



OFFICE OF INSPECTOR GENERAL

Catalyst for Improving the Environment

Public Liaison Report

Complete Assessment Needed to Ensure Rural Texas Community Has Safe Drinking Water

Report No. 2007-P-00034

September 11, 2007



Report Contributors:

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Abbreviations

EPA	U.S. Environmental Protection Agency
MCL	Maximum contaminant level
MTBE	Methyl tertiary butyl ether
OIG	Office of Inspector General
TCEQ	Texas Commission on Environmental Quality

Cover photo: Contaminated soil around the Mitchell Facility saltwater disposal tank farm (photo taken in April 2004 by Texas Commission on Environmental Quality).



At a Glance

Catalyst for Improving the Environment

Why We Did This Review

We conducted this review in response to a hotline complaint alleging that a small community's only source of drinking water had been contaminated by adjacent saltwater disposal operations. The complaint also alleged that Federal and State officials had not provided assistance obtaining safe drinking water.

Background

In 1996, residents in a small community in Panola County, Texas, complained of drinking water discoloration, stained kitchen and bath fixtures, and gastrointestinal problems after consuming water. Most residents had begun buying bottled water or obtaining water from relatives. Between 1996 and 2003, residents said U.S. Environmental Protection Agency (EPA) and Texas representatives took no action to help identify a permanent source of safe drinking water. In 2003, Texas found the groundwater was contaminated and advised residents to not use the water for domestic purposes.

For further information, contact our Office of Congressional and Public Liaison at (202) 566-2391.

To view the full report, click on the following link:
www.epa.gov/oig/reports/2007/20070911-2007-P-00034.pdf

Complete Assessment Needed to Ensure Rural Texas Community Has Safe Drinking Water

What We Found

A Panola County resident first alleged in 1996 that drinking water for residents in a small community in the county was contaminated. However, State officials did not confirm the problem until 2003, when they told the residents to not use their water for domestic purposes. In September 2005, EPA began providing, and continues to provide, bottled water to the affected residents. EPA and the State have taken additional steps to assess the source, severity, and extent of contamination.

In March 2005 the State requested that Basic Energy Services, the site operator, assess groundwater, and in October 2005 the State requested that Basic Energy Services install additional monitoring wells. In March 2006, because Basic Energy Services' performance was inadequate, the State indicated it would take enforcement action. However, we found no evidence that the State took enforcement action. Although the State has installed additional groundwater monitoring wells in the area, the full extent and source of contamination is still not known. Region 6 is confident that the contamination does not originate from injected waste. Even so, the State has initiated additional assessment action under State programs.

Responding to a petition filed by Panola County residents in November 2006, EPA is conducting an assessment to determine if the site qualifies for cleanup under EPA's Superfund program. Further, in its June 29, 2007, response to our draft report, EPA said that it intends to use removal action funds to pay for constructing a water line that will provide the residents with access to the Panola Bethany Water Supply Corporation. EPA decided to evaluate and fully assess the contaminated groundwater under its Superfund program, as well as to have the residents connected to the water system. In response to our suggestion that more frequent communication with the community would be beneficial, in 2007, the Region acted to keep the community informed. Region 6 stated they have held community meetings and Superfund staff have met with the citizens individually in preparation for additional site investigations. We commend the Region for these communication activities and encourage their continuance.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
INSPECTOR GENERAL

September 11, 2007

MEMORANDUM

SUBJECT: Complete Assessment Needed to Ensure Rural Texas Community
Has Safe Drinking Water
Report No. 2007-P-00034

FROM: Eileen McMahon 
Assistant Inspector General for Congressional and Public Liaison

TO: Richard Greene
Regional Administrator, EPA Region 6

This is our final report on the subject review conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). This report represents the opinion of the OIG and the findings in this report do not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established resolution procedures.

The findings in this report are not binding in any enforcement proceeding brought by EPA or the Department of Justice under the Comprehensive Environmental Response, Compensation, and Liability Act to recover costs incurred not inconsistent with the National Contingency Plan.

The estimated cost of this report – calculated by multiplying the project's staff day by the applicable daily full cost billing rates in effect at the time – is \$375,251.

Action Required

In accordance with EPA Manual 2750, you are required to provide this office with a written response within 90 days of the date of this report. We have no objection to the further release of this report to the public. This report will be available at <http://www.epa.gov/oig>.

If you or your staff has any questions regarding this report, please contact me at 202-566-2391 or mcmahon.eileen@epa.gov, or Paul McKechnie at 617-918-1471 or mckechnie.paul@epa.gov.

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Chapter 1

Introduction

Purpose

We conducted this review in response to a hotline complaint that alleged a small residential community's only source of drinking water had been contaminated by adjacent saltwater waste disposal well operations. The complainant also alleged that the U.S. Environmental Protection Agency (EPA) and the State of Texas had not provided assistance to obtain safe drinking water. Our specific objectives were to answer the following questions:

- Are the existing testing and sampling sufficient to provide an accurate assessment of contaminants in the soil and groundwater, the actual levels of contamination, and the potential effects on human health and the environment?
- What are EPA's and the State's short- and long-term plans for providing safe drinking water to Panola County residents, and are there plans for fully assessing and, if necessary, remediating the saltwater disposal site?
- Has EPA Region 6 provided enough oversight of the Texas Underground Injection Control program, the State's responsiveness to the threats posed by known groundwater contamination, and the State's assessment and remedial actions at the saltwater disposal site?

Background

Safe Drinking Water Act and Underground Injection Control Program

The Safe Drinking Water Act of 1974, as amended, establishes statutory requirements for protecting underground sources of drinking water. Part C establishes a Federal/State system to regulate underground injection activities. EPA implements the statutory requirements of the Act through regulations and guidance.

The underground injection activity in Panola County was classified as a Class II commercial saltwater disposal facility (Class II involves oilfield operations). During oil production, a large amount of saltwater waste is recovered and transported to saltwater disposal facilities to be injected back into the earth. At these facilities, a small amount of oil is recovered from the saltwater waste. The

remaining waste (brine) is disposed of by being injected into a Class II injection well.

States can apply for primary responsibility for the Underground Injection Control program, including enforcement authority (primacy), under Section 1422 or 1425 of the Safe Drinking Water Act; Title 42, U.S. Code, Sections 300h-1 and 300h-4, respectively. Texas has been granted primacy for its program under section 1425, or 300h-4 of the Code. EPA Region 6 still remains responsible for overseeing Texas' program. Under section 1425, a State is required to demonstrate that the Class II portion of its Underground Injection Control program meets the requirements at section 1421(b)(1)(A) through (D), (A) through (D) of section 300h(b)(1) of the Code, and represents an effective program to prevent underground injection operations that could endanger drinking water sources. EPA Region 6's Source Water Protection Branch provides oversight of the Texas Underground Injection Control program. The Region 6 Superfund Division's Emergency Response unit helps States respond to, assess, and remediate soil and groundwater contamination at hazardous sites.

Panola County Complaint

The complaint concerned a small community, consisting of seven families and a church, in the rural town of De Berry, Panola County, Texas. Residents stated that they first told Texas officials in 1996 that their drinking water was contaminated. They also stated that they discussed drinking water concerns in 1996 with an EPA Region 6 employee, but the Region had no record of that employee nor could we locate that employee. They complained of water discoloration, stained kitchen and bath fixtures, and gastrointestinal problems. Most residents elected not to use the water and began obtaining water from other sources. Some bought bottled water from a discount chain store approximately 23 miles away. Others, using personal containers such as milk jugs, obtained water from relatives in adjacent areas.

The Texas Commission on Environmental Quality (TCEQ) and the Railroad Commission of Texas were aware of the Panola County residents' concerns. TCEQ is responsible for addressing groundwater contamination from refined petroleum products and organic matter. The Railroad Commission of Texas is the State's regulatory agency for oil and gas production, as well as underground injection activities. Sampling and testing conducted in 2002 by Basic Energy Services, the site operator, showed the presence of some contaminants above maximum contaminant levels (MCLs) used by EPA and States as health protection standards for drinking water. The Railroad Commission of Texas took no action at that time because an oilfield contamination source had not been definitively established.

After conducting additional tests in 2003, the commission advised the residents not to use the water for domestic purposes and continued to assess water

conditions. The 2003 testing data showed the presence of several contaminants in the soil and groundwater. This confirmed the resident's allegation that the groundwater was contaminated. Contaminants included barium, chlorides, total petroleum hydrocarbons, fecal coliform, benzene, toluene, ethyl benzene, and xylene. Based on these test results, the State advised residents to not use their water for domestic purposes. Until a full assessment is completed, the source of these contaminants cannot be definitively known and contamination from the injection site cannot be ruled out. Residents' wells are also susceptible to pollution from surface runoff and bacterial contaminants, such as animal waste.



Saltwater Injection Site

The Mitchell saltwater disposal facility (top photo) was located approximately 1/8-mile northeast of the affected community. It began operations in 1987 as a commercial saltwater disposal facility. The disposal site consisted of a tank farm with eight large storage and processing tanks, a truck loading and unloading rack, a truck washout pit, a fresh-water well with storage tank and pump house, and an injection well (Mitchell #2). This injection well (center photo) had a permit to inject waste saltwater into the earth at an interval between 1,080 and 1,110 feet. The well's permit also established the base of the groundwater to be protected at 250 feet. The Mitchell #2 well ceased operations sometime between October 1999 and February 2000.



Top: Tank Farm at Waste Disposal Site – Mitchell Facility. Center: Mitchell #2 Injection Well. Bottom: AF Hall Injection Well (photos courtesy TCEQ)

After the Mitchell #2 well closed, Basic Energy Services continued to use the Mitchell facility (tank farm, washout pit, etc.) for all disposal operations except the actual injection of saltwater. After being processed at the Mitchell facility, the saltwater was pumped approximately 1/4-mile offsite to the AF Hall injection well (bottom photo). The AF Hall well was a stand-alone well permitted to inject waste saltwater into the earth between 3,474 and 3,578 feet. As a result of an

administrative permit violation, the saltwater disposal operation – which included the Mitchell Facility, Mitchell #2 injection well, and AF Hall injection well – was shut down in November 2004. At that time, Basic Energy Services started cleanup activities at both wells.

When we visited the site in May 2005, all equipment had been removed. The wells had been closed and plugged. The contaminated topsoil had been removed and transported to another saltwater disposal site. Basic Energy Services had spread new soil and gravel over the site and installed three groundwater monitoring wells.

Noteworthy Achievements

EPA and the State of Texas have made progress toward fully assessing the severity, extent, and source of contaminants affecting the Panola County community and keeping residents informed. For example, the State has drilled additional monitoring wells to further assess the extent of contamination at and around the underground injection site. Since September 2005, EPA Region 6 has provided, and continues to provide, residents with bottled drinking water. In addition, the Region is conducting an assessment under its Superfund authority to determine if the site qualifies for federally funded remediation. Continued joint efforts by the State and EPA are a positive sign that, working together, they will be able to conclusively determine the source of harmful pollutants and help the affected residents establish a permanent source of safe drinking water.



TCEQ staff taking samples from sludge and standing liquid during an inspection (photo courtesy TCEQ)

Scope and Methodology

We conducted our review between May 2005 and July 2007. We visited the Panola County community and Federal, State, and local agencies to conduct interviews, obtain official records, and review files and electronic databases. We focused on allegations in the complaint received from the Panola County residents. We found no prior reviews pertinent to the complaint. We conducted this review in accordance with generally accepted government auditing standards, issued by the Comptroller General of the United States. Because our review was

of a specific complaint, we did not evaluate overall management controls for EPA programs. Further details on our scope and methodology are in Appendix A.

We did not pursue other issues that we became aware of during the course of our review. These included community residents' legal action against the potential responsible party and an environmental justice complaint the community filed with EPA. The Office of Inspector General (OIG) does not normally comment on issues brought before the legal system or other complaints that have not yet been resolved by the Agency.

Chapter 2

Complete Assessment Needed to Ensure Community Has Safe Drinking Water

Since 1996, when a Panola County resident first complained to the State of Texas about drinking water contamination, EPA and Texas representatives have not fully characterized the extent of contamination or cleaned up the contamination. According to EPA representatives, they did not become aware of the resident's complaint until 2002. In 2003, the State recognized the presence of harmful contaminants in the residents' drinking water supply. However, despite considerable effort by the State and EPA, they still have not identified the source or extent of the contamination or cleaned up the contamination. We received the complaint in 2004 and began our review in May 2005. In September 2005, Region 6 began providing bottled water to the residents. Since 2005, State and EPA representatives have also increased their efforts to fully assess the source, severity, and extent of contaminants. Responding to a petition filed by a Panola County resident in November 2006, EPA is conducting an assessment to determine if the site qualifies for cleanup under EPA's Superfund program. In its June 29, 2007, response to our draft report, Region 6 said it intends to use removal action funds to pay for constructing a water line that will provide the residents with access to the Panola Bethany Water Supply Corporation. To date, however, the residents do not have a permanent source of safe drinking water and the contamination has not been fully assessed or remediated.

Data Collected to Date Do Not Definitively Identify Source and Extent of Contamination

None of the analyses conducted as of February 2007 has definitively determined the source or extent of contamination in the Panola County community. The Railroad Commission of Texas, TCEQ, Basic Energy Services, and complainant have all conducted water quality analysis at the Panola County site. Region 6 personnel told us they believe evidence shows the contamination did not originate from the injection well. The Regional Administrator further stated that recent sampling data confirms that groundwater contamination did not result from Underground Injection Control activities. Although we have not confirmed the Regional Administrator's assertion, we agree that recent steps to provide a permanent source of safe drinking water and continued monitoring will effectively protect the health of Panola County residents.

Test Results Identify Contaminants

Testing data, compiled from water samples taken between 2002 and 2005, identified some contaminants above MCLs in the groundwater at and around the Panola County injection site. From October 2002 until August 2005, at least six sampling events have been conducted by the Railroad Commission of Texas, TCEQ, Basic Energy Services, and the complainant. Data have shown various contaminants in the groundwater aquifer 35 feet below the surface, fresh water springs, and monitoring wells that exceed primary and/or secondary MCLs. Exceeding primary MCLs presents a health risk to residents. Secondary MCLs are established only as guidelines to assist public water systems in managing their drinking water for aesthetic considerations and are not enforced by EPA. Neither the State nor EPA has conclusively determined the source of the contamination. Samples taken in October 2003 showed high levels of chlorides, arsenic, barium, and benzene. Test data also found fecal coliform and MTBE (methyl tertiary butyl ether), which do not have MCLs but pose health concerns. Based on these test results, the State advised the community to not use the water for domestic purposes.

The Region stated that, in 2005, TCEQ detected lead and dichloromethane – both designated as hazardous substances under Federal Superfund laws. At the State's request, EPA provided bottled drinking water to the affected residents under its Superfund authority. Although EPA officials told us that they believe the dichloromethane detection was due to a laboratory error, they have continued to provide bottled water. In response to a petition filed by Panola County residents in November 2006, EPA is conducting an assessment to determine if the site qualifies for cleanup under EPA's Superfund program.

Site Assessment/Remediation Efforts Not Yet Complete

Although groundwater testing showed some contamination in 2002, the State did not issue an official notification until 2003 that the groundwater was contaminated and should not be used for domestic purposes. Basic Energy Services began investigative and remedial activities immediately after the saltwater disposal facility closed in 2004. After more than 3 years, the site investigation has not conclusively determined the source of the contamination. However, Region 6 is confident that, based on current sampling data, the contamination does not originate from injected waste. The



Resident's backyard well July 2005; water surface has oily sheen (EPA OIG photo)

full extent of the contamination, its lateral limits, its depth, and its migration patterns or movement along the groundwater plume is not known.

The three monitoring wells installed by Basic Energy Services were not sufficient to characterize the extent and source of contamination. One of the wells was not properly sited, and collectively the three wells did not provide conclusive data to fully characterize the pollution at the site. One well was at the northeast portion of the site up-gradient to the general flow of the shallow groundwater. Any contaminated groundwater would flow away from that well and would likely not be detected. A second well was at the southwest site boundary near the residential community. A third well was further south of the second well along the southwest boundary and also nearer to the residential community. All three wells were located on the disposal site property.

Between July 2005 and November 2005, the State installed five additional monitoring wells at the Mitchell site that will help better characterize the site. The State should continually assess the adequacy of data produced from these additional monitoring wells and ensure information received from them is adequate to categorize the site contaminants.



Northeast corner of Mitchell Facility after closure (EPA OIG photo)



Monitoring Well #1 (right bottom) with resident home in background (EPA OIG photo)

State and EPA Determined Enforcement Action Was Not Appropriate

Since the site's closure in 2004, Basic Energy Services has not fully complied with State requests. The State has, on several occasions, directed it to install additional monitoring wells, conduct additional sampling and testing of the deeper groundwater, and provide a plan for the full remediation of the site. However, Basic Energy Services has not done so.

For example, in March 2005, the State requested Basic Energy Services to assess the contamination at the Mitchell site, to include testing the deeper groundwater (about 180 feet) via the site's previously operated freshwater well. Basic Energy

Services informed the State that it did not believe the contamination was its responsibility, and since the freshwater well had been plugged, deeper groundwater testing could not be conducted. In October 2005, the State directed Basic Energy Services to install two additional monitoring wells to delineate elevated barium and chlorides. Again, Basic Energy Services responded that it did not believe the barium and chlorides were related to its saltwater disposal operation and asked the State to reconsider its request for additional monitoring wells. In March 2006, the State indicated that Basic Energy Services' performance was inadequate and it would take enforcement action. However, we found no evidence that the State had taken enforcement action. The State is now assessing and remediating the site under its State-managed Oilfield Cleanup and Site Remediation Program.

EPA has also determined that it will not take enforcement action against Basic Energy Services. The Safe Drinking Water Act (Title 42, U.S. Code, Section 300h-2) provides enforcement authority for the Underground Injection Control program. EPA has broad discretion about using its authority to take enforcement actions. EPA told us there is not sufficient evidence that subsurface injection contributed to the groundwater contamination. Therefore, EPA indicated no enforcement action can be pursued under the Safe Drinking Water Act. Region 6 attorneys stated that the Region had not invoked its authority because (1) the groundwater data do not consistently show violation of a drinking water standard, (2) data do not exist to prove that contamination originated from a specific known source, and (3) there is no feasible respondent (responsible party) to whom an enforcement order could be sent.

A Short-Term Solution Continues; EPA Conducts an Assessment

EPA began providing bottled water for Panola County residents in September 2005. In response to a request by TCEQ, EPA Region 6 established a contract with a drinking water distributor to provide bottled drinking water and dispensers to the affected residents. The Region indicated that bottled water would be provided to the affected residents until a permanent source of safe drinking water is obtained. The EPA On-Scene Coordinator reported that there is the potential that the contamination will spread to other families in the area. Therefore, the Agency would monitor the site for other residents with contaminated wells. The Region's efforts are the first to provide any means of clean water for the Panola County residents since this situation began in 1996.

EPA Region 6 has taken further action to assess the contamination. According to a Panola County resident, the Region had initiated action to assess the site under EPA's Superfund program. In March 2007, residents told us that EPA had conducted what appeared to them to be a thorough investigation.

EPA Has Begun to Assert Its Oversight Authority

Since December 2002, EPA has been working with the residents of Panola County. Prior to December 2002, EPA did not have significant contact with the Panola County residents. According to the Region 6 Regional Administrator, the Region did not initially become involved in the Panola County issue because it had no reason to believe the underground injection operation was responsible for residential well contamination.

Since contamination was confirmed at the site in 2003, EPA has become more involved. During 2003 and 2004, Region 6 staff visited Texas State offices to review files, analyze lab results, and discuss ongoing efforts with State officials. The Regional Administrator noted that since 2005 Region 6 staff made multiple field trips to the site, conducted citizen interviews, reviewed additional site records, and analyzed site data. Region 6 staff added that because the Underground Injection Control program is delegated to Texas, it becomes involved in program issues only when necessary. However, although it has been 3 years since official notification that the community's groundwater was contaminated, the affected residents are still without a permanent source of safe drinking water.

Conclusion

EPA and the State of Texas have agreed to provide a permanent source of safe drinking water for the affected community. Specifically, in its June 29, 2007, response to our draft report, Region 6 said it intends to use removal action funds to pay for constructing a water line that will provide the residents with access to the Panola Bethany Water Supply Corporation. Further, the State and EPA are continuing to assess the source, extent, and severity of contamination. Region 6's increased involvement since December 2002 is a positive step in identifying an affordable, permanent source of safe drinking water. Because of these positive actions, we are not making recommendations. The Region should continue the level of recent communication with the community until the project is completed.

Region 6 Response to Draft Report and OIG Comment

EPA is planning to take appropriate action to correct the problems noted in the affected Panola County community. Specifically, Region 6 indicated it intends to use removal action funds to pay for connecting the affected community to a water system. Region 6's full response to our draft report is in Appendix B. Where we agreed with the Region's position, we made appropriate changes to the report. Below, we provide information on issues for which we maintain our position and did not change the report.

Region 6 Response

1. The Region stated that the report should state that “No groundwater contamination has occurred from injected waste.” It states that the draft report inaccurately suggests that injected waste from the Mitchell #2 well may have contaminated groundwater. The reply goes on to say both the Railroad Commission of Texas and EPA’s Underground Injection Control Oversight Program years ago determined that the Mitchell #2 injection well or AF Hall well were not the source of ground water contamination.

OIG Comment

While OIG cannot definitively determine where the contamination originated, we do agree with the Region that it is unlikely contamination originated from injected waste.

Region 6 Response

2. The Region took issue with the statement, "Region 6 personnel told us they believe evidence suggests the contamination does not originate from the injection site."

OIG Comment

We changed the statement to read “Region 6 personnel told us they believe evidence shows the contamination does not originate from the injection well.” In fact, the Region concluded that contamination came from surface spills at the site.

Region 6 Response

3. The Region said that it believes the April 3, 2007, preliminary assessment report falsely concludes that contamination came from the injection well.

OIG Comment

OIG has not received a copy of, nor have we evaluated the conclusions reached in, the April 3, 2007, preliminary assessment report. Because we have not reviewed the report we are unable to evaluate the Region’s position.

Region 6 Response

4. The Region recognizes the difficulty in keeping various roles and responsibilities of its divisions and programs clear, and suggests this may have led us to incorrect conclusions about the Region’s oversight role. The Region also

takes issues with our characterization of its Underground Injection Control program. It added that, in fact, surface spills are not under the jurisdiction of the Underground Injection Control program.

OIG Comment

The OIG understands the Region’s organizational structure and each organization’s respective responsibilities. We believe that a more coordinated regional response may have led the Region to provide assistance to Panola County residents sooner than it did. We also believe it would be beneficial for Region 6's various divisions and programs to reassess their relationships with each other to better and more timely identify when issues such as this should be referred to other divisions or programs that could effectively deal with the problem.

Region 6 Response

5. The Region recommended that the OIG add a “current status” to the draft report highlighting the Region’s most recent accomplishments.

OIG Comment

We have added throughout the report comments describing the current situation and actions taken by Region 6. Preliminarily, Region 6 has determined that it will use removal action funds to provide uncontaminated water to the community by constructing a waterline from the Panola Bethany Water Supply Corporation to residents. Until completion of this project, Region 6 will continue to supply bottled water.

Region 6 also indicated that it is now in regular communication with community residents. Contacts include frequent phone calls, emails, and two community meetings since December 2006. Superfund representatives have met individually with community residents in preparing for the Preliminary Assessment and Site Investigation and to explain test results.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in \$000s)	
Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date	Claimed Amount	Agreed To Amount
No recommendations							

¹ O = recommendation is open with agreed-to corrective actions pending;
 C = recommendation is closed with all agreed-to actions completed;
 U = recommendation is undecided with resolution efforts in progress

Details on Scope and Methodology

Our review focused on allegations raised by the complainant. We conducted preliminary research to validate the allegations in the complaint, and used the preliminary research results to develop our objectives for field work.

We visited the Panola County community in De Berry, Texas (to include the saltwater disposal well sites) and met with the residents of the community, including the complainant. We interviewed State headquarters and field office representatives at the Railroad Commission of Texas and TCEQ, including staff responsible for underground injection well operations and environmental protection. We interviewed EPA Region 6 staff members in the Source Water Protection Branch and the Superfund Division's Emergency Response unit. We also met with an EPA Underground Injection Control specialist.

To determine EPA's and the State's short- and long-term plans for providing safe drinking water to Panola County residents, we interviewed EPA and State staff members and sought to obtain documentation related to planning.

To determine whether existing testing and sampling results were sufficient, we analyzed a compilation of all testing data from six testing episodes over a 3-year period. We used the most recent testing and sampling results (as of August 2005) as the basis for determining the presence and level of contaminants because these data are being accepted and used as reliable data by EPA Region 6 and State staff members.

To determine whether EPA Region 6 provided adequate oversight of the Texas efforts at the site, we reviewed the specific requirements pertinent to EPA in the Safe Drinking Water Act. We interviewed EPA Region 6 and State representatives regarding EPA actions. Further, we reviewed EPA Region 6 Underground Injection Control program manager files and the Railroad Commission of Texas database for any documentation about EPA involvement with the site.

Region 6 Response to Draft Report

June 29, 2007

MEMORANDUM

SUBJECT: Comments on Second Draft Public Liaison Report “A Complete Assessment Needed to Ensure Rural Texas Community Has Safe Drinking Water”
Assignment No. 2005-1161

FROM: Richard E. Greene
Regional Administrator (6RA)

TO: Paul D. McKechnie
Office of Inspector General (OIG)

This memo provides our comments on the second draft report dated June 8, 2007. Generally, this draft is much improved over the first draft of September 26, 2006. We are particularly pleased that the first draft’s recommendations, which were based on questionable interpretations of the Safe Drinking Water Act, are not included in the second draft. We commend the thoughtful professionalism your legal staff exhibited in its discussions with Agency attorneys from the Regional and General Counsel Offices. The second draft still contains a few factual and technical errors, however:

No ground water contamination has occurred from injected waste. The last paragraph on page seven and the first two paragraphs on page eight of the second draft report inaccurately suggest that waste injected in RB Mitchell #2 may have contaminated ground water. The second draft report then concludes that “[t]he State and EPA agree that further assessment [of potential contamination by injected waste] is necessary.”

In fact, both the Railroad Commission of Texas (RRCT) and EPA’s Underground Injection Control (UIC) oversight program years ago determined that waste injection via RB Mitchell #2 or AF Hall #1B was not the source of ground water contamination, but have continued to review new data as it becomes available. The Region’s December 1, 2006 response (Response) to the first draft report addressed that issue on pages 9 - 11, explaining in detail why the Region concludes no such contamination has occurred. See Also Exhibit 1 to the Response, pp. 1, 13, 25 - 25, 29 - 30, 33, 34 - 35, 38 - 40, 43 - 45.¹ Sampling data obtain since Region 6

¹ On page six, the second draft report inaccurately states, “Region 6 personnel told us they believe evidence suggests the contamination does not originate from the injection.” In fact, the Region’s first response instead indicated that surface spills at the site *had* contaminated ground water, but that such surface spills were not within UIC program oversight authority or responsibility. See, e.g., Response, pp. 3, 14.

submitted its Response to the first draft further confirms that injected waste has not contaminated the ground water at issue. We suggest references to potential contamination by injected waste be deleted from the final report.

The preliminary assessment was released on April 3, 2007. That report, which was prepared by an EPA contractor, preliminarily concluded that the site's ground water contamination stemmed from underground injection. The assessment did not receive a thorough EPA technical review before it was distributed. A review has now been conducted and shows that the contractor apparently failed to consider significant information and analysis independently generated by EPA Region 6 and RRCT. Although it noted other potential sources of contamination in the area, e.g., pipeline brine spills, the contractor apparently limited its consideration to the former R.B. Mitchell #2 Facility. Observing that the former surface site of the facility well had been remediated, the Contractor concluded that injected waste was the source of continuing ground water contamination without further analysis. Region 6 has informed Basic Energy Services of this error and plans to issue an accurate site investigation report in the near future.

Region 6 is not now asserting “oversight authority.” The last paragraph on page ten of the second draft report suggests Region 6 has tardily asserted its “oversight authority,” essentially implying that the UIC oversight program failed to provide bottled water or conduct a preliminary site assessment until 2005 and 2006, respectively. We realize that keeping the respective authority and responsibilities of the three separate organizational units (Superfund Division, Water Quality Division, and Enforcement Division) that have been involved with this situation since early 2003 is difficult. Providing bottled water to the Panola residents and preparing a preliminary site assessment are not, however, UIC or any other program “oversight” actions. They are instead direct and independent actions of the Superfund program, which has no UIC program oversight responsibilities whatsoever over Texas state agencies.

The Response described the UIC program's oversight responsibilities on pp. 4-5 and the manner in which it carried them out on pp. 5-8, 15-16. See also Exhibit 1, pp. 5, 9, 11-13, 22-23, 31, 47-49, 53-54. As pointed out in the Response, the UIC oversight program quickly reacted to its *first* notice (in December 2002²) of alleged Panola County ground water contamination by injected waste. Even though there was, and is, persuasive evidence that no such contamination by injected waste occurred, the UIC oversight program continued to monitor the situation.

² The second draft report continues to reference a hearsay report that a 1996 complaint was submitted to ██████████ an alleged EPA employee. Region 6 continues to believe Mr./Ms. ██████████ was not an EPA employee because its personnel records contain no mention of such a person and staff working in the Region in 1996 have no recollection of meeting him or her. See Response, Exhibit I, pp. 3.

The Second Draft Report should be updated to reflect the currently status of Superfund program efforts. The Region's submission of the December 1, 2006, Response was its last substantive communication with Office of Inspector General technical staff. The Superfund program has preliminarily determined it appropriate to provide uncontaminated drinking water to the community and intends to use removal action funds to construct a waterline from the Panola Bethany Water Supply Corporation to transport such water to the community. Region 6 understands the community has received funds from a settlement with Basic Energy Services and a grant that may be used to defray the costs of constructing hookups from the line EPA will construct to individual residences and structures. Until completion of this project, the Region will continue to provide bottled water to the community. The Superfund program is now preparing a comprehensive site investigation document that will provide a technical basis for those actions and plans to release that document in several weeks.

The IG report indicated (page 11, "Conclusion") that "More frequent communication between EPA and the community may also be beneficial." Region 6 is in regular communication with the community via our program office contacts, as well as via the Office of Environmental Justice and Tribal Affairs. Contacts include frequent phone calls (several calls and or emails each week) and two community meetings since December 2006. In addition, Superfund program has met with the community members individually in preparation for the Preliminary Assessment and Site Investigation (PA/SI), to explain test results.

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