



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

SEP 17 2007

Ref: 8ENF-UFO

CERTIFIED MAIL #
RETURN RECEIPT REQUESTED

Gordon Poppens
dba Gordy's Garage
27096 SD Highway 17
Tea, SD 57064

Re: UNDERGROUND INJECTION
CONTROL PROGRAM (UIC)
Penalty Complaint and Notice of
Opportunity for Hearing

Dear Mr. Poppens:

The enclosed document is a Penalty Complaint and Notice of Opportunity for Hearing (Complaint) for violations of the Safe Drinking Water Act (SDWA). We encourage you to read the Complaint soon, since it describes your rights and responsibilities in this matter as well as EPA's authority, the factual basis of the violations, and the background for the proposed penalties. Also enclosed is a copy of the Rules of Practice that govern these proceedings, the required Public Notice associated with this Complaint and, in case you meet the criteria, an information sheet about the Small Business Regulatory Enforcement Fairness Act.

You are required to take action within 30 calendar days of your receipt of this Complaint to avoid the possibility of having a default judgment entered against you that could impose the penalty amount proposed in the Complaint.

Whether or not you request a hearing, we encourage an informal conference with EPA concerning the alleged violations in an effort to negotiate a settlement. You may wish to appear at an informal conference and/or be represented by legal counsel. To arrange for such a conference, you should contact the EPA attorney listed below. The request for such a conference does not extend the 30 calendar day period during which a request for hearing must be submitted.

Public Notice of EPA's Complaint and the opportunity to provide written comments on the Complaint is being provided pursuant to section 1423 (c)(3)(B) of the SDWA, 42 U.S.C. § 300h-2(c)(3)(B). Should a hearing be held, any person who comments on the Complaint has a right to participate in the hearing.

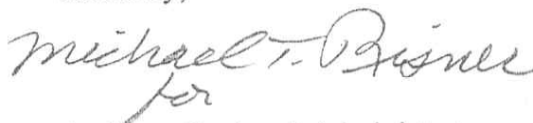
If you have technical questions relating to this matter, the person most knowledgeable on my staff is Phil Strobel, UIC Enforcement Team, Technical Enforcement Program, at 1-800-227-8917 ext. 312-6704 or (303) 312-6704. For all legal questions, the person most knowledgeable on my staff is Jim Eppers at 1-800-227-8917 ext. 6893 or (303) 312-6893. Mr. Strobel and Mr. Eppers can also be reached at the following addresses:

Philip Strobel (Mail Code 8ENF-UFO)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

James Eppers (Mail Code 8ENF-L)
Enforcement Attorney
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

We urge your prompt attention to this matter.

Sincerely,

Handwritten signature of Michael T. Brisner in cursive script, with the word "for" written below it.

Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures:

Complaint and Opportunity to Request Hearing
40 C.F.R. Part 22
Public Notice
U.S. EPA Small Business Resources Fact Sheet

cc: Ms. Anita Yan
SD DENR
523 East Capitol
Pierre, SD 57501-3181

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2007 SEP 17 PM 3: 07

Docket No. SDWA-08-2007-0088

In the Matter of:)
)
Gordon Poppens) **PENALTY COMPLAINT AND NOTICE OF**
dba Gordy's Garage) **OPPORTUNITY FOR HEARING**
)
Respondent.)

INTRODUCTION

1. This civil administrative enforcement action 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 statute 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 Penalty Complaint and Notice of Opportunity for Hearing (Complaint).

3. EPA alleges that Gordon Poppens dba Gordy's Garage (Respondent) has violated the regulations and therefore the Act and proposes the assessment of a civil penalty, 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 disagree with (1) any fact stated (alleged) by EPA in the complaint, (2) the grounds for any legal defense or (3) the appropriateness of the proposed penalty.

5. To disagree with the complaint and assert your right to a hearing, you must file a written answer (and one copy) with the Regional Hearing Clerk (1595 Wynkoop Street (8RC); Denver, Colorado 80202) within 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 you may dispute, and your 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 FOR HEARING WITHIN 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 THE PENALTY PROPOSED IN THE COMPLAINT, OR 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 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 count of this complaint:

7. Respondent, Gordon Poppens, is an individual and doing business in the State of South Dakota as Gordy's Garage, a sole proprietorship.

8. Respondent is a "person" as defined in the Act, and therefore subject to the requirements of the statute and/or regulations. 42 U.S.C. § 300f(11).

9. Respondent owns the property and operates the facility located at 27096 SD Highway 17, Tea, South Dakota, ("facility").

10. On April 5, 2005, authorized EPA employees entered the facility with the consent of Gordon Poppens to inspect it for compliance with the law.

11. The inspection showed that, as of that date, Respondent operated at least one "Class V Injection Well" as defined by 40 C.F.R. §144.6 and §146.5 at the facility.

12. As of that date, it was also determined by EPA that Respondent operated the type of Class V Injection Well known as a "Motor Vehicle Waste Disposal Well" as defined by 40 C.F.R. §144.81(16) as follows: "Motor vehicle waste disposal wells that receive or have 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 combustion engine repair/maintenance work."

13. Respondent is subject to applicable Underground Injection Control (UIC) requirements of 40 C.F.R. §§ 124, 144 and 146.

14. By letter dated June 27, 2005, and pursuant to 40 CFR 144.12 (c) & (d), EPA directed Respondent to either permit or close the well(s), by October 24, 2005.

15. Respondent never applied for a permit for the well(s).

16. On August 22, 2006, an authorized EPA employee again entered the facility with the consent of Respondent to inspect it for compliance with the law.

17. As of that date, Respondent continued to own and operate the motor vehicle waste disposal well.

18. By letter dated March 27, 2007, EPA informed the Respondent the facility was in violation of EPA regulations and instructed him to close the well.

19. Additionally, **all** owners and operators of motor vehicle waste disposal systems that existed prior to the April 5, 2000, ban of construction of new motor vehicle waste disposal systems, were required by 40 C.F.R. § 144.88(b) to have submitted a completed permit application or have completed the closure of the motor vehicle waste disposal systems by January 1, 2007. Respondent was notified of this ban in the March 27, 2007 letter.

20. On April 24, 2007, EPA representatives spoke with Respondent on the telephone and he admitted that the well had not been closed.

21. Lying underneath the disposal system are underground sources of drinking water (USDWs), including but not limited to unconsolidated sand and gravel aquifers approximately 100 feet below land surface.

22. Respondent's ownership and operation of the well was in violation of the following EPA regulations and therefore the Act. 42 U.S.C. § 3000h-2 (c)(1):

- for owning, operating, and maintaining a Class V disposal facility 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 under 40 C.F.R. part 142 or may otherwise adversely affect the health of persons; 40 C.F.R. §144.12(a) and 40 C.F.R. §144.82(a)(1)
- for failing to close or retrofit the Class V disposal system in a manner that would keep contaminants from entering a USDW; 40 C.F.R. §144.12(c)(1) and (2), and 40 C.F.R. §144.88(b), and

- for operating a motor vehicle waste disposal system after the January 1, 2007 ban of all motor vehicle waste disposal wells. 40 C.F.R. § 144.88(b)

PROPOSED CIVIL PENALTY

23. For an administrative proceeding, the Act authorizes the assessment of a civil penalty of up to \$11,000 per day, for each violation of the Act, up to a maximum of \$157,500. 42 U.S.C. § 3000h-2 (c)(1). 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.

24. In light of the statutory factors and the specific facts of this case, EPA proposes that a penalty of forty-two thousand, one hundred and twenty dollars (\$42,120) be assessed against Respondent for owning and operating the prohibited Class V well, as explained below:

Seriousness of the Violation

Respondent's owning and operating the prohibited MVWD Class V well is serious because the injection of dangerous motor vehicle waste constituents have been shown to be hazardous to human health and the environment and can render an underlying USDW unfit for human consumption. The nearly two year duration of noncompliance makes it even more serious. Respondent has been responsible for maintaining compliance and has been in complete control of the facility from the effective date of the program. Despite this, for penalty purposes EPA is only considering Respondent's noncompliance from the closure date specified in the Permit or Close Letter (October 24, 2005) through the date by which we estimate Respondent will document the closure of the system (October 24, 2007).

Economic Benefit

Respondent enjoyed a minimal economic benefit by not expending money to come into compliance

Prior Compliance History

EPA Region 8 has not taken any prior formal enforcement actions against Respondent requiring compliance with the applicable UIC regulations.

Good-Faith Efforts to Comply

Respondent has had almost two years to come into compliance and yet has not done so. Given the relatively low cost of coming into compliance and EPA's repeated communication to the Respondent of the requirements, EPA did not reduce the proposed penalty for this factor.

Economic Impact on Respondent

Because little information is available at this time to document financial status of the Respondent, and the EPA's knowledge of the facility and surrounding area indicates the Respondent runs a small business, EPA did reduce the proposed penalty due to this factor. EPA will consider information Respondent may present regarding Respondent's ability to pay the proposed penalty.

Other Factors that Justice may Require

EPA has made no additional adjustments to the penalty based on this factor.

25. Respondent's payment of the penalty shall be made by money order or certified check made payable to "Treasurer, United States of America" and mailed to the following address:

EPA - Region 8
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

A copy of said check shall be mailed to the following address:

Legal Enforcement Program ATTN: Jim Eppers
U.S. EPA - Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

PROPOSED COMPLIANCE ORDER

26. Respondent shall comply with the following:

Submit plans in writing for closure of the Class V well, including a schedule for plugging the drain or retrofitting the disposal system, and a plan for alternative disposal for the waste in accordance with the requirements of 40 C.F.R. § 144.12 (a), (c), and (d). If closure includes the use of a holding tank, the plan must

address the specific type, specifications and size of tank to be installed, installation requirements, and provide a schedule for integrity testing and regular maintenance, inspections and monitoring requirements. EPA will promptly review the proposed plan and either approve it or provide Respondent with written comments. Once the closure or retrofitting has been accomplished, documentation must be provided including an as-built sketch of the drain system showing where changes have been made. The drain system must be permanently closed or retrofitted in a manner that will prevent future use by October 31, 2007.

27. Respondent shall submit all documentation to:

Philip Strobel (8ENF-UFO)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

28. 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 people to comment on the matter, and present evidence in the event a hearing is held. 42 U.S.C. § 3000h-2 (c)(3)(B).

29. The Administrative Law Judge is not bound by EPA's penalty policy or the penalty proposed by EPA, and may assess a penalty above the proposed amount, up to the \$11,000 per day per violation authorized in the statute.

30. To discuss settlement or ask any questions you may have about this case or process, please contact Jim Eppers, Senior Enforcement Attorney, at 303-312-6893, or at the address below.

Complainant:

United States Environmental Protection Agency
Region 8, Office of Enforcement, Compliance and
Environmental Justice, Complainant
1595 Wynkoop Street (ENF-L)
Denver, CO 80202-1129

Date:

9/13/07

By:

Michael T. Bisner
for Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Gordon Poppens dba Gordy's Garage
Docket No. SDWA-08-2007-

CERTIFICATE OF SERVICE

I hereby certify that the original and one true copy of this Penalty Complaint and Notice of Opportunity for Hearing were hand carried to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado, and that a true copy was sent via Certified Mail; Return Receipt Requested to the following address:

Gordon Poppens
dba Gordy's Garage
27096 SD Highway 17
Tea, SD 57064

Dated: 9/17/07

By: Judith M. McTernan
Judith McTernan