



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAR 22 2007

REPLY TO THE ATTENTION OF:
WU-16J

CERTIFIED MAIL
RECEIPT NO. 7001 0320 0005 8933 2492

Douglas F. Wicklund
Environmental Disposal Systems, Inc.
199 W. Brown Street, Suite 200
Birmingham, MI 48009

In the Matter of: Environmental Disposal Systems, Inc., Docket No. **SDWA-05-2007-0003**

Dear Mr. Wicklund:

I have enclosed the Complaint filed by the United States Environmental Protection Agency (U.S. EPA), Region 5, against Environmental Disposal Systems, Inc. under Section 1423(c) of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300h-2(c).

As provided in the Complaint, if you wish to request a hearing, you must do so in your answer to the Complaint. Please note that if you do not file an answer with the Regional Hearing Clerk (E-13J), U.S. EPA, Region 5, 77 West Jackson Blvd., Chicago, IL 60604 within 30 days of your receipt of this Complaint, a default order may be issued.

In addition, whether or not you request a hearing, you may request an informal settlement conference. If you wish to request a conference, or if you have any questions about this matter, please contact Erik H. Olson, Associate Regional Counsel at (312) 886-6829.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Lynn Traub".

Lynn Traub
Director, Water Division

Enclosures

cc: Lawrence Scott, Esquire
O'Reilly Rancilio PC
12900 Hall Road, Suite 350
Sterling Heights, MI 48313-1151
by Certified Mail, Receipt No. 7001 0320 0005 8933 2508

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

**Environmental Disposal Systems, Inc.
Birmingham, Michigan,**

Respondent.

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) **Docket No. SDWA-05-2007-0003**
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COMPLAINT

A. GENERAL ALLEGATIONS

1. This is an administrative proceeding to assess a civil penalty pursuant to Section 1423(c) of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300h-2(c).

2. The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits" (Consolidated Rules) at 40 C.F.R. Part 22 govern this administrative proceeding. In particular, this proceeding shall be conducted according to the procedures set forth in the Consolidated Rules at 40 C.F.R. Part 22, Subpart I, which apply to proceedings, such as this one, that are not governed by Section 554 of the Administrative Procedure Act (APA), 5 U.S.C. § 554. Enclosed with the Complaint is a copy of the Consolidated Rules.

3. The Director of the Water Division, Region 5, United States Environmental Protection Agency (U.S. EPA), is, by lawful delegation, the Complainant.

4. The Respondent is Environmental Disposal Systems, Inc. (Respondent or EDS), which is, and has been continuously since at least May 9, 1986, a corporation organized under the laws of the State of Michigan.

5. Section 1421 of SDWA, 42 U.S.C. § 300h, requires that U.S. EPA promulgate regulations, which shall include inspection, monitoring, recordkeeping and reporting requirements, for state underground injection control (UIC) programs that prevent the endangerment of drinking water sources by underground injection.

6. Section 1422(b) of SDWA, 42 U.S.C. § 300h-1(b), provides that states, upon receipt of U.S. EPA's approval of a proposed UIC program, may implement a federally-enforceable UIC program in that state and obtain primary enforcement responsibility of that program.

7. Section 1422(c) of SDWA, 42 U.S.C. § 300h-1(c), further provides that, for states that have not obtained primary enforcement responsibility, U.S. EPA is to promulgate, implement and enforce an applicable UIC program in that state.

8. Pursuant to Sections 1421 and 1422 of SDWA, 42 U.S.C. §§ 300h and 300h-1, respectively, U.S. EPA has promulgated UIC regulations at 40 C.F.R. Parts 144 through 147.

9. The UIC program for the State of Michigan is set forth at 40 C.F.R. Part 147, Subpart X.

10. Pursuant to 40 C.F.R. § 147.1151, the UIC program for the State of Michigan for Class I wells, as defined by 40 C.F.R. §§ 144.6 and 146.5, consists of the UIC program requirements set forth at, inter alia, 40 C.F.R. Parts 124, 144, 146, 147 (Subpart X) and 148, and was effective on June 25, 1984.

11. Pursuant to 40 C.F.R. § 147.1151, at all times relevant to this Complaint, U.S. EPA had primary enforcement responsibility over Class I wells, as defined by 40 C.F.R. §§ 144.6 and 146.5, in the State of Michigan.

12. The UIC program set forth at 40 C.F.R. § 147.1151, constitutes the “applicable underground injection control program” as defined by Section 1422(d) of SDWA, 42 U.S.C. § 300h-1(d), for the State of Michigan.

13. 40 C.F.R. § 144.3 states that when there is no state or tribal approved UIC program, and there is a U.S. EPA administered program, “Director” means the Regional Administrator.

14. In U.S. EPA, Region 5 Delegation 9-33-A, effective February 1987, the Regional Administrator delegated to the Director, Water Division, his authority pursuant to the SDWA to: 1) assess a penalty against any person in violation of any administrative order issued under Part B of the SDWA; 2) to issue, amend or withdraw complaints; and 3) to negotiate and sign consent agreements between the Agency and respondents.

15. On September 27, 1991, pursuant to the regulations at 40 C.F.R. Part 144, U.S. EPA issued to Respondent Underground Injection Control Permit No. MI-163-1W-0006 (the 1-20 Permit), to construct and operate a hazardous waste injection well located in T3S, R9E, Section 20, SE Quarter Section, Wayne County, Michigan.

16. Subsequently, Respondent constructed a hazardous waste injection well as authorized by the 1-20 Permit (Well 1-20).

17. Respondent never operated Well 1-20.

18. On July 26, 2006, Respondent completed the plugging of Well 1-20.

19. On March 19, 1998, pursuant to the regulations at 40 C.F.R. Parts 124 and 144, U.S. EPA issued to Respondent two UIC permits, No. MI-163-1W-C007 (the 1-12 Permit) and No. MI-163-1W-C008, (the 2-12 Permit) to construct and operate two hazardous waste injection

wells located in T3S, R9E, Section 12, SE Quarter Section, Wayne County, Michigan.

20. Subsequently, Respondent constructed two hazardous waste injection wells as authorized by the 1-12 Permit (Well 1-12) and the 2-12 Permit (Well 2-12), and above ground facilities of treatment and control used by the permittee to achieve compliance with the conditions of its UIC permits. These two wells and the above ground facilities together will be referred to as the “facility.”

21. On September 6, 2005, pursuant to the regulations at 40 C.F.R. Parts 124 and 144, U.S. EPA again issued to Respondent the 1-12 Permit and the 2-12 Permit, as the term of the original permits had expired.

22. Well 1-20 is a Class I well as defined by 40 C.F.R. §§ 144.6 and 146.5.

23. Well 1-12 is a Class I well as defined by 40 C.F.R. §§ 144.6 and 146.5.

24. Well 2-12 is a Class I well as defined by 40 C.F.R. §§ 144.6 and 146.5.

25. The 1-20 Permit authorizes the underground injection of hazardous waste into Well 1-20, subject to the terms and conditions set forth in the 1-20 Permit.

26. The 1-12 Permit authorizes the underground injection of hazardous waste into Well 1-12, subject to the terms and conditions set forth in the 1-12 Permit.

27. The 2-12 Permit authorizes the underground injection of hazardous waste into Well 2-12, subject to the terms and conditions set forth in the 2-12 Permit.

28. Respondent is the Permittee under the 1-20 Permit.

29. Respondent is the Permittee under the 1-12 Permit.

30. Respondent is the Permittee under the 2-12 Permit.

31. Condition I(E)(1) of the 1-20 Permit and 40 C.F.R. § 144.51(a) require the

Permittee to comply with the requirements of the 1-20 Permit.

32. Condition I(E)(1) of the 1-12 Permit and 40 C.F.R. § 144.51(a) require the Permittee to comply with the requirements of the 1-12 Permit.

33. Condition I(E)(1) of the 2-12 Permit and 40 C.F.R. § 144.51(a) require the Permittee to comply with the requirements of the 2-12 Permit.

34. Condition I(B)(1) of the 1-20 Permit identifies the “Director,” as referred to in the 1-20 Permit, as the Director of the Water Division of Region 5, U.S. EPA.

35. Condition I(B)(1) of the 1-12 Permit identifies the “Director,” as referred to in the 1-12 Permit, as the Director of the Water Division of Region 5, U.S. EPA.

36. Condition I(B)(1) of the 2-12 Permit identifies the “Director,” as referred to in the 2-12 Permit, as the Director of the Water Division of Region 5, U.S. EPA.

37. Section 1423(a) of SDWA, 42 U.S.C. § 300h-2(a), provides, *inter alia*, that U.S. EPA may issue an order under Section 1423(c) of SDWA, 42 U.S.C. § 300h-2(c), to any person found to be in violation of any regulation or requirement of an applicable UIC program in a state that does not have primary enforcement responsibility.

38. Section 1423(c)(1) of SDWA, 42 U.S.C. § 300h-2(c)(1), provides that U.S. EPA may issue to any person in violation of any regulation or requirement, not relating to the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production, or any underground injection for the secondary or tertiary recovery of oil or natural gas, an administrative order assessing a civil penalty of not more than \$10,000 for each day of violation for any past or current violation, up to a maximum administrative penalty of \$125,000 or requiring compliance with such regulation or

requirement, or both. For violations occurring after March 15, 2004, these statutory maximum civil penalties are increased to \$11,000 and \$157,500, respectively, pursuant to the Civil Penalties Inflation Adjustment Act, 28 U.S.C. § 2461, and 40 C.F.R. Part 19.

39. Three representatives of U.S. EPA performed an inspection of the EDS facility on November 2 and 3, 2006 (the November inspection).

40. Three representatives of U.S. EPA performed an inspection of the EDS facility on December 14 and 15, 2006 (the December inspection).

41. As a result of the discoveries and observations made during the November and December inspections, U.S. EPA issued a Request for Information, dated January 12, 2007, to Respondent, requesting certain information from Respondent to determine, among other things, compliance with its permits.

42. On February 22, 2007, U.S. EPA issued a Notice of Intent to File Civil Complaint against the Respondent. That notice of intent stated that U.S. EPA was planning to file a civil Complaint against Respondent for specific alleged violations of the conditions of its permits and that the complaint would seek a civil penalty. U.S. EPA asked Respondent to identify any factors Respondent thought U.S. EPA should consider before issuing the complaint. U.S. EPA asked Respondent to submit specific financial documents, if Respondent believed U.S. EPA should consider information on Respondent's ability to pay a penalty.

43. At the time of filing of this Complaint, Respondent has responded to neither the Request for Information nor the Notice of Intent to File Civil Complaint.

B. FAILURE TO COMPLY WITH THE CONDITIONS OF PERMIT 1-12

Count I - Failure to Provide Information

44. Paragraphs 1 through 43 of this Complaint are incorporated by reference as if fully set forth herein.

45. Condition I(E)(7) of the 1-12 Permit and 40 C.F.R. §144.51(h) state that the permittee shall furnish to the Director, within a time specified, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request within a time specified, copies of records required to be kept by this permit.

46. As noted in Paragraph 41, above, U.S. EPA sent to Respondent a Request for Information on January 12, 2007.

47. Respondent received the Request for Information on February 2, 2007.

48. U.S. EPA sent the Request for Information to Respondent to determine, among other things, whether cause exists for modifying, revoking and reissuing, or terminating the 1-12 Permit, and to determine compliance with the 1-12 Permit.

49. The Request for Information specified a deadline for response within 30 days of receipt of the request, or March 4, 2007.

50. Respondent has not responded to the Request for Information.

51. Respondent's failure to respond to the Request for Information violated Conditions I(E)(7) and I(E)(1) of the 1-12 Permit and 40 C.F.R. §§ 144.51(a) and (h).

Count II - Failure to Allow Access to Records to U.S. EPA Inspectors

52. Paragraphs 1 through 43 of this Complaint are incorporated by reference as if fully set forth herein.

53. Condition I(E)(8)(b) of the 1-12 Permit and 40 C.F.R. §144.51(i)(2) require that the permittee allow the Director or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to have access to and copy, at reasonable times, any records that must be kept under the conditions of the 1-12 Permit.

54. Condition I(E)(9) of the 1-12 Permit requires Respondent to retain, among other things, all calibration and maintenance records and all original chart recordings for continuous monitoring instrumentation.

55. During the November inspection, a U.S. EPA inspector asked to review calibration records for, among other things, the injection pressure gauges for Well 1-12, the annulus pressure gauges for Well 1-12, and for the pH meters for Well 1-12. Respondent did not provide these records to the U.S. EPA inspector.

56. During the November inspection, a U.S. EPA inspector asked to review continuous monitoring records for Well 1-12. Respondent did not provide these records to the U.S. EPA inspector.

57. During the November inspection, an EDS employee told U.S. EPA inspectors that the records that EDS did not provide were likely in the plant operations office, for which no one on site had a key.

58. Respondent's failure to allow access to: 1) the calibration records for the injection pressure gauges, the annulus pressure gauges, and the pH meters for Well 1-12; and 2) the

continuous monitoring records for Well 1-12; violated Conditions I(E)(8)(b) and I(E)(1) of the 1-12 Permit and 40 C.F.R. § 144.51(i)(2).

Counts III - Failure to Retain Continuous Monitoring Records

59. Paragraphs 1 through 43 of this Complaint are incorporated by reference as if fully set forth herein.

60. Condition I(E)(9)(a) of the 1-12 Permit and 40 C.F.R. §144.51(j)(2)(i) state that the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original chart recordings for continuous monitoring instrumentation and copies of all reports required by this permit for a period of at least five years from the date of the sample, measurement or report.

61. During the December inspection, U.S. EPA inspectors were provided with copies of some continuous monitoring records. At that time a former EDS employee stated that the records provided constitute all of the continuous monitoring records available at the facility.

62. The following continuous monitoring records pertaining to Well 1-12 were not provided to U.S. EPA inspectors during the December inspection, and were not retained by Respondent:

<u>Weekly dates</u>	<u>Charts</u>
March 13-19, 2006	1 and 3
April 10-16, 2006	1 and 3
April 24-30, 2006	1 and 3
May 22-28, 2006	1 and 3

July 3-9, 2006	1 and 3
July 24-30, 2006	1 and 3
October 2-8, 2006	1
October 23-29, 2006	1 and 3
October 30-November 5, 2006	1 and 3

63. Respondent's failure to retain weekly continuous monitoring records violated Conditions I(E)(9)(a) and I(E)(1) of Permit 1-12 and 40 C.F.R. §§ 144.51(a) and (j)(2)(i).

Count IV - Failure to Increase Cost Estimate for Closure

64. Paragraphs 1 through 43 of this Complaint are incorporated by reference as if fully set forth herein.

65. Condition I(I)(1)(b) of the 1-12 Permit and 40 C.F.R. §144.62(b) state that the permittee must adjust the cost estimate of closure and post-closure for inflation within 30 calendar days after each anniversary of the first estimate.

66. Respondent provided the first cost estimate for closure of Well 1-12 on May 5, 2004.

67. The adjusted cost estimate for closure of Well 1-12 was due on June 3, 2005.

68. Respondent did not adjust the cost estimate for closure at any time after May 5, 2004.

69. Respondent's failure to adjust the cost estimate for the closure of Well 1-12 by June 3, 2005, violated Conditions I(I)(1)(b) and I(E)(1) of the 1-12 Permit, and 40 C.F.R. §§ 144.51(a) and 144.62(b).

Count V - Failure to Increase Cost Estimate for Post-closure

70. Paragraphs 1 through 43 of this Complaint are incorporated by reference as if fully set forth herein.

71. Condition I(I)(1)(b) of the 1-12 Permit and 40 C.F.R. §144.62(b) state that the permittee must adjust the cost estimate of closure and post-closure for inflation within 30 calendar days after each anniversary of the first estimate.

72. Respondent provided the first cost estimate for post-closure of Well 1-12 on January 21, 2003.

73. The adjusted cost estimate for post-closure of Well 1-12 was due on February 20, 2004.

74. Respondent did not adjust the cost estimate for post-closure at any time after January 21, 2003.

75. Respondent's failure to adjust the cost estimate for post-closure by February 20, 2004, violated Conditions I(I)(1)(b) and I(E)(1) of the 1-12 Permit, and of 40 C.F.R. §§ 144.51(a) and 144.62(b).

Count VI - Failure to Test the Automatic Warning System

76. Paragraphs 1 through 43 of this Complaint are incorporated by reference as if fully set forth herein.

77. Condition II(B)(4) of the 1-12 Permit states, among other things, that the permittee shall install an automatic warning and automatic shut-off system prior to the

commencement of injection. The permittee must also test the warning system and shut-off system prior to receiving authorization to inject, and at least once every twelfth month after the last approved demonstration. These tests must involve subjecting the system to simulated failure conditions and must be witnessed by the Director or his or her representative.

78. U.S. EPA inspectors observed a successful demonstration of the automatic warning system and automatic shut off system on June 30, 2004.

79. A U.S. EPA-contracted inspector observed a successful demonstration of the automatic warning system and automatic shut off system on June 8, 2006.

80. Respondent did not test the automatic warning system and automatic shut-off system within 12 months of June 30, 2004.

81. Respondent's failure to test the automatic warning system and automatic shut-off system within 12 months of the June 30, 2004 demonstration is a violation of Conditions II(B)(4) and I(E)(1) of the 1-12 Permit and 40 C.F.R. §§ 144.51(a).

Count VII - Failure to Conduct Ambient Monitoring

82. Paragraphs 1 through 43 of this Complaint are incorporated by reference as if fully set forth herein.

83. Condition II(C)(4) of the 1-12 Permit and 40 C.F.R. §146.68(e) state that the permittee shall, at least every twelfth month, monitor the pressure buildup in the injection interval (ambient monitoring), including, at a minimum, a shut down of the well for a time sufficient to conduct a valid observation of the pressure fall-off curve. The permittee shall submit plans for this testing at least 30 days before the testing is planned, and is prohibited from

performing the testing unless the Director has given written approval.

84. The first 12-month period ended on September 5, 2006.

85. Respondent never submitted plans for monitoring the pressure buildup in the injection interval.

86. Respondent has not received Director's written approval for monitoring the pressure buildup in the injection interval.

87. Respondent has not monitored the pressure buildup in the injection interval at any time.

88. Respondent's failure to conduct monitoring of the pressure buildup in the injection interval, by September 5, 2006, violated Conditions II(C)(4) and I(E)(1) of the 1-12 Permit, and 40 C.F.R. §§ 144.51(a) and 146.68(e).

Count VIII - Failure to Submit Quarterly Reports

89. Paragraphs 1 through 43 of this Complaint are incorporated by reference as if fully set forth herein.

90. Condition II(D)(2) of the 1-12 Permit states that quarterly reporting periods shall begin on the first day of January, April, July, and October of each year, and that the permittee shall report the following at least every quarter:

- (a) Results of the injection fluid analyses specified in Parts III(A) and (E) of this permit, if applicable. In reporting fluid analyses, the permittee shall identify the waste components of the waste stream by their common name, chemical name, structure and

concentration, or as approved by the Director. Laboratory reports shall be submitted with the first monthly monitoring report following the close of the quarterly reporting period;

(b) The results of the continuous corrosion monitoring as stipulated in Part II(C)(5) of this permit;

(c) Any quarterly analyses of ground water monitoring wells at this facility; and

(d) Any other monitoring required on a quarterly basis.

91. Condition II(D) of the 1-12 Permit states that the permittee shall submit all required reports to the Director no later than the end of the month following the reporting period.

92. EDS submitted the following quarterly report after the due date, and with corrosion monitoring data from a different quarter:

<u>Quarter</u>	<u>Date due</u>	<u>Date submitted</u>
Jan. 1-Mar. 31, 2006	April 30, 2006	May 12, 2006

93. EDS has not submitted quarterly reports for the following quarter.

<u>Quarter</u>	<u>Date due</u>
July 1, 2006-September 30, 2006	October 31, 2006

94. Respondent's failure to submit complete, timely quarterly reports violated Conditions II(D)(2) and I(E)(1) of the 1-12 Permit and 40 C.F.R. § 144.51(a).

Count IX - Failure to Submit Annual Report

95. Paragraphs 1 through 43 of this Complaint are incorporated by reference as if fully set forth herein.

96. Condition II(D)(3) of the 1-12 Permit states that the permittee shall report the following at least every twelfth month from the effective date of this permit:

(a) Results of the injection fluid analyses specified in Part III(A) and (E) of this permit, and the approved Waste Analysis Plan as recorded in the permit file for this permit. In reporting fluid analyses, the permittee shall identify the waste components of the waste stream by their common name, chemical name, structure and concentration, or as approved by the Director. This report must include statements showing that the permittee has met the requirements of Part I(E)(10), Part II(B)(2), and Part II(C)(3) of this permit.

(b) Results of pressure fall-off testing required by 40 C.F.R. §146.68(e) and of other annual requirements of the Groundwater Monitoring Plan which is a part of the permit file for this permit.

97. Condition II(D) of the 1-12 Permit states that the permittee shall submit all required reports to the Director no later than the end of the month following the reporting period.

98. The end of the 12-month period following the effective date of the 1-12 Permit is September 5, 2006.

99. EDS did not submit an annual report with the information required by Condition

II(D)(3)(a) and (b) of the 1-12 Permit for the period of September 6, 2005 through September 5, 2006.

100. Respondent's failure to submit an annual report, as described in Paragraph 111 above, violated Conditions II(D)(3) and I(E)(1) of the 1-12 Permit and 40 C.F.R. § 144.51(a).

C. FAILURE TO COMPLY WITH THE CONDITIONS OF PERMIT 2-12

Count X - Failure to Provide Information

101. Paragraphs 1 through 43 of this Complaint are incorporated by reference as if fully set forth herein.

102. Condition I(E)(7) of the 2-12 Permit and 40 C.F.R. §144.51(h) state that the permittee shall furnish to the Director, within a time specified, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request within a time specified, copies of records required to be kept by this permit.

103. As noted in Paragraph 41, above, U.S. EPA sent to Respondent a Request for Information on January 12, 2007.

104. Respondent received the Request for Information on February 2, 2007.

105. U.S. EPA sent the Request for Information to Respondent to determine, among other things, whether cause exists for modifying, revoking and reissuing, or terminating the 2-12 Permit, and to determine compliance with the 2-12 Permit.

106. The Request for Information specified a deadline for response within 30 days of

receipt of the request, or March 4, 2007.

107. Respondent has not responded to the Request for Information.

108. Respondent's failure to respond to the Request for Information violated Conditions I(E)(7) and I(E)(1) of the 2-12 Permit and 40 C.F.R. §§ 144.51(a) and (h).

Count XI - Failure to Allow Access to Records to U.S. EPA Inspectors

109. Paragraphs 1 through 43 of this Complaint are incorporated by reference as if fully set forth herein.

110. Condition I(E)(8)(b) of the 2-12 Permit and 40 C.F.R. §144.51(i)(2) require that the permittee allow the Director or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to have access to and copy, at reasonable times, any records that must be kept under the conditions of the 2-12 Permit.

111. Condition I(E)(9) of the 2-12 Permit requires Respondent to retain, among other things, all calibration and maintenance records and all original chart recordings for continuous monitoring instrumentation.

112. During the November inspection, a U.S. EPA inspector asked to review calibration records for, among other things, the injection pressure gauges for Well 2-12, the annulus pressure gauges for Well 2-12, and for the pH meters for Well 2-12. Respondent did not provide these records to the U.S. EPA inspector.

113. During the November inspection, a U.S. EPA inspector asked to review continuous monitoring records for Well 2-12. Respondent did not provide these records to the U.S. EPA inspector.

114. During the November inspection, an EDS employee told the U.S. EPA inspectors that the records that EDS did not provide were likely in the plant operations office, for which no one on site had a key.

115. Respondent's failure to allow access to: 1) the calibration records for the injection pressure gauges, the annulus pressure gauges, and the pH meters for Well 2-12; and 2) the continuous monitoring records for Well 2-12; violated Conditions I(E)(8)(b) and I(E)(1) of the 2-12 Permit and 40 C.F.R. § 144.51(i)(2).

Count XII - Failure to Retain Continuous Monitoring Records

116. Paragraphs 1 through 43 of this Complaint are incorporated by reference as if fully set forth herein.

117. Condition I(E)(9)(a) of the 2-12 Permit and 40 C.F.R. §144.51(j)(2)(i) state that the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original chart recordings for continuous monitoring instrumentation and copies of all reports required by this permit for a period of at least five years from the date of the sample, measurement or report.

118. During the December inspection, U.S. EPA inspectors received copies of some continuous monitoring records. At that time a former EDS employee stated that the records provided constitute all of the continuous monitoring records available at the facility.

119. The following continuous monitoring records pertaining to Well 2-12 were not supplied to U.S. EPA inspectors during the December inspection, and were not retained by Respondent:

<u>Weekly dates</u>	<u>Charts</u>
March 13-19, 2006	2 and 3
April 10-16, 2006	2 and 3
April 24-30, 2006	2 and 3
May 22-28, 2006	2 and 3
July 3-9, 2006	2 and 3
July 24-30, 2006	2 and 3
October 2-8, 2006	2
October 23-29, 2006	2 and 3
October 30-November 5, 2006	2 and 3

120. Respondent's failure to retain weekly continuous monitoring records violated Conditions I(E)(9)(a) and I(E)(1) of Permit 2-12 and 40 C.F.R. §§ 144.51(a) and (j)(2)(i).

Count XIII - Failure to Increase Cost Estimate for Closure

121. Paragraphs 1 through 43 of this Complaint are incorporated by reference as if fully set forth herein.

122. Condition I(I)(1)(b) of the 2-12 Permit and 40 C.F.R. §144.62(b) state that the permittee must adjust the cost estimate of closure and post-closure for inflation within 30 calendar days after each anniversary of the first estimate.

123. Respondent provided the first cost estimate for closure of Well 2-12 on May 5, 2004.

124. The adjusted cost estimate for closure of Well 2-12 was due on June 4, 2005.

125. Respondent did not adjust the cost estimate for closure at any time after May 5, 2004.

126. Respondent's failure to adjust the cost estimate for the closure of Well 2-12 by June 4, 2005, violated Conditions I(I)(1)(b) and I(E)(1) of the 2-12 Permit, and 40 C.F.R. §§ 144.51(a) and 144.62(b).

Count XIV - Failure to Increase Cost Estimate for Post-closure

127. Paragraphs 1 through 43 of this Complaint are incorporated by reference as if fully set forth herein.

128. Condition I(I)(1)(b) of the 2-12 Permit and 40 C.F.R. §144.62(b) state that the permittee must adjust the cost estimate of closure and post-closure for inflation within 30 calendar days after each anniversary of the first estimate.

129. Respondent provided the first cost estimate for post-closure of Well 2-12 on January 21, 2003.

130. The adjusted cost estimate for post-closure of Well 2-12 was due on February 20, 2004.

131. Respondent did not adjust the cost estimate for post-closure at any time after January 21, 2003.

132. Respondent's failure to adjust the cost estimate for post-closure by February 20, 2004, violated Conditions I(I)(1)(b) and I(E)(1) of the 2-12 Permit, and of 40 C.F.R. §§ 144.51(a) and 144.62(b).

Count XV - Failure to Test the Automatic Warning System

133. Paragraphs 1 through 43 of this Complaint are incorporated by reference as if fully set forth herein.

134. Condition II(B)(4) of the 2-12 Permit states, among other things, that the permittee shall install an automatic warning and automatic shut-off system prior to the commencement of injection. The permittee must also test the warning system and shut-off system prior to receiving authorization to inject, and at least once every twelfth month after the last approved demonstration. These tests must involve subjecting the system to simulated failure conditions and must be witnessed by the Director or his or her representative.

135. U.S. EPA inspectors observed a successful demonstration of the automatic warning system and automatic shut off system on June 30, 2004.

136. A U.S. EPA-contracted inspector observed a successful demonstration of the automatic warning system and automatic shut off system on June 8, 2006.

137. Respondent did not test the automatic warning system and automatic shut-off system within 12 months of June 30, 2004.

138. Respondent's failure to test the automatic warning system and automatic shut-off system within 12 months of the June 30, 2004 demonstration violated Conditions II(B)(4) and I(E)(1) of the 2-12 Permit and 40 C.F.R. §§ 144.51(a).

Count XVI - Failure to Have a Deep Well Operator on Site During Injection

139. Paragraphs 1 through 43 of this Complaint are incorporated by reference as if fully set forth herein.

140. Condition II(B)(4) of the 2-12 Permit states, among other things, that a trained operator must be on site at all times during operation of the well.

141. Injection occurred throughout the night of October 22-23, 2006, and into the morning of October 23, 2006.

142. Respondent's trained operator was not present at the facility during the night of October 22-23, 2006.

143. Respondent's trained operator arrived at the facility on October 23, 2006 at approximately 8:30 a.m.

144. Injection occurred the night of October 22-23, 2006, with no trained operator on site.

145. Respondent's failure to have a trained operator on site during injection is a violation of Conditions II(B)(4) and I(E)(1) of the 2-12 Permit and 40 C.F.R. § 144.51(a).

Count XVII - Failure to Conduct Ambient Monitoring

146. Paragraphs 1 through 43 of this Complaint are incorporated by reference as if fully set forth herein.

147. Condition II(C)(4) of the 2-12 Permit and 40 C.F.R. §146.68(e) state that the permittee shall, at least every twelfth month, monitor the pressure buildup in the injection interval (ambient monitoring), including, at a minimum, a shut down of the well for a time sufficient to conduct a valid observation of the pressure fall-off curve. The permittee shall submit plans for this testing at least 30 days before the testing is planned, and is prohibited from performing the testing unless the Director has given written approval.

148. The first 12-month period ended on September 5, 2006.

149. Respondent never submitted plans for monitoring the pressure buildup in the injection interval.

150. Respondent has not received Director's written approval for monitoring the pressure buildup in the injection interval.

151. Respondent has not monitored the pressure buildup in the injection interval at any time.

152. Respondent's failure to conduct monitoring of the pressure buildup in the injection interval, by September 5, 2006, violated Conditions II(C)(4) and I(E)(1) of the 2-12 Permit, and 40 C.F.R. §§ 144.51(a) and 146.68(e).

Count XVIII - Failure to Submit Quarterly Reports

153. Paragraphs 1 through 43 of this Complaint are incorporated by reference as if fully set forth herein.

154. Condition II(D)(2) of the 2-12 Permit states that quarterly reporting periods shall begin on the first day of January, April, July, and October of each year, and that the permittee shall report the following at least every quarter:

- (a) Results of the injection fluid analyses specified in Parts III(A) and (E) of this permit, if applicable. In reporting fluid analyses, the permittee shall identify the waste components of the waste stream by their common name, chemical name, structure and concentration, or as approved by the Director. Laboratory reports shall be

submitted with the first monthly monitoring report following the close of the quarterly reporting period;

(b) The results of the continuous corrosion monitoring as stipulated in Part II(C)(5) of this permit;

(c) Any quarterly analyses of ground water monitoring wells at this facility; and

(d) Any other monitoring required on a quarterly basis.

155. Condition II(D) of the 2-12 Permit states that the permittee shall submit all required reports to the Director no later than the end of the month following the reporting period.

156. EDS submitted the following quarterly report after the due date:

<u>Quarter</u>	<u>Date due</u>	<u>Date submitted</u>
Jan. 1-Mar. 31, 2006	April 30, 2006	May 12, 2006

157. EDS has not submitted quarterly reports for the following quarter.

<u>Quarter</u>	<u>Date due</u>
July 1, 2006-September 30, 2006	October 31, 2006

158. Respondent's failure to submit complete, timely quarterly reports violated Conditions II(D)(2) and I(E)(1) of the 2-12 Permit and 40 C.F.R. § 144.51(a).

Count XIX - Failure to Submit Annual Report

159. Paragraphs 1 through 43 of this Complaint are incorporated by reference as if fully set forth herein.

160. Condition II(D)(3) of the 2-12 Permit states that the permittee shall report the following at least every twelfth month from the effective date of this permit:

(a) Results of the injection fluid analyses specified in Part III(A) and (E) of this permit, and the approved Waste Analysis Plan as recorded in the permit file for this permit. In reporting fluid analyses, the permittee shall identify the waste components of the waste stream by their common name, chemical name, structure and concentration, or as approved by the Director. This report must include statements showing that the permittee has met the requirements of Part I(E)(10), Part II(B)(2), and Part II(C)(3) of this permit.

(b) Results of pressure fall-off testing required by 40 C.F.R. §146.68(e) and of other annual requirements of the Groundwater Monitoring Plan which is a part of the permit file for this permit.

161. Condition II(D) of the 2-12 Permit states that the permittee shall submit all required reports to the Director no later than the end of the month following the reporting period.

162. The end of the 12-month period following the effective date of the 2-12 Permit is September 5, 2006.

163. EDS did not submit an annual report with the information required by Condition II(D)(3)(a) and (b) of the 2-12 Permit for the period of September 6, 2005 through September 5, 2006.

164. Respondent's failure to submit an annual report, as described in Paragraph 187

above, violated Conditions II(D)(3) and I(E)(1) of the 2-12 Permit and 40 C.F.R. § 144.51(a).

D. FAILURE TO COMPLY WITH THE CONDITIONS OF PERMIT 1-20

Count XX - Failure to Submit Closure Report by Required Date

165. Paragraphs 1 through 43 of this Complaint are incorporated by reference as if fully set forth herein.

166. Condition II(F)(5) of the 1-20 Permit states that the permittee shall submit a closure report to the Director which meets the requirements of 40 C.F.R. § 146.71(c), within the time frame specified in 40 C.F.R. § 146.71(c).

167. 40 C.F.R. § 146.71(c) states that within 60 days after closure or at the time of the next quarterly report (whichever period is shorter) the owner or operator shall submit a closure report to the Director. If the quarterly report is due less than 15 days after completion of closure, then the report shall be submitted within 60 days after closure. The report shall be certified as accurate by the owner or operator and by the person who performed the closure operation (if other than the owner or operator). Such report shall consist of either:

- (1) A statement that the well was closed in accordance with the closure plan previously submitted and approved by the Director; or
- (2) Where actual closure differed from the plan previously submitted, a written statement specifying the differences between the previous plan and the actual closure.

168. A former employee of EDS submitted, via electronic email, a closure report to U.S. EPA on December 13, 2006 for Well 1-20.

169. The closure report submitted on December 13, 2006 states that the plugging was completed on July 26, 2006.

170. The closure report was due to be submitted to the Director by September 25, 2006.

171. Respondent's failure to submit the closure report within the time frame specified in Section 146.71(c) violated Conditions II(F)(5) and I(E)(1) of the 1-20 Permit and 40 C.F.R. §§ 144.51(a) and 146.71(c).

E. PROPOSED CIVIL PENALTY

172. Section 1423(c)(4)(B) of SDWA, 42 U.S.C. § 300h-2(c)(4)(B), provides that, in assessing any civil penalty, the Administrator of U.S. EPA shall take into account (i) the seriousness of the violation, (ii) the economic benefit (if any) resulting from the violation, (iii) any history of such violations, (iv) any good faith efforts to comply with the applicable requirements, (v) the economic impact of the penalty on the violator, and (vi) such other matters as justice may require.

173. Based upon the factors set forth at Section 1423(c)(4)(B) of SDWA, 42 U.S.C. § 300h-2(c)(4)(B), Complainant proposes that the Administrator of U.S. EPA assess a civil penalty of \$73,992 against Respondent for the violations alleged in this Complaint, as follows:

<u>Count Number</u>	<u>Violation Type</u>	<u>Proposed Penalty</u>
I	Failure to provide information Permit Condition I(E)(7)	\$258
II	Failure to allow access to records Permit Condition I(E)(8)(b)	\$258

III	Failure to retain records Permit Condition I(E)(9)(a)	\$4,738
IV	Failure to increase cost estimate for closure Permit Condition I(I)(1)	\$4,728
V	Failure to increase cost estimate for post-closure Permit Condition I(I)(1)	\$8,744
VI	Failure to test the automatic warning and shut off system Permit Condition II(B)(4)	\$7,764
VII	Failure to conduct ambient monitoring Permit Condition II(C)(4)	\$7,471
VIII	Failure to submit quarterly reports by the due date Permit Condition II(D)(2)	\$630
IX	Failure to submit annual report Permit Condition II(D)(3)	\$426
X	Failure to provide information Permit Condition I(E)(7)	\$258
XI	Failure to allow access to records Permit Condition I(E)(8)(b)	\$258
XII	Failure to retain records Permit Condition I(E)(9)(a)	\$4,738
XIII	Failure to increase cost estimate for closure Permit Condition I(I)(1)	\$4,727
XIV	Failure to increase cost estimate for post-closure Permit Condition I(I)(1)	\$8,744
XV	Failure to test the automatic warning and shut off system Permit Condition II(B)(4)	\$7,763
XVI	Failure to have a deep well operator on site during injection Permit Condition II(B)(4)	\$2,028

XVII	Failure to conduct ambient monitoring Permit Condition II(C)(4)	\$7,470
XVIII	Failure to submit quarterly reports Permit Condition II(D)(2)	\$630
XIX	Failure to submit annual report Permit Condition II(D)(3)	\$425
XX	Failure to submit timely closure report Permit Condition II(F)(5)	\$1,934
TOTAL PROPOSED CIVIL PENALTY		\$73,992

174. Complainant derived the penalties proposed in this Complaint by applying the factors enumerated in Paragraph 208 above to the particular allegations that constitute the violations charged in this action under the “Region 5 UIC Penalty Policy” (September 21, 1994). The penalty policy provides a rational, consistent and equitable calculation methodology for applying the statutory factors to particular cases. The proposed penalty includes a 28.95% increase provided for inflation pursuant to the Civil Penalties Inflation Adjustment Act, 28 U.S.C. § 2461, and 40 C.F.R. Part 19, for violations occurring after March 15, 2004.

ANSWER AND OPPORTUNITY TO REQUEST A HEARING

As provided in Section 1423(c)(3)(A), of SDWA, 42 U.S.C. § 300h-2(c)(3)(A), you have the right to request a hearing on the allegations of the Complaint, and/or the appropriateness of the civil penalty proposed to be assessed for the violations. Any hearing that you request will be held and conducted according to the provisions of the Consolidated Rules, 40 C.F.R. Part 22, Subpart I. A copy of the Consolidated Rules is included with this Complaint.

To request a hearing, you must file a written Answer with the Regional Hearing Clerk

within 30 days of service of this Complaint, and you must include in the written Answer a request for a hearing. The Regional Hearing Clerk's address is:

Regional Hearing Clerk
U.S. EPA, Region 5 (E-13J)
77 West Jackson Boulevard
Chicago, IL 60604

The Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint with respect to which Respondent has any knowledge, or clearly state that Respondent has no knowledge as to a particular factual allegation in the Complaint. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied. Pursuant to 40 C.F.R. § 22.15(b), the Answer must also state:

1. The circumstances or arguments that you allege constitute the grounds of defense;
2. The facts that you intend to place at issue;
3. The basis for opposing the proposed penalty; and
4. Whether you request a hearing.

Pursuant to 40 C.F.R. § 22.15(d), the failure to admit, deny, or explain any material factual allegation contained in the Complaint constitutes an admission of the allegation.

A copy of the Answer and any subsequent documents filed in this action should also be sent to:

Erik H. Olson
Associate Regional Counsel
U.S. EPA, Region 5 (C-14J)
77 West Jackson Boulevard
Chicago, IL 60604

Mr. Olson's telephone number is (312) 886-6829.

If you fail to file a written Answer, with or without a Request for Hearing, within 30 days

of your receipt of this Complaint, the Presiding Officer may issue a Default Order. Issuance of a Default Order will constitute a binding admission of all facts alleged in the Complaint and a waiver of your right to contest the factual allegations. The civil penalty proposed in this Complaint shall then become due and payable without further proceedings 60 days after a Final Order of Default is issued pursuant to 40 C.F.R. § 22.17.

PUBLIC NOTICE

Under Section 1423(c)(3)(B) of the SDWA, 42 U.S.C. § 300h-2(c)(3)(B), and in accordance with Section 22.45 of the Consolidated Rules, U.S. EPA is providing public notice of and reasonable opportunity to comment on this proposed assessment of an administrative penalty against Respondent. If a hearing is held on this proceeding, members of the public who submitted timely comments on this proposed penalty shall have the right to be heard and present evidence at the hearing under Section 1423(c)(3)(C) of the SDWA, 42 U.S.C. § 300h-2(c)(3)(C).

SETTLEMENT CONFERENCE

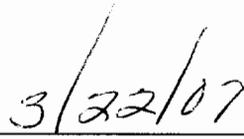
Whether or not you request a hearing, you may request an informal conference in order to discuss the facts of this case and to arrive at a settlement. To request an informal settlement conference, please contact Erik H. Olson, Associate Regional Counsel, at the address or phone number listed above in Section III (Answer and Opportunity To Request A Hearing).

Your request for an informal settlement conference does not extend the 30 day period for filing a written answer to this Complaint. You may pursue the informal conference procedure simultaneously with the adjudicatory hearing procedure.

U.S. EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement through an informal conference. However, U.S. EPA will not reduce the penalty simply because such a conference is held. The U.S. EPA has authority, where appropriate, to modify the amount of the proposed penalty to reflect any settlement reached with you in an informal conference. The terms of the settlement would be embodied in a Consent Agreement and Final Order.



Jo Lynn Traub, Director
Water Division
U.S. EPA, Region 5 (W-15J)
77 West Jackson Boulevard
Chicago, Illinois 60604



Date

SDWA-05-2007-0003

**In the Matter of:
Environmental Disposal Systems, Inc.
Docket No. SDWA-05-2007-0003**

Certificate of Service

I certify that I filed the original and one copy of this Complaint with the Regional Hearing Clerk (E-13J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I sent to Respondent by Certified Mail, Receipt No. 7001 0320 0005 8933 2492, and to Respondent's Counsel by Certified Mail, Receipt No. 7001 0320 0005 8933 2508, a true copy of this Complaint along with a copy of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22, addressed as follows:

To Respondent: Douglas F. Wicklund
Environmental Disposal Systems, Inc.
199 W. Brown Street, Suite 200
Birmingham, MI 48009

To Respondent's Counsel: Lawrence Scott
O'Reilly Rancilio Pc
12900 Hall Road, Suite 350
Sterling Heights, MI 48313-1151

on this 22 day of March, 2007.


Leslie Patterson
Environmental Officer, WU-16J
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

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REGION 5
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