



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

James S. Bolinger
ARG Resources, Incorporated
285 Custom Lumber Lane
Kane, PA 16735

Re: Intent to Issue Administrative Order and Opportunity to
Request a Hearing
Docket No. SDWA-03-2018-0068DU

Dear Mr. Bolinger:

Based on correspondence with you and a site inspection of the Elk County facilities owned by ARG Resources, Incorporated, the U.S. Environmental Protection Agency (EPA) has determined that your facilities are in violation of the Safe Drinking Water Act (SDWA, 42 U.S.C. §§ 300f et seq., and the Underground Injection Control (UIC) regulations promulgated under Sections 1421 and 1422 of the SDWA, 42 U.S.C. §§ 300h and 300h-1.

Specifically:

ARG Resources, Incorporated is in violation of 40 C.F.R. § 144.28(f)(2) for failing to maintain the mechanical integrity of injection wells and has failed to properly plug and abandon wells pursuant to 40 C.F.R. § 146.10.

Such violations are subject to enforcement action under Section 1423 of the SDWA, 42 U.S.C. § 300h-2. This Section provides for the initiation of civil and/or criminal actions in federal district court or the issuance of Administrative Orders which mandate compliance with all provisions of the SDWA and its implementing regulations. EPA may assess penalties or terminate permits for violations of these requirements.

A copy of the proposed Order is enclosed herewith for your review. Notice of EPA's intent to issue this Order, and of the opportunity to provide written comments on the proposed Order, is also being provided to the public, pursuant to Section 1423(c)(3)(B) of the SDWA, 42 U.S.C. §§ 300h-2(c)(3)(B).



You are hereby offered an opportunity to submit written comments on the proposed Order and/or to request a hearing within 30 days of receipt of this notice, under Section 1423(c)(3), 42 U.S.C. §§ 300h-2(c)(3). Such a hearing would formally offer you an opportunity to show cause why the enclosed Order should not be issued or why its terms should be modified. If you decide to request a hearing, you will be sent a copy of the Guidance on UIC Administrative Order Procedures.

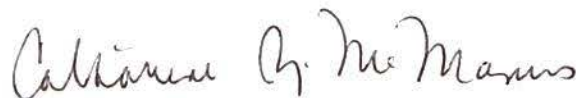
Such a hearing would be held on the record. You would have the right to present any witnesses and any documentary evidence bearing on the Findings of the violations cited above, and on specific steps you propose to remedy the violation. Any person who comments on the proposed Order has a right to participate in such a hearing. At such a hearing, you would have the right to be represented by legal counsel. If you do request a hearing, you will be notified promptly of the date of the hearing, which will be held at EPA's Region III office, located at 1650 Arch Street in Philadelphia.

If you choose not to request a hearing as provided above, EPA will review any comments submitted on the proposed Order and will thereafter determine whether to issue the Order as proposed or modified in response to comments.

Whether or not you request a hearing, you may confer informally with EPA concerning the alleged violations and applicable procedural rules at 40 CFR § 22.50. (Consolidated Rules for complying with the regulations.) You may wish to appear at the conference yourself and/or be represented by your counsel. A request for an informal conference does not extend the thirty (30) day period during which a request for hearing must be submitted. The informal conference procedure may be pursued as an alternative to, or simultaneously with, a hearing.

EPA may take further administrative or judicial action for the same violations pursuant to Section 1423(b) of the SDWA, 42 U.S.C. § 300h-2(b) as warranted. If you have any questions pertaining to this matter, or would like to schedule an informal conference, please contact Ms. Jill Branby of my staff at (215) 814-5466.

Sincerely,

A handwritten signature in cursive script, reading "Catharine G. McManus".

Catharine McManus, Acting Director
Water Protection Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 ARCH STREET
PHILADELPHIA, PENNSYLVANIA 19103-2029

IN THE MATTER OF:

ARG Resources, Incorporated
285 Custom Lumber Lane
Kane, PA 16735

)
)
) **ADMINISTRATIVE ORDER**
) **FOR COMPLIANCE**

)
) Docket No. SDWA-03-2018-0068DU
) Proceedings Pursuant to Section
) 1423(c) of the Safe Drinking Water
) Act, 42 U.S.C. § 300h-2(c).
)
)

I. STATUTORY AUTHORITY

1. This Administrative Order for Compliance (“Order”) is issued pursuant to section 1423(c)(2) of the Safe Drinking Water Act (“Act”), 42 U.S.C. § 300h-2(c)(2).
2. The authority to issue an order pursuant to section 1423(c)(2) of the Act has been vested in the Administrator of the United States Environmental Protection Agency (“EPA” or “the Agency”). The Administrator of EPA has delegated the authority to take these actions to the Regional Administrator of EPA, Region III, who has redelegated these authorities to the Director of the Water Protection Division, EPA Region III.

II. STATUTORY AND REGULATORY FRAMEWORK

3. Part C of the Safe Drinking Water Act, Sections 1421 – 1429, 42 U.S.C. §§ 300h – 300h-8, sets forth the regulations for the Underground Injection Control (“UIC”) program.
4. Section 1421 of SDWA, 42 U.S.C. § 300h, requires that U.S. EPA promulgate regulations, which shall include inspection, monitoring, recordkeeping and reporting requirements, for State underground injection control (“UIC”) programs that prevent endangerment to drinking water sources by underground injection.
5. Section 1422(b) of the SDWA, 42 U.S.C. § 300h-1(b), provides that States, upon receipt of U.S. EPA’s approval of a proposed UIC program, may implement a Federally-enforceable UIC program in that State and obtain primacy enforcement responsibility of that program. Section 1422(c) of the SDWA, 42 § 300h-1(c) further provides that, in states that have not obtained primacy, EPA is to prescribe an applicable UIC program in

that State.

6. Pursuant to Sections 1421 and 1422 of SDWA, 42 §§ 300h and 300h-1, respectively, EPA has promulgated regulations for state underground injection control (UIC) programs at 40 C.F.R. Parts 144 through 147. The Commonwealth of Pennsylvania has not obtained primacy. The EPA program for the Commonwealth of Pennsylvania is 40 C.F.R, Subpart NN, 40 C.F.R. §§ 147.1951- 1955, and became effective on June 25, 1984.
7. Federal regulations at 40 C.F.R. §144.6 define six classes of injection wells. Class II wells allow for the injection of fluids which are brought to the surface in connection with conventional oil or natural gas production, specifically, 40 C.F.R. § 144.6(b) describes a Class II UIC well as a well “which injects fluids: (2) For enhanced recovery of oil or natural gas...”
8. Oil and/or gas production wells are regulated by the Commonwealth of Pennsylvania Department of Environmental Protection. Production wells are used to extract oil and/or gas from underground formations.
9. UIC Class II disposal wells (known as II-D) are wells that inject brine not in conjunction with a production operation. In general, II-D wells are subject to more stringent regulation due to the high amount of pressure injected into the underground formation. Pressure builds up over time and allows for the pressure in the formation to potentially rise to the level which would allow for fluid to migrate upward potentially endangering an Underground Source of Drinking Water (USDW). For this reason, II-D wells may not be rule authorized; II-D wells may only be authorized by permit.
10. UIC Class II enhanced recovery wells (known as II-R) are used to assist oil and gas production by injecting produced brines (and other chemicals) into previously depleted production zones to displace oil and/or gas and drive it to a production wellbore. Regulation of II-R wells is not as stringent as II-D wells and they may be authorized by rule. Extraction of oil and gas during enhanced recovery operations relieves pressure in the injection formation. However, when production stops at II-R operations, USDW endangerment due to formation over-pressurization becomes a concern.
11. 40 C.F.R. Part 144, Subpart C sets forth the regulations that apply to UIC wells authorized by rule. 40 C.F.R. § 144.21(a) provides that “[a]n existing Class II (except enhanced recovery and hydrocarbon storage) ... injection well is authorized by rule if the owner or operator injects into the existing well within one year after the date at which a UIC program authorized under the Act becomes effective for the first time or inventories the well pursuant to the requirements of § 144.26. An owner or operator of a well which is authorized by rule pursuant to this section shall rework, operate, maintain, convert, plug, abandon or inject into the well in compliance with applicable regulations.”
12. “Owner or operator” is defined in 40 C.F.R. § 144.3 to mean “the owner or operator of any “facility or activity” subject to regulation under the UIC program.

13. “Director” as defined in 40 C.F.R. § 144.3 means the EPA Regional Administrator, when there is an EPA administered program.
14. “Person” is defined in section 1401(12) of the Act, 42 U.S.C. § 300f(12), to mean “an individual, corporation, company, association, partnership, State, municipality, or Federal agency (and includes officers, employees, and agents of any corporation, company, association, State, municipality, or Federal Agency).”
15. “Facility or activity” is defined in 40 C.F.R § 144.3, in pertinent part, to mean “any UIC ‘injection well,’ ... that is subject to regulation under the UIC program.”
16. “UIC” is defined in 40 C.F.R. § 144.3 to mean “the Underground Injection Control program under Part C of the Safe Drinking Water Act, including an ‘approved State program.’”
17. “Injection well” is defined in 40 C.F.R. § 144.3 to mean “a ‘well’ into which ‘fluids’ are being injected.”
18. “Fluid” is defined in 40 C.F.R. § 144.3 to mean “any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.”
19. “Well” is defined in 40 C.F.R. § 144.3, in pertinent part, to mean “[a] bored, drilled, or driven shaft whose depth is greater than the largest surface dimension...”
20. 40 C.F.R. § 144.21(e) specifies that “[t]he owner or operator of a well authorized under this section shall comply with the applicable requirements of § 144.28 and part 147 of this chapter no later than one year after authorization.”
21. 40 C.F.R. § 144.28 states that “[t]he following requirements apply to the owner or operator of a Class I, II or III well authorized by rule under this subpart, as provided by §§ 144.21(e) and 144.22(d).” 40 C.F.R. § 144.28(a) specifies that “[t]he owner or operator shall comply with all applicable requirements of this subpart and subpart B of this part. Any noncompliance with these requirements constitutes a violation of the Safe Drinking Water Act and is grounds for enforcement action...”
22. 40 C.F.R. § 144.28(c) requires the owner or operator of a Class II UIC well to “prepare, maintain, and comply with a plan for plugging and abandonment of the well or project that meets the requirements of § 146.10 of this chapter and is acceptable to the Director” and, pursuant to paragraph (2)(i) of that subsection, “submit the plan, on a form provided by the Regional Administrator, no later than one year after the effective date of the UIC program in the state.”
23. 40 C.F.R. § 144.28(d)(1) requires that the owner and operator of a Class II well “demonstrate and maintain financial responsibility and resources to close, plug and abandon the underground injection operation in a manner prescribed by the Director

until: (i) The well has been plugged and abandoned in accordance with an approved plugging and abandonment plan pursuant to §§ 144.28(c) and 146.10 and submission of a plugging and abandonment report has been made pursuant to § 144.28(k)...” 40 C.F.R. § 144.28(d)(2) states that “[f]or EPA-administered programs, the owner or operator shall submit such evidence no later than one year after the effective date of the UIC program in the State.”

24. 40 C.F.R. § 144.28(f)(2) specifies that “[t]he owner or operator of a Class I, II or III injection well authorized by rule shall establish and maintain mechanical integrity as defined in § 146.8 of this chapter until the well is properly plugged in accordance with an approved plugging and abandonment plan pursuant to §§ 144.28(c) and 146.10, and a plugging and abandonment report pursuant to § 144.28(k) is submitted, or until the well is converted in compliance with § 144.28(j).”

25. 40 C.F.R. § 144.28(f)(3) provides that “[w]hen the Director determines that a Class I (non-hazardous), II or III injection well lacks mechanical integrity pursuant to § 146.8 of this chapter, the Director shall give written notice of his determination to the owner or operator. Unless the Director requires immediate cessation, the owner or operator shall cease injection into the well within 48 hours of receipt of the Director’s determination. The Director may allow plugging of the well in accordance with the requirements of § 146.10 of this chapter, or require the owner or operator to perform such additional construction, operation, monitoring, reporting and corrective action as is necessary to prevent the movement of fluid into or between USDWs caused by the lack of mechanical integrity. The owner or operator may resume injection upon receipt of written notification from the Director that the owner or operator has demonstrated mechanical integrity pursuant to § 146.8 of this chapter.

26. Section 1423(c)(2) of the Act, 42 U.S.C. § 300h-2(c)(2), authorizes the Administrator of the EPA, in any case in which the Administrator is authorized to bring a civil action under section 1423 with respect to any regulation or other requirement of Part C of the Act (pertaining to Protection of Underground Source of Drinking Water) relating to the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production, to issue an order either assessing a civil penalty, or requiring compliance with such regulation or other requirement, or both.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

27. Respondent, ARG Resources, Incorporated, is a corporation that is registered to do business in the Commonwealth of Pennsylvania with a registered address of 285 Custom Lumber Lane, Kane, PA, 16735 and is therefore a “person” within the meaning of 40 C.F.R. §141.2.

28. In July of 2001, Respondent purchased the Elk County Facilities, PAS2R208AELK, PAS2R208BELK, PAS2R208CELK, PAS2R208DELK, PAS2R222AELK, and PAS2R222BELK, underground injection, Class II, enhanced recovery facilities located in

the Allegheny National Forest in Elk County, Pennsylvania (“Facility”). The leases include over 600 injection wells, both rule-authorized and permitted.

29. On October 4, 2016, EPA issued a Notice of Violation to Respondent for twenty-two (22) injection wells, spread over four permits at the Facility, that had been out of compliance for loss of mechanical integrity for greater than 90 days. The NOV also addressed two additional wells that Respondent had notified EPA were out of compliance for a period of less than 90 days at the time.
30. On December 6, 2017, representatives of U.S. EPA met with representatives of Respondent at the regional EPA office. Respondent indicated that the company’s current financial assets are not adequate to cover repair of all of the wells that are out of compliance (stated to be 32 wells at that time), or to cover site closure and abandonment if the company shuts down.
31. Respondent has failed to comply with 40 C.F.R. § 144.28(f)(2) by maintaining the mechanical integrity of the above-mentioned injection wells.
32. The Facility contains approximately 40 improperly plugged wells requiring corrective action under a prior EPA criminal enforcement case, in addition to the non-compliant wells. Respondent has failed to properly plug and abandon these wells pursuant to 40 C.F.R. § 146.10.

IV. ORDER FOR COMPLIANCE

Therefore, this ____ day of _____, 2018, Respondent is hereby ORDERED, pursuant to this Section to take the following actions in order to comply with the section or requirement of the SDWA cited above:

33. Within 90 days of the effective date of this AO, Respondent shall submit to EPA a plan, subject to approval by EPA, detailing well rework to bring wells into compliance and demonstrate mechanical integrity in accordance with 40 C.F.R. § 146.8.
34. The plan must also identify all wells that will be plugged and abandoned in accordance with EPA and PADEP regulatory requirements, including 40 C.F.R. § 144.28(c).

V. GENERAL PROVISIONS

35. The following certification must accompany each submission by Respondent pursuant to this Order and must be signed by a Representative of Respondent authorized to sign on behalf of Respondent:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

36. Respondent’s compliance with the terms of this Order shall not relieve Respondent of their obligation to comply with all applicable provisions of the SDWA or any other Federal, State or local law or regulation nor shall it be a ruling on, or determination of, any issue related to any federal, state or local permit. This Order does not constitute a waiver, suspension or modification of the requirements of 40 C.F.R. Parts 144, 146 and 148 which remain in full force and effect.
37. Violation of the Order after its effective date may subject Respondent to a civil action in a United States district court with (1) penalties up to \$54,789 per day per violation as authorized in section 1423(b) of the Act, 42 U.S.C. § 300h-2(b), and as modified by EPA’s 2017 Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. § 19.4; and (2) if such violation is willful, in addition to or in lieu of a civil penalty, to imprisonment for not more than three years, or a fine in accordance with Title 18, or both.
38. Issuance of this Order is not an election by EPA to forego any civil or criminal action otherwise authorized by the SDWA. EPA reserves the right to seek any remedy available under the law that it deems appropriate to address the violations described herein. Compliance with this Order shall not be a defense to any action commenced pursuant to such authorities. Failure to comply and/or respond to this Order, or providing misleading or false information, may subject you to civil and/or criminal sanctions pursuant to, 33 U.S.C. § 1319.

VI. OPPORTUNITY TO CONFER

39. Pursuant to section 1423(c)(3)(A) and (B) of the Act, 42 U.S.C. § 300h-2(c)(3)(A) and (B), the EPA is providing public notice and an opportunity to comment on the Order prior to issuing the Final Order, and notifies Respondent of their opportunity to request a hearing on the Order. Any request for a hearing by Respondent shall be made within thirty (30) calendar days of the date this Order is received by Respondent, and must be directed to the person and address specified in paragraph 41 of this Order.

VII. JUDICIAL REVIEW

40. Respondent may seek federal judicial review of this Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

VIII. NOTICE OF INTENT TO COMPLY

41. Within ten (10) days of the effective date of this Order, Respondent shall submit to EPA a Notice of Intent to Comply with the Order. The Notice shall be submitted to:

Jill Branby
Ground Water & Enforcement Branch
Water Protection Division
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103
(215) 814-5466

IX. EFFECTIVE DATE

42. This Order will be considered issued upon filing with the Regional Hearing Clerk in Region III. Pursuant to Section 300h-2(c)(3)(B) and (D), 42 U.S.C. §§ 1423(2)(c)(3)(B) and (D) this Order will become effective thirty (30) days after issuance unless an appeal is filed by Respondent within thirty (30) days from the date of issuance.

Date: _____

Catharine McManus, Acting Director
Water Protection Division
U.S. EPA Region III

CERTIFICATE OF SERVICE

I certify that I caused to be sent the original Administrative Order for Compliance to the following by certified mail, return receipt requested, after filing the original with the Regional Hearing Clerk:

James S. Bolinger
ARG Resources, Incorporated
285 Custom Lumber Lane
Kane, PA 16735

Date: _____

Bonnie A. Pugh
Sr. Assistant Regional Counsel