

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2013 AUG 26 PM 3:35

IN THE MATTER OF: ) Docket No. **SDWA-08-2013-0050** L.C.  
) )  
) ) **COMBINED COMPLAINT AND** EPA REGION VIII  
) ) **CONSENT AGREEMENT** HEARING CLERK  
) )  
) ) Simultaneous Commencement and  
) ) Conclusion of a Proceeding Pursuant to  
) ) Section 1423(c)(1) of the Public Health  
) ) Service Act, commonly known as the Safe  
) ) Drinking Water Act and 40 C.F.R. § 22.13(b)  
) )  
Respondent. )  
\_\_\_\_\_ )

Complainant, the United States Environmental Protection Agency, Region 8 (EPA), and Respondent, United Parcel Service, Inc. (UPS), by their undersigned representatives, hereby consent and agree as follows:

**AUTHORITY**

1. This proceeding is subject to the EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. Part 22. The regulations at 40 C.F.R. Part 22, subpart I, apply to this Combined Complaint and Consent Agreement (Agreement). This Agreement is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. section 22.13(b) and executed pursuant to 40 C.F.R. sections 22.18(b)(2), 22.18(b)(3) and 22.45.
2. This Agreement is authorized by Congress in section 1423(c)(1) of the Public Health Service Act, commonly known as the Safe Drinking Water Act (Act). 42 U.S.C. § 300h-2(c)(1).
3. Pursuant to section 1422 of the Act, 42 U.S.C. § 300h-1, and 40 C.F.R. Part 147 subpart BB, section 147.1351, the EPA administers the Underground Injection Control (UIC) program for

Class V wells in the State of Montana. The effective date of the program is June 25, 1984. The program requirements are located at 40 C.F.R. Parts 124, 144, 146, 147, and 148.

### **GENERAL ALLEGATIONS**

4. Respondent is a corporation organized under the laws of the State of Ohio and authorized to do business in the State of Montana.

5. Respondent is a “person” within the meaning of section 1401 of the Act, 42 U.S.C. § 300f(12), and therefore subject to the requirements of the Act.

6. Respondent, at all times pertinent hereto, owned and operated a car wash, which injects waste fluids pursuant to a Class V Underground Injection Permit MT50986-06511 (the Permit), at a facility located at 80675 Highway 87 West, Lewistown, Montana. The Permit was issued by the EPA on March 5, 2005 pursuant to 40 C.F.R. Parts 124, 144, 146, and 147.

7. Beneath Respondent’s underground injection well are underground sources of drinking water (USDWs), including but not limited to the shallow Northern Great Plains Aquifer System.

8. For Class V underground injection wells, operators are required to comply with all permit conditions, as defined in the regulations. “Any permit noncompliance constitutes a violation of the Safe Drinking Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application” except when noncompliance is authorized by an emergency permit. 40 C.F.R. § 144.51(a).

9. For Class V underground injection wells, operators are required to report monitoring results at the intervals specified in the Permit. 40 C.F.R. § 144.51(l)(4).

10. For Class V underground injection wells and pursuant to 40 C.F.R. § 144.51(l)(6), and the Permit, operators are required to “report any noncompliance which may endanger health or the environment, including:

(i) Any monitoring or other information which indicates that any contaminant may cause an endangerment to a USDW; or

(ii) Any noncompliance with a permit condition or malfunction of the injection system which may cause fluid migration into or between USDWs.

Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause, the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.”

11. For Class V underground injection wells, operators are required to operate underground injection wells in a manner that does not allow for “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 . . .” 40 C.F.R. §144.12(a).

12. The Maximum Contaminant Limit (MCL) and Permit limit for arsenic is 0.01 mg/L.

13. The Permit states in Part II, section E.4, page 9 that “any unauthorized injectate or any exceedance of a Permit limit or requirement shall be considered non-compliance with this Permit and may result in enforcement action.”

14. On October 11, 2012, Respondent or Respondent’s consultant took a sample from its underground injection well subject to the Permit.

15. The October 11, 2012, sample for arsenic showed arsenic at a level of 0.014 mg/L which was documented in a October 24, 2012, Analytical Summary Report and received by the EPA on November 1, 2012. The October 11, 2012, sample for arsenic exceeds the MCL for arsenic.

16. The Permit states in Part III, section E.10(c)(i), page 14, and in accordance with 40 C.F.R. section 144.51, that “the Permittee shall report to the Director any noncompliance which may endanger health or the environment. Information shall be provided either orally or by leaving a message, within twenty-four (24) hours from the time the Permittee becomes aware of the circumstances...” part III, section E.10(c)(ii), page 15 further states that “written notice of any noncompliance which may endanger health or the environment shall be provided to the Director within five (5) calendar days of the time the Permittee becomes aware of the noncompliance.”

17. The Permit states in Part II, section D.3, page 6 that “the concentration of any constituent in the injected fluid shall not exceed any [MCL] . . . If an analysis of the waste fluid shows that the waste fluid exceeds these permit limits, EPA **must** be notified within twenty-four (24) hours, per Part III E.10 of the permit. A follow-up sample must be collected and analyzed Immediately . . .” Emphasis in the Permit.

18. Respondent did not orally notify the Director of the October 11, 2012, arsenic MCL exceedance within twenty-four hours as required by the Permit and 40 C.F.R. section 144.51.

19. Respondent did not provide written notice to the Director of the October 11, 2012, arsenic MCL exceedance within five calendar days of the time Respondent became aware of the noncompliance as required by the Permit and 40 C.F.R. section 144.51.

20. Respondent did not collect and analyze a follow up sample after the October 11, 2012, arsenic MCL exceedance.

21. The Permit states in Part II, section E.3, page 9, and in accordance with 40 C.F.R. section 144.51(l), "The report of the analysis of the fluid will be sent to the [UIC Program] Director no later than four (4) weeks after the sample was collected."

22. Results from Respondent's sampling events from its underground injection well subject to the Permit taken on March 30, 2010, and April 24, 2012, were received by the EPA on November 16, 2010, and November 1, 2012, respectively. The March 30, 2010, and April 24, 2012 sampling results were not reported to the Director within four weeks after the samples were collected.

23. Paragraphs 1 through 22 of this Agreement are re-alleged and incorporated herein by reference into each of the counts below.

**COUNT 1**  
**Exceeding MCL and Permit limit for arsenic**

24. Respondent's exceedance of the MCL for arsenic constitutes a violation of 40 C.F.R. section 144.12, Part II section E.4 of the Permit, and the Act. The length of violation is one day, October 11, 2012.

**COUNT 2**  
**Failure to notify the EPA of the arsenic MCL exceedance**

25. Respondent's failure to orally notify the Director of the arsenic MCL exceedance within twenty-four hours and to provide written notice to the Director of the arsenic MCL exceedance within five calendar days of the time Respondent became aware of the MCL exceedance, constitutes a violation of 40 C.F.R. section 144.51; Part II section D.3., Part III sections E.10(c)(i) and (ii) of the Permit; and the Act. The length of violation is two days, for October 25, 2012 for the oral notification, and October 30, 2012 for the written notification.

### **COUNT 3**

#### **Failure to collect and analyze a follow up sample**

26. Respondent's failure to collect and analyze a follow up sample for the October 11, 2012, arsenic MCL exceedance is a violation of 40 C.F.R. section 144.51, Part II section D.3 of the Permit, and the Act. The length of violation is one day, October 24, 2012.

### **COUNT 4**

#### **Failure to submit sampling results in a timely manner**

27. Respondent's failure to submit the analytical results of the two sampling events within four weeks after the samples from its underground injection well were collected constitutes a violation of 40 C.F.R. §144.51, Part II section E.3 of the Permit, and the Act. The length of violation is three hundred and sixty one (361) days, for the periods of April 30, 2010, through November 16, 2010, and May 25, 2012, through November 1, 2012.

### **CIVIL PENALTY**

28. For an administrative proceeding, the Act authorizes a civil penalty assessment 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 the 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. Taking such factors into account, the EPA proposes the assessment of a civil penalty of nine thousand three hundred twenty seven dollars (\$9,327) for the violations alleged in Paragraphs 24 through 27.

29. Respondent consents, for the purpose of settlement, to the issuance of a final order in this matter and agrees to pay the civil penalty of nine thousand three hundred twenty seven dollars (\$9,327) as follows:

- a. Payment is due within thirty (30) calendar days from the date written on the Final Order, issued by the Regional Judicial Officer that adopts this Agreement. If the due date falls on a weekend or legal federal holiday, then the due date becomes the next business day. The date the payment is made is considered to be the date processed by the bank described below. Payments received by 11:00 AM EST are processed on the same day, those received after 11:00 AM are processed on the next business day.
- b. The payment shall be made by remitting a cashier's or certified check, referencing the name and docket number of this case, for this amount, payable to "**Environmental Protection Agency,**" to:

**US checks by regular mail**  
**US postal service mail:**

U.S. EPA Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

**Federal Express, Airborne,  
or other commercial carrier:**

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

**Wire transfers:**

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York NY 10045  
Field Tag 4200 of the Fedwire message  
should read "D 68010727 Environmental  
Protection Agency "

**On Line Payment:**

WWW.PAY.GOV  
Enter sfo 1.1 in the search field  
Open form and complete required fields.

Copies of the check or wire transfer shall be simultaneously sent to:

Tina Artemis, Regional Hearing Clerk  
U.S. EPA Region 8 (8RC)  
1595 Wynkoop Street  
Denver, CO 80202-1129

- c. In the event payment is not received by the specified due date, interest accrues from the date of the Final Order, not the payment due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. section 3717, and will continue to accrue until the payment is received in full (i.e., on the 1<sup>st</sup> late day, 30 days of interest accrues).
- d. In addition to the accrual of interest specified in (c) above, a handling charge of fifteen dollars (\$15.00) shall be assessed on the 31<sup>st</sup> day from the date of the Final Order, and each subsequent 30-day period that the penalty, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if the penalty payment is not received within ninety (90) days of the due date (i.e., the 121<sup>st</sup> day from the date the Final Order is signed). Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.
- e. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

#### **PUBLIC NOTICE**

30. As required by the Act and 40 C.F.R. section 22.45, prior to the final assessment of a civil penalty, the 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).

31. Pursuant to the quick resolution and settlement provision codified in 40 C.F.R. section 22.45(c)(3), "no proceeding subject to the public notice and comment provision of paragraphs (b) and (c) of [40 C.F.R. section 22.45] may be resolved or settled under § 22.18, or commenced under § 22.13(b), until 10 days after the close of the comment period provided in [40 C.F.R. section 22.45(c)(1)]."



## GENERAL PROVISIONS

32. Payment of the penalty in this manner does not relieve Respondent of its obligation to comply with the requirements of the Act. Payment of the penalty in this manner shall constitute consent by Respondent to the assessment of the proposed penalty.

33. Failure by Respondent to comply with any of the terms of this Agreement shall constitute a breach of the Agreement and may result in referral of the matter to the Department of Justice for enforcement of this Agreement and for such other relief as may be appropriate.

34. Nothing in this Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Agreement.

35. Respondent neither admits nor denies the allegations contained in this Agreement.

36. Respondent waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in this Agreement.

37. This Agreement, upon incorporation into a final order, applies to and is binding upon the EPA, and upon Respondent, its successors and assigns. Any change in ownership or corporate status by Respondent including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this Agreement. This Agreement contains all terms of the settlement agreed to by the parties.

38. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to bind Respondent to its terms and conditions.

39. The parties agree to submit this Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.

40. Each party shall bear its own costs and attorney fees in connection with this matter.

41. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Agreement, including any right of judicial review.

42. This Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in this Agreement.


**UNITED PARCEL SERVICE, INC.**, *an Ohio corporation*  
Respondent.

Date: 8/23/2013

  
Norman M. Brothers, Jr.  
Assistant Secretary  
Vice President

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8**  
Office of Enforcement, Compliance  
and Environmental Justice, Complainant.

Date: 8/26/13

  
Andrew M. Gaydosh  
Assistant Regional Administrator

**U.S. ENVIRONMENTAL PROTECTION AGENCY  
PUBLIC NOTICE  
OPPORTUNITY FOR PUBLIC COMMENT ON  
COMBINED COMPLAINT AND  
CONSENT AGREEMENT  
AGAINST  
UNITED PARCEL SERVICE, INC.  
FOR FAILURE TO COMPLY WITH  
UNDERGROUND INJECTION CONTROL REQUIREMENTS**

**PURPOSE OF PUBLIC NOTICE**

The purpose of this notice is to solicit written comments on a Combined Complaint and Consent Agreement (consent agreement), Docket # **SDWA-08-2013-0050** that Region 8 of the United States Environmental Protection Agency (EPA) proposes to issue to United Parcel Service, Inc. for alleged violations at the facility located in Lewistown, Montana. The consent agreement 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 consent agreement proposes the assessment of a monetary penalty in the amount of \$9,327.

The 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 consent agreement is appropriate. The EPA will review and consider all comments received, and will thereafter determine whether to modify or withdraw the consent agreement.

**BACKGROUND**

Part C of the SDWA (40 U.S.C. §300h *et seq*) requires the 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 the 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 Montana; therefore, the 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 underground injection well which is the subject of this consent agreement is located at 80675 Highway 87 West, Lewistown, Montana. A Class V injection well, pursuant to 40 C.F.R. 144.6 and 146.5, is a shallow injection well that injects fluids into or above a USDW.

The consent agreement alleges that United Parcel Service, Inc. is in violation of UIC requirements, and is subject to appropriate penalties and fines for exceeding its permit limits or Maximum Contaminant Levels (MCL) for arsenic, failing to notify the EPA orally within twenty four hours of any noncompliance which may endanger health or the environment, failing to submit to the EPA written notification within five calendar days of the noncompliance, failing to

collect and analyze a follow up sample, and failing to submit a timely report of analysis. The consent agreement cites that after the EPA took all factors required by the SDWA into account, the EPA proposed a penalty of \$9,327.

### **PUBLIC COMMENTS**

Written comments on the consent agreement 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 United Parcel Service, Inc. will be available for public review as part of the Administrative Record, subject to the provisions of law restricting the disclosure of confidential information. Any person submitting written comments may petition the Regional Administrator of EPA Region 8 to set aside the consent agreement subject to the requirements in 40 C.F.R. section 22.45(c)(4). The consent agreement 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 the 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 Britta Copt in the UIC program, EPA Region 8, at (303) 312-6229.

### **THE DECISION**

The EPA will review and consider all public comments received on the public notice and will thereafter determine whether to modify or withdraw the consent agreement. If the consent agreement is revised, copies shall be provided to all parties and to all members of the public who have commented.



Darcy O'Connor, Director  
UIC/FIFRA/OPA Technical Enforcement Program  
U.S. EPA, Region 8  
1595 Wynkoop Street  
Denver, CO 80202