



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

Ref: 8ENF-UFO

SEP 17 2009

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ralph Belnap, Owner
d/b/a Tweet's Auto Care
34717 County Road 13
Elizabeth, CO 80107

Re: Proposed Compliance Order, Penalty Complaint,
And Notice Of Opportunity For Hearing
Docket No. **SDWA-08-2009-0082**

Dear Mr. Belnap:

Enclosed is a Proposed Compliance Order, Penalty Complaint, And Notice Of Opportunity For Hearing (complaint) issued by the Environmental Protection Agency (EPA) as authorized by the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300h-2. The document describes how you have violated the SDWA and proposes both compliance requirements and the assessment of a civil penalty.

However, if Tweet's Auto Care fully complies with the compliance order requirements in a timely manner as set out in the complaint, EPA will evaluate the civil penalty factors at 42 U.S.C. § 300h-2(c) (4)(B), and may settle this case without the assessment of a civil penalty, if appropriate. Please note that there are deadlines in the complaint that must be followed. The complaint is effective upon the receipt date and you have thirty (30) calendar days to file an answer to dispute the contents of the complaint.

If you have any technical questions, contact Cynthia Peterson at the above address (with the mail code 8ENF-UFO) or by phone at (303) 312-6879. For legal questions, the attorney assigned to this matter is Eduardo Quintana, who can be reached at the above address (with the mail code 8ENF-L) or by phone at (303) 312-6924.

We urge your prompt attention to this matter.

Sincerely,

for Eddie A. Sierra
Acting Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures:

Proposed Compliance Order, Penalty Complaint,
and Notice of Opportunity for Hearing
Part 22 Rules of Practice
Public Notice
U.S. EPA Small Business Resources Fact Sheet

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2009 SEP 21 PM 1:04

Docket No. SDWA-08-2009-0082

FILED
EPA REGION VIII
HEARING CLERK

In the Matter of:)
)
Ralph Belnap, Owner)
d/b/a Tweet's Auto Care,)
)
Respondent.)

**PROPOSED COMPLIANCE ORDER,
PENALTY COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING**

INTRODUCTION

1. This Proposed Compliance Order, Penalty Complaint and Notice of Opportunity for Hearing (complaint) is authorized by Congress in section 1423 of the Public Health Service Act, commonly known as the Safe Drinking Water Act (the Act). 42 U.S.C. § 300h-2. The Environmental Protection Agency (EPA) regulations authorized by the statute are set out in part 144 of title 40 of the Code of Federal Regulations (C.F.R.), and violations of the statute, permits or EPA regulations constitute violations of the Act. The rules for this proceeding are the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits ("Rules of Practice")," 40 C.F.R. Part 22, a copy of which is enclosed.

2. The undersigned EPA official has been properly delegated the authority to issue this complaint.

3. EPA alleges that Ralph Belnap, Owner, d/b/a Tweet's Auto Care, (Respondent) has violated the regulations and therefore the Act, as more fully explained below.

NOTICE OF OPPORTUNITY FOR A HEARING

4. Respondent has the right to a public hearing before a presiding officer within the Agency to (1) disagree with any fact alleged by EPA in the complaint, (2) state the grounds for any legal defense or (3) disagree with the appropriateness of the proposed penalty.

5. To disagree with the complaint and assert Respondent's right to a hearing, Respondent must file a written answer (and one copy) with the Regional Hearing Clerk (1595 Wynkoop Street (8RC); Denver, Colorado 80202) within thirty (30) calendar days of receiving this complaint. The answer must clearly admit, deny or explain the factual allegations of the complaint, the grounds for any defense, the facts Respondent may dispute, and Respondent's

specific request for a public hearing. Please see section 22.15 of the Rules of Practice for a complete description of what must be in the answer. **FAILURE TO FILE AN ANSWER AND REQUEST A HEARING WITHIN THIRTY (30) CALENDAR DAYS MAY WAIVE RESPONDENT'S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR PROPOSED PENALTY, AND RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF PENALTY UP TO THE MAXIMUM AUTHORIZED BY THE ACT.**

SETTLEMENT NEGOTIATIONS

6. EPA encourages discussing whether cases can be settled through informal settlement conferences. If Respondent wants to pursue the possibility of settling this matter, or has any other questions, contact the attorney listed at the end of this complaint. **Please note that calling the attorney or requesting a settlement conference does NOT delay the running of the thirty (30) day period for filing an answer and requesting a hearing.**

GENERAL ALLEGATIONS

The following general allegations apply to all times relevant to this action and to each violation alleged in this complaint:

7. Respondent, Ralph Belnap, Owner, d/b/a Tweet's Auto Care, is an individual doing business in the State of Colorado.

8. Respondent is a "person" as defined in the Act, and is therefore subject to the requirements of the statute and/or regulations. 42 U.S.C. § 300f (12).

9. Respondent owns and/or operates the facility located at 34717 County Road 13, Elizabeth, Colorado ("facility").

10. On March 31, 2003, EPA Region 8 received a completed *Shallow Injection Well Inventory Request Form*, prepared by Ralph Belnap, Owner, representing Respondent, dated March 31, 2003, which indicated the existence of one septic system that receives wastes from a sanitary system.

11. On March 31, 2003, an authorized EPA employee entered the facility, with consent, to inspect it for compliance with the law. This inspection revealed that the facility operates a maintenance shop with a floor drain.

12. On May 17, 2004, relating to the floor drain described in paragraph 11 above, a letter was sent to Respondent requiring that Mr. Belnap discontinue the use of the floor drain or apply for a UIC permit.

13. On September 24, 2008, an authorized EPA employee entered the facility, with

consent, to inspect it for compliance with the law. This inspection showed that the facility operates a motor vehicle maintenance shop with a floor drain.

14. Based on the *Shallow Injection Well Inventory Request Form* described in paragraph 10 above, and the inspections described in paragraphs 11 and 13 above, Respondent owns and operates a Class V Motor Vehicle Waste Disposal Well.

15. Respondent's disposal system, as identified in the inspections above, is classified as a "Class V Injection Well" as defined by 40 C.F.R. §§144.6, 144.81, and 146.5. Respondent is subject to applicable requirements of 40 C.F.R. §§124, 144 and 146.

16. Lying beneath Respondent's disposal well are underground sources of drinking water (USDWs), including but not limited to, the Denver Basin Aquifer.

17. Respondent is in violation of:

(a) 40 C.F.R. §§ 144.12(a) and 144.82(a)(1) by owning, operating or maintaining a Class V disposal well which, through injection activity, allows the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water regulation or may otherwise adversely affect the health of persons; and

(b) 40 C.F.R. § 144.88(b) for operating a motor vehicle waste disposal well after the January 1, 2007 ban of all motor vehicle waste disposal wells.

Respondent's operation of the well is in violation of the EPA regulations is therefore in violation of the Act, 42 U.S.C. § 300h-2 (c)(1).

PROPOSED COMPLIANCE ORDER

18. Respondent shall:

(a) within thirty (30) calendar days of Respondent's receipt of this complaint, submit to EPA, in writing, a schedule for permanently closing the disposal well, and a plan for alternative disposal of the waste. If the closure includes the use of a self-contained holding tank, the plan must address the specific type, specifications and size of tank to be installed. EPA will promptly review the proposed plan and either approve it or provide Respondent with written comments;

(b) within sixty (60) calendar days of the receipt of this complaint, permanently close the disposal well; and

(c) within thirty (30) calendar days of completing this work, provide EPA with subsequent documentation of the closure.

19. Respondent shall submit all documentation to:

Cynthia Peterson (Mail Code 8ENF-UFO)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202

PROPOSED CIVIL PENALTY

20. For an administrative proceeding, the Act authorizes the assessment of a civil penalty of up to \$11,000 per day, for each violation of the Act, up to a maximum of \$157,500. 42 U.S.C. § 300h-2 (c)(1). The Act requires EPA to take into account appropriate factors in assessing a civil penalty, including the seriousness of the violations, the economic benefit resulting from the violations, any history of such violations, any good-faith efforts to comply with the requirements, the economic impact on the violator, and such other matters as justice may require.

21. As required by the Act, prior to the assessment of a civil penalty, EPA will provide public notice of the proposed penalty, and reasonable opportunity for the public to comment on the matter and present evidence in the event a hearing is held 42 U.S.C. § 300h-2 (c)(3)(B).

22 . To discuss settlement or ask any questions you may have about this case or process, please contact Eduardo Quintana, Enforcement Attorney, at (303) 312-6924, or the address below.

United States Environmental Protection Agency
Region 8, Office of Enforcement, Compliance and
Environmental Justice
1595 Wynkoop Street (ENF-L)
Denver, CO 80202

Date: 9/17/09

By: Sharon Z Kecker
Eddie A. Sierra
Acting Assistant Regional Administrator
Office of Enforcement, Compliance
And Environmental Justice

In the Matter of: Ralph Belnap, Owner, d/b/a Tweet's Auto Care
Docket No.: SDWA-08-2009-0082

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the PROPOSED COMPLIANCE ORDER, PENALTY COMPLAINT, AND NOTICE OF OPPORTUNITY FOR HEARING with the Consolidated Rules of Practice (40 C.F.R. Part 22), a Public Notice, and the U.S. EPA Small Business Resources Fact Sheet were hand-carried to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street; Denver, Colorado 80202-1129, and that a true copy of the same was sent via Certified Mail to:

Ralph Belnap, Owner
d/b/a Tweet's Auto Care
34717 County Road 13
Elizabeth, CO 80107

 Sep 21, 2009
Date

 Anne Howell

**U.S. ENVIRONMENTAL PROTECTION AGENCY
PUBLIC NOTICE
OPPORTUNITY FOR PUBLIC COMMENT ON
PROPOSED COMPLIANCE ORDER, PENALTY COMPLAINT,
AND
NOTICE OF OPPORTUNITY FOR HEARING
AGAINST
RALPH BELNAP, OWNER, D/B/A TWEET'S AUTO CARE
FOR FAILURE TO COMPLY WITH
UNDERGROUND INJECTION CONTROL REGULATIONS**

PURPOSE OF PUBLIC NOTICE

The purpose of this notice is to solicit written comments on a Proposed Compliance Order, Penalty Complaint, and Notice of Opportunity for Hearing (complaint) [Docket No. ~~SDWA-08-2009~~⁰⁰⁸²] that Region 8 of the United States Environmental Protection Agency (EPA) proposes to issue to Ralph Belnap, Owner, d/b/a Tweet's Auto Care for alleged violations at the facility located in Elizabeth, Colorado. The complaint alleges violations of the Safe Drinking Water Act (SDWA) and the regulations detailing the requirements of the SDWA's Underground Injection Control (UIC) program. These regulations govern the injection of fluids that may endanger an underground source of drinking water (USDW). The complaint proposes compliance requirements and monetary penalties for the alleged violation.

EPA desires to receive written comments from any interested party having knowledge of the alleged violations or who can provide any information useful to ensure that the complaint is appropriate. EPA will review and consider all comments received, and will thereafter determine whether the comments, if any, justify the modification or withdrawal of the complaint.

BACKGROUND

Part C of the SDWA (40 U.S.C. §300h *et seq*) requires EPA to regulate underground injection of fluid through wells to assure that underground sources of drinking water (USDWs) are not endangered. Section 1421 of the SDWA (40 U.S.C. §300h) requires EPA to administer UIC programs in States that do not have approved State UIC programs. Regulation of the UIC Class V Program has not been delegated to the State of Colorado; therefore, EPA administers the program in accordance with title 40 of the Code of Federal Regulations (40 C.F.R.) parts 124, 144, 146, 147, and 148.

The Class V motor vehicle waste disposal well, which is the subject of this complaint, is located at 34717 County Road 13, Elizabeth, Colorado. A Class V injection well, pursuant to 40 C.F.R. §§ 144.6, 144.81, and 146.5, is a shallow injection well that injects fluids into or above a USDW.

The complaint alleges that Ralph Belnap, Owner, d/b/a Tweet's Auto Care is in violation of UIC regulations and is subject to appropriate penalties for failing to prevent movement of fluids into a USDW that may cause a violation of a primary drinking water regulation under 40 C.F.R. Part 142 or otherwise

adversely affect the health of persons. The complaint cites that EPA may assess an administrative civil penalty of up to \$11,000 per day, for each violation of the Act, up to a maximum of \$157,500, and proposes certain compliance measures, including the permanent closure of the well.

PUBLIC COMMENTS

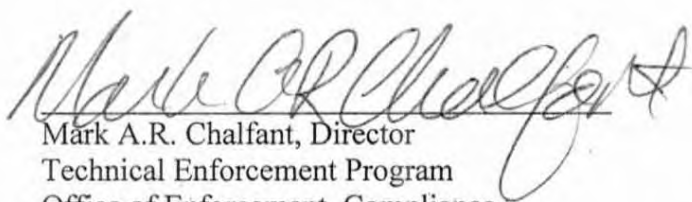
Written comments on the complaint are encouraged and will be accepted at the address listed below for a period of thirty (30) calendar days after the publication of this notice. Written comments submitted by the public, as well as information submitted by Ralph Belnap, Owner, d/b/a Tweet's Auto Care, will be available for public review as part of the Administrative Record, subject to the provisions of law restricting the disclosure of confidential information. Ralph Belnap, Owner, d/b/a Tweet's Auto Care may request a hearing. Any person submitting written comments will be notified of and has a right to participate in such a hearing. The complaint and the Administrative Record are available for review between 9:00 a.m. and 4:00 p.m. at the address listed below. It is recommended that those wishing to view the Administrative Record call Eduardo Quintana, Enforcement Attorney, Legal Enforcement Program, EPA Region 8, at (303) 312-6924 before visiting EPA Region 8 offices. Please submit written comments to:

Tina Artemis (8RC)
Regional Hearing Clerk
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, Colorado 80202

Any person interested in receiving their own copy of this or any future public notice of a UIC administrative action can call Cynthia Peterson in the UIC program, EPA Region 8, at (303) 312-6879.

THE DECISION

EPA will review and consider all public comments received on the public notice and will thereafter determine whether the comments, if any, justify the modification or withdrawal of the complaint. If the complaint is revised, copies shall be provided to all parties and to all members of the public who have commented.



Mark A.R. Chalfant, Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202

State agency authorized to receive such funds in conducting this program.

§21.13 Effect of certification upon authority to enforce applicable standards.

The certification by EPA or a State for SBA Loan purposes in no way constitutes a determination by EPA or the State that the facilities certified (a) will be constructed within the time specified by an applicable standard or (b) will be constructed and installed in accordance with the plans and specifications submitted in the application, will be operated and maintained properly, or will be applied to process wastes which are the same as described in the application. The certification in no way constitutes a waiver by EPA or a State of its authority to take appropriate enforcement action against the owner or operator of such facilities for violations of an applicable standard.

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION/TERMINATION OR SUSPENSION OF PERMITS

Subpart A—General

- Sec.
- 22.1 Scope of this part.
 - 22.2 Use of number and gender.
 - 22.3 Definitions.
 - 22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.
 - 22.5 Filing, service, and form of all filed documents; business confidentiality claims.
 - 22.6 Filing and service of rulings, orders and decisions.
 - 22.7 Computation and extension of time.
 - 22.8 *Ex parte* discussion of proceeding.
 - 22.9 Examination of documents filed.

Subpart B—Parties and Appearances

- 22.10 Appearances.
- 22.11 Intervention and non-party briefs.
- 22.12 Consolidation and severance.

Subpart C—Prehearing Procedures

- 22.13 Commencement of a proceeding.
- 22.14 Complaint.
- 22.15 Answer to the complaint.
- 22.16 Motions.

- 22.17 Default.
- 22.18 Quick resolution; settlement; alternative dispute resolution.
- 22.19 Prehearing information exchange; prehearing conference; other discovery.
- 22.20 Accelerated decision; decision to dismiss.

Subpart D—Hearing Procedures

- 22.21 Assignment of Presiding Officer; scheduling the hearing.
- 22.22 Evidence.
- 22.23 Objections and offers of proof.
- 22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard.
- 22.25 Filing the transcript.
- 22.26 Proposed findings, conclusions, and order.

Subpart E—Initial Decision and Motion to Reopen a Hearing

- 22.27 Initial decision.
- 22.28 Motion to reopen a hearing.

Subpart F—Appeals and Administrative Review

- 22.29 Appeal from or review of interlocutory orders or rulings.
- 22.30 Appeal from or review of initial decision.

Subpart G—Final Order

- 22.31 Final order.
- 22.32 Motion to reconsider a final order.

Subpart H—Supplemental Rules

- 22.33 [Reserved]
- 22.34 Supplemental rules governing the administrative assessment of civil penalties under the Clean Air Act.
- 22.35 Supplemental rules governing the administrative assessment of civil penalties under the Federal Insecticide, Fungicide, and Rodenticide Act.
- 22.36 [Reserved]
- 22.37 Supplemental rules governing administrative proceedings under the Solid Waste Disposal Act.
- 22.38 Supplemental rules of practice governing the administrative assessment of civil penalties under the Clean Water Act.
- 22.39 Supplemental rules governing the administrative assessment of civil penalties under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.
- 22.40 [Reserved]

First Page Only



Office of Enforcement and Compliance Assurance
INFORMATION SHEET

U. S. EPA Small Business Resources

If you own a small business, the United States Environmental Protection Agency (EPA) offers a variety of compliance assistance resources such as workshops, training sessions, hotlines, websites, and guides to assist you in complying with federal and state environmental laws. These resources can help you understand your environmental obligations, improve compliance, and find cost-effective ways to comply through the use of pollution prevention and other innovative technologies.

Compliance Assistance Centers

(www.assistancecenters.net)

In partnership with industry, universities, and other federal and state agencies, EPA has established Compliance Assistance Centers that provide information targeted to industries with many small businesses.

Agriculture

(www.epa.gov/agriculture or 1-888-663-2155)

Automotive Recycling Industry

(www.ecarcenter.org)

Automotive Service and Repair

(www.ccar-greenlink.org or 1-888-GRN-LINK)

Chemical Industry

(www.chemalliance.org)

Construction Industry

(www.cicacenter.org or 1-734-995-4911)

Education

(www.campuserc.org)

Healthcare Industry

(www.hercenter.org or 1-734-995-4911)

Metal Finishing

(www.nmfrc.org or 1-734-995-4911)

Paints and Coatings

(www.paintcenter.org or 1-734-995-4911)

Printed Wiring Board Manufacturing

(www.pwbrc.org or 1-734-995-4911)

Printing

(www.pneac.org or 1-888-USPNEAC)

Transportation Industry

(www.transource.org)

Tribal Governments and Indian Country

(www.epa.gov/tribal/compliance or 202-564-2516)

US Border Environmental Issues

(www.bordercenter.org or 1-734-995-4911)

The Centers also provide State Resource Locators (www.envcap.org/statetools/index.cfm) for a wide range of topics to help you find important environmental compliance information specific to your state.

EPA Websites

EPA has several Internet sites that provide useful compliance assistance information and materials for small businesses. If you don't have access to the Internet at your business, many public libraries provide access to the Internet at minimal or no cost.

EPA's Home Page

www.epa.gov

Small Business Gateway

www.epa.gov/smallbusiness

Compliance Assistance Home Page

www.epa.gov/compliance/assistance

Office of Enforcement and Compliance Assurance

www.epa.gov/compliance

Voluntary Partnership Programs

www.epa.gov/partners

