

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 Broadway  
New York, New York 10007-1866

2010 NOV - 1 A 11: 28

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. 21

HEARINGS  
CLERK

IN THE MATTER OF:

Dale Stevens d/b/a Stevens Auto Repair  
1380 Old Market Road  
Norwood, NY 13668

Respondent

Proceedings Pursuant to §1423(c) of the  
Safe Drinking Water Act, 42 U.S.C.  
§300h-2(c).

CONSENT AGREEMENT  
AND  
FINAL ORDER

DOCKET NO.  
SDWA-02-2009-8904

**CONSENT AGREEMENT**

The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, Region 2, United States Environmental Protection Agency (“EPA”), issued a “Complaint, Notice of Violation, Proposed Administrative Order with Civil Penalty and Opportunity to Request a Hearing” (“Complaint”) to Dale Stevens d/b/a Stevens Auto Repair (“Respondent”) on September 10, 2009.

Complainant and Respondent, having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order (“CA/FO”) without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby ordered as follows:

**I. PRELIMINARY STATEMENT**

1. EPA initiated this proceeding for compliance with the Safe Drinking Water Act pursuant to Section 1423(c) of the Safe Drinking Water Act, 42 U.S.C. §300h-2(c).
2. The Complaint alleges violations of the Safe Drinking Water Act Part C – Underground Injection Control, as they pertain to a Class V injection well located at 1380 Old Market Road, Norwood, New York. The Complaint alleges that the Class V well is owned and operated by Dale Stevens d/b/a Stevens Auto Repair.

3. This action was public noticed on October 2, 2009.
4. This Consent Agreement and Final Order shall apply to and be binding on Respondent, the business officers, directors, employees, successors and assigns, including but not limited to, subsequent purchasers.
5. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint. Respondent waives any defenses Respondent might have as to jurisdiction and venue, and, without admitting or denying the allegations contained in the Complaint, consents to the terms of this Consent Agreement and Final Order.
6. Respondent hereby waives Respondent's rights to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint or on any terms of this Consent Agreement and Final Order.

## II. TERMS OF SETTLEMENT

### A. Payment of Civil Penalty

1. Pursuant to Section 1423(c) of the Safe Drinking Water Act, EPA has considered statutory factors, including the seriousness of the violation(s), the economic benefit (if any) resulting from the violation(s), the history of such violation(s), the good-faith efforts to comply with the applicable requirements, and other matters as justice may require.
2. EPA has determined that an appropriate civil penalty to settle this action is in the amount of **one thousand and two hundred (\$1,200) dollars**.
3. For the purpose of settlement, Respondent consents to the issuance of this Consent Agreement and consents to the payment of the civil penalty cited in Paragraph 2 above.
4. Not more than forty five (45) days after the date of issuance of the executed Final Order signed by the Regional Administrator, EPA, Region 2, Respondent shall pay the penalty of **one thousand and two hundred (\$1,200) dollars** by cashier's or certified check or by Electronic Fund Transfer ("EFT"). If the payment is paid by check, then the check shall be payable to the "Treasurer, United States of America". The check shall be identified with a notation thereon listing the following: **IN THE MATTER OF DALE STEVENS D/B/A STEVEN'S AUTO REPAIR**, and shall bear thereon **Docket Number SDWA-02-2009-8904**. This check shall be mailed to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- a. Amount of Payment
- b. SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045
- c. Account Code for Federal Reserve Bank of New York receiving payment: 68010727
- d. Federal Reserve Bank of New York ABA routing number: 021030004
- e. Field Tag 4200 of the Fedwire message should read "D68010727 Environmental Protection Agency"
- f. Name of Respondent: Dale Stevens d/b/a Stevens Auto Repair.
- g. Case Number: SDWA-02-2009-8904

Such EFT must be received on or before 45 days after the Effective Date of this CA/FO.

Whether the payment is made by check or by EFT, Respondent shall promptly thereafter furnish reasonable proof that such payment has been made, to both:

Nadine Orrell, Esq.  
Assistance Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866  
(212) 637-3244  
and

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866

5. Payment must be received on or before forty five (45) calendar days after the date of signature of the Final Order (at the end of this document). The date by which payment must be received shall hereafter be referred to as the "due date".
  - a. Failure to pay the penalty in full according to the above provisions will result in a referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
  - b. Further, if payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31 U.S.C. §3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each 30 day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty will be applied on any principal amount not paid within 90 days of the due date.

- c. In addition, pursuant to Section 1423(c)(7) of the Safe Drinking Water Act, 42 U.S.C. §300h-2(c)(7), if payment is not received by the due date, a civil action may be commenced in Federal District Court to recover the amount assessed, plus costs, attorneys' fees and interest at currently prevailing rates from the date the order is effective. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.
  - d. Respondent also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.
6. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from the Respondent's federal or state taxes.

#### **B. Compliance Measures**

7. **Cease injection:** As of the effective date of this Order, Respondent shall discontinue the use of the two floor drains that discharge the injection well disposal system as currently utilized.
8. **Well Remediation:** Within 60 days of the effective date of this Order, Respondent shall permanently seal the floor drains that discharge to the injection well with concrete.
9. **Well Remediation/Closure Report:** **Within 90 days** of the effective date of this Order, Respondent shall submit a final report and pictures to EPA, summarizing the work completed in fulfillment of the requirements of this Order. EPA shall notify Respondent in writing if the report is deemed adequate or if additional measures must be taken.
10. **Request for Permit:** Should Respondent desire to continue to use any or all injection wells subject to this Order, Respondent must submit a written request ("Request") to EPA within 60 days of the effective date of this Order, indicating Respondent's desire to obtain a permit for continued injection. This Request must include, at a minimum:
  - a. The source(s) and type(s) of fluid(s) that Respondent wishes to dispose of into the injection well or wells.
  - b. Any treatment of the wastes that will be done prior to injection of the wastes.
  - c. Any available analytical data demonstrating the levels of contaminants in the fluid(s) Respondent wishes to dispose of into the injection well or wells.

Once EPA completes its review of the Request, EPA will send Respondent a written response detailing any additional information that may be needed to evaluate the Request and may include additional requirements that must be met in order for the Request to be approved.

### III. GENERAL PROVISIONS

1. Respondent shall transmit all notices, reports and submissions required by this Consent Agreement and Final Order to:

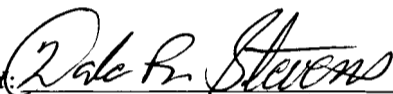
Nicole Kraft, Chief  
Ground Water Compliance Section  
Water Compliance Branch  
U.S. EPA, Region 2  
290 Broadway, 20<sup>th</sup> Floor  
New York, NY 10007-1866

2. Respondent waives any right Respondent may have pursuant to 40 C.F.R. §22.8 or statute to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that the Administrator accept this Consent Agreement and issue the accompanying Final Order.
3. Violations of the terms of the Final Order after its effective date or date of final judgment as described in Section 1423(c)(6) of the Act, 42 U.S.C. §300h-2(c)(6), may subject Respondent to further enforcement action, including a civil action for enforcement of the Final Order under Section 1423(b) of the Act, 42 U.S.C. §300h-2(b), and civil and criminal penalties for violations of the compliance terms of the Final Order under Section 1423(b)(1) and (2) of the Act, 42 U.S.C. §300h-2(b)(1) and (2).
4. This Consent Agreement and Final Order shall not relieve Respondent of Respondent's obligations to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.
5. Nothing in this Consent Agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Consent Agreement or of the statutes and regulations upon which this Consent Agreement is based, or for Respondent's violation of any applicable provision of law.
6. Issuance of the Final Order is not an election by EPA to forego any civil or criminal action otherwise authorized under the Act.
7. This Consent Agreement and Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the Safe Drinking Water Act for the violations alleged in the Complaint. Nothing in this Consent Agreement and Final Order is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent. Compliance with this Consent Agreement and Final Order shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered

by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.


8. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.
9. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this Consent Agreement and Final Order.

RESPONDENT:

BY:   
Dale Stevens d/b/a  
Dale Stevens Auto Repair

DATE: 8/30/10

COMPLAINANT:


BY:   
Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance  
U.S. EPA, Region 2  
290 Broadway, 21st Floor  
New York, New York 10007-1866

DATE: 9/23/10

**IV. FINAL ORDER**

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as a Final Order. The effective date of this Final Order shall be 30 days after the date of signature.

DATE: 9/29/10

  
\_\_\_\_\_  
JUDITH A. ENCK  
Regional Administrator  
United States Environmental  
Protection Agency - Region 2  
290 Broadway  
New York, New York 10007-1866

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 Broadway  
New York, New York 10007-1866**

**IN THE MATTER OF:**

Dale Stevens d/b/a Stevens Auto Repair  
1380 Old Market Road  
Norwood, NY 13668

Proceedings under Section 1423(c)  
of the Safe Drinking Water Act,  
42 U.S.C. "300h-2(c)

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AND  
FINAL ORDER**

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SDWA-02-2009-8904**

**CERTIFICATE OF SERVICE**

I certify that on NOV 1 - 2010, I served the above-cited Consent Agreement  
And Final Order for Compliance, bearing the above referenced docket number, on the persons  
listed below, in the following manner:

Original and One Copy

By Hand:

Karen Maples  
Regional Hearing Clerk  
U.S. Environmental Protection  
Agency - Region 2  
290 Broadway, 16th Floor  
New York, New York 10007-1866

Copy by Certified Mail, Return

Receipt Requested:

Tom Wheeler, Esq.  
Aubuchon Mall  
63 Market Street  
P.O.Box 506  
Potsdam, New York 13676

Dated: NOV 1 - 2010

