



February 2, 2015

Via Electronic Mail

Mr. Jared Blumenthal
Administrator, US EPA Region IX
75 Hawthorne Street
San Francisco, CA 94105-3901
blumenfeld.jared@epa.gov

Ms. Jane Diamond
Director, Water Division
US EPA Region IX
75 Hawthorne Street
San Francisco, CA 94105-3901
diamond.jane@epa.gov

Re: Contamination of Protected Underground Sources of Drinking Water; Request for Enforcement Action

Dear Mr. Blumenthal and Ms. Diamond,

We are writing to request that you order the immediate closure of the hundreds of disposal wells currently injecting oil industry wastewater directly into protected aquifers in California. Because the state has failed to protect our water or uphold the law, action by the EPA Administrator is legally required. In the midst of an unprecedented drought and when so many Californians lack access to safe, clean drinking water, it is outrageous to allow contamination of drinking and irrigation water to continue. It is never acceptable to allow the contamination of drinking and irrigation water with industrial wastewater. Moreover, in our era of rapid climate change, when there is scientific consensus that we must leave the vast majority of untapped fossil-fuel reserves in the ground to avert catastrophic climate disruption, it makes no sense to allow such damage to our water and health in the interest of facilitating further fossil-fuel development.

Documents only recently released in response to requests under open government laws reveal that illegal and unsafe injection of oil and gas wastewater directly into protected aquifers is far more widespread than previously revealed. State oil and gas Supervisor Steve Bohlen forwarded a list of 532 wells believed to be injecting into protected aquifers to EPA on August 18, 2014. This list contains 174 wells injecting into the freshest and highest quality aquifers with total dissolved solids (TDS) of less than 3,000 ppm, 275 wells injecting into aquifers with TDS between 3,000 and 10,000 TDS,

and 83 wells injecting into aquifers with unknown TDS. The state's response to this water pollution crisis has been woefully inadequate.

The immediate shutdown of every unsafe and illegal injection well is not only required by law, but by common sense. Once our groundwater is poisoned, it is difficult or impossible to undo the damage. The first order of business must be to stop the ongoing injection of toxic oil industry wastewater into our groundwater. We expect you to issue orders to that effect immediately.

In addition, all relevant information regarding this unfolding problem must be released to the public. Despite your direction to state oil and gas regulators in July, 2014 to provide "a plan to communicate this information to the public and to address subsequent questions and concerns," the state for the most part has released information only in response to formal Public Records Act requests. Given the grave public health concerns surrounding the injection of wastewater containing acutely toxic and cancer-causing substances such as benzene, this is unacceptable.

History of Violations

The Safe Drinking Water Act protects underground sources of drinking water. While California state regulators have been granted "primacy" to implement the law, the EPA retains broad oversight authority. EPA is charged with ensuring that California's Underground Injection Control Program (UIC Program) continues to meet the minimum requirements of federal law and that our drinking water is in fact protected from contamination. The EPA is required by law to take action when it is aware of violations of the UIC Program or the underlying law.

EPA has long been aware that California's regulatory program does not meet the minimum requirements of federal law. EPA wrote to state officials on July 18, 2011, describing serious program deficiencies that had been highlighted by the most recent audit of the state program, and requiring submission of a plan for corrective action by September 1, 2011.¹ Despite the EPA's clear directive to move quickly, years have passed without any effective corrective action from state regulators. Your most recent letter on December 22, 2014 to Mr. Johnathan Bishop and Mr. Steven Bohlen reaffirms the persistence of these problems and sets forth a set of directives to remedy California's deficiencies. However, the letter inexplicably suggests that unlawful injection into protected aquifers may continue for more than an additional two years. Specifically, the letter sets a deadline for corrective action of February 15, 2017, and appears to contemplate that injection into protected drinking water aquifers could in some instances continue during this time period. This would result in the continued damage of these protected aquifers and is, consequently, simply unacceptable.

¹ July 18, 2011 Letter from David Albright, Manager, Ground Water Office, US EPA, to Elena Miller, State Oil and Gas Supervisor, Department of Conservation Division of Oil, Gas, and Geothermal Resources.

The continued unlawful injection of hazardous oil and gas wastewater into underground sources of drinking water (USDWs) poses an emergency situation because it contaminates drinking and irrigation water and consequently threatens our health, safety and environment. The consequences were vividly demonstrated in the summer of 2014 when multiple wastewater disposal wells in Kern County were shut down by emergency order because they were injecting toxic oil industry wastewater directly into aquifers containing high quality drinking water. State regulators themselves acknowledged that the shut-down orders were necessary because “an emergency exists and ... immediate action(s) are necessary to protect life, healthy, property, and natural resources, specifically, the further degradation of the affected aquifers...”²

Any Injection into a USDW Is Unlawful Because Permits Are Void.

Federal regulations provide that once a State UIC Program is in place, all underground injections are unlawful unless they are authorized by a permit or a rule.³ The California Code of Regulations requires that approval be obtained before any project to inject wastewater begins.⁴

Regulations at 40 C.F.R. § 144.1(g) provide that “no injection shall be authorized by permit or by rule if it results in the movement of fluid containing any contaminant into underground sources of drinking water (USDW), if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 C.F.R. part 141 or may adversely affect the health of persons.”⁵ The nature of wastewater injection wells are that they contain hazardous chemicals that may adversely affect the health of persons. Therefore, state regulators did not have authority to issue any permits for injection in USDW. As state regulators did not have any legal authority to issue the permits, the permits are void *ab initio*. The result is that all wells injecting oil and gas wastewater into a USDW are operating without a permit, and are therefore operating unlawfully.

Moreover, any injection into a USDW is unlawful irrespective of whether a permit has purportedly been granted. Regulations require that all oil and gas wastewater wells be separated from a USDW by a “confining zone that is free of known open faults or fractures within the area of review,” and that the wells be cased and cemented to prevent wastewater from entering a USDW.⁶ By necessary implication, such wells cannot inject into a USDW. Nothing in the Federal Regulations indicates that the Director has the power to grant a permit that contravenes these requirements, or that the grant of a permit makes it legal to inject into a USDW. Therefore, any well that is injecting directly into a USDW is in contravention of the federal regulations.

² July 2, 2013 Emergency Order to Immediately Cease Injection Operations, issued to CMO, Inc. Well(s): 03039980 and 03044445 by State of California Natural Resources Agency, Department of Conservation, Division of Oil, Gas, and Geothermal Resources.

³ 40 C.F.R. §§ 144.1(e); 144.11

⁴ 14 C.C.R. § 1724.6

⁵ 40 C.F.R. § 144.1(g).

⁶ 40 C.F.R. § 146.22(a).

EPA Must Take Action in Respect of the Class II Wells Injecting into USDWs

The Safe Water Drinking Act provides that, where a State has primary enforcement responsibility for underground water sources, and the Administrator finds that “any person who is subject to a requirement of an applicable underground injection control program in such State is violating such requirement, he shall so notify the State and the person violating such requirement.”⁷ If the State does not take enforcement action within 30 days of receiving a notice, the Administrator must issue an order requiring the person to comply, or take civil action.⁸ The language of the Safe Drinking Water Act is mandatory. Therefore, the EPA *must* take action when it knows about violations of the UIC Program.

The Administrator is now aware that there are hundreds of disposal wells in California that are injecting oil and gas wastewater into underground sources of drinking water. As set out above, such injections are in violation of the statute and the regulations that govern the UIC Program. Because far longer than 30 days have passed since these violations became apparent, and the state has shut down only a small fraction of the illegal wells, the Administrator must take enforcement action to shut the remainder, either by administrative order or civil action.

The Administrator may issue an administrative order imposing a fine, requiring compliance with the law, or both.⁹ Because injection of toxic wastewater into a non-exempt USDW can never be legal, the only manner in which well operators can be required to comply is to cease operating. The EPA may also bring court action to impose a fine or require compliance.¹⁰

Further delay in proper administration of the program poses unacceptable dangers to our water supply. For these reasons, we request that you immediately begin enforcement proceedings to shut down the hundreds of wastewater disposal wells operating illegally in our state.

Thank you very much for your continued work on this urgent matter. Please contact Hollin Kretzmann, hkretzmann@biologicaldiversity.org, (415) 436-9682 x333, if you have any questions or would like to discuss these issues further.

Yours Sincerely,



Kassie Siegel
Senior Counsel
Climate Law Institute Director
Center for Biological Diversity

⁷ 42 U.S.C. § 300h-2(a).

⁸ *Id.*

⁹ 42 U.S.C. § 300h-2(c).

¹⁰ 42 U.S.C. § 300h-2(b).

Hollin Kretzmann
Staff Attorney
Center for Biological Diversity

Clare Lakewood
Staff Attorney
Center for Biological Diversity

Cc:

Mr. Steven Bohlen
Oil and Gas Supervisor
Division of Oil, Gas, and Geothermal Resources
California Department of Conservation
801 K Street, MS 18-05
Sacramento, CA 95814-3530
steven.bohlen@conservation.ca.gov

Mr. Jonathan Bishop
Chief Deputy Director
California State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100
Jonathan.Bishop@waterboards.ca.gov