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March 3, 2014

Jackie Shultz, Clerk
Environmental Quality Board
601 57th Street, SE
Charleston, WV 25304

**Re: Keenan, et al. v. WV DEP
Environmental Quality Board
Appeal No.: _____**

Dear Clerk Shultz:

Enclosed for filing are an original and six copies of a Notice of Appeal and Certificate of Service. Copies have been served upon all interested parties.

If you should have any questions, do not hesitate to contact me.

Respectfully,

Thomas A. Rist

Enclosures

cc: Bradley Keenan
Natural Resources Defense Council
WV Surface Owners' Rights Organization
Plateau Action Network



100% RECYCLED
100% POST CONSUMER CONTENT

**WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD
CHARLESTON, WEST VIRGINIA**

BRADLEY KEENAN,
NATURAL RESOURCES
DEFENSE COUNCIL,
WV SURFACE OWNERS'
RIGHTS ORGANIZATION, and
PLATEAU ACTION NETWORK,

Appellants,

v.

Appeal No.:

DIRECTOR, DIVISION
OF WATER AND WASTE MANAGEMENT,
WEST VIRGINIA DEPARTMENT OF
ENVIRONMENTAL PROTECTION;

Appellee.

NOTICE OF APPEAL

Action Complained of: The appellants named above, by counsel, Rist Law Offices, by Thomas A. Rist, respectfully represent as follows:

The issuance of Underground Injection Control Reissuance Permit #UIC2D0190460 (attached) to Danny E. Webb Construction, Inc. on February 6, 2014 by the West Virginia Department of Environmental Protection violates State and Federal Law, including the West Virginia Water Pollution Control Act.

Relief Requested: The appellants therefore pray that this matter be reviewed and that the Board grant the following relief:

Appellants request that the Board reverse or vacate this permit altogether as the legal and factual errors could not possibly be remedied in order to bring this permit into compliance with state and federal law.

Specific Objections:

1. The issuance of this permit violates the public policy of the state of West Virginia to maintain reasonable standards of purity and quality of the water of the state

pursuant to the West Virginia Water Pollution Control Act, W. Va. Code § 22-11-1 *et seq.* and the West Virginia Groundwater Protection Act, W. Va. Code § 22-12-1 *et seq.*

2. Danny E. Webb Construction, Inc. continued injection into this well after the expiration of the prior permit issued by the WV DEP. The prior permit terminated on October 25, 2012 and injections continued after that date. This injection occurred before the reissuance of the present permit being appealed in violation of 47 CSR 13-13.1.a, 47 CSR 13-13.2.a.1, and 47 CSR 13-13.12.b.

3. Danny E. Webb Construction, Inc. has a history of substantial violations that were not timely abated. W. Va. Code § 22-6-6(h) requires a permit to be denied if the director of the WV DEP determines that the applicant has committed a substantial violation of a previously issued permit. The director of the WV DEP has failed to make this determination, regardless of the substantial prior violations by Danny E. Webb Construction, Inc.

4. The issuance of this permit violates W. Va. Code § 22-6-11 because the proposed work at this well constitutes a hazard to the safety of persons; damage would occur to publicly owned resources, and the proposed work fails to protect fresh water sources or supplies.

The stream adjacent to this permit is a tributary of Wolf Creek, flows directly into the New River upstream from the current drinking water source for the town of Fayetteville and surrounding area.

Moreover, the New River is a publicly owned resource that is critical to the whitewater rafting and tourism industry in southern West Virginia. This river is not being adequately protected by the issuance of this permit.

5. The issuance of this permit violates W. Va. Code § 22-6-11 because the permit would allow injection beyond the capacity of the geologic formation into which injection is proposed, and therefore fails to protect fresh water sources and supplies, and constitutes a hazard to the safety of persons.

6. Waste fluid pits were constructed on this site without the prior approval of the WV DEP. W. Va. Code 22-11-4(a)(12) requires that plans to be submitted prior to construction. This did not occur in this case. These pits are now required to be closed and reclaimed, yet the Permit issued provides no requirements for the closure of these pits. This permit should not have been issued until after this serious problem was abated.

7. Stream monitoring requirements in the permit as issued are wholly inadequate to protect the water resources of the State of West Virginia.

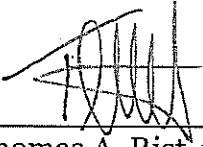
8. The injectate monitoring frequency and parameters are not designed to prevent violations of primary safe drinking water act standards.

9. The issuance of the permit violates 47 CSR 58-4 because the site does not meet the requirements of that section for the protection of groundwater.

Respectfully Submitted,

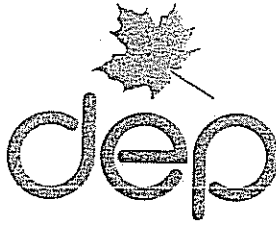
BRADLEY KEENAN,
NATURAL RESOURCES
DEFENSE COUNCIL,
WV SURFACE OWNERS'
RIGHTS ORGANIZATION, and
PLATEAU ACTION NETWORK,

By Counsel



Thomas A. Rist
West Virginia State Bar # 9100
California State Bar # 238090
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Copy of Permit



west virginia department of environmental protection

Office of Oil and Gas
601 57th Street, S.E.
Charleston, WV 25304
Phone: (304) 926-0450; Fax: (304) 926-0452

Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
www.dep.wv.gov

UIC Permit Reissuance

Danny E. Webb Construction Inc.
Attn: Danny E. Webb
Address P.O. Box 267
Lochgelly, WV 25866

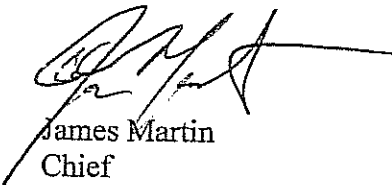
Dear Mr. Webb:

Enclosed you will find Underground Injection Control Reissuance Permit #UIC2D0190460 dated February 6, 2014. Be advised that the duration of the permit is for a period of five (5) years.

Also be advised that all conditions established by the UIC Permit Number UIO2D0190460 either expressly or incorporated by reference, must be strictly adhered to. All monitoring forms shall be submitted to the Office of Oil and Gas in the manner and frequency prescribed. The monitoring forms will be compared with the scope of the permit activity to verify compliance.

Please review the permit carefully and be aware of all permit conditions. Compliance of all permit conditions will be strictly enforced.

The operation of this injection well facility in general, including maintenance of all related surface equipment, shall be conducted so as to preclude any unlawful discharge of waste materials into the surface or ground waters of the state.



James Martin
Chief

Enclosures as stated

Promoting a healthy environment.

**UIC PERMIT NO. UIC2D0190460
WELL NO. NORTH HILLS #1**

**UNDERGROUND INJECTION CONTROL PERMITS
FOR
DEPARTMENT OF ENVIRONMENTAL PROTECTION,
OFFICE OF OIL AND GAS AND DIVISION OF WATER AND WASTE MANAGEMENT
FOR
CLASS II COMMERCIAL DISPOSAL WELL**

This document consists of the Underground Injection Control (UIC) Permit required by the Department of Environmental Protection, Office of Oil and Gas, and the Division of Water and Waste Management. The Permittee is allowed to engage in underground injection in accordance with the terms and conditions of this permit based upon an approved UIC Permit.

The Underground Injection Control Permit No. **UIC2D0190460** consists of Forms WW-3A and WW-3B and the terms and conditions below:

1. The underground injection activity authorized by this permit shall not allow the movement of fluid, as per (47CSR13-2.26), containing any contaminant into any subsurface area other than that which is specified and may not cause a violation of any primary drinking water regulation promulgated under 40 CFR Chapter 1, Part 141 or any water quality standard promulgated by the Department of Environmental Protection.
2. This permit is issued in accordance with the provisions of Article 11 and 12, Chapter 22 of the Code of West Virginia and the Legislative Rule 47CSR13.
3. All reports required by this permit shall be submitted to the Office of Oil and Gas with the exception to paragraph 4 below.
4. The following activities require the immediate cessation of facility operations and prompt notification of the Director of Water and Waste Management (47CSR13-13.6.d and 47CSR13-13.12.1.6).
 - a) Any monitoring or other information which indicates that any contaminant has caused or may cause an endangerment to an underground source of drinking water;
 - b) Any non-compliance with a permit condition or any malfunction of the injection system which may cause fluid migration into or between underground sources of drinking water; and
 - c) Any non-compliance which may endanger health and environment.

5. The applicant must satisfy the requirement of the Office of Oil and Gas regarding any corrective action needed on all known wells penetrating the injection zone within the area of review. This must be done in a manner which satisfies the requirements of 47CSR 13.9.
6. This permit is for authorization of injection of only fluids as defined for Class II wells in 47CSR13-4.2. Permittee shall maintain a manifesting system to record all loads hauled to this facility. Fluids to be injected shall be consistent with the analysis of injected fluids submitted with permit application. Additional sources of fluids may be approved upon written request by the Permittee
7. Any production well within a ¼ mile radius of disposal well# 47-019-00460 which does not have cemented production casing shall be plugged immediately upon becoming inactive. Any temporary inactive well shall be monitored at a frequency and by a method prescribed by the Office of Oil and Gas upon notice by the permittee of such activity. Any well shut-in more than one (1) week shall be considered inactive.
8. This permit approves the Weir Sandstone formation for commercial injection. The interval is 2634 feet to 2692 feet.
9. The maximum wellhead injection pressure is established as 796 psi. as a result of a Step-Rate test conducted and witnessed on December 18, 2001.
10. The Permittee shall provide for security at the injection facility to guard against illegal or unauthorized dumping and injection at the injection facility. The UIC well, tank battery, and settling ponds shall be fenced and monitored 24 hours a day.
11. The Permittee shall sample and analyze injection fluids upon request by the Office of Oil and Gas at a frequency not to exceed twice a year. Analyses shall cover all parameters listed on Attachment B of this permit. Results of all analyses shall be submitted to the Office of Oil and Gas. Permittee shall submit a letter of explanation for any parameter which exceeds the ranges on Attachment A.
12. The Permittee shall monitor daily and report monthly monitoring results using the Office of Oil and Gas electronic WR-40 Form. These report shall be submitted to the Office of Oil and Gas, Department of Environmental Protection on the appropriate forms (Regulation 35CSR §4-7.5). These reports may be electronically submitted to the Office of Oil and Gas via email submission. Email completed electronic WR-40 files to the Office of Oil and Gas at: DEPOOGEP@wv.gov. The subject line of the email shall contain the following (WR-40 Danny Webb Construction Co Inc.)

13. The permittee shall conduct a mechanical integrity test on UIC well **2D0190460** at minimum once every five years per 35CSR4-7.7.b. The permittee must submit a WR-37 Form with each mechanical integrity test along with a copy of any test chart(s). Failure of a mechanical integrity test or expiration of the five-year mechanical integrity test regulatory period, the permittee shall cease operation/injection and shut-in the well immediately until repaired or permanently plugged and abandoned per regulation. Corrective action shall be completed and approved by the Office of Oil and Gas. Said corrective action must be completed within 90 days of the failure date. If repaired, the well must be re-tested making sure to submit an updated WR-37 Form to the Office of Oil and Gas. The Office of Oil and Gas shall be notified 24 hours in advance of the re-test date to witness said test. Failure to meet the specified terms shall proceed to the revocation of Permit **UIC2D0190460** by the Office of Oil and Gas.
14. A well head pressure gauge shall be installed and maintained on the injection tubing to facilitate inspection and ensure compliance of maximum injection pressures as approved on Oil and Gas Form WR-37. A daily reading of the injection pressure shall be taken and reported on Form WR-40.
15. The permittee shall sample and analyze any water source within a one mile radius of the injection well upon the request of the Office of Oil and Gas. Analyses shall cover all parameters listed on Attachment A of this permit. The Office of Oil and Gas may require additional parameters to be analyzed if necessary. Results of all analyses shall be submitted to the Office of Oil and Gas. Permittee shall submit a letter of explanation for any parameter which exceeds the ranges listed on Attachment A.
16. The permittee shall monitor the 2 3/8" x 4 1/2" and 4 1/2" x 7" casing annuli with pressure sensitive devices or with such a method as approved or required by the Office of Oil and Gas to allow early detection of any leaks from the injection zone or casing. The results of such monitoring shall be reported monthly on Form WR-40.
17. The area of review is designated as a 1 / 4 mile radius around the injection well.
18. Pipeline(s) connecting UIC above-ground storage tank station(s) and permitted underground injection control well (UIC2D0190460) shall be tested for integrity at least once every five years reporting results on Form WR-37 to this agency.
19. Permittee shall maintain vapor recovery on each holding tank in an effort to reduce any possible odors from emitting to the atmosphere.
20. The permittee shall fulfill the requirements of the Office of Oil and Gas regarding maintaining financial responsibility and resources to close, plug, and abandon permitted wells. An additional five-thousand dollar performance bond shall be maintained on permitted UIC well #47-019-00460.
21. The permittee shall continue to cease operation of the waste fluid pits. The waste fluid pits shall be maintained to ensure fluids collected through natural causes are properly disposed of.

22. The permittee shall within sixty (60) days of permit issuance submit and obtain approval for a waste fluid pits closure and reclamation plan. The plan must be designed and certified by a registered professional engineer. Proper closure and reclamation shall be completed no later than sixty (60) days from date of approval of the closure and reclamation plans.
23. Permittee shall follow all requirements outlined in Consent Order number 2008-15.
24. Permittee shall satisfy the Office of Oil and Gas for plugging and abandonment of permitted injection wells in a manner as to ensure no fluid migration occurs either from the injection zone into an underground source of drinking water or from one underground source of drinking water to another.
25. Permittee shall haul all fluids from the source to the facility for disposal or designate by letters to the Office of Oil and Gas, a single hauler to transport all fluids. No third party haulers will be permitted to transport fluid to the facility.
26. The herein-described activity is to be extended, modified, added to, made, enlarged, acquired, constructed or installed, and operated, used and maintained strictly in accordance with the terms and conditions of this permit; with the information submitted with the Permit Application No. **UIC2D0190460** with the plan of maintenance and method of operation thereof submitted with such application(s); and with any applicable rules and regulations promulgated by the Department of Environmental Protection.
27. The operation of this injection well facility in general, including maintenance of all unrelated surface equipment, shall be conducted so as to preclude any unlawful discharge of waste materials into the surface or ground waters of this State.
28. Failure to comply with the terms and conditions of this permit, with the plans and specifications submitted with the Permit Application No. **UIC2D0190460** and with the plan of maintenance and method of operation thereof submitted with such application(s) shall constitute grounds for the revocation or suspension of this permit and for the invocation of all the enforcement procedures set forth in Article 11, Chapter 22, of the Code of West Virginia and Legislative Rule 47CSR13.
29. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must submit a complete application for a new permit, along with the appropriate permit application fees, at least 180 days before this permit expires.

ATTACHMENT A

Injection Fluid Analyses Parameters

<u>Parameter</u>	<u>Ranges</u>
PH	>2 - 10
TDS	0 - 265,000 mg/l
TSS	0 - 1000 mg/l
Aluminum	0 - 10 mg/l
Arsenic	0 - 10 mg
Barium	0 - 1500 mg/l
Cadmium	0 - 2 mg/l
Chromium	0 - 1 mg/l
Iron	0 - 1000 mg/l
Lead	0 - 7.5 mg/l
Magnesium	0 - 5000 mg/l
Manganese	0 - 15 mg/l
Potassium	0 - 5000 mg/l
Sodium	0 - 110,000 mg/l
Zinc	0 - 15 mg/l
Surfactants	0 - 10 mg/l
TKN	0 - 25 mg/l
Oil and Grease	0 - 100 mg/l
TOC	0 - 10,000 mg/l
COD	0 - 30,000 mg/l
Acidity	0 - 500 mg/l
Chloride	0 - 250,000 mg/l
Sulfate	0 - 500 mg/l
Cyanide	0 - 1 mg/l
Phenols	0 - 10 mg/l
Calcium	0 - 60,000 mg/l
BNA - Extractables	Trace
Purgeable Aromatics	Trace
Purgeable Halocarbons	Trace
PCBs	<MDL or 50 ppm
TPHs (ORO, DRO, GRO)	

WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD
CHARLESTON, WEST VIRGINIA

BRADLEY KEENAN,
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Appellee.

CERTIFICATE OF SERVICE

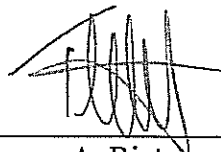
I, Thomas A. Rist, certify that the attached **Notice of Appeal** was served on this
the 3rd day of March, 2014 by United States Mail upon the following:

Jackie Shultz, Clerk
Environmental Quality Board
601 57th Street, SE
Charleston, WV 25304

West Virginia DEP
Office of Legal Services
601 57th Street, SE
Charleston, WV 25304

Director, Division of Water and Waste Management
601 57th Street, SE
Charleston, WV 25304

Danny Webb Construction Co., Inc.
PO Box 267
Lochgelly, WV 25866



Thomas A. Rist