



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

SEP 23 2011

Ref: 8ENF-UFO

CERTIFIED MAIL – 7009 3410 0000 2592 1797 – RETURN RECEIPT REQUESTED

Daniel R. Bau
d/b/a DRB Contracting
60 U.S. Highway 16
Osage, WY 82723

Re: Order for Compliance with Information
Request and Notice of Opportunity
to Confer
Docket No. **CWA-08-2011-0032**

Dear Mr. Bau:

Based on your failure to respond to the request for information that the United States Environmental Protection Agency (“EPA”) previously sent to you March 17, 2010, EPA has determined that you are in violation of section 308 of the Clean Water Act (“the Act”), 33 U.S.C. § 1318. Section 308 of the Act, 33 U.S.C. § 1311(a), among other things, authorizes the Administrator of the EPA to require the owner or operator of any point source to provide information necessary to determine whether any person is in violation of any effluent limitation or other limitation, prohibition, or effluent standard, pretreatment standard, or standard of performance, or to carry out various sections of the Act, including section 311 of the Act, 33 U.S.C. § 1321.

On March 17, 2010, EPA sent you a request for information (“March 17, 2010 Request”) pursuant to section 308 of the Act, 33 U.S.C. § 1318, to determine compliance with section 311(j) of the Act, 33 U.S.C. § 1321(j), and regulations promulgated at 40 C.F.R. Part 112. In a letter dated March 29, 2010, you made several statements to the effect that EPA was trying to enforce laws against a “sovereign citizen,” but you did not provide responses to the information requested in the March 17, 2010 Request. To date, EPA has not received any of the information that you were required to provide.

Enclosed is an Order for Compliance with Information Request and Notice of Opportunity to Confer (“Order”) which specifies the nature of your violation of section 308 of the Act, 33 U.S.C. § 1318, and orders you to respond to the March 17, 2010 Request. Issuance of the Order is authorized pursuant to section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3). Additionally, pursuant to section 309(a)(4) of the Act, 33 U.S.C. § 1319(a)(4), the Compliance Order portion of the Order will not become effective until thirty days following your receipt of the Order.

thereby providing you with an opportunity to confer with EPA regarding the alleged violation of section 308. The enclosed Order provides notice of such opportunity for you to confer with EPA concerning your alleged violation of section 308 of the Act. If you wish to take advantage of this opportunity, you are encouraged to contact Sheldon Muller, Senior Enforcement Attorney, at 303-312-6916.

Also enclosed is a copy of "U.S. EPA Small Business Resources Information Sheet," which can assist in compliance with federal environmental laws.

The Act requires the Administrator of EPA to take all appropriate enforcement action to secure prompt compliance with the Act and any order issued thereunder. Section 309 of the Act authorizes a variety of possible enforcement actions, including filing of a civil or criminal action, administrative penalty action, and/or disbarment from federal contracts and/or loans for any non-compliance with the Act or an order issued pursuant to the Act.

Please review the Order carefully. If you have any questions, please contact Cynthia Peterson at 303-312-6879.

Sincerely,



Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

Enclosures

Order for Compliance
U.S. EPA Small Business Resources Information Sheet



3. The Facility includes at least three above-ground storage tanks that are piped together, with at least one dispenser connected to the pipes.

4. The above-ground storage tanks are the type that typically contain oil, as defined in 40 C.F.R. § 112.2.

5. The above-ground storage tanks are located such that a discharge, as defined in 40 C.F.R. § 112.2, from the tanks could migrate in quantities that could be harmful, as defined in 40 C.F.R. § 110.3, to nearby navigable waters of the United States, as defined in 40 C.F.R. § 112.2, or their adjoining shorelines.

6. The above-ground storage tanks do not have any secondary containment.

7. On March 17, 2010, EPA sent to Respondent a request for information (“March 17, 2010 Request”) pursuant to section 308 of the Act, 33 U.S.C. § 1318, to determine compliance with section 311(j) of the Act, 33 U.S.C. § 1321(j), and regulations promulgated at 40 C.F.R. Part 112.

8. Respondent’s response to the March 17, 2010 Request was due within 30 days of its receipt by Respondent. The March 17, 2010 Request was sent via certified mail (article number 7008-3230-0003-0726-6513), return receipt requested. The return receipt card was signed by Danny Bau on behalf of Respondent on March 20, 2010.

9. In a letter to EPA dated March 29, 2010, Respondent stated, *inter alia*, the following: “YOU ARE TRYING TO ENFORCE MANDATED RULES AND REGULATIONS ON A SOVEREIGN CITIZEN. THAT KNOWING OR UNKNOWING (sic) IS IN DIRECT VIOLATION OF THE UNITED STATES CONSTITUTION AND THE STATE OF WYOMING. . . . THERE FOR (sic) YOU MUST FILL OUT A PUBLIC SERVANT’S QUESTIONNAIRE IN FRONT OF ME AND AT LEAST TWO WITNESS (sic). I AM

ENCLOSING A COPY OF THE QUESTIONNAIR (sic) SO YOU WILL KNOW WHAT INFORMATION I WILL NEED FROM YOU. I WILL NEED TO SET UP A TIME WHEN THE COUNTY SHERIFF, WITNESS, ME AND MY CAM-CORDER (sic) CAN MEET WITH YOU.” (Capitalization in original.)

10. To date, Respondent has not provided any of the information requested in the March 17, 2010 Request.

11. Respondent is a “person” within the meaning of section 311(a)(7) of the Act, 33 U.S.C. §1321(a)(7).

12. Respondent is an “owner or operator,” within the meaning of section 311(a)(6) of the Act, 33 U.S.C. §1321(a)(6), of the three above-ground storage tanks referenced in Paragraph 3 of this Order.

13. The three above-ground storage tanks referenced in Paragraph 3 of this Order each constitute a “point source” within the meaning of section 502(14) of the Act, 33 U.S.C. § 1362(14).

14. Section 308(a)(2)(A) of the Act, 33 U.S.C § 1318 (a)(2)(A), authorizes the Administrator of the EPA to require the owner or operator of any point source to provide information necessary to determine whether any person is in violation of any effluent limitation or other limitation, prohibition, or effluent standard, pretreatment standard, or standard of performance, or to carry out the objective of the Act, including carrying out section 311 of the Act, 33 U.S.C. § 1321.

15. Respondent’s failure to provide the information requested in the March 17, 2010 Request constitutes a violation of section 308 of the Act, 33 U.S.C. § 1318, and is subject to enforcement pursuant to section 309 of the Act, 33 U.S.C. § 1319.

COMPLIANCE ORDER

16. Based on the forgoing FINDINGS OF VIOLATION, and pursuant to the authority vested in the Administrator of EPA pursuant to sections 308 and 309 of the Act, 33 U.S.C. §§ 1318 and 1319, as properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance, and Environmental Justice, it is hereby ORDERED:

17. Within 21 calendar days of the effective date of the Compliance Order portion of this Order (see Paragraph 22 of this Order), Respondent shall submit to EPA the following information:

- a. Describe the name, operations and all business activities conducted at the facility.
- b. Provide the name and street address of the current owner(s) of the facility. Also, provide the name and street address of the operator of the facility if different than the owner.
- c. When did the facility begin operations? If you, or your company, are not the original owner, then also state when you purchased the facility.
- d. Include a description of any type of container which produces, stores, processes, recycles, transports, or contains any type of oil in any capacity.
- e. Provide details on the location of the facility:
 - i. Give the latitude and longitude, county, and state. Also give the street address and city, if applicable, or give the township, range, quarter-section and fractions for rural areas.
 - ii. Is the facility on Indian Lands (Yes or No)? If so, state which lands? This includes not only reservation, but any type of Indian Land.
- f. What is the total above ground oil capacity of the facility? This means all containers, including tanks, equipment, mobile refuelers, totes, barrels, transformers, pipelines, separators and heater treaters, etc. that are 55 gallons or greater which contain any kind of oil.
 - i. What is the total below ground capacity of the facility?
- g. What is the oil capacity of the single largest container/vessel at the facility?

- h. If the facility is an oil and/or gas producer, give the API numbers of all the wells.
- i. What is the distance to the nearest water of the United States (waters of the U.S. may include, but are not limited to, rivers, creek, intermittent streams, ditches, ponds, lakes, gullies, reservoirs, tributaries, arroyos, etc.) and/or to any wetlands, marshes, or sewers?
- j. Does the facility have a Spill Prevention Control and Countermeasure (SPCC) Plan, as required by 40 C.F.R. Part 112 (Yes or No)? If so, include a copy of the SPCC Plan.
- k. Does the facility have a Facility Response Plan (FRP), as required by C.F.R. Part 112 (Yes or No)? If no, please send a copy of the Certification of Substantial Harm and/or your planning distance calculation.
 - i. If yes, has a copy of the FRP been submitted to EPA (Yes or No)? What is the FRP number and the date of submission to EPA?
 - ii. Has the FRP been approved by EPA (Yes or No)? What was the approval date?

18. Respondent's responses to the questions set forth in Paragraph 17 of this Order must be accompanied by a certificate that is signed and dated by Respondent or a person authorized to represent Respondent. The certification must state that the response is complete and contains all information and documentation available to Respondent that is responsive to the questions set forth in Paragraph 17 of this Order. A sample Statement of Certification can be found in Attachment A to this Order.

19. Please be advised that section 309(d) of the Act, 33 U.S.C. § 1319(d), authorizes civil penalties of up to \$37,500 per day for each violation of, *inter alia*, section 308 of the Act, 33 U.S.C. § 1318, and for each violation of an order issued by the Administrator of EPA under section 309(a) of the Act, 33 U.S.C. § 1319(a), including this Order. Additionally, section 309(g) of the Act, 33 U.S.C. § 1319(g), authorizes EPA to impose administrative penalties for violations of the Act, including violations of section 308 of the Act, 33 U.S.C. § 1318. Further, section 309(c) of the Act, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for negligent

or knowing violations of the Act. Issuance of this Order shall not be deemed to be an election by the United States to forego any civil or criminal action to seek penalties, fines, or other appropriate relief under the Act for violations giving rise to the Order.

20. Compliance with the terms and conditions of the Order shall not be construed to relieve Respondent of his obligation to comply with any applicable Federal, state, or local law or regulation.

21. The information required by this Order shall be sent to EPA at the following address:

Cynthia Peterson (8ENF-UFO)
U.S. EPA, Region 8
1595 Wynkoop St.
Denver, Colorado 80202-1129

NOTICE OF OPPORTUNITY TO CONFER

22. As required by section 309(a)(4) of the Act, 33 U.S.C. § 1319(a)(4), the Compliance Order portion of this Order shall not take effect until Respondent has the opportunity to confer with EPA on the alleged violations. The effective date of the Compliance Order portion of this Order is therefore delayed until 30 calendar days after Respondent's receipt of this Order. Accordingly, if you wish to confer with EPA regarding the violations alleged in

this Order, we encourage you to contact Sheldon Muller, Senior Enforcement Attorney, at 303-312-6916, to schedule the conference within 30 calendar days after your receipt of this Order.

Issued this 23rd day of September, 2011.

A handwritten signature in black ink, appearing to read 'Andrew M. Gaydosh', written over a horizontal line.

Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance,
and Environmental Justice

In the Matter of Daniel R. Bau
d/b/a DRB Contracting
Docket No. CWA-08-2011-0032

Attachment A – Statement of Certification

I certify under the penalty of law, that I have personally examined and am familiar with the information submitted in this document and all attachments, and that, based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information.

Signature

Date

Name (printed)

Title

In the Matter of Daniel R. Bau
d/b/a DRB Contracting
Docket No. CWA-08-2011-0032

CERTIFICATE OF SERVICE

I certify that on the date noted below, I sent by certified mail, return receipt requested, a copy of the foregoing ORDER FOR COMPLIANCE WITH INFORMATION REQUEST AND NOTICE OF OPPORTUNITY TO CONFER to:

Daniel R. Bau
d/b/a DRB Contracting
60 U.S. Highway 16
Osage, Wyoming 82723

Certified Return Receipt No. 7009-3410-0000-2592-1797

I further certify that on the same date below I sent by certified mail, return receipt requested, a copy of this document to:

John Wagner, Administrator
Water Quality Division
Wyoming Department of Environmental Quality
122 West 25th Street
Herschler Building, 4th Floor-West
Cheyenne, Wyoming 82002

Certified Return Receipt No. 7009-3410-0000-2594-6103

I further certify that on the same date below the original and one copy were hand-delivered to:

Tina Artemis
Regional Hearing Clerk
U.S. EPA Region 8 (8RC)
1595 Wynkoop Street
Denver, CO 80202-1129

Date: 9/23/2011

By: Judith M. McTernan

U.S. EPA Small Business Resources Information Sheet

The United States Environmental Protection Agency provides an array of resources, including workshops, training sessions, hotlines, websites and guides, to help small businesses understand and comply with federal and state environmental laws. In addition to helping small businesses understand their environmental obligations and improve compliance, these resources will also help such businesses find cost-effective ways to comply through pollution prevention techniques and innovative technologies.

EPA's Small Business Websites

Small Business Environmental Homepage - www.smallbiz-enviroweb.org

Small Business Gateway - www.epa.gov/smallbusiness

EPA's Small Business Ombudsman - www.epa.gov/sbo or 1-800-368-5888

EPA's Compliance Assistance Homepage

www.epa.gov/compliance/assistance/business.html

This page is a gateway to industry and statute-specific environmental resources, from extensive web-based information to hotlines and compliance assistance specialists.

EPA's Compliance Assistance Centers

www.assistancecenters.net

EPA's Compliance Assistance Centers provide information targeted to industries with many small businesses. They were developed in partnership with industry, universities and other federal and state agencies.

Agriculture

www.epa.gov/agriculture/

Automotive Recycling

www.ecarcenter.org

Automotive Service and Repair

www.ccar-greenlink.org or 1-888-GRN-LINK

Chemical Manufacturing

www.chemalliance.org

Construction

www.cicacenter.org or 1-734-995-4911

Education

www.campuserc.org

Food Processing

www.fpeac.org

Healthcare

www.hercenter.org

Local Government

www.lgean.org

Metal Finishing

www.nmfrc.org

Paints and Coatings

www.paintcenter.org

Printed Wiring Board Manufacturing

www.pwbrc.org

Printing

www.pneac.org

Ports

www.portcompliance.org

U.S. Border Compliance and Import/Export Issues

www.bordercenter.org

Hotlines, Helplines and Clearinghouses

www.epa.gov/epahome/hotline.htm

EPA sponsors many free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements. Some examples are:

Antimicrobial Information Hotline

info-antimicrobial@epa.gov or
1-703-308-6411

Clean Air Technology Center (CATC) Info-line

www.epa.gov/ttn/catc or 1-919-541-0800

Emergency Planning and Community Right-To-Know Act

www.epa.gov/superfund/resources/infocenter/epca.htm or 1-800-424-9346

EPA Imported Vehicles and Engines Public Helpline

www.epa.gov/otaq/imports or
734-214-4100

National Pesticide Information Center

www.npic.orst.edu/ or 1-800-858-7378

National Response Center Hotline -

to report oil and hazardous substance spills
www.nrc.uscg.mil or 1-800-424-8802

Pollution Prevention Information Clearinghouse (PPIC)

www.epa.gov/opptintr/ppic or
1-202-566-0799

Safe Drinking Water Hotline

www.epa.gov/safewater/hotline/index.html or 1-800-426-4791

Stratospheric Ozone Protection Hotline

www.epa.gov/ozone or 1-800-296-1996

Toxic Substances Control Act (TSCA) Hotline

tsc hotline@epa.gov or 1-202-554-1404

Wetlands Information Helpline

www.epa.gov/owow/wetlands/wetline.html or 1-800-832-7828

State and Tribal Web-Based Resources

State Resource Locators

www.envcap.org/statetools

The Locators provide state-specific contacts, regulations and resources covering the major environmental laws.

State Small Business Environmental Assistance Programs (SBEAPs)

www.smallbiz-enviroweb.org

State SBEAPs help small businesses and assistance providers understand environmental requirements and sustainable business practices through workshops, trainings and site visits. The website is a central point for sharing resources between EPA and states.

EPA's Tribal Compliance Assistance Center

www.epa.gov/tribalcompliance/index.html

The Center provides material to Tribes on environmental stewardship and regulations that might apply to tribal government operations.

EPA's Tribal Portal

www.epa.gov/tribalportal/

The Portal helps users locate tribal-related information within EPA and other federal agencies.

EPA Compliance Incentives

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations before an enforcement action has been initiated, businesses may be eligible for penalty waivers or reductions. EPA has two such policies that may apply to small businesses:

EPA's Small Business Compliance Policy

www.epa.gov/compliance/incentives/smallbusiness/index.html

This Policy offers small businesses special incentives to come into compliance voluntarily.

EPA's Audit Policy

www.epa.gov/compliance/incentives/auditing/auditpolicy.html

The Policy provides incentives to all businesses that voluntarily discover, promptly disclose and expeditiously correct their noncompliance.

Commenting on Federal Enforcement Actions and Compliance Activities

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established a SBREFA Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. If you believe that you fall within the Small Business Administration's definition of a small business (based on your North American Industry Classification System designation, number of employees or annual receipts, as defined at 13 C.F.R. 121.201; in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, call the SBREFA Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247), or go to their website at www.sba.gov/ombudsman.

Every small business that is the subject of an enforcement or compliance action is entitled to comment on the Agency's actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community in response to comments made under SBREFA.

Your Duty to Comply

If you receive compliance assistance or submit a comment to the SBREFA Ombudsman or Regional Fairness Boards, you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes it enforces, including the right to take emergency remedial or emergency response actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act or related provisions.