



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

JUL 28 2009

Ref: 8ENF-UFO

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Tom Grover, Owner
Handlebar Motorsports, Inc.
49 Black Bear Lane
Bayfield, CO 81122

Re: Proposed Compliance Order, Penalty Complaint,
And Notice Of Opportunity For Hearing
Docket No. SDWA-08-2009-0074

Dear Mr. Grover:

Enclosed is a Proposed Compliance Order, Penalty Complaint, And Notice Of Opportunity For Hearing (complaint) issued by the Environmental Protection Agency (EPA) under the authority of the Safe Drinking Water Act, 42 U.S.C. § 300h-2. The enclosed document describes how Handlebar Motorsports, Inc. has violated the Safe Drinking Water Act and proposes both compliance requirements and the assessment of a civil penalty.

However, if Handlebar Motorsports, Inc. fully complies with the compliance order requirements in a timely manner as set out in the complaint, EPA will evaluate the civil penalty factors at 42 U.S.C. § 300h-2(c) (4)(B), and may settle this case without the assessment of a civil penalty, if appropriate. Please note that there are deadlines in the complaint that must be followed. The complaint is effective upon the receipt date and you have thirty (30) calendar days to file an answer to dispute the contents of the complaint.

If you have any technical questions, contact Britta Copt at the above address (with the mail code 8ENF-UFO) or by phone at (303) 312-6229. For legal questions, the attorney assigned to this matter is Brenda Morris, who can be reached at the above address (with the mail code 8ENF-L) or by phone at (303) 312-6891.



Printed on Recycled Paper

We urge your prompt attention to this matter.

Sincerely,



for Eddie A. Sierra
Acting Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures:

Proposed Compliance Order, Penalty Complaint,
and Notice of Opportunity for Hearing
Part 22 Rules of Practice
Public Notice
U.S. EPA Small Business Resources Fact Sheet

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

Docket No. SDWA-08-2009-0074

2009 JUL 28 PM 1:31

In the Matter of:)
)
Handlebar Motorsports, Inc.)
49 Black Bear Lane)
Bayfield, Colorado)
81122)
)
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 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 complaint.

3. EPA alleges that Handlebar Motorsports, Inc. (Respondent) 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, 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 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, Handlebar Motorsports, Inc., is a corporation, incorporated in the State of Colorado, and doing business in the State of Colorado.

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 operates the facility located at 346 S. Camino Del Rio, in Durango, Colorado ("facility").

10. On May 22, 2008, authorized EPA employees entered the facility with the consent of Mr. Thomas Grover to inspect it for compliance with the law. The Inspection identified a floor drain in the vehicle storage and maintenance area which is connected to a septic system.

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

12. EPA has determined that Respondent operated the type of Class V Injection Well known as a "Motor Vehicle Waste Disposal Well" 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... ."

13. Lying underneath the disposal well and septic system is the leachfield that discharges to the subsurface, or the alluvial aquifer composed of Animas River alluvium, which is an underground source of drinking water (USDW).

14. At the time of the inspection through April 14, 2009, Respondent was 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 in violation of the EPA regulations is therefore in violation of the Act, 42 U.S.C. § 300h-2 (c)(1).

PROPOSED COMPLIANCE ORDER

15. Respondent shall, within thirty (30) calendar days of Respondent's receipt of this complaint, submit to EPA, in writing, evidence (pictures or invoices) that it has permanently closed the motor vehicle waste disposal well.

16. Respondent shall submit all documentation to:

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

PROPOSED CIVIL PENALTY

17. 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. § 300h-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, and good-faith efforts to comply with the requirements, the economic impact on the violator, and such other matters as justice may require.

18. 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. § 300h-2 (c)(3)(B).

19. To discuss settlement or ask any questions you may have about this case or process, please contact Brenda Morris, Enforcement Attorney, at 303-312-6891, or the address below.

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

Date: July 28, 2009 By: Sharon L. Kercher
for Eddie A. Sierra
Acting Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

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 was hand-carried to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop St, Denver, Colorado, and that a true copy of the same was sent via certified mail to:

Tom Grover, Owner
Handlebar Motorsports, Inc.
49 Black Bear Lane
Bayfield, CO 81122

7/28/09
Date

Judith McTernan
Judith McTernan