

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

1.	WARREN AMERICAN OIL COMPANY, LLC,	)	
		)	
	Plaintiff,	)	
v.		)	Case No. 18-cv-00048-GKF-FHM
		)	
1.	UNITED STATES ENVIRONMENTAL	)	
	PROTECTION AGENCY,	)	
2.	E. SCOTT PRUITT, ADMINISTRATOR,	)	
	U.S. ENVIRONMENTAL PROTECTION	)	
	AGENCY, IN HIS OFFICIAL CAPACITY,	)	
3.	ANNE L. IDSAL, IN HER OFFICIAL	)	
	CAPACITY AS ADMINISTRATOR OF EPA	)	
	REGION 6,	)	
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**

COMES NOW Plaintiff, Warren American Oil Company, LLC (“Warren American”), by and through its attorneys of record, and alleges and states:

**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 Warren American 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 “A” (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. Warren American, simultaneously with the filing of this case, has sent by certified mail a copy of this Complaint to the Administrator of the USEPA and the Attorney General of the United States.

## **III. PARTIES**

4. Plaintiff Warren American is an Oklahoma limited liability company 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. Warren American operates three wells which have been designated Class II wells (collectively “the wells”) which are duly permitted and authorized by applicable law to inject waste waters into the Mississippi Chat formation located in Osage County, Oklahoma. The wells are described below as:

<u>Well No.</u>	<u>Inventory No.</u>	<u>Location</u>				<u>Hereinafter Referred to as</u>
		<u>Quarter</u>	<u>Section</u>	<u>Township</u>	<u>Range</u>	
B7	OS0920	Southeast	01	27 North	7 East	“Well No. B7”
B8	OS0921	Southeast	01	27 North	7 East	“Well No. B8”
B9	OS5133	Southeast	01	27 North	7 East	“Well No. B9”

14. On August 8, 1986, EPA issued UIC permit number 06S1261P5133 (“the Permit”) to Well No. B9.

15. Wells No. B7 and No. B8 are permitted by rule.

16. The Defendants have claimed that there are elevated temperatures and total dissolved solid levels (“contaminates”) in a tributary and North Bird Creek located approximately ½ mile from the wells. The Order is premised on unsupported allegations that the contaminants are coming from the wells. This claim(s) by the Defendants is not based on substantial evidence and the Order constitutes an abuse of discretion.

17. For example, the Defendants concluded that injected fluids from Warren American’s wells are no longer confined to the authorized injection zone, but this conclusion is not supported by substantial evidence. There is no substantial evidence on the record as to Warren American and the wells, taken as a whole, to support the Order.

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

19. Warren American filed its Answer to the Proposed Order and Request for Hearing (“Answer”) on August 31, 2017, and contested material facts alleged *and* the appropriateness of the Proposed Order.

20. On October 11, 2017, the Defendants held a hearing on this matter in Tulsa, Oklahoma, but the procedures for such hearing were flawed. Nonetheless, Warren American presented evidence at the hearing that conclusively established that its wells could not have been the source of the contaminates.

21. On December 21, 2017, the Defendants issued an Order *In the Matter of Warren American Oil Company, LLC*, Respondent, Docket No. SDWA-06-2017-1111, as follows:

“SECTION 1423(c) COMPLIANCE ORDER

21. 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. B7, B8 and B9 until the Respondent can prove that the injected fluids are being confined to the authorized injection zone.” *See* Exhibit “A”.

**VI. STATEMENT OF CLAIMS**

**A. Warren American was denied its due process rights.**

22. 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.

23. 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 A, Order paragraph 15). Warren American produced unrefuted expert testimony and extensive data into the record that conclusively established that (1) the wells at all times disposed of produced water only into the Mississippi Chat formation, (2) that the Mississippi Chat formation was not “overpressured” and (3) that given the known bottom hole pressures in Warren American’s wells it is physically

impossible for fluids to move up from the Mississippi Chat formation into the bottom of North Bird Creek.

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

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

25. Warren American incorporates the forgoing allegations.

26. The Order ignored substantial evidence.

27. The Defendants made no attempt to understand, and ignored, the evidence in the record.

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

**C. The Defendants' assessment of a penalty and the requirements of the Order constitutes an abuse of discretion.**

29. Warren American incorporates the forgoing allegations.

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

**VII. PRAYER FOR RELIEF**

For the foregoing reasons, Warren American requests that the Court:

- a. 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
- b. Vacate and set aside the Order; and
- c. Remand the Order.

DATED: January 19, 2018.

Respectfully Submitted,

**MCNAMARA, INBODY & PARRISH, PLLC**

Stephen R. McNamara, OBA #6071  
Brian T. Inbody, OBA #17188  
Boulder Towers, Suite 1210  
1437 South Boulder Avenue  
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and

/s/ David P. Page

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David P. Page, Esq. OBA # 6852  
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Facsimile: (580) 255-5587  
Email: [david@leachsullivan.com](mailto:david@leachsullivan.com).

***Attorneys for Plaintiff, Warren American  
Oil Company, LLC***

**EXHIBIT "A"**



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 6

1445 ROSS AVENUE, SUITE 1200

DALLAS, TEXAS 75202-2733

**21 DEC 2017**

CERTIFIED MAIL: 7007 3020 0000 1522 8632

Mr. John Burroughs, Vice President of Operations

Warren American Oil Company, LLC

6585 S. Yale Ave., Suite 800

Tulsa, OK 74136

Re: Final Order

SDWA-06-2017-1111

Dear Mr. Burroughs:

The Environmental Protection Agency ("EPA"), Region 6, is issuing the enclosed final order pursuant to Section 1423(c) of the Safe Drinking Water Act ("the Act"), 42 U.S.C. § 300h-2(c). EPA issues this Final Order to address violations of the Act and its Underground Injection Control ("UIC") Program requirements at 40 C.F.R. Part 147, Subpart GGG at Wells No. B7, B8 and B9 in Osage County, Oklahoma. This Final Order, as proposed, was subject to public notice and comment, and an opportunity to request a hearing. A hearing was provided in Tulsa, Oklahoma, on October 11, 2017. At the hearing, you were provided an opportunity to be heard and present evidence, in accordance with Section 1423(c)(3)(A) of the Act, 42 U.S.C. § 300h-2(c)(3)(A). After considering the testimony and evidence, EPA has decided to proceed with the issuance of the Final Order as it was proposed, with some non-material revisions.

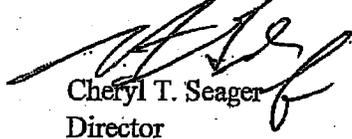
You may appeal this Final Order pursuant to Section 1423(c)(6) of the Act, 42 U.S.C. 300h-2(c)(6).

Please note that the Small Business Regulatory Enforcement and Fairness Act provides small businesses with the opportunity to submit comments on regulatory enforcement at the time of an EPA enforcement action. The attached link provides information on this right as well as information on compliance assistance.

<http://nepis.epa.gov/Exe/ZyPDF.cgi/P100BYAV.PDF?Dockey=P100BYAV.PDF>

Questions regarding this Order should be addressed to Jerry Saunders at (214) 665-6470.

Sincerely,



Cheryl T. Seager  
Director  
Compliance Assurance and  
Enforcement Division

Enclosures:

Final Order  
Response to Comments  
Interim Final Report  
Map  
Charts

Cc:

Steve McNamara  
McNamara, Inbody & Parrish, PLLC  
Boulder Towers,  
Suite 1210  
1437 South Boulder Ave.  
Tulsa, OK 74119-3609

U.S. ENVIRONMENTAL PROTECTION AGENCY-REGION 6  
 ADMINISTRATIVE ORDER  
 In the Matter of Warren American Oil Company, LLC, Respondent  
 Docket No. SDWA-06-2017-1111

FILED

2017 DEC 21 PM 4:53

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. Warren American Oil Company, LLC ("Respondent") is a limited liability 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 Inventory		Location			Hereinafter
No.	No.	Quarter	Section	Township Range	Referred to as
B7	OS0920	Southeast	01	27 North 7 East	"Well No. B7"
B8	OS0921	Southeast	01	27 North 7 East	"Well No. B8"
B9	OS5133	Southeast	01	27 North 7 East	"Well No. B9"

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 ("ABR") 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.

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 § 147.2912(c), require that ABR 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-down, until the failure has been identified and corrected.

7. Regulations at 40 C.F.R. § 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.

8. On August 8, 1986, EPA issued UIC permit number 06S1261P5133 ("permit") to Well No. B9.

9. Wells No. B7 and No. B8 are regulated as ABR wells.

10. 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.

11. On 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 Warren American Oil Company, LLC's tank battery facility. Cation/anion analyses of the samples show a correlation between the tributary samples and produced fluids from this tank battery facility which services the wells. In addition, EPA noted elevated temperatures at the bottom of the water column of the tributary and North Bird Creek.

12. 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.

13. 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.

14. From June 9 - 20, 2017, a coordinated "static shut-in" of the six closest injection wells in the area occurred which included Respondent's B7, B8 and B9 Wells. The following are the observations which resulted from the shut-in:

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(a) Due to the measured static fluids being 500 – 600 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.

15. From EPA investigations including those discussed in paragraphs 10 through 14 of this Order, EPA has made the determination that injected fluids from Respondent's wells are no longer confined to the authorized injection zone.

16. 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.

17. 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.

18. 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).

19. 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).

20. 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**

21. 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. B7, B8 and B9 until the Respondent can prove that the injected fluids are being confined to the authorized injection zone.

**GENERAL PROVISIONS**

22. 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.

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

24. 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**

25. 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).

12-21-17

Date

  
Cheryl T. Seager  
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

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Copy by certified mail  
return receipt requested: Mr. John Burroughs, Vice President of Operations  
Warren American Oil Company, LLC  
6585 S. Yale Ave., Suite 800  
Tulsa, OK 74136

First class mail: Steve McNamara  
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Robin Phillips, Superintendent  
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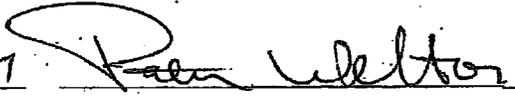
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[kristen.kokinos@sol.doi.gov](mailto:kristen.kokinos@sol.doi.gov)

Dated: 12/21/2017 

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