UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6

FILED
2011 DEC 12 PM 4:02
REGIONAL HEARING CLERK
EPA REGION VI

	§	Docket No. SDWA-06-2011-1109
In the Matter of	§	
	§	
Performance Energy Resources, LLC	§	
Barnsdall, Oklahoma	§	CONSENT AGREEMENT
Respondent	§	AND
	§	FINAL ORDER
Proceedings under Section	§	
1423(c) of the Safe Drinking	§	
Water Act, 42 U.S.C. § 300h-2(c)	§	

I. STATUTORY AUTHORITY

This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") pursuant to Section 1423, 42 U.S.C. § 300h-2, of the Safe Drinking Water Act ("the Act"). This CAFO is issued in accordance with 40 C.F.R. § 22.18, as set forth in 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.

II. CONSENT AGREEMENT

1. The EPA and Performance Energy Resources, LLC ("Respondent") (collectively "Parties") agree that settlement of this matter without litigation will save time and resources, that it is in the public interest, and that the entry of this CAFO is the most appropriate means of resolving this matter. Compliance with all terms of this CAFO resolves only those violations alleged by EPA in the administrative complaint issued on August 25, 2011.

2. Respondent admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in the complaint or this CAFO. This CAFO states a claim upon which relief may be granted.

3. Respondent expressly waives any right to a hearing regarding penalty assessment or any other issue of law or fact relevant to this proceeding. Respondent further waives all defenses which have been or could have been raised to the claims set out in the previously issued complaint and waives the right to judicial review of this administrative penalty assessment.

4. Before the taking of any testimony, and without adjudication of any issue of law or fact, the Parties agree to the terms of this CAFO and to its issuance. Respondent consents to the assessment and payment of a civil penalty in the amount and by the method stated below.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

5. At all times relevant to the violations alleged in the complaint and herein ("relevant time period"), Respondent is a limited liability company authorized to do business in the State of Oklahoma, and as such, is a "person," within the meaning of Section 1401(12) of the Act, 42 U.S.C. § 300f(12).

6. During the relevant time period, 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 on the Osage Mineral Reserve in Osage County, Oklahoma. Respondent's Class II well included in this CAFO ("Well") is identified as Well Number 31. The Well is also identified by EPA Inventory Number OS5105 and is located in the Northwest Quarter of Section 25, Township 25 North, Range 11 East, Woolaroc Field, Osage County, Oklahoma.

7. Because Respondent owned or operated an injection well on the Osage Mineral Reserve, Respondent is subject to underground injection control ("UIC") program requirements at 40 C.F.R. Part 147, Subpart GGG, which is authorized under Section 1421 of the Act, 42 U.S.C. § 300h.

8. 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.

9. The Well is a "New Class II well" as that term is defined at 40 C.F.R. § 147.2902.

10. On April 10, 1986, the EPA issued UIC permit number 06S12611P5105 ("permit") to convert the well to underground injection use. The permit was transferred to Respondent on June 2, 2010. The permit requires the Respondent to maintain mechanical integrity of the well and to obtain written authorization to inject before using the well for underground injection of fluids.

11. 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.

12. Regulations at 40 C.F.R. § 147.2925(a) and condition II.B of the permit require Respondent to comply with all permit conditions except as authorized by an emergency permit.

13. On August 25, 2011, EPA issued an administrative complaint against Respondent pursuant to Section 1423(c) of the Act, 42 U.S.C. § 300h-2(c), setting forth findings of fact and conclusions of law hereby incorporated by reference, and proposing to assess a civil penalty against Respondent. The complaint provided notice of Respondent's opportunity to request a hearing on the proposed administrative penalty assessment.

14. The complaint alleges that Respondent violated regulations at 40 C.F.R.

§§ 147.2916, 147.2920(b), and 147.2925(a) by operating the Well without mechanical integrity and authorization to inject.

15. EPA notified the public of the complaint and afforded the public thirty (30) days to comment on the complaint and proposed penalty. At the expiration of the notice period, EPA received no comments from the public.

IV. PENALTY ORDER

16. Based on the foregoing stipulations, EPA, Region 6, having taken into account the factors used for assessment of civil penalties found in Section 1423(c) of the Act, 42 U.S.C. § 300h-2(c), hereby orders, and Respondent agrees, that Respondent shall pay to the United States a civil penalty in the amount of four thousand dollars ($4,000.00) to settle the violations alleged in the complaint. Payment shall be made within thirty (30) days of the effective date of this CAFO by one of the following methods:

a. By mailing a bank check, cashier's check, or certified check payable to "Treasurer, United States," to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

b. By wire transfer to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

c. By overnight mail (Express, FedEx, DHL, etc.) to:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone: 314-418-1028

d. By credit card payments to https://www.pay.gov/paygov/

(Insert SFO 1.1 in the search field)

"In the Matter of Performance Energy Resources, LLC, Docket No. SDWA-06-2011-1109" should be clearly marked on the check, or other remittance, to ensure proper credit is given when payment is received.

17. Respondent shall send simultaneous notices of payment, including a copy of the check or instrument of payment, to each of the following:

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

b. Chief, Water Legal Branch (6RC-EW)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

18. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

19. If the United States does not receive payment within the thirty (30) days specified above, interest will accrue on the amount due from the due date at the current annual rate prescribed and published by the Secretary of the Treasury in the Federal Register and the

Treasury Fiscal Requirements Manual Bulletin, per annum, through the date of payment. Late payments and final payments shall include all accrued interest or penalties.

20. If all or part of a payment is overdue, EPA will impose a late-payment handling charge of fifteen dollars ($15.00), with an additional delinquent notice charge of fifteen dollars ($15.00) for each subsequent thirty (30)-day period. EPA will also apply a six percent (6%) per annum penalty on any principal amount not paid within ninety (90) days of the due date. Penalties under other Federal statutes for failure to make timely payment may also apply.

21. Failure by Respondent to pay the penalty assessed according to the terms of this CAFO in full, by its due date, may subject Respondent to a civil action to collect the assessed penalty and any accrued interest or penalties.

22. In the event a collection action is necessary, Respondent shall pay, in addition to any applicable penalty, fees, and interest described herein, all reasonable costs and expenses, including legal expenses and court costs, incurred by the United States for enforcement and collection proceedings for nonpayment of the amounts agreed hereunder. In any such collection action, the validity, amount, and appropriateness of the penalty, and the terms of this CAFO, shall not be subject to review.

V. GENERAL PROVISIONS

23. To execute this Agreement, Respondent shall sign and forward a copy of this CAFO, with original signature, to:

Mr. Efren Ordoñez (6RC-EW)
Office of Regional Counsel
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

24. Issuance of this CAFO does not relieve Respondent from responsibility to comply with all requirements of the Act and the requirements of any permits issued thereunder, nor does it constitute a waiver by EPA of its right to enforce compliance with the requirements of any applicable permits or other requirements of the Act by actions under the authority of the Act, except as to any requirement to pay any penalty or perform any corrective action not described herein for the violations alleged in the Complaint.

25. The provisions of this CAFO shall be binding upon Respondent, its officers, directors, managers, agents, representatives, employees, successors and assignees.
Each party agrees to bear its own costs and attorneys' fees in this matter, except to the extent that Respondent may be responsible for reasonable costs and expenses of enforcement and collection proceedings for failure to comply with the terms of this CAFO.

26. Each undersigned representative of the Parties to this agreement certifies that he or she is fully authorized by the party represented to enter into the terms of this agreement and legally bind that party.

In recognition and acceptance of the foregoing:

For Performance Energy Resources, LLC — Date: 12/01/11

John Blevins
Director
Compliance Assurance and
Enforcement Division — Date: 12/7/11

FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This CAFO shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO shall resolve only those causes of action alleged in the complaint. Nothing in this CAFO shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers', agents', servants', employees', successors', or assigns') obligation to comply with all applicable Federal, State, and local statutes and regulations, including the regulations subject to this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the CAFO. This CAFO shall become effective thirty (30) days after the issuance date specified below pursuant to Section 1423(c) of the Safe Drinking Water Act.

Issuance Date: 12-12-11

Regional Judicial Officer
EPA, Region 6

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of December, 2011, the original of the foregoing CAFO was hand-delivered to the Regional Hearing Clerk (6RC-D), EPA Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and that true and correct copies were placed in the United States mail, first class, postage prepaid, addressed to each of the following:

Copy by certified mail return receipt requested:	Mr. J. Scott DuCharme Performance Energy Resources, LLC P.O. Box 628 Barnsdall, OK 74002
Copy:	Bureau of Indian Affairs, Osage Agency P.O. Box 1539 Pawhuska, OK 74056
	Osage Nation Environmental and Natural Resources Department P.O. Box 1495 Pawhuska, OK 74056
Copy hand-delivered:	Mr. Efren Ordoñez (6RC-EW) Office of Regional Counsel U.S. EPA, Region 6 1445 Ross Avenue, Suite 1200 Dallas, TX 75202-2733

Date: 12-12-11 Lori Jackson