

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

REGION 8

2014 SEP -4 PM 3: 28

Docket No.

SDWA-08-2014-0036

FILED  
EPA REGION VIII  
HEARING CLERK

In the Matter of: )  
)  
Custer County Road & Bridge, )  
)  
)  
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 Act 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 Custer County Road and Bridge (Respondent), a department of Custer County, owner and/or operator of the Custer County Road and Bridge Shop 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, it should contact Eduardo Quintana, Enforcement Attorney, at (303) 312-6924 or at the following address:

Eduardo Quintana (Mail Code 8ENF-L)  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202

**Please note that calling Mr. Quintana 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 is a political subdivision and, therefore 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).

8. Respondent owns and/or operates the facility known as Custer County Road & Bridge Shop, located at 25980 Colorado 96, Wetmore, CO 81253 (Facility).

9. On May 9, 2013, authorized EPA employees entered the Facility, with consent, to inspect it for compliance with the Act and regulations. This inspection showed that Respondent owns and/or operates a motor vehicle maintenance area with a large floor drain in the shop area. The floor drain leads to a tank with an overflow pipe that is connected to a perforated pipe which drains outside of the Facility.

10. Based on the inspection described above, Respondent owns and/or operates a Class V Motor Vehicle Waste Disposal Well. 40 C.F.R. § 144.81(16).

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

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

13. 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 and is therefore in violation of the Act, 42 U.S.C. § 300h-2(c)(1).

### **PROPOSED COMPLIANCE ORDER**

14. 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 in the motor vehicle maintenance area, 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 the EPA with subsequent documentation of the closure.

15. Respondent shall submit all documentation to:

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

## PROPOSED CIVIL PENALTY

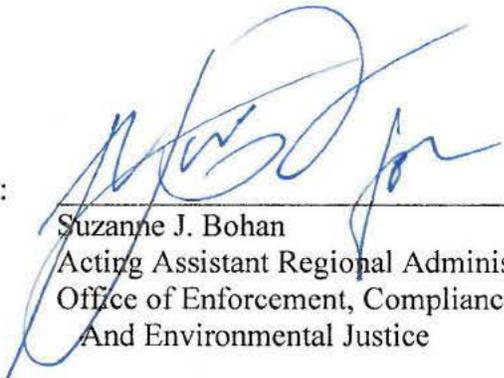
16. For an administrative proceeding, the Act authorizes the assessment of a civil penalty of up to \$16,000 per day, for each violation of the Act, up to a maximum of \$177,500. 42 U.S.C. § 300h-2(c)(1) as adjusted for inflation by 40 C.F.R. part 19. The Act requires EPA to take into account appropriate 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.

17. 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).

SEP 04 2014

Date: \_\_\_\_\_

By: \_\_\_\_\_

  
Suzanne J. Bohan  
Acting Assistant Regional Administrator  
Office of Enforcement, Compliance  
And Environmental Justice

**In the Matter of:** Custer County Road & Bridge, Owners/Operators  
**Docket No.:**

**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 each individual in one package to the address below:

Rusty Christensen  
Roger Squire  
Custer County Road & Bridge  
P.O. Box 120  
Westcliffe, CO 81252

SEP 04 2014

\_\_\_\_\_  
Date

*Gayle Aldinger*  
\_\_\_\_\_

**U.S. ENVIRONMENTAL PROTECTION AGENCY  
PUBLIC NOTICE  
OPPORTUNITY FOR PUBLIC COMMENT ON  
PROPOSED COMPLIANCE ORDER, PENALTY COMPLAINT,  
AND  
NOTICE OF OPPORTUNITY FOR HEARING  
AGAINST  
RUSTY CHRISTENSEN, ROGER SQUIRE AND  
CUSTER COUNTY ROAD & BRIDGE  
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-08-2014- ] that Region 8 of the United States Environmental Protection Agency (EPA) proposes to issue to Custer County Road & Bridge, Owners and/or Operators, of Custer County Road and Bridge Shop, for alleged violations at the facility located in Wetmore, 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 violations.

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

**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 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 25980 Colorado 96, Wetmore, Colorado. 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 complaint alleges that Rusty Christensen, Roger Squire and Custer County Road and Bridge, Owners and/or Operators, of Custer County Road and Bridge Shop, are in violation of UIC regulations and are 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 and operating a banned well. 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 \$187,500 and proposes certain compliance measures, including the permanent closure of the well.

### **PUBLIC COMMENTS**

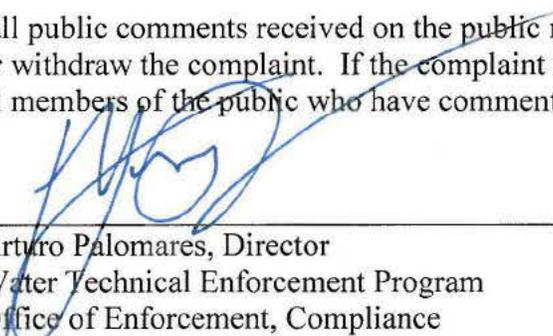
Written comments on the complaint are encouraged and will be accepted at the address listed below for a period of thirty (30) calendar days after the publication of this notice. Written comments submitted by the public as well as information submitted by Rusty Christensen, Roger Squire and Custer County Road and Bridge, will be available for public review as part of the Administrative Record, subject to the provisions of law restricting the disclosure of confidential information. David Gouveia and Canon Marine, 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 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 Christopher Ajayi in the UIC program, EPA Region 8, at (303) 312-6320.

### **THE DECISION**

EPA will review and consider all public comments received on the public notice and will thereafter determine whether to modify or withdraw 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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Arturo Palomares, Director  
Water Technical Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice