.

9. 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).
10. Regulations at 40 C.F.R. § 147.2920(b) and Part I.B.1. of the UIC permit require that the injection well have mechanical integrity and demonstrate mechanical integrity every three years.
11. On August 18, 2017, the injection well was due for a mechanical integrity test. To date, the injection well has not successfully demonstrated mechanical integrity.
12. On April 3, 2020, EPA emailed a letter to Respondent notifying Respondent that EPA determined that the injection well was overdue for a mechanical integrity test. 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 in regards to this matter.
13. Therefore, Respondent violated regulations set forth at 40 C.F.R. §§ 147.2903(b), 147.2920(b) and Part I.B.1. of the permit by maintaining the injection 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) PROPOSED COMPLIANCE ORDER**

14. 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 order Respondent to:
  - a. Cease use of the injection well for the unauthorized underground injection of fluids,  
and
  - b. Take one of the following actions:
    - i. Repair the injection well and successfully demonstrate mechanical integrity according to regulations at 40 C.F.R. § 147.2920 and Part I.B.1. of the

permit within ninety (90) days after the effective date 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 after the effective date of a Final Administrative Order; or
- iii. Convert the injection well to production use within ninety (90) days after the effective date of a Final Administrative Order.

15. Submit copies of completed plugging reports or completed work reports showing conversion to production and BIA Osage Agency Forms 139 within 120 days after the effective date of a Final Administrative Order to:

Jeanne Eckhart  
eckhart.jeanne@epa.gov  
U.S. Environmental Protection Agency  
Water Enforcement Branch (ECDWE)

#### **NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

16. Respondent may request a hearing to contest the issuance of the Final Administrative 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.

17. 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 Proposed Administrative 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.

18. Should a hearing be requested, members of the public who commented on the issuance of this Proposed Administrative 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).

#### **GENERAL PROVISIONS**

19. Issuance of the Final Administrative 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 the Final Administrative 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 the Final Administrative 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 the Final Administrative 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 the Final Administrative Order under Section 1423(b)(1) and (2) of the Act, 42 U.S.C. § 300h-2(b)(1) and (2).

#### **TAX IDENTIFICATION**

22. 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. § 1.162-21(b)(2), performance of Paragraphs 14 and 15 is restitution, remediation, or required to come into compliance with the law.

### SETTLEMENT

23. 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 Proposed Administrative Order, please contact Jeanne Eckhart, of my staff, at (214) 665-8174.

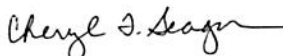
24. If this action does not proceed to a formal hearing, EPA shall issue a Final Administrative Order.

### EFFECTIVE DATE

25. The Final Administrative Order becomes effective thirty (30) days after issuance unless an appeal is taken pursuant to Section 1423(c)(6) of the Act, 42 U.S.C. § 300h-2(c)(6).

August 11, 2021

Date



Digitally signed by CHERYL SEAGER  
DN: c=US, o=U.S. Government, ou=Environmental Protection  
Agency, cn=CHERYL SEAGER,  
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Date: 2021.08.11 15:45:30 -0500

Cheryl T. Seager, Director  
Enforcement and  
Compliance Assurance Division

**CERTIFICATE OF SERVICE**

I certify that the foregoing Proposed Administrative Order was sent to the following persons, in the manner specified, on the date below:

Signed Original E-mailed: Regional Hearing Clerk (R6ORC)  
U.S. EPA, Region 6  
1201 Elm Street, Suite 500  
Dallas, TX 75270  
vaughn.lorena@epa.gov

File Stamped Copy  
Transmitted via Email: Mr. Scott DuCharme  
Performance Energy Resources, LLC  
P.O. Box 628  
Barnsdall, OK 74002  
sducharme@ppcooil.com

Electronic Copy: Ms. Kristine Talbot  
Ms. Jeanne Eckhart  
U.S. EPA, Region 6  
1201 Elm Street, Suite 500  
Dallas, TX 75270  
talbot.kristine@epa.gov  
eckhart.jeanne@epa.gov

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 Department of Natural Resources  
100 W. Main, Suite 304  
Pawhuska, OK 74056  
jannhayman@osagenation-nsn.gov

Mr. Doyle Williams  
Discovery Energy Inc.  
2201 S Utica Pl. #100  
Tulsa, OK 74114  
ddwilliams@triplecrownenergy.com

Dated: 8/13/2021

JEANNE ECKHART

Digitally signed by JEANNE ECKHART  
DN: cn=JE, o=U.S. Government, ou=Environmental  
Protection Agency, email=JEANNE.ECKHART,  
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Date: 2021.08.13 10:44:00 -0700

