

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

2015 AUG 12 AM 11:30

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)
)
INTERMOUNTAIN RURAL ELECTRIC)
ASSOCIATION)
)
Respondent.)

Docket No. SDWA-08-2015-0026

ANSWER AND REQUEST FOR A HEARING

Intermountain Rural Electric Association (Respondent), by and through its undersigned attorney, hereby submits its Answer to the Proposed Compliance Order, Penalty Compliant, and Notice of Opportunity for Hearing (Complaint) filed in this matter by the United States Environmental Protection Agency Region 8 (EPA) on July 13, 2015.

Respondent respectfully submits this Answer disagreeing with facts alleged by the EPA in the Complaint and asserting that it is not in violation of the Safe Drinking Water Act, 42 U.S.C § 300h-2 (SDWA).

ANSWER

Respondent, for its Answer, states as follows:

1. Respondent admits that it is a "person" as defined in the SDWA. The remainder of paragraph 7 of the Complaint states a legal conclusion that does not require an answer and is therefore neither admitted nor denied.
2. Respondent admits that it owns and operates a facility located at 5496 N. U.S. HWY 85, Sedalia, Colorado 80135 (Facility) as stated in paragraph 8 of the Complaint.
3. Respondent admits that on May 21, 2014, it authorized EPA employees to enter the Facility to conduct inventory verification and to inspect for compliance with the law. Respondent neither admits nor denies the contents of the EPA inspection report referred to in paragraph 9 of the Complaint as that document speaks for itself. Respondent denies that maintenance fluids enter the floor drain in the motor vehicle bay as alleged in paragraph 9 of the Complaint.

4. Respondent denies that its disposal system includes a floor drain in the motor vehicle bay as alleged in paragraph 10 of the Complaint. Respondent further denies the existence at that location of a Class V Injection Well as defined by 40 C.F.R. §§ 144.6, 144.8, and 146.5 (Class V Motor Vehicle Waste Disposal Well). Respondent denies that the requirements of 40 C.F.R. §§ 124, 144, and 146 are applicable to the Respondent's Facility as alleged in paragraph 10 of the Complaint.
5. Respondent denies the allegation that it owns or operates a Class V Motor Vehicle Waste Disposal Well as stated in paragraph 11 of the Complaint.
6. Respondent denies the allegation that it owns or operates a Class V Motor Vehicle Waste Disposal Well above underground sources of drinking water as stated in paragraph 12 of the Complaint.
7. Respondent denies that it owns, operates, or maintains a Class V Motor Vehicle Waste 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 contaminate may cause a violation of any primary drinking water regulation or may otherwise adversely affect the health of persons, as stated in paragraph 13(a) of the Complaint.
8. Respondent denies the that it has operated a Class V Motor Vehicle Waste Disposal Well after the January 1, 2007 ban of all Class V Motor Vehicle Waste Disposal Wells as stated in paragraph 13(b) of the Complaint.
9. Respondent denies that it is in violation of the SDWA as alleged in paragraphs 13(a)-(b) of the Complaint.
10. Respondent objects to the EPA's proposed civil penalty of up to \$16,000 per day, for each violation of the SDWA, up to a maximum of \$187,500. Respondent denies all allegations in the Complaint but nonetheless asserts that if a violation is found Respondent is subject to 42 U.S.C. § 300h-2(c)(1), which provides for a civil penalty of up to \$10,000 for each day of violation, up to a maximum of \$125,000.
11. The paragraphs of the Complaint titled Notice of Opportunity for a Hearing, Settlement Negotiations, Proposed Compliance Order, and Proposed Civil Penalty do not contain factual allegations and thus do not require an answer.

RESPONDENT'S POSITION STATEMENTS

12. Respondent affirms that the floor drain in Respondent's motor vehicle bay that is the subject of the Complaint is not a Class V Motor Vehicle Waste Disposal Well as defined by 40 C.F.R. § 144.81(16) because it does not receive fluids from vehicular repair or maintenance activities and such activities do not occur in the motor vehicle bay.
13. A Class V Motor Vehicle Waste Disposal Well is a waste disposal well that receives or has received fluids from vehicular repair or maintenance activities, such as an auto body repair shop, automotive repair shop, new and used car dealership, specialty repair shop (e.g., transmission and muffler repair shop), or any facility that does any vehicular repair work. 40 C.F.R. § 144.81(16). Respondent does not use its motor vehicle bay for vehicular repair and maintenance activities. Respondent's motor vehicle bay is a parking and storage area. The floor drain in the motor vehicle bay does not receive fluids from vehicular repair or maintenance activities.
14. Respondent performs vehicular repair and maintenance activities in its maintenance room, which is located in a separate area of the Facility from the motor vehicle bay. As confirmed by the EPA's inspection and the attached pictures, the floor drains in the maintenance room are permanently closed with impermeable metal drain covers as required by 40 C.F.R. § 144.88(b). *See attached Maintenance Room Pictures.*
15. When performing vehicle repair and maintenance activities in Respondent's maintenance room, Respondent affirms that it captures all vehicular repair and maintenance fluids in aboveground storage containers. *See attached Storage Container Pictures.*
16. Respondent affirms that it does not dispose of any waste fluids from vehicular repair or maintenance activities at the Facility. Respondent contracts with Thermo Fluids Inc. for the pickup and offsite disposal of the waste fluids. Respondent's disposal records are available for inspection.

REQUEST FOR WITHDRAW

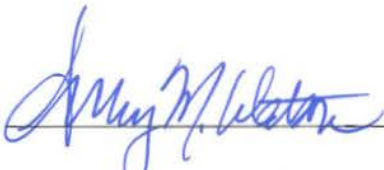
Based on an inspection of the Facility, the attached pictures, and Respondent's disposal records, the EPA can confirm that Respondent (1) does not use the floor drain in the motor vehicle bay or any drain in the Facility to dispose of waste fluids from vehicular repair and maintenance activities, and (2) does not own or operate a Class V Motor Vehicle Waste Disposal Well. Respondent requests that the EPA verify the available information and exercise its discretion to withdraw the Complaint.

REQUEST FOR A HEARING

In accordance with the EPA's Consolidated Rules of Practice, Respondent requests a hearing on all allegations and the proposed civil penalty, provided that the Complaint is not withdrawn prior to the scheduling of the hearing pursuant to the foregoing request.

Dated this 11th day of August, 2015.

Respectfully submitted,

By: 

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