



NATURAL RESOURCES DEFENSE COUNCIL

August 14, 2014

Mr. Shawn M. Garvin  
Regional Administrator  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

***Re: West Virginia Underground Injection Control Wells: API #47-019-00460 & #47-019-00508, Operated by Danny E Webb Construction, Inc.***

Dear Regional Administrator Garvin:

We write to bring your attention to the unauthorized and illegal underground injection occurring at the two above-referenced underground injection control (UIC) wells at a site in West Virginia, and the State of West Virginia's failure to act to prevent this activity, in violation of the Safe Drinking Water Act. The state of West Virginia appears unable or unwilling to ensure that the requirements of the Safe Drinking Water Act are met at this site, endangering drinking water sources. The State's management of the site and apparent unwillingness to prevent clear violations also calls into question the State's regulation of the UIC program throughout West Virginia.

On January 8, 2014, NRDC notified the West Virginia Department of Environmental Protection (WV DEP) by letter that injection was occurring at both wells despite expired permits and no authorization to inject under state law.<sup>1</sup> We e-mailed a copy of this letter to Region III staff on the same date to alert the U.S. Environmental Protection Agency (EPA) of this unlawful activity but, to our knowledge, EPA has taken no action to address the concerns raised in the initial letter.

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<sup>1</sup> The letter is attached as appendix 1.

Subsequent to the January letter, the WV DEP issued a permit to the operator Danny E. Webb Construction, Inc. (DEWCI) to continue injection into the North Hills #1 well, API #47-019-00460 on February 6, 2014.<sup>2</sup> This permit was issued despite a significant history of violations by the operator.<sup>3</sup> These violations are of a very serious nature and are classified in EPA guidance as Level I violations with potential for significant environmental contamination.<sup>4</sup> In issuing the permit, the WV DEP disregarded evidence of ongoing risks to water resources posed by operations at the site, and a pattern of unauthorized injection into the well. Also on February 6<sup>th</sup>, the state issued two orders which purported to retroactively authorize injection after the expiration of permits for the North Hills #1 well and the North Hills #1A well, API #47-019-00508, which is located at the same site.<sup>5</sup> These orders were issued despite the WV DEP's lack of legal authority to extend the permits in question.

As noted in our letter of January 8, 2014, federal law allows state-issued UIC permits to continue in effect after expiration only if (1) the permittee has submitted a complete and timely application for a new permit, (2) through no fault of the permittee the new permit is not issued with an effective date on or before the previous permit's expiration, and (3) state law allows for a UIC permit to continue in effect until the effective date of a new permit.<sup>6</sup> None of these three requirements were fulfilled for the permits in question. In neither case was a complete and timely application submitted before the permit expired.<sup>7</sup> And West Virginia state law does not

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<sup>2</sup> The state permit was designated UIC2D0190460.

<sup>3</sup> Previous violations at the site include: Injection without a valid permit (May 8, 2008); Failure to close associated pits, as per WV DEP order (May 12, 2008); Injection without a valid permit (June 3, 2008) [note that while this obvious violation was documented by DEP, it is not clear that a Notice of Violation was ever issued for the infraction]; Used oil observed within pits at the site (September 23, 2010).

<sup>4</sup> See EPA, *Underground Injection Control Program Guidance #77: Operating, Monitoring and Reporting Guidelines for Class IID Commercial Salt Water Disposal Wells*, (Jun. 22, 1992) available at [http://www.epa.gov/ogwdw/uic/pdfs/guidance/guide-memo\\_guidance-77\\_op\\_mon\\_rept\\_guid\\_class2d\\_1992.pdf](http://www.epa.gov/ogwdw/uic/pdfs/guidance/guide-memo_guidance-77_op_mon_rept_guid_class2d_1992.pdf).

<sup>5</sup> These orders are attached as appendices 2 and 3, respectively.

<sup>6</sup> 40 CFR § 144.37.

<sup>7</sup> See W. Va. Dep't of Env'tl. Prot. UIC Permit Database (listing the date on which state permit 2D0190460 [issued for the North Hills #1 well] expired as October 25, 2012, and the date on which a renewal application was received as January 3, 2013) attached as appendix 4; *Id.* (listing the date on which state permit 2D0190508 [issued for the North Hills #1A well] expired as November 7, 2013). In an email to Matthew McFeeley, an NRDC attorney, on December 18, 2013, WV DEP staff member James Peterson indicated that the renewal application for permit 2D0190508 was not complete, stating "I can send you what I have on that renewal. Operator still owes me info." A printout of that email is attached as appendix 5.

allow for the continuation of the permit.<sup>8</sup> Despite the fact that injection into these wells is not allowed by federal law, the WV DEP continues to take the position that the operator may continue injection. To our knowledge, EPA has not acted to clarify the legal obligations of the operator or the state, or to prevent the continued illegal injection at the site.

NRDC, the West Virginia Surface Owners' Rights Organization (WVSORO), and others filed an appeal of the UIC permit with the West Virginia Environmental Quality Board on March 3, 2014. On March 4, 2013, the WV DEP issued an order revoking the UIC permit for the North Hills #1 well.<sup>9</sup> However, the order allowed injection of oil and gas waste into the well to continue into the well indefinitely, pending the submission of a new application by DEWCI. Federal law requires that state underground injection programs prohibit any underground injection which is not authorized by permit.<sup>10</sup>

NRDC, WVSORO, and others filed an appeal of the March 4 order on March 17, 2014. No state permit is in effect for the North Hills #1 well, yet West Virginia Department of Environmental Protection has indicated to the operator that it may continue injection until a new permit is issued, without even providing a deadline for a new permit application to be submitted.<sup>11</sup>

WV DEP's action is not in compliance with federal law. The WV DEP's actions appear to demonstrate a determination to allow continued injection at the site despite the contrary requirements of federal law. Because the state of West Virginia appears unable or unwilling to ensure the requirements of the Safe Drinking Water Act are met, the EPA should take steps to identify deficiencies in the West Virginia UIC program and to withdraw approval of the program if these deficiencies are not promptly addressed, as directed by federal regulation.<sup>12</sup>

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<sup>8</sup> See W. Va. Code R. § 47-13-13.12.b ("If the permittee wishes to continue activity regulated by this permit after the expiration date of this permit, the permittee must apply for *and obtain* a new permit.") (emphasis added).

<sup>9</sup> The Order was designated 2014-UIC-12 by the WV DEP. The order stated that the permit was revoked for unspecified "procedural deficiencies." The order is attached as appendix 6.

<sup>10</sup> See 42 U.S.C. § 300h. Injection may also be authorized by rule, however the allowable situations in which Class II wells may be authorized to inject by rule are not applicable here. See 40 C.F.R. § 144.28.

<sup>11</sup> See Order 2014-UIC-13, attached as appendix 7, at 2.

<sup>12</sup> See 40 C.F.R. §§ 145.33, 145.34. Note that while Part 145 indicates that it provides criteria and procedures for withdrawal of a program approved under section 1422 of the Safe Drinking Water Act, EPA has previously utilized the withdrawal procedures for a program approved under section 1425. See 64 Fed. Reg. 43329, 43330 (1999).

As you know, strict oversight and enforcement of Class II UIC wells is necessary to protect drinking water.<sup>13</sup> Unfortunately, necessary safeguards are frequently circumvented or ignored, putting drinking water sources at risk. A recent survey of a small number of wells in West Virginia found significant lapses in UIC oversight by the West Virginia DEP.<sup>14</sup> The investigators found numerous problems after inspecting the sites and paperwork for only four UIC wells, including: lack of site security, lack of secondary containment, and approval of a faulty Mechanical Integrity Test.<sup>15</sup> In addition, all injection records the investigators examined were deficient in information and some records appear to be fabricated.<sup>16</sup> These unaddressed problems represent an imminent and substantial endangerment of drinking water and public health.

A troubling pattern of state oversight of class II wells has been evidenced by a recent ProPublica analysis of well inspections conducted between late 2007 and late 2010 for more than 194,000 Class II wells. ProPublica found that “fundamental safeguards are sometimes being ignored or circumvented. State and federal regulators often do little to confirm what pollutants go into wells for drilling waste.”<sup>17</sup> ProPublica also found that “More than 1,000 times in the three-year period examined, operators pumped waste into Class II wells at pressure levels they knew could fracture rock and lead to leaks. In at least 140 cases, companies injected waste illegally or without a permit. In several instances, records show, operators did not meet requirements to identify old or abandoned wells near injection sites until waste flooded back up to the surface, or found ways to cheat on tests meant to make sure wells aren’t leaking.”<sup>18</sup> A GAO report released last month also demonstrated that state oversight of UIC class II wells is

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<sup>13</sup>Because oil and gas exploration and production (E&P) wastes are not regulated as hazardous under the Resource Conservation and Recovery Act, they can be injected into Class II wells, which are not designed to handle waste with hazardous characteristics. The lower standards applicable to Class II wells have proven inadequate to prevent E&P wastes from contaminating groundwater, one reason why NRDC supports an elimination of the exemption for oil and gas E&P wastes in RCRA.

<sup>14</sup> George Monk & Molly Schaffnit, *Gas Well Study, 2013* (Mar. 2014) available at <http://www.sootypaws.net/gws/documents/2013gws.pdf>.

<sup>15</sup> *Id.* at 6-10.

<sup>16</sup> *Id.* at 7-8.

<sup>17</sup> Abrahm Lustgarten, *The Trillion-Gallon Loophole: Lax Rules for Drillers that Inject Pollutants Into the Earth*, ProPublica (Sept. 20, 2012) available at <http://www.propublica.org/article/trillion-gallon-loophole-lax-rules-for-drillers-that-inject-pollutants>.

<sup>18</sup> *Id.*

lacking in many instances.<sup>19</sup> Among other findings, the GAO investigation revealed that states and EPA have not adequately addressed risks such as overpressurization of formations and induced seismicity.

EPA must take immediate action to protect underground sources of drinking water at this site and throughout West Virginia, and to ensure that all provisions of the Safe Drinking Water Act are being vigorously enforced to the full extent of the law. WV DEP's actions are not in compliance with federal law, and EPA should immediately take steps to identify deficiencies in the West Virginia UIC program and to withdraw approval of the program if these deficiencies are not promptly addressed, as directed by federal regulation.

Sincerely,



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Tom L. Bass, West Virginia DEP Office of Oil and Gas, UIC Program;  
Jon M. Capacasa, Director, EPA Region III Water Protection Division;  
Samantha Beers, Director, EPA Region III Office of Enforcement, Compliance and  
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<sup>19</sup> See <sup>19</sup> U.S. Gov't Accountability Office, GAO 14-555, Drinking Water: EPA Program to Protect Underground Sources from Injection of Fluids Associated With Oil and Gas Production Needs Improvement (July 2014) available at <http://www.gao.gov/assets/670/664499.pdf>.