



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

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FILED  
EPA REGION VIII  
HEARING CLERK

DOCKET NO.: SDWA-08-2012-0045

IN THE MATTER OF:

KERRY SMITH, OWNER  
TOP COUNTRY AUTO SALES

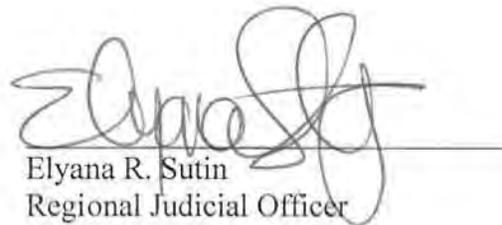
RESPONDENTS

)  
)  
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)  
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)

FINAL ORDER

Pursuant to 40 C.F.R. §22.18(b)(2) of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondents are hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondents of this Consent Agreement and Final Order.

SO ORDERED THIS 27<sup>th</sup> DAY OF November, 2012.

  
Elyana R. Sutin  
Regional Judicial Officer

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

Docket No. SDWA-08-2012-0045

In the Matter of:	)	
	)	
Kerry Smith, Owner	)	
Top Country Auto Sales	)	<b>CONSENT AGREEMENT</b>
	)	
	)	
Respondent.	)	

Complainant, United States Environmental Protection Agency, Region 8 (EPA), and Respondent, Kerry Smith (Respondent), owner/operator of Top Country Auto Sales, by his undersigned representative, hereby consent and agree as follows.

BACKGROUND

1. On August 23, 2012, the EPA issued a Proposed Compliance Order, Penalty Complaint and Notice of Opportunity for Hearing (Complaint) to Respondent for certain violations of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300h et seq., and the underground injection control regulations promulgated thereunder.
2. Respondent admits the jurisdictional allegations of the Complaint and neither admits nor denies the specific factual allegations of the Complaint.
3. Respondent waives his right to a hearing before any tribunal to contest any issue of law or fact set forth in the Complaint or this Consent Agreement.
4. This Consent Agreement, upon incorporation into a final order, applies to and is binding upon the EPA and upon Respondent and Respondent's heirs, successors or assigns. This Consent Agreement contains all terms of the settlement agreed to by the parties.
5. The EPA acknowledges that Respondent has timely closed the Class V Motor Vehicle

Waste Disposal well at issue and submitted documentary evidence of the closure to the EPA.

6. Respondent agrees to keep the Class V Motor Vehicle Waste Disposal well at issue permanently closed.
7. Due to Respondent's timely compliance and in consideration of the statutory penalty factors at 42 U.S.C § 300h-2(c)(4)(B), the EPA agrees to settle this action without the assessment of a civil penalty.
8. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with the SDWA and its implementing regulations.
9. The undersigned representative of the Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to the terms and conditions of this Consent Agreement.
10. The parties agree to submit this Consent Agreement to the Regional Judicial Officer with a request that it be incorporated into a final order.
11. Each party shall bear its own costs and attorney fees in connection with this matter.
12. Respondent waives any and all claims for relief, and otherwise available rights to judicial or administrative review or other remedies which the Respondent may have, with respect to any issue of fact or law or any terms and conditions set forth in this Consent Agreement, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.

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

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8,**

**Complainant.**

Date: 11/21/2012

By: 

Andrew M. Gaydosh  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

Kerry Smith

**Respondent.**

Date: 11-13-12

By: 

Name, Title: Owner

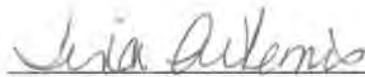
## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER**, in the matter of **KERRY SMITH, OWNER TOP COUNTRY AUTO SALES; DOCKET NO.: SDWA-08-2012-0045** was filed with the Regional Hearing Clerk on November 27, 2012.

Further, the undersigned certifies that a true and correct copy of the documents were delivered to Dana J. Stotsky, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on November 27, 2012, to:

Kerry Smith, Owner  
Top County Auto Sales  
605 3<sup>rd</sup> Street  
Penrose, CO 81240

November 27, 2012



Tina Artemis  
Paralegal/Regional Hearing Clerk