



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

DEC 20 2010

CERTIFIED MAIL – 7009 3410 0000 2592 1667<sup>81</sup> – RETURN RECEIPT REQUESTED

Kurt Menges, Owner  
Menges Auto Repair  
1100 Barnes Ave.  
La Junta, CO 81050-2612

Re: PROPOSED COMPLIANCE ORDER, PENALTY COMPLAINT, AND NOTICE OF OPPORTUNITY FOR HEARING  
Docket No. **SDWA-08-2011-0010**

Dear Mr. Menges:

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 Complaint alleges that you have violated the SDWA and proposes both compliance requirements and assessment of a civil penalty.

**However, if Menges Auto Repair 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 Dana Stotsky, who can be reached at the above address (with the mail code 8ENF-L) or by phone at (303) 312-6905.

We urge your prompt attention to this matter.

Sincerely,

ta Andrew M. Gaydosh  
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

Alternative Methods of Disposing of Industrial Fluid Wastes

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8  
Docket No. SDWA-08-2011-0010

2010 DEC 20 AM 8:09

FILED  
EPA REGION VIII  
HEARING CLERK

\_\_\_\_\_  
In the Matter of: )  
)  
Kurt J. Menges, )  
d/b/a Menges Auto Repair, )  
)  
)  
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 section 1423 of the Public Health Service Act, commonly known as the Safe Drinking Water Act (the Act), 42 U.S.C. § 300h-2, an enacted law. The U.S. Environmental Protection Agency (EPA) promulgated regulations by authority of the Act. These regulations are set out in part 144 of title 40 of the Code of Federal Regulations (C.F.R.) Violations of requirements set out in part 144, or associated permits, constitute violations of the Act. The rules governing 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 Kurt J. Menges, an individual d/b/a Menges Auto Repair (Respondent), has violated requirements contained in part 144 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, Kurt J. Menges, an individual d/b/a Menges Auto Repair, is a "person" as that term is defined in the Act, and is therefore subject to the requirements of the Act and/or regulations promulgated by authority of the Act. 42 U.S.C. § 300f (12).

8. Respondent owns and/or operates the facility located at 1100 Barnes Avenue, La Junta, Colorado (Facility).

9. On May 13, 2009, EPA Region 8 received a completed *Shallow Injection Well Inventory Request Form* prepared and signed by Kurt J. Menges, dated April 27, 2009, which indicated the existence of one septic system that receives wastes from both a sanitary system and floor drain(s) associated with auto repair activities.

10. On June 15, 2010, an authorized EPA employee (Inspector) entered the Facility, with Respondent's consent, to conduct an inspection (the Inspection) and determine Respondent's compliance with the Act and regulations promulgated by authority of the Act. During the Inspection the Inspector observed Respondent's Facility and noted that Respondent operates a motor vehicle maintenance shop which uses three (3) floor drains located in the Facility.

11. Based on the *Shallow Injection Well Inventory Request Form* described in Paragraph 9 above, and the Inspection described in the preceding Paragraph 10, Respondent owns and/or operates a Class V Motor Vehicle Waste Disposal Well.

12. Respondent's disposal system, as identified in the inspection 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.

13. Lying beneath Respondent's disposal well are underground sources of drinking water (USDWs), including but not limited to, the Dakota-Cheyenne aquifer.

14. Respondent has violated:

(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.

15. Respondent's operation of the well constitutes one or more violation(s) of regulations promulgated by authority of the Act, which constitutes one or more violations(s) of the Act, 42 U.S.C. § 300h-2 (c)(1).

### **PROPOSED COMPLIANCE ORDER**

16. 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.

17. 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

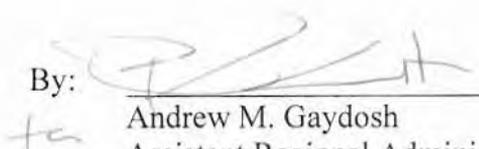
18. For an administrative proceeding, the Act authorizes the assessment of a civil penalty of up to \$16,000 per day, for each violation of the Act, up to a maximum of \$177,500. 42 U.S.C. § 300h-2 (c)(1). The Act requires EPA to consider appropriate factors in assessing a civil penalty, including the seriousness of the violations, the economic benefit resulting from the violations, any history of prior violations, any good-faith efforts made by Respondent to comply with the requirements, the economic impact on the Respondent, and such other matters as justice may require.

19. 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).

20. To discuss settlement or ask any questions you may have about this case or process, please contact Dana Stotsky, Enforcement Attorney, at (303) 312-6905, 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: 12/15/10

By:   
Andrew M. Gaydosh  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
And Environmental Justice

In the Matter of: Kurt J. Menges, d/b/a Menges Auto Repair  
Docket No.: SDWA-08-2011-0010

**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, Return Receipt Requested, to:

Mr. Kurt J. Menges, Owner  
Menges Auto Repair  
1100 Barnes Ave.  
La Junta, CO 81050-2612

Date: 12/20/10

By: *Susan McDowell*

Print Name: SUSAN MCDOWELL

**U.S. ENVIRONMENTAL PROTECTION AGENCY  
PUBLIC NOTICE  
OPPORTUNITY FOR PUBLIC COMMENT ON  
PROPOSED COMPLIANCE ORDER, PENALTY COMPLAINT,  
AND  
NOTICE OF OPPORTUNITY FOR HEARING  
AGAINST  
KURT J. MENGES D/B/A MENGES AUTO REPAIR  
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-08-2011-0010** ] that Region 8 of the United States Environmental Protection Agency (EPA) proposes to issue to Kurt J. Menges d/b/a Menges Auto Repair for alleged violations at the facility located at 1100 Barnes Avenue, La Junta, 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 1100 Barnes Avenue, La Junta, 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 Kurt J. Menges d/b/a Menges Auto Repair 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 \$16,000 per day, for each violation of the Act, up to a maximum of \$177,500, 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 Kurt J. Menges d/b/a Menges Auto Repair, will be available for public review as part of the Administrative Record, subject to the provisions of law restricting the disclosure of confidential information. Kurt J. Menges d/b/a Menges Auto Repair 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 Dana Stotsky, Enforcement Attorney, Legal Enforcement Program, EPA Region 8, at (303) 312-6905 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.



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Sandra A. Stavnes, Director  
UIC/FIFRA/OPA Technical Enforcement Program

## MOTOR VEHICLE WASTE DISPOSAL WELL OPTIONS

By law, you must either (1) **close** your motor vehicle waste disposal well, or (2) **modify** your system so that underground sources of drinking water are protected.

**Important deadlines apply to well closures and post-closure documentation.**  
Please refer to the *Proposed Compliance Order, Penalty Complaint and Notice of Opportunity for Hearing* issued to you or the facility owner/operator for details.

### Option 1 Well Closure

If you elect to close your motor vehicle waste disposal well, you must permanently plug your well so that the closure cannot be reversed, and no fluids can enter underground sources of drinking water. You must obtain prior approval of your closure plan from EPA before implementing the closure. Some options for permanent well closure include:

- **Fill floor drains with cement.** Drains must be cleaned and filled with enough cement that the closure cannot be reversed and no fluids can enter the septic tank, dry well, sump, or cesspool.
- **Disconnect floor drains and/or sinks from the septic tank or dry well.** Clean inflow pipes to the septic tank, dry well, sump, or cesspool and fill with enough cement that the closure cannot be reversed and no fluids can enter the septic system or dry well.

### Option 2 Well Modification

If you choose to modify your waste disposal system (allowing continued use of floor drains), you must employ an alternative method to dispose waste fluids, and you must obtain prior approval of your plan from EPA before implementing the modification. Some options for system modification and alternative fluid waste disposal include:

- **Connect drain line to a sewer.** Disconnect the drain line from the septic tank, dry well, sump, or cesspool and then connect the drain line to the sewer line. The old portion of the drain line connected to the septic tank must be plugged with cement or completely removed.
- **Connect drain line to a holding tank.** Disconnect the drain line from the septic tank, dry well, sump, or cesspool and then connect the drain line to a holding tank. The holding tank must be large enough to completely contain the waste fluids stored at your facility until the waste is removed from the premises by a licensed waste hauler for disposal in accordance with federal and state regulations. The old portion of the drain line connected to the septic tank must be plugged with cement.

There may be additional, effective methods of well closure or system modification. If you know of a method not listed, you may propose it to EPA. If EPA finds your proposed method to be protective of underground sources of drinking water, EPA may approve it for your use.

Please be advised that EPA neither endorses nor recommends any specific alternative waste disposal method, product, technology or company. Each fluid waste disposal situation is unique, and care must be taken to choose and implement an appropriate alternative waste disposal method for each individual facility.