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west virginia department of environmental protection

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February 6, 2014

**Danny E. Webb Construction Inc. UIC Permit 2D0190460 Comment and Response to Comment and Final UIC Permit.**

On January 29, 2013 the Draft Underground Injection Control Permit No. **UIC2D0190460** was present to the public of review and comment. Subsequently a public hearing was request and held on June 4, 2013 therefore extending the public comment period to June 14, 2013. The following is a summary of written and verbal comment received during the comment period.

1. Danny Webb's operation is a public health and environmental hazard and continues to be a nuisance to the local community. Objectionable odors have been smelled periodically in the neighborhood surrounding the site since 2004. The odors have been originating from settling ponds located on the premises of the operation. The odor was determined to be caused by hydrogen sulfide, a flammable, toxic gas. The previous UIC permit was issued in 2007 with the condition that the settling ponds be removed within six months. Danny Webb was cited on May 12, 2008 for failing to comply with the previous permit requirement. The only reason these ponds are still present is because the DEP decided not to enforce the permit that it had written and allowed Danny Webb to enter into a consent decree, allowing the pits to remain. The consent decree conditioned the ponds' continued existence on Danny Webb not allowing any waste in the pits with objectionable odors sufficient to be smelled off- site. The local community has extensive complaints documenting obnoxious odors emanating from the site. The local Postmaster, the Access Health Fayette Clinic and nearby neighbors have all submitted letters complaining of objectionable odors. More recently, neighbors smelled obnoxious odors on February 24, 2013. Given that this problem has persisted for at least nine years, Danny Webb clearly is not willing to operate the settling ponds in compliance with the applicable rules and regulation. He has violated his permit and the consent decree, and therefore should not be issued another permit. The DEP should not allow such toxic materials to be released into the environment, either from the settling ponds or the injection well.

**DEP Response:**

In or around 2007 odorous fluids from Oil and Gas activities were received at the Webb facility for injection. This fluid should have been unloaded into tanks with odor flappers and filtered then injected into UIC well. The DEP's Office of Oil and Gas investigated an odor complaint received following this incident and issued a violation to the company. The facility was required to train all truck drivers and operators at the site to ensure proper assessment and handling of fluids. The Office of Oil and Gas has responded to additional odor

complaints, with the assistance of staff from the Division of Air Quality, but has not been able to substantiate any more odor releases to date.

2. There is evidence that the settling ponds are leaking, polluting both the ground and adjacent stream, and violating the Clean Water Act. It should be noted that Wolf Creek is an impaired stream listed on the state's listing of impaired waters under Section 303(d) of the Clean Water Act and the Water Quality Planning and Management Regulations, 40CFR130.7. The New River TMDL, which includes the Wolf Creek subwater shed, was completed by Tetra Tech in 2008, and shortly thereafter a Watershed Based Plan for Wolf Creek was approved by the EPA in 2009. The sole purpose of this program is to track waters that are NOT supporting their designated uses and to reduce the discharge of pollutants into impaired waters. Danny Webb's operation is located in the headwaters of the main stem of Wolf Creek and has been identified as a possible water quality threat. A marshy spot has developed on the north side of the operation near the settling pond embankment. The area is reddish in color and an oily sheen has been observed. The runoff from the leaking settling ponds is directly discharging into a tributary of Wolf Creek. A recent water sample taken by a concerned citizen from the adjacent downstream property showed a chloride level of 271mg/L, in violation of the human health water quality standards and the chronic water quality standard for aquatic life. Tests of the fluid in the settling ponds have shown very high chloride levels. The direct correlation of water quality analysis and visual observation suggest that the settling ponds are failing to contain fluids and are polluting the stream. Additionally, it should be noted that Wolf Creek is the source of emergency drinking water for Fayetteville and toxic fluids from hydraulic fracturing waste should not be allowed to pollute its waters.

DEP Response:

To date there has been no conclusive evidence to support the statement "*There is evidence that the settling ponds are leaking*". In addition to the monitoring required by the facility DEP staff has conducted numerous spot checks of the stream as well as the fluid contained within the pits. Further, in March of this year, DEP staff inserted dye into the pits to further evaluate the potential for leakage of the liner system. Based on the physical and analytical analysis DEP has determined there is no substantial evidence that the pits is leaking. The upstream (background) sample replicates within the acceptable analytical variation the analysis of the sample collected adjacent to the pits and the immediate downstream sample results. A comparison of the Oil and Gas fluid placed into the pits and the stream data shows a significant variation between stream vs. the Oil and Gas fluid. In other words, the stream samples and the pits samples do not match. If the pits were leaking, the samples would have a closer resemblance to each other. During the evaluation of the waste fluid pits, it was determined that the pits would need upgrades for continued use. As part of the application process, DEP informed the applicant that an upgrade plan would need to be submitted for approval or the pits would need to be closed. An upgrade plan has not been approved. Consequently, as a condition of the permit, the pits are to be closed.

3. Danny Webb has a history of ignoring legal obligations and regulations. In 2007, a UST inspector found that Danny Webb was not managing his storage tanks properly. In an email to other DEP personnel, the inspector stated that Danny Webb, "is not to be trusted. He is loose cannon, doing as he jolly well pleases, right or wrong, regulations be damned." This is not the sort of operator who should be granted permits. If the permit must be issued, removing the settling ponds must be a condition.

DEP Response:

Over the past eleven years there has only been two violations issued to this operator pursuant to this permit. This in itself does not indicate a chronic offender or skirting of the regulations.

4. The UIC permit for injection well 019-00460 expired on October 25, 2012. Danny Webb has continued to receive waste at the site. Oil and gas wastes are exempted from the definition of solid waste under the regulations implementing the West Virginia Solid Waste Management Act only if they are disposed of in a permitted facility. W.Va.Code§ 22-15-2.31. Because the facility is not permitted, the settling ponds are open dumps. W.Va. Code§ 22-15-2.23. Open dumps are unlawful, as is their operation. W. Va. Code §22-15-10. Danny Webb is unlawfully operating an open dump. Such flouting of state law should preclude Danny Webb of receiving a UIC permit for his currently unlawful operation.

DEP Response:

During the renewal process both the EPA and DEP allow operators to conduct business under the existing permit, as long as the operators continue to follow the permit conditions.

5. The traffic, dust, noise, smell, and danger of tanker trucks traveling up the small road to the UIC site are a hazard to local residents. The permitted injection well is the only reason tanker trucks have to enter the neighborhood. While the Office of Oil and Gas cannot regulate the trucks, it does have the power to determine that the operation, with all of its consequences, is not in the public interest and deny the permit on that basis.

DEP Response:

The West Virginia Department of Environmental Protection does not regulate traffic on commerce.

6. Significant concerns related to water quality continue to exist. The stream adjacent to the pits is a tributary of Wolf Creek and the DWC site is in the headwaters of the main stem of Wolf Creek, the source of emergency drinking water for Fayetteville. Wolf Creek is an impaired stream listed on the state's listing of impaired waters under Section 303(d) of the Clean Water Act and the Water Quality Planning and Management Regulations. Among the impairments for which Wolf Creek is listed is a high concentration of iron, a contaminant that appears in high levels in a number of the water samples provided by DWC.

Longstanding reports of contamination in the stream may be related to DWC's operations. While DWC was required to sample the stream twice annually, it is not clear that it has undertaken sampling as often as required. The sampling has not been on a regular schedule, which is important to account for seasonal change in the stream. In addition, it appears that DWC gathers the samples itself, casting doubt on the credibility of the samples and the methods used to collect them. The location at which samples were collected is not precisely recorded, and does not appear to have been recorded at all for certain samples. DEP should require sampling to be conducted by an independent third-party laboratory using best practices for establishing the location of the sampling



(including taking GPS coordinates of sampling locations) and maintaining a secure chain of custody. It is extremely concerning that a number of the water tests show high levels of contaminants, including benzene, a known carcinogen, oil, chloride, and iron, yet the record reveals no evidence that DEP has investigated or taken independent samples since these results were provided.

DEP Response:

It is a fact the watershed is impacted. In February 2002 the *Wolf Creek Environmental Trust* was established to address impacts from past activities within the watershed. This trust is currently being managed by the Plateau Action Network (PAN).

Monitoring requirements pursuant to the order issued by the agency places the sampling requirements on the permit holder. The agency does not dictate which entity the permit holder utilizes for sample collection: however, the samples are required to be submitted to a certified laboratory for analysis. Failure to properly monitor or sample would be a violation of the order that would be addressed by the agency.

7. There is photographic, video, and eye-witness evidence that indicates that contaminants may be seeping out of the sides of the pits berms, leading to the contamination of soil and the creek. Yet there is no evidence that the DEP has ever investigated the reports of seeping pits. A seeping pit with a failed liner is a potential threat to underground sources of drinking water, to the creek itself, and could result in numerous statutory violations.

DEP Response:

On numerous occasions, the DEP has evaluated the potential for leakage from the pits. The latest field event was conducted in March of 2013. Field personnel collected surface water samples upstream, adjacent to the spring at the pits and immediately downstream of the pits. In addition, a dye test of the pits was conducted. Dye was introduced to the fluid, circulated to ensure homogeneity, contained within the pits and monitored for a week. After the monitoring effort, DEP's field staff has periodically visited the site to determine whether there is any evidence of breakthrough of dye. No evidence of breakthrough or seepage has been identified.

8. The Site has no security. One of the videos I am submitting shows the gate standing open while several trucks, tankers and pickups, drive in and out, and an ATV goes through. Even if the gate is closed, there is a bypass for smaller vehicles that would stay open; and because the site is not fenced, a person could walk into the site from virtually any direction.

DEP Response:

As a condition of the permit is to provide security the facility maintains twenty four hour video surveillance to satisfy this criterion.

9. One of the storage tanks has no containment, and due to the myriad other ways Webb's site is not in compliance, we would like an independent inspection of whether there is

adequate containment for the other tanks.

DEP Response:

During an inspection conducted March 2013 a professional engineer assessed the secondary containment structures. Other than routine maintenance, secondary containment is adequate. Any deficiency will be addressed by the permit.

10. What are the pits used for and why can't this be done at the location the Frack water is produced.

DEP Response:

The pits are utilized for the purpose of settling solids that may be in solution. This is a business solution for the process of these fluids. Regulations do not prohibit this process for handling of this fluid because the practice provides a centralized location for management of these fluids.

11. Is it true Danny Webb Construction is bringing in Frack water from out of state to dump in our community? Is it true that the reason this is happening is because other states do not permit the Frack water to be disposed of in their states, because it is deemed too toxic and public health hazard? I have verified this with Maryland DEP.

DEP Response:

This is a lawfully regulated practice that is managed by the United States Environmental Protection Agency. Ohio, Pennsylvania, and West Virginia, as well as other states have active Underground Injection Control programs that accept waste water from the oil and gas industry. There are no regulations that prohibit out of state fluids from being properly disposed of at the Webb facility. There are companies that drill in West Virginia that transport their waste fluids to other states for disposal, as well.

12. According to the EPA and other federal agencies, the Natural Resources Defense Council (NRDC) and other documented Nonprofit reports, fracking wastewater has shown to be extremely toxic and radioactive. When released into the environment, these chemicals can cause major health problems and cancer.

DEP Response:

Most of the injected fluid is salt water (brine), which is brought to the surface in the process of producing (extracting) oil and gas. The various additives in the fracturing fluid, combined with the produced brine water have toxic constituents and can have elevated radioactivity levels. Of the readings that have been taken, generally they are within normal ranges for human health. It is our understanding that there may be studies regarding radioactivity that will be conducted on a national scale. Some states still allow this type of fluid to be land applied, which means it is sprayed out into an open field. West Virginia does not allow that because of the very reason stated in the comment-in the open environment, it has a greater chance of having a negative impact. West

Virginia's regulations only allow this fluid to be disposed of by injecting back into the rock formations from which most came, into Class II wells that are regulated, undergo integrity testing and monitoring.

13. Since the inception of the injection well. How many gallons/barrels have been pumped into the Well?

DEP Response:

Since 2002 Underground Injection Control (UIC) well # 2D0190460 has injected a total of 1,502,229.04 BBLS of fluid.

14. Why was Danny Webb Construction given a Descent Decree to keep the pits at the Injection site? When the 2001-2008 OOG agreement said he had to remove them in six months.

DEP Response:

The pits were investigated and found not to be leaking. It was decided to let Danny Webb Construction, LLC keep operating the pits but require stream sampling to be conducted.

15. Was Danny Webb Construction ever given a permit for the Pits?

DEP Response:

The pits are a part of the UIC facility regulated under permit #2D0190460. Regulation does not prevent surface impoundments/pits at UIC facilities.

16. How many citations has Danny Webb Construction been given and who issued the citations?

DEP Response:

UIC well #2D0190460 has had two violations since 2002 by WVDEP/Office of Oil and Gas

UIC well #2d0190508 has had two violations since 2007 by WVDEP/Office of Oil and Gas

17. Who gave Danny Webb Construction permission to reroute the stream at the Injection site? You can see this through Google Earth looking at the 1996 image and the 2003 image. I will attach a map showing the original stream location and the new stream location.

DEP Response:

It cannot be shown/proven that Danny Webb Construction has rerouted a stream.

18. Is it true that Danny Webb Construction is bringing in Frack water from out of state to dump in our community?

DEP Response:

Yes, commercial injection wells in West Virginia can accept out of state fluids. Such fluids must meet the definition of a UIC Class II fluid under 47CSR13-4.2.

19. Why is Danny Webb allowed to have the pits when other UICs only have tanks?

DEP Response:

UIC regulations do not prevent surface impoundments/pits at such facilities.

20. What is happening to it (fluid) when it goes down?

DEP Response:

Fluids are injected deep into the ground into formation(s) that can accept it. The fluids are prevented from coming back up due to UIC well construction and confining geological layer(s) above the injection formation.