

**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 the attached order number 2014-UIC-13 to Danny E. Webb Construction, Inc. dated March 4, 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 the order altogether and require all injection at this site to cease until such time as a permit can be issued that is in compliance with state and federal law.

Specific Objections:

1. By order dated March 4, 2014, the WV DEP revoked Underground Injection Control (UIC) Permit No. 2D0190460, originally issued to Danny E. Webb Construction, Inc. on February 6, 2014. The revocation order states in Paragraph 8 that the permit was revoked due to "procedural deficiencies" but nothing further is noted in

the order about what these "procedural deficiencies" are or how they are to be corrected. The order additionally fails to provide any deadline for when a reapplication should occur and instead, gives an open-ended extension, allowing injection to occur at the site indefinitely.

As a result, the issuance of this order 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. Although the order revokes a UIC permit, it still allows Danny E. Webb Construction, Inc. to continue injection into the well. Allowing further injection into this well when the permit itself has been revoked violates 47 CSR 13-13.1.a, 47 CSR 13-13.2.a.1, 47 CSR 13-13.12.b, and 42 U.S.C. § 300h(b)(1).

3. The issuance of this order 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.

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 order.

Moreover, Danny E. Webb Construction, Inc. has a history of substantial violations that were not timely abated. By failing to adequately address (1) the operator's history of violations and to ensure they will not recur, and (2) continuing unsafe conditions at the site, this order fails to protect fresh water sources and supplies.

4. The issuance of this order violates W. Va. Code § 22-6-11 because the order 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.

5. 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 pursuant to this order, yet the order provides no guidance or requirements concerning the closure of these pits other than Danny E. Webb Construction, Inc. will provide plans for how to close and reclaim the pits. An order allowing continued injection to occur prior to the closure of these pits should not have been issued until this serious problem is abated.

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

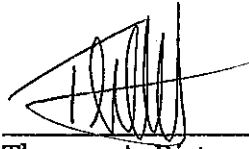
7. The injectate monitoring frequency and parameters are not designed to prevent violations of primary safe drinking water act standards.

8. The issuance of the order 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,

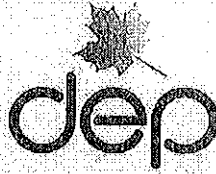
By Counsel



---

Thomas A. Rist  
West Virginia State Bar # 9100  
California State Bar # 238090  
**Rist Law Offices, LC**  
103 Fayette Avenue  
Fayetteville, WV 25840  
(304) 574-0222  
(304) 574-0224 (fax)  
tom@helpwv.com

Copy of Order



west virginia department of environmental protection

Office of Oil and Gas  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304-2345  
Telephone Number (304) 926-0450  
Fax Number (304) 926-0452

Earl Ray Tomblin, Governor  
Randy C. Huffman, Cabinet Secretary  
www.wvdep.org

CERTIFIED RETURN RECEIPT REQUESTED

ORDER NO.: 2014-UIC-12

DATE: March 4, 2014

TO: Danny E. Webb Construction, Inc.  
Attention: Danny E. Webb  
P. O. Box 267  
Lochgolly, WV 25866

SUBJECT: Underground Injection Control (UIC) Permit 2D0190460

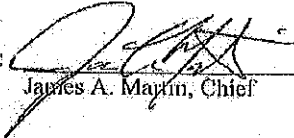
**ORDER**

**REVOCATION OF UIC PERMIT NO. 2D0190460**

Whereas, certain procedural deficiencies exist with regard to UIC permit number 2D0190460, it is hereby **ORDERED** that Underground Injection Control Permit No. 2D0190460, dated February 6, 2014, be revoked.

Entered this 4th day of March 2014, this ORDER shall become effective 30 days from the date of this order.

BY:

  
James A. Martin, Chief

JW:

Promoting a healthy environment.



West Virginia Department of Environmental Protection

Office of Oil and Gas  
601 57<sup>th</sup> 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

**ORDER  
ISSUED UNDER  
WEST VIRGINIA CODE CHAPTER 22**

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

DATE: March 4, 2014

ORDER NO.: 2014-UIC-13

**INTRODUCTION**

This Order (hereinafter "Order") is issued by the Office of Oil and Gas (hereinafter "OOG"), by and through its Chief, pursuant to the authority of West Virginia Code §§ 22-1-1 *et seq.*, 22-6-2, 22-11-1 *et seq.* and 22-12-1 *et seq.* to Danny E. Webb Construction Co., Inc.

**FINDINGS OF FACT**

In support of this order, the Chief hereby finds the following:

1. Danny E. Webb Construction Co., Inc. was issued an underground injection control permit (UIC) number 2D0190460 from the Office of Oil and Gas to inject waste fluids from oil and natural gas exploration and development in well API # 47-019-00460 on October 25, 2007 with an expiration date of October 25, 2012.
2. Danny E. Webb Construction Co., Inc. began developing a new application for this activity with coordination through the Office of Oil and Gas staff prior to the expiration date of the permit.
3. Danny E. Webb Construction Co., Inc. submitted a reissuance application package on January 3, 2013.

Promoting a healthy environment.

4. In compliance with the requirements set forth at 47CSR13, public notice was provided concerning the reissuance application package on February 11, 2013.
5. In compliance with the requirements set forth at 47CSR13, a public hearing regarding the reissuance application package was held on June 4, 2013.
6. Order 2014-UIC-1 was issued by this Office on February 6, 2014. Order 2014-UIC-1 authorized Danny E. Webb Construction Co., Inc., for injection in well API # 47-019-00460 under the provisions of the October 25, 2007 permit from October 25, 2012 until February 6, 2014.
7. On February 6, 2014, Underground Injection Control Reissuance Permit No. UIC2D0190460 was issued by this Office. That Permit was to expire on February 6, 2019.
8. Due to certain procedural deficiencies with regard to the February 6, 2014 Permit No. UIC2D0190460, Permit No. UIC2D0190460 was revoked by ORDER of this Office dated March 4, 2014.

#### ORDER FOR COMPLIANCE

Therefore, in accordance with West Virginia Code §§ 22-1-1 *et seq.*, 22-6-2, 22-11-1 *et seq.* and 22-12-1 *et seq.*, it is hereby ORDERED by the Chief that:

1. Danny E. Webb Construction Co., Inc. is hereby authorized for injection in well API # 47-019-00460 under the provisions of this ORDER from April 3, 2014 until such time as a reissuance application package is submitted by Danny E. Webb Construction Co., Inc. and a permit is reissued by this Office or is explicitly denied by this Office.
2. The underground injection activity authorized by this ORDER 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.

3. All reports required by this ORDER shall be submitted to the Office of Oil and Gas with the exception to the following: these 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 condition of this ORDER 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 or the environment.
4. Danny E. Webb Construction Co., Inc. 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 47CSR13.9.
5. This ORDER is for authorization of injection of only fluids as defined for Class II wells in 47CSR13-4.2. Danny E. Webb Construction Co., Inc. shall maintain a manifesting system to record all loads hauled to this facility. Additional sources of fluids may be approved upon written request by the Danny E. Webb Construction Co., Inc.
6. 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 Danny E. Webb Construction



Co., Inc. of such activity. Any well shut-in more than one (1) week shall be considered inactive.

7. This ORDER approves the Weir Sandstone formation for commercial injection. The injection interval is at a depth of 2634 feet to 2692 feet below ground level.
8. 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.
9. Danny E. Webb Construction Co., Inc. shall provide for security at the injection facility to guard against illegal or unauthorized dumping and injection at the injection facility.
10. Danny E. Webb Construction Co., Inc. shall sample and analyze injection fluids upon request by the Office of Oil and Gas. Analyses shall cover all parameters listed on Attachment A of this ORDER. Results of all analyses shall be submitted to the Office of Oil and Gas. Danny E. Webb Construction Co., Inc. shall submit a letter of explanation for any parameter which exceeds the ranges on Attachment A.
11. Danny E. Webb Construction Co., Inc. shall monitor daily and report monthly monitoring results to the Office of Oil and Gas. These reports shall be submitted to the Office of Oil and Gas, Department of Environmental Protection on the appropriate forms (Regulation 35CSR4-7.5). These reports may be electronically submitted to the Office of Oil and Gas via email on 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 E. Webb Construction Co., Inc.).
12. 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.

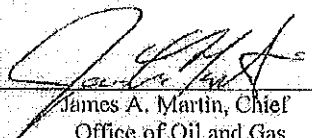
13. Danny E. Webb Construction Co., Inc. shall sample and analyze any water source within a one mile radius of the injection well upon the request of the Office of Oil and Gas. Analyses shall cover all parameters listed on Attachment A of this ORDER. The Office of Oil and Gas may require additional parameters to be analyzed if necessary. Results of all analyses shall be submitted to the Office of Oil and Gas. Danny E. Webb Construction Co., Inc. shall submit a letter of explanation for any parameter which exceeds the ranges listed on Attachment A.
14. Danny E. Webb Construction Co., Inc. 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.
15. The area of review is designated as a 1/4 mile radius around the injection well.
16. Danny E. Webb Construction Co., Inc. shall fulfill the requirements of the Office of Oil and Gas regarding maintaining financial responsibility and resources to close, plug, and abandon well API # 47-019-00460. An additional five-thousand dollar performance bond shall be maintained on well API #47-019-00460.
17. Danny E. Webb Construction Co., Inc. 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.
18. Danny E. Webb Construction Co., Inc. shall by April 6, 2014 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 of the waste fluid pits shall be completed no later than sixty (60) days from date of approval of the closure and reclamation plans.

19. Danny E. Webb Construction Co., Inc. shall satisfy the Office of Oil and Gas for plugging and abandonment of well API # 47-019-00460 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.
20. Danny E. Webb Construction Co., Inc. 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.
21. 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 ORDER and with any applicable rules and regulations promulgated by the Department of Environmental Protection,
22. 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 this State.
23. Failure to comply with the terms and conditions of this ORDER shall constitute grounds for the revocation or suspension of this ORDER 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.
24. Danny E. Webb Construction Co., Inc. shall have appropriate containment and/or diversionary structures or equipment to prevent discharged oil or other pollutants from reaching the waters of the state in accordance with 35CSR1-7.
25. Danny E. Webb Construction Co., Inc. shall sample the stream adjacent to the pits in March and September of the calendar year. The stream samples shall be analyzed for the following parameters: pH, Iron, Manganese, Chlorides, Sodium, TPH (DRO, GRO,

ORO), TDS, BTEX, and Oil/Grease. The samples shall be taken as immediately downstream of the pits as possible, but in no case more than 50 feet downstream of the pits.

26. Danny E. Webb Construction Co., Inc. shall give notice to the Chief as soon as possible of any planned significant physical alterations or additions to the facility, or any planned significant changes in the operation of the facility.

3/4/14  
DATE

  
\_\_\_\_\_  
James A. Martin, Chief  
Office of Oil and Gas

ATTACHMENT A

Injection Fluid Analyses Parameters

Parameter	Ranges
PH	>2 - 10
TDS	0 - 265,000 mg/l
TSS	0 - 1000 mg/l
Aluminum	0 - 10 mg/l
Arsenic	0 - 10 mg/l
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 & 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,  
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.

**CERTIFICATE OF SERVICE**

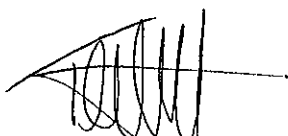
I, Thomas A. Rist, certify that the attached **Notice of Appeal** was served on this  
the 17<sup>th</sup> day of March, 2014 by United States Mail upon the following:

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