



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

Ref: 8ENF-UFO

SEP 26 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jerry Byrkeland, Owner/Operator
JB Body Shop/Rivercity Sandblasting
1906 East Highway 50
Yankton, SD 57078

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

Dear Mr. Byrkeland:

The enclosed document is a Penalty Complaint and Notice of Opportunity for Hearing (Complaint) for violations of the Safe Drinking Water Act (SDWA). Please carefully read the Complaint soon, since it describes your 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 you meet the criteria, an information sheet about the Small Business Regulatory Enforcement Fairness Act.

Mr. Byrkeland, you are 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 you that could impose the penalty amount proposed in the Complaint.

Whether or not you request 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 Jim Eppers, *Enforcement Attorney, Legal Enforcement Program*, at the number provided below. 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.

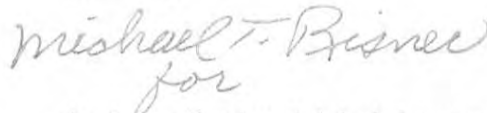
If you have technical questions relating to this matter, the person most knowledgeable on my staff is Carol L. Hutchings, UIC Enforcement Team, Technical Enforcement Program, at 1-800-227-8917 ext. 6485 or (303) 312-6485. For all legal questions, the person most knowledgeable on my staff is Jim Eppers at 1-800-227-8917 ext. 66893 or (303) 312-6913. Mrs. Hutchings and Mr. Eppers can also be reached at the following addresses:

Carol L. Hutchings (Mail Code 8ENF-UFO)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129, or

Jim Eppers (Mail Code 8ENF-L)
Enforcement Attorney
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

We urge your prompt attention to this matter.

Sincerely,

Handwritten signature of Michael T. Bisbee in cursive, with the word "for" written below it.

Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures:

Penalty Complaint and Notice of Opportunity for Hearing
40 C.F.R. Part 22
Public Notice
U.S. EPA Small Business Resources Fact Sheet

cc: Dennis Mines, Property Owner
1904 East Highway 50
Yankton, SD 57078

Ms. Anita Yan
SD DENR
523 East Capitol
Pierre, SD 57501-3181



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Handwritten signature of Michael T. Bisner in cursive script, with the word "for" written below it.

Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures:

Penalty Complaint and Notice of Opportunity for Hearing
40 C.F.R. Part 22
Public Notice
U.S. EPA Small Business Resources Fact Sheet

cc: Jerry Byrkeland, Business Owner & Operator
Rivercity Sandblasting and JB Body Shop
1906 East Highway 50
Yankton, SD 57078

Ms. Anita Yan
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523 East Capitol
Pierre, SD 57501-3181

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**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

REGION 8

Docket No. **SDWA-08-2007-0092**

2007 SEP 23 AM 8:53

In the Matter of:)

Jerry Byrkeland dba)

Rivercity Sandblasting and JB Body Shop,)

Yankton, South Dakota; and)

Dennis Mines,)

Respondents.)

**PENALTY COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING**

INTRODUCTION

19 1. This civil administrative enforcement action is authorized by Congress in section 1423
20 of the Public Health Service Act, commonly known as the Safe Drinking Water Act (the Act).
21 42 U.S.C. § 300h-2. The Environmental Protection Agency (EPA) regulations authorized by the
22 statute are set out in part 144 of title 40 of the Code of Federal Regulations (C.F.R.), and
23 violations of the statute, permits or EPA regulations constitute violations of the Act. The rules
24 for this proceeding are the "Consolidated Rules of Practice Governing the Administrative
25 Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the
26 Revocation, Termination or Suspension of Permits (Rules of Practice)," 40 C.F.R. part 22, a copy
27 of which is enclosed.

28
29 2. The undersigned EPA official has been properly delegated the authority to issue this
30 Penalty Complaint and Notice of Opportunity for Hearing (complaint).

31
32 3. EPA alleges that Jerry Byrkeland dba Rivercity Sandblasting and JB Body Shop, and
33 Dennis Mines, property owner (together referred to as "Respondents") have violated the
34 regulations and therefore the Act and proposes the assessment of a civil penalty, as more fully
35 explained below.

NOTICE OF OPPORTUNITY FOR A HEARING

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37
38
39 4. Respondents have the right to a public hearing before a presiding officer within the
40 Agency to disagree with (1) any fact stated (alleged) by EPA in the complaint, (2) the grounds for
41 any legal defense or (3) the appropriateness of the proposed penalty.
42

1 11. Respondent Jerry Byrkeland, dba Rivercity Sandblasting and JB Body Shop, operates
2 the auto body repair and painting shop, and building exterior sandblasting contract business
3 located at the facility.
4

5 12. On April 29, 2004, EPA Region 8 received a completed Shallow Well Injection Well
6 Inventory Request form prepared by Jerry Byrkeland of JB Body Shop dated April 23, 2004
7 (Inventory Form). Although the Inventory Form was incomplete, it did list that two floor drains
8 existed in a shop area where engine service, vehicle maintenance, or vehicle/equipment washing
9 was done. The Inventory Form did not list if the waste from two floor drains discharged to the
10 septic system which is also listed in the inventory.
11

12 13. Motor vehicle waste disposal wells are defined at 40 C.F.R. §144.81(16) as follows:
13 "Motor vehicle waste disposal wells that receive or have received fluids from vehicular repair or
14 maintenance activities, such as an auto body repair shop, automotive repair shop, new and used
15 car dealership, specialty repair shop (e.g., transmission and muffler repair shop), or any facility
16 that does any combustion engine repair/maintenance work."
17

18 14. On June 10, 2004, an authorized EPA employee entered the facility with the consent
19 of Jerry Byrkeland to inspect it for compliance with the law.
20

21 15. As of that date, it was verified that Respondents owned and were operating a motor
22 vehicle waste disposal well(s).
23

24 16. Respondents' disposal system, as identified in the Inventory Form above and the June
25 10, 2004 inspection, is classified as a "Class V Injection Well" as defined by 40 C.F.R. §144.6
26 and §146.5 and is a motor vehicle waste disposal well as defined by 40 C.F.R. §144.81(16).
27 Respondents are subject to applicable Underground Injection Control (UIC) requirements of
28 40 C.F.R. §§ 124, 144 and 146.
29

30 17. By letter dated June 27, 2005, EPA, pursuant to 40 C.F.R. § 144.12 (c) & (d),
31 directed Jerry Byrkeland, dba Rivercity Sandblasting and JB Body Shop, to either permit or close
32 the well(s), by October 24, 2005.
33

34 18. Respondents never applied for a permit for the well(s).
35

36 19. On August 24, 2006, an authorized EPA employee again entered the facility with the
37 consent of Jerry Byrkeland to inspect it for compliance with the law.
38

39 20. As of the day of the August 2006 inspection, Respondents continued to own and
40 operate the motor vehicle waste disposal well(s).
41
42

1 21. By letter dated March 27, 2007, EPA informed each Respondent the facility was in
2 violation of EPA regulations and directed the Respondents to close the well.
3

4 22. Additionally, **all** owners and operators of motor vehicle waste disposal systems that
5 existed prior to the April 5, 2000, ban of construction of new motor vehicle waste disposal
6 systems, were required by 40 C.F.R. § 144.88(b) to have submitted a completed permit
7 application or have completed the closure of the motor vehicle waste disposal systems by
8 January 1, 2007. Respondents were notified of this ban in the March 27, 2007 letter.
9

10 23. On March 30, 2007, EPA was contacted by Dennis Mines by telephone. Mr. Mines
11 was provided compliance assistance on permanent closure of the motor vehicle waste disposal
12 well; and told that he needed to submit a closure plan to EPA for approval prior to the closure.
13 He was also told to submit documentation of the closure after it was completed. Mr. Mines was
14 referred back to the March 27, 2007, EPA letter for complete instructions and EPA's address.
15

16 24. On March 30, 2007, EPA contacted Jerry Byrkeland by telephone to discuss the need
17 to permanently close the motor vehicle waste disposal well, to submit the closure plan for EPA
18 approval prior to closure and to submit documentation of the closure when it was complete per
19 the March 27, 2007 letter sent to him by EPA.
20

21 25. A closure plan was never submitted to EPA for approval.
22

23 26. On April 6, 2007, EPA received documentation from Jerry Byrkeland of permanent
24 closure of the floor drains.
25

26 27. Lying underneath the disposal system are underground sources of drinking water
27 (USDWs), including but not limited to the surficial alluvium of the nearby Missouri River,
28 50 feet or less below land surface. This alluvium overlies other major aquifers.
29

30 28. Respondents' ownership and operation of the well was in violation of the following
31 EPA regulations and therefore the Act. 42 U.S.C. § 3000h-2 (c)(1):
32

33 -for owning, operating, and maintaining a Class V disposal facility which, through
34 injection activity, allows the movement of fluid containing any contaminant into
35 underground sources of drinking water, if the presence of that contaminant may cause a
36 violation of any primary drinking water regulation under 40 C.F.R. part 142 or may
37 otherwise adversely affect the health of persons, 40 C.F.R. § 144.12(a) and 40 C.F.R.
38 §144.82(a)(1) ;
39

40 -for failure to close or retrofit the Class V disposal system in a manner that would keep
41 contaminants from entering a USDW, 40 C.F.R. §144.12(c)(1) and (2) and 40 C.F.R.
42 §144.88(b) ; and
43

1 -for operating a motor vehicle waste disposal system after the January 1, 2007 ban of all
2 motor vehicle disposal wells. 40 C.F.R. § 144.88(b).

4 PROPOSED CIVIL PENALTY

5
6 29. For an administrative proceeding, the Act authorizes the assessment of a civil penalty
7 of up to \$11,000.00 per day, for each violation of the Act, up to a maximum of \$157,500.00. 42
8 U.S.C. § 3000h-2 (c)(1). The Act requires EPA to take into account the following factors in
9 assessing a civil penalty, including the seriousness of the violations, the economic benefit
10 resulting from the violations, any history of such violations, any good-faith efforts to comply
11 with the Act's requirements, the economic impact on the violator, and such other matters as
12 justice may require. 42 U.S.C. § 300h-2(c)(4)(B).

13
14 30. In light of the statutory factors and the specific facts of this case, EPA proposes
15 that a penalty of thirty four thousand-six hundred dollars (\$34,600.00), be assessed against
16 Respondents for owning and operating the prohibited Class V well, as explained below:

17 Seriousness of the Violations

18
19
20 Respondents' ownership and operation of the prohibited MVWD Class V well is serious
21 because the injection of dangerous motor vehicle waste constituents has been shown to be
22 hazardous to human health and the environment and can render an underlying USDW
23 unfit for human consumption. The nearly two year duration of noncompliance makes it
24 even more serious. Respondents have been responsible for maintaining compliance and
25 have been in complete control of the facility from the effective date of the program.
26 Despite this, for penalty purposes, EPA, is only considering Respondents' non-
27 compliance from the closure date of October 24, 2005, as specified in the Permit or Close
28 Letter dated June 27, 2005, through the date the system was permanently closed by
29 sealing the two floor drains in the shop area and installing a holding tank on March 30,
30 2007.

31 Economic Benefit

32
33
34 Respondents enjoyed a minimal economic benefit by delaying spending of money to
35 come into compliance.

36 Prior Compliance History

37
38
39 EPA Region 8 has not taken any prior formal enforcement actions against Respondents
40 requiring compliance with the applicable UIC regulations.

1
2 Good-Faith Efforts to Comply
3

4 Respondents came into compliance on March 30, 2007. Given the relatively low cost of
5 coming into compliance, together with the long period of time it took the Respondents to
6 comply after formal notice, EPA did not reduce the proposed penalty for this factor.
7

8 Economic Impact on Respondents
9

10 Because little information is available at this time to document financial status of the
11 Respondents, and the EPA's knowledge of the facility and surrounding area indicates the
12 Respondents run small businesses, EPA did reduce the proposed penalty due to this
13 factor. EPA will consider information Respondents may present regarding Respondents'
14 ability to pay the proposed penalty.
15

16 Other Factors that Justice may Require
17

18 EPA has made no additional adjustments to the penalty based on this factor.
19

20 31. Respondent's payment of the penalty shall be made by money order or certified
21 check made payable to "Treasurer, United States of America" and mailed to the following
22 address:

23 US Environmental Protection Agency - Region 8
24 Fines and Penalties
25 Cincinnati Finance Center
26 P.O. Box 979077
27 St. Louis, MO 63197-9000
28

29 A copy of said check shall be mailed to the following address:

30
31 Jim Eppers (8ENF-L)
32 Enforcement Attorney
33 U.S. EPA - Region 8
34 1595 Wynkoop Street
35 Denver, CO 80202-1129
36

37 32. As required by the Act, prior to the assessment of a civil penalty, EPA will provide
38 public notice of the proposed penalty, and reasonable opportunity for the people to comment on
39 the matter, and present evidence in the event a hearing is held. 42 U.S.C. § 3000h-2 (c)(3)(B).
40

41 33. The Administrative Law Judge is not bound by EPA's penalty policy or the penalty
42 proposed by EPA, and may assess a penalty above the proposed amount, up to the \$11,000 per
43 day per violation authorized in the statute.

1 34. To discuss settlement or ask any questions you may have about this case or process,
2 please contact Jim Eppers, Enforcement Attorney, at 303-312-6893, or the address below.
3

4 United States Environmental Protection Agency
5 Region 8, Office of Enforcement, Compliance and
6 Environmental Justice, Complainant
7 1595 Wynkoop (ENF-L)
8 Denver, CO 80202
9

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11
12 Date: 9/25/07

13 By: Michael T. Bisner
14 *for* Assistant Regional Administrator
15 Office of Enforcement, Compliance
16 And Environmental Justice
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1 Jerry Byrkeland dba Rivercity Sandblasting and JB Body Shop
2 Dennis Mines
3 Docket No. SDWA-08-2007- 0092
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7 CERTIFICATE OF SERVICE
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9

10 I hereby certify that the original and one true copy of this Penalty Complaint and Notice of
11 Opportunity for Hearing were hand carried to the Regional Hearing Clerk, EPA Region 8, 1595
12 Wynkoop Street, Denver, Colorado, and that true copies were sent via Certified Mail; Return
13 Receipt Requested to Jerry Byrkeland dba Rivercity Sandblasting and JB Body Shop at the
14 following address:
15

16 Jerry Byrkeland, Owner
17 Rivercity Sandblasting and JB Body Shop
18 1906 East Highway 50
19 Yankton, SD 57078
20

21 and to Dennis Mines at the following address:
22

23 Dennis Mines
24 1904 East Highway 50
25 Yankton, SD 57078
26
27
28

29 Dated: 9/26/07
30

31 By: Judith McTernan
Judith McTernan