



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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

2010 SEP 14 PM 1:25

Ref: 8ENF-UFO

SEP 14 2010

FILED  
EPA REGION VIII  
HEARING CLERK

CERTIFIED MAIL – 7009-3410-0000-2592-0004  
RETURN RECEIPT REQUESTED

Harvard Schulz, Registered Agent  
Welfl Construction Corporation  
P.O. Box 60  
Yankton, SD 57078-0060

Re: Proposed Compliance Order, Penalty Complaint,  
And Notice Of Opportunity For Hearing  
Docket No. **SDWA-08-2010-0076**

Dear Mr. Schulz:

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

**However, if Welfl Construction Corporation 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 Sarah Roberts at the above address (with the mail code 8ENF-UFO) or by phone at (303) 312-7056. For legal questions, the attorney assigned to this matter is David J. Janik, who can be reached at the above address (with the mail code 8ENF-L) or by phone at (303) 312-6917.

We urge your prompt attention to this matter.

Sincerely,

*for* Andrew M. Gaydosh  
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

cc:

Tom Brandner, Groundwater Section Engineering Director  
South Dakota DENR

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

Docket No. SDWA-08-2010-0076

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In the Matter of: )  
)  
Welfl Construction Corporation ) **PROPOSED COMPLIANCE ORDER,**  
) **PENALTY COMPLAINT AND NOTICE OF**  
) **OPPORTUNITY FOR HEARING**  
Respondent. )

**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 Welfl Construction Corporation (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, Welfl Construction Corporation, is a corporation doing business in the State of South Dakota.

8. Respondent is 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).

9. Respondent owns and/or operates the facility located at 800 West 23<sup>rd</sup> Street, Yankton, South Dakota 57078-1207 ("facility").

10. On May 26, 2010, an authorized EPA employee entered the facility, with consent, to inspect it for compliance with the law. This inspection revealed that motor vehicle maintenance takes place in the main garage of the facility and barrels containing oil are stored in the garage. There is a floor drain inside of the main garage. The inspection confirmed that the floor drain discharges into the subsurface nearby.

11. Based on the inspection described above, Respondent owns and/or operates a Class V Motor Vehicle Waste Disposal Well.

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

13. Lying beneath Respondent's disposal well are underground sources of drinking water

(USDWs), including but not limited to, the aquifers of alluvial and glacial origin.

14. 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**

15. 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, 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 EPA with subsequent documentation of the closure.

16. Respondent shall submit all documentation to:

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

## PROPOSED CIVIL PENALTY

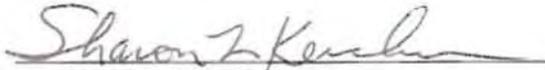
17. For an administrative proceeding, the Act authorizes the assessment of a civil penalty of up to \$16,000 per day, for each violation of the Act, up to a maximum of \$177,500. 42 U.S.C. § 300h-2 (c)(1). The Act requires EPA to take into account appropriate factors in assessing a civil penalty, including 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.

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 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).

19. To discuss settlement or ask any questions you may have about this case or process, please contact David J. Janik, Enforcement Attorney, at (303) 312-6917, 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: 10 September 2010

By:   
for Andrew M. Gaydosh  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
And Environmental Justice

**In the Matter of: Welfl Construction Corporation**  
**Docket No.: SDWA-08-2010-0076**

**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:

Harvard Schulz, Registered Agent  
Welfl Construction Corporation  
P.O. Box 60  
Yankton, SD 57078-0060

9/14/10  
Date

June Dawell

**U.S. ENVIRONMENTAL PROTECTION AGENCY  
PUBLIC NOTICE  
OPPORTUNITY FOR PUBLIC COMMENT ON  
PROPOSED COMPLIANCE ORDER, PENALTY COMPLAINT,  
AND  
NOTICE OF OPPORTUNITY FOR HEARING  
AGAINST  
WELFL CONSTRUCTION CORPORATION  
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. ] that Region 8 of the United States Environmental Protection Agency (EPA) proposes to issue to Welfl Construction Corporation for alleged violations at the facility located at 800 West 23<sup>rd</sup> Street, Yankton, South Dakota. 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 violation.

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 the comments, if any, justify the modification or withdrawal of the complaint.

**BACKGROUND**

Part C of the SDWA (40 U.S.C. §300h *et seq*) requires 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 South Dakota, 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 800 West 23<sup>rd</sup> Street, Yankton, South Dakota. A Class V injection well, pursuant to 40 C.F.R. §§ 144.6, 144.81, and 146.5, is a shallow injection well that injects fluids into or above a USDW.

The complaint alleges that Welfl Construction Corporation is in violation of UIC regulations and is 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. 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 \$177,500, and proposes certain compliance measures, including the permanent closure of the well.

### **PUBLIC COMMENTS**

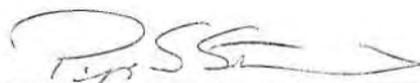
Written comments on the complaint are encouraged and will be accepted at the address listed below for a period of thirty (30) calendar days after the publication of this notice. Written comments submitted by the public, as well as information submitted by Welfl Construction Corporation, will be available for public review as part of the Administrative Record, subject to the provisions of law restricting the disclosure of confidential information. Welfl Construction Corporation 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 David J. Janik, Enforcement Attorney, Legal Enforcement Program, EPA Region 8, at (303) 312-6917 before visiting 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 Sarah Roberts in the UIC program, EPA Region 8, at (303) 312-7056.

### **THE DECISION**

EPA will review and consider all public comments received on the public notice and will thereafter determine whether the comments, if any, justify the modification or withdrawal of 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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Philip S. Strobel, Acting Director  
Technical Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice  
U.S. EPA, Region 8  
1595 Wynkoop Street  
Denver, CO 80202