

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

1.	NOVY OIL AND GAS, INC.,)	
)	
	Plaintiff,)	
)	
Vs.)	Case No.: 4:18-cv-051-CVE-FHM
)	
1.	UNITED STATES ENVIRONMENTAL)	
	PROTECTION AGENCY,)	
2.	E. SCOTT PRUITT, ADMINISTRATOR,)	
	U.S. ENVIRONMENTAL PROTECTION)	
	AGENCY, IN HIS OFFICIAL CAPACITY,)	
3.	ANNIE L. IDSAL, IN HER OFFICIAL)	
	CAPACITY AS ADMINISTRATOR OF EPA)	
	REGION 6, and)	
4.	CHERYL T. SEAGER, IN HER OFFICIAL)	
	CAPACITY AS DIRECTOR OF THE)	
	COMPLIANCE ASSURANCE AND)	
	ENFORCEMENT DIVISION OF REGION 6)	
	OF THE ENVIRONMENTAL PROTECTION)	
	AGENCY,)	
)	
	Defendants.)	

COMPLAINT

Plaintiff, Novy Oil and Gas, Inc. ("Novy"), by and through its attorney of record, John H. Tucker, states as follows:

I. INTRODUCTION

This is a civil action for relief brought against the Defendants pursuant to Section 1423(c)(6) of the Safe Drinking Water Act ("the Act"), 42 U.S.C. 300h-2(c)(6). This case involves an appeal and challenge to an Order issued by the Defendants pursuant to Section 1423(c) of the Act, 42 U.S.C. § 300h-2(c).

II. JURISDICTION AND VENUE

1. This action arises under Section 1423(c) of the Act, 42 U.S.C. § 300h-2(c).

2. Jurisdiction exists under Section 1423(c)(6) of the Act, 42 U.S.C. § 300h-2(c)(6), and 28 U.S.C. § 1331. This action is brought by Novy seeking judicial review of an administrative order issued by Defendants under Section 1423(c)(3) of the Act, 42 U.S.C. § 300h-2(c)(3) on December 21, 2017. (A true and correct copy of the order is attached hereto as Exhibit "1" (hereafter the "Order").

3. Venue is proper in this district under Section 1423 (c)(6) of the Act, 42 U. S. C. § 300h-2(c)(6) as this judicial district is the judicial district in which the violation is alleged to have occurred (Osage County, Oklahoma).

4. Plaintiff, simultaneously with the filing of this case, has sent by certified mail a copy of this Complaint to the Administrator of the United States Environmental Protection Agency (USEPA") and the Attorney General of the United States.

III. PARTIES

4. Plaintiff is an Oklahoma corporation with its principal place of business in Tulsa, Oklahoma.

5. Defendant, United States Environmental Protection Agency ("USEPA"), is an agency and authority of the Government of the United States within the meaning of the Administrative Procedure Act. *See* 5 U.S.C. § 551(1). The USEPA is charged with administering certain provisions of the Act on behalf of the United States.

6. Defendant E. Scott Pruitt is the Administrator of the USEPA. He is sued in his official capacity only.

7. Defendant Anne L. Idsal is the Regional Administrator of USEPA Region 6.

She is being sued in her official capacity only.

8. Defendant Cheryl T. Seager is the Director of the Compliance Assurance and Enforcement Division of the USEPA Region 6. She is sued in her official capacity only.

IV. BACKGROUND

9. The Act was established to protect the quality of drinking water in the United States. The Act is intended to protect all waters actually or potentially designated for drinking water use, whether from above ground or underground sources.

10. The Act authorizes the USEPA to establish minimum standards to protect tap water and requires all owners or operators of public water systems to comply with primary (health-related) standards.

11. The USEPA has primary enforcement responsibility for underground injection of wastes 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.

12. The Order was issued by Defendants under the Section 1423(c) of the Act, 42 U.S.C. §§ 300h-2(c).

13. The well identified in the Order is located in Osage County, Oklahoma. It is properly permitted and authorized to place waste water into the Mississippi and Arbuckle formations.

14. The Order is premised on unsupported allegations that contaminates are coming from the well. The claims by the Defendants are not based on substantial evidence and the Order constitutes an abuse of discretion. There is no substantial evidence on the record as to Novy to support the Order.

15. On August 4, 2017, EPA Region 6 issued a proposed Administrative Order to Novy (the "Proposed Order"), alleging violation of 40 CFR §§ 2912(c), for failure to confine injected fluids to authorized injection zones.

16. Novy filed its Answer to the Proposed Order and Request for Hearing ("Answer") on September 5, 2017, and contested material facts alleged *and* the appropriateness of the Proposed Order.

17. On October 11, 2017, the Defendants held what they described as a public hearing on this matter in Tulsa, Oklahoma, but the procedures for such hearing were flawed. Nonetheless, Novy presented evidence at the hearing that conclusively established that its well could not have been the source of the contaminates.

18. On December 21, 2017, the Defendants issued an Order *In the Matter of Novy Oil and Gas, Inc.*, Respondent, Docket No. SDWA-06-2017-1112, as follows:

"SECTION 1423(c) COMPLIANCE ORDER

19. 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 orders Respondent to:

Immediately shut-in and/or shut-down and disconnect injection pipelines from the wellhead for Well Nos. 15 until the Respondent can prove that the injected fluids are being confined to the authorized injection zone."

[See Exhibit "1."]

V. STATEMENT OF CLAIMS

A. Novy was denied its due process rights.

19. The procedures upon which the Order was issued violated the Administrative Procedures Act, and the Safe Drinking Water Act, and the rules and regulations issued thereunder.

20. By the way of example, the Order found that injected fluids from the wells were no longer confined to the authorized injection zone. [See, Exhibit 1, Order paragraph 13.] Novy introduced unrefuted expert data into the record that conclusively established that (1) the well at all times disposed of produced water only into the Mississippi and Arbuckle formations, (2) that the Mississippi and Arbuckle formations were not "overpressured" and (3) that given the known bottom hole pressures in Novy's well and the fact that the Novy well is a vacuum well, it is physically impossible for fluids to move up from the relevant formations into the bottom of North Bird Creek.

21. Thus, the Order is arbitrary and capricious, an abuse of discretion, not in accordance with law, and not supported by substantial evidence record.

B. The Administrative Order is not based on substantial evidence to support the finding of a violation.

22. The Order ignored substantial evidence.

23. The Defendants made an insufficient attempt to understand, and ignored, the evidence in the record.

24. The Administrative Order is not supported by substantial evidence, is arbitrary and capricious, an abuse of discretion, not in accordance with law.

C. The requirements of the Order constitute an abuse of discretion.

25. Based on the flawed procedures, the lack of substantial evidence and the severity of the penalty imposed, the Order is an abuse of discretion.

VI. PRAYER FOR RELIEF

For the foregoing reasons, Novy Oil and Gas, Inc., requests that the Court:

1. Find and declare that the Order is not supported by substantial evidence, is based on a flawed procedure, is arbitrary and capricious, and an abuse of

discretion

2. Vacate and set aside the Order; and
3. Remand the Order.

Respectfully submitted,

By /s/ John H. Tucker
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Attorney for Novy Oil and Gas, Inc.

U.S. ENVIRONMENTAL PROTECTION AGENCY-REGION 6
 ADMINISTRATIVE ORDER
 In the Matter of Novy Oil and Gas, Inc., Respondent
 Docket No. SDWA-06-2017-1112

Exhibit 1

FILED

2017 DEC 21 PM 4:50

STATUTORY AUTHORITY

The following findings are made and Administrative Order (“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 Compliance Assurance and Enforcement Division. 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.

FINDINGS

1. Novy Resources Oil and Gas, Inc. (“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 operated injection wells which are Class II wells (collectively, “the wells”) authorized to inject in the Mississippi Chat formation located in Osage County, Oklahoma, as described below:

Well No.	Inventory No.	Quarter	Location		Range	Hereinafter Referred to as
15	OS5258	Northwest	Section 18	Township 27 North	8 East	“Well No. 15”

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 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 CFR § 147.2920(d), require that permitted injection wells or projects which have exhibited failure to confine injected fluids to the authorized injection zone or zones may be subject to restriction of injected volume

and pressure or shut-in, until the failure has been identified and corrected.

7. On November 19, 1987, EPA issued UIC permit number 06OS1261P5258 (“permit”) to Well No. 15.

8. On August 16, 2016, EPA initially observed contamination in a tributary of North Bird Creek (“tributary”) and North Bird Creek. Water located in the tributary at Latitude 36.8322 N and Longitude -96.4984 W, measured over 80,000 parts-per-million (ppm) Total Dissolved Solids (TDS). Also residual oil was observed on the surface and along the banks of the creek. These observations are consistent with impacts associated with oil and gas operations. Since then, EPA has conducted at least 20 inspections and has observed continued contamination.

9. On October 5, 2016 and June 27 – 29, 2017, samples were collected for cation/anion analyses in order to help identify the source(s) of contamination. Grab samples were taken at certain locations including the following: several locations throughout the tributary and North Bird Creek; and Novy Oil and Gas, Inc. well 15. Cation/anion analyses of the samples show a correlation between the tributary samples and produced fluids from this well. In addition, EPA noted elevated temperatures at the bottom of the water column of the tributary and North Bird Creek.

10. On May 25, 2017, in-stream fluid monitoring began in the tributary and North Bird Creek. In-stream monitors were placed in the tributary at ten different monitoring locations measuring the levels of TDS and temperature in the tributary and North Bird Creek.

11. Based on data from in-stream monitors, several stations continue to show elevated TDS and temperature levels. The patterns of TDS and temperature readings, the quick rebound of TDS and temperature levels to pre-event levels after precipitation events, and cyclical variations seen in the data indicate that the presence of these elevated TDS and elevated temperature are consistent with oil field related activities.

12. From June 9 – 20, 2017, a coordinated “static shut-in” of the six closest injection wells in the area occurred which included Respondent’s well 15. The following are the observations which resulted from the shut-in:

- (a) Due to the measured static fluids being 500 – 750 feet below ground surface, the static fluids cannot migrate from depth to the surface without additional pressure buildup, which was provided by the injection operations.

(b) A correlation was seen between injection operations and in-stream water quality TDS before and after the coordinated shut-in event.

(c) Amplitude (degree of variability) of short term concentration fluctuations at some stations diminished during the shut-in period.

13. From EPA investigations including those discussed in paragraphs 8 through 12 of this Order, EPA has made the determination that injected fluids from Respondent's wells are no longer confined to the authorized injection zone.

14. Therefore, Respondent violated regulations at 40 C.F.R. 147.2920(d) by exhibiting failure to confine injected fluids to the authorized injection zone.

15. Therefore, Respondent violated regulations at 40 C.F.R. §§ 147.2912(c) and 147.2920(d) by exhibiting failure to confine injected fluids to the authorized injection zone.

16. On August 4, 2017, EPA Region 6 issued a proposed order to Respondent and provided Respondent an opportunity to request a hearing on the order pursuant to Section 1423(c) of the Act, 42 U.S.C. § 300h-2(c).

17. On October 11, 2017, EPA Region 6 administered a public hearing on this matter in Tulsa, Oklahoma, which provided Respondents and persons who had commented on the proposed order a reasonable opportunity to be heard and to present evidence in accordance with Section 1423(c) of the Act, 42 U.S.C. § 300h-2(c).

18. EPA summarized its determinations in its Interim Final Bird Creek Investigation and Injection Well Response Action Plan dated August 4, 2017, and its Overview and Response to Comments dated December 21, 2017.

SECTION 1423(c) COMPLIANCE ORDER

19. 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 orders Respondent to:

Immediately shut-in and/or shut-down and disconnect injection pipelines from the wellhead for Well 15 until the Respondent can prove that the injected fluids are being confined to the authorized injection zone.

GENERAL PROVISIONS

20. This Order does not constitute a waiver, suspension, or modification of the requirements of 40 C.F.R. Parts 144, 146, and 147, Subpart III, which remain in full force and effect.

21. Issuance of this Order is not an election by EPA to forego any civil or criminal action otherwise authorized under the Act.

22. Violation of the terms of this 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 this Order under Section 1423(b) of the Act, 42 U.S.C. § 300h-2(b), and civil and criminal

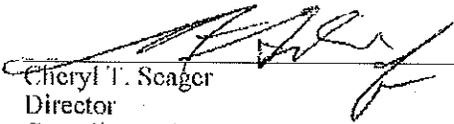
penalties for violations of the compliance terms of this Order under Section 1423(b)(1) and (2) of the Act, 42 U.S.C. § 300h-2(b)(1) and (2).

EFFECTIVE DATE

23. This 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).

17-21-17

Date


Cheryl T. Scager
Director
Compliance Assurance and
Enforcement Division

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CERTIFICATE OF SERVICE

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

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

Copy by certified mail
return receipt requested:

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Novy Oil and Gas, Inc.
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The Corporation Company
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Dated: 2/21/2017 