



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

Eissinger Equipment Savage Ford, Inc.
22 Hwy 200 E
Circle, MT 59215

ATTN: Gerald Eissinger, President

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

Dear Mr. Eissinger:

The enclosed document is a Penalty Complaint and Notice of Opportunity for Hearing (Complaint) for violations of the Safe Drinking Water Act (SDWA). Please have Eissinger Equipment Savage Ford, Inc. (Eissinger, Inc.) carefully read the Complaint soon, since it describes the company's 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 Eissinger, Inc. meets the criteria, an information sheet about the Small Business Regulatory Enforcement Fairness Act.

Eissinger Inc. is 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 it that could impose the penalty amount proposed in the Complaint.

Whether or not Eissinger, Inc. requests 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.

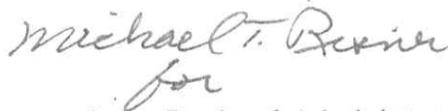
If you have technical questions relating to this matter, the person most knowledgeable on my staff is Phil Strobel, UIC Enforcement Team, Technical Enforcement Program, at 1-800-227-8917 ext. 312-6704 or (303) 312-6704. For all legal questions, the person most knowledgeable on my staff is Jim Eppers 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 Eissinger, Inc.'s prompt attention to this matter.

Sincerely,



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

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

2007 SEP 17 11:05

Docket No. **SDWA-08-2007-0087**

In the Matter of:)
)
Eissinger Equipment Savage Ford, Inc.,) **PENALTY COMPLAINT AND NOTICE OF**
a Montana Corporation;) **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 Eissinger Equipment Savage Ford, Inc. (Respondent) has violated the regulations and therefore the Act and EPA 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 its 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 30 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 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, Eissinger Equipment Savage Ford, Inc. is a corporation, incorporated in the State of Montana and doing business in the State of Montana.

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 facility located at 22 Hwy 200 E, Circle, MT 59215, ("facility").

10. On May 14, 2004, EPA Region 8 received a completed *Shallow Injection Well Inventory Request Form* prepared by Gerald Eissinger representing Respondent dated May 10, 2004 (Inventory Form). The Inventory Form indicated that sanitary waste and waste from floor drain(s) or sink(s) in a shop area, engine service area or maintenance bay are connected to a septic system, drainfield, or cesspool; and that other wastes are stored and are hauled off-site (recycled).

11. Respondent's disposal system, as identified in the Inventory Form above, is classified as a "Class V Injection Well" as defined by 40 C.F.R. §144.6 and §146.5 and is a motor vehicle waste disposal well as defined by 40 C.F.R. §144.8l(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."

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

13. On July 14, 2004, an authorized EPA employee entered the facility with the consent of Gerald Eissinger to inspect it for compliance with the law.

14. As of that date, it was verified that Respondent owned and was operating a motor vehicle waste disposal well(s).

15. By letter dated August 16, 2004, and pursuant to 40 CFR 144.12 (c) and (d), EPA directed Respondent to either permit or close the well(s) by January 12, 2005.

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

17. On September 27, 2004, EPA received a Class V Pre-Closure Notification Form from Gerald Eissinger representing Respondent dated September 14, 2004. The form listed the proposed closure as a "holding tank to be pumped and disposed of periodically."

18. By letter dated November 3, 2004, EPA authorized closure according to the September, 2004 Closure Plan (Pre-Closure Notification Form).

19. On June 23, 2005, an authorized EPA employee again entered the facility with the consent of Grant Wall representing Respondent to inspect it for compliance with the law.

20. As of the day of the June, 2005, inspection, Respondent continued to own and operate the motor vehicle waste disposal well(s).

21. By electronic mail dated April 28, 2006, EPA requested documentation of closure of the Class V well.

22. By electronic mail dated April 28, 2006, Gerald Eissinger representing Respondent sent documentary photos to EPA showing an excavation to access the drain pipe, and placement of an open wading pool to receive fluids discharged from the pipe.

23. By letter dated June 28, 2006, EPA informed Respondent the facility was in violation of EPA regulations and directed the Respondent to close the well. The letter specified that the "holding tank must be a self-contained tank and NOT allow for overflow" and must be installed within 30 days of receipt of the letter (signed for on June 28, 2006 by Beverly Eissinger).

24. In a phone conversation on July 10, 2006, EPA reiterated to Gerald Eissinger representing Respondent that a wading pool is not considered a holding tank and is not self-contained.

25. EPA contacted Gerald Eissinger representing Respondent by phone on August 2, 2007, to determine Respondent's compliance. Mr. Eissinger said the self-contained holding tank was not yet installed.

26. Additionally, **all** owners and operators of MVWD systems that existed prior to the April 5, 2000, ban of construction of new MVWD 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 MVWD systems by January 1, 2007.

27. Lying underneath the disposal system are underground sources of drinking water (USDWs), including but not limited to a sandstone aquifer.

28. Respondent's operation of the well after the January 12, 2005, 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 §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 §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

29. 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 violation, the economic benefit resulting from the violation, 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.

30. In light of the statutory factors and the specific facts of this case, EPA proposes that a penalty of forty-three thousand-two hundred dollars (\$43,200.00) be assessed against Respondent for owning and operating the prohibited Class V well, as explained below:

Nature, Circumstances, Extent, and Gravity of Violations

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 more than 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, for purposes of calculating a proposed penalty. Despite this, for penalty purposes EPA is only considering Respondent's noncompliance from the closure date specified in the Permit or Close Letter (January 12, 2005) through the date by which we estimate Respondent will document the closure of the system (September 12, 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 over two years to come into compliance and yet has not done so. Respondent did make an initial effort to come into compliance by installing an open evaporation tank, but that tank did not implement the Closure Plan's "holding tank" and did not assure protection of the USDW because the tank was not self-contained. The cost of coming into compliance is fairly low and EPA has repeatedly communicated the requirements to the Respondent. EPA did reduce the proposed penalty for this factor.

Ability to Pay

Because little information is available at this time to document financial status, and the EPA's knowledge of the facility and surrounding area indicates it is 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

31. 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

32. Respondent shall comply with the following:

By October 31, 2007, install a self-contained holding tank according to the Respondent's September, 2004, Closure Plan and the June, 2006 Notice of Noncompliance. Once the closure or retrofitting has been accomplished, documentation must be provided to EPA including an as-built sketch of the drain system showing where changes have been made. The documentation must also include the specific type, specifications and size of the installed tank and an estimate of how often the tank will require pumping. The tank must be pumped by a waste handler licensed for this type of waste.

33. Respondent shall submit all documentation to:

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

34. 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).

35. 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.

36. 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.

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. Buzni
for Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Eissinger Equipment Savage Ford, Inc.
Docket No. SDWA-08-2007- SDWA-08 - 2007-0087

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:

Eissinger Equipment Savage Ford, Inc.
22 Hwy 200 E
Circle, MT 59215

ATTN: Gerald Eissinger, President

Dated: 9/17/07

By: Judith McTernan
Judith McTernan