



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 25 2008

CERTIFIED MAIL #
RETURN RECEIPT REQUESTED

Gary D. Smith
dba Gary's Auto Body and Glass
31017 US Hwy 24
Stratton, CO 80836

Re: Proposed Compliance Order, Penalty
Complaint and Notice of Opportunity for
Hearing
Docket No. **SDWA-08-2008-0113**

Dear Mr. Smith:

The enclosed document is a Proposed Compliance Order, Penalty Complaint and Notice of Opportunity for Hearing (Complaint) for violations of the Safe Drinking Water Act (SDWA). We encourage you to 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.

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 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.

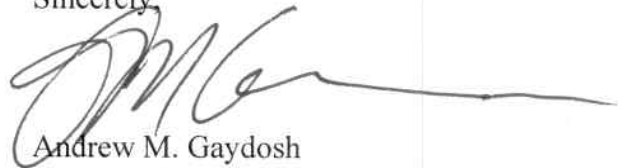
If you have technical questions relating to this matter, the person most knowledgeable on my staff is Phil Strobel, UIC Enforcement Team, Technical Enforcement Program, at 1-800-227-8917 ext. 312-6704 or (303) 312-6704. For all legal questions, the person most knowledgeable on my staff is Jim Eppers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

Sincerely,



Andrew M. Gaydosh
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**

Docket No. **SDWA-08-2008-0113**

2008 SEP 25 PM 1:48

EPA REGION VIII
HEARING CLERK

In the Matter of:)

Gary D. Smith)
dba Gary's Auto Body and Glass)

Respondent.)

**PROPOSED COMPLIANCE ORDER,
PENALTY COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING**

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 Gary Smith dba Gary's Auto Body and Glass (Respondent) has violated the regulations and therefore the Act and 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 your right to a hearing, you must file a written answer (and one copy) with the Regional Hearing Clerk (1595 Wynkoop Street (8RC); Denver, Colorado 80202) within 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 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 CALENDAR 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, Gary Smith, is an individual and doing business in the State of Colorado as Gary's Auto Body and Glass, a sole proprietorship.

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 operates the facility located at 31017 US Hwy 24, Stratton, CO, ("facility").

10. On November 19, 2003, authorized EPA employees entered the facility with the consent of Gary Smith to inspect it for compliance with the law.

11. The inspection showed that, as of that date, Respondent operated at least one "Class V Injection Well" as defined by 40 C.F.R. §144.6 and §146.5 at the facility.

12. As of that date, it was also determined by EPA that Respondent operated the type of Class V Injection Well known as a "Motor Vehicle Waste Disposal Well" as defined by 40 C.F.R. §144.81(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."

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

14. By letter dated May 20, 2004, and pursuant to 40 C.F.R. 144.12 (c) & (d), EPA directed Respondent to either permit or close the well(s), by July 21, 2004.

15. Respondent sent a written closure plan on June 18, 2004, indicating his planned installation of a holding tank.

16. On August 31, 2007, an authorized EPA employee again entered the facility with the consent of Respondent to inspect it for compliance with the law.

17. As of that date, Respondent continued to own and operate the motor vehicle waste disposal well and had not implemented the closure plan.

18. Additionally, **all** owners and operators of motor vehicle waste disposal systems that existed prior to the April 5, 2000, ban of construction of new motor vehicle waste disposal 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 motor vehicle waste disposal systems by January 1, 2007. Respondent was notified of this ban in the May 20, 2004 letter.

19. Lying underneath the disposal system are underground sources of drinking water (USDWs) located in the High Plains Aquifer and within the Plains Ground Water Management District (Colorado Ground Water Commission). The High Plains aquifer consists of near-surface deposits of unconsolidated or partly consolidated gravel, sand, silt, or clay.

20. Respondent's ownership and operation of the well 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 40 C.F.R. §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 40 C.F.R. §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

21. 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 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.

22. In light of the statutory factors and the specific facts of this case, EPA proposes that a penalty of sixteen thousand, six hundred and thirty-two dollars (\$16,632) be assessed against Respondent for owning and operating the prohibited Class V well, as explained below:

Seriousness of the Violation

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 four 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 penalty purposes EPA is considering Respondent's noncompliance from the closure date specified in the Permit or Close Letter (July 21, 2004) through the date by which we estimate Respondent will document the closure of the system (October 21, 2008).

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 four years to come into compliance and yet has not done so. Given the relatively low cost of coming into compliance and EPA's repeated communication to the Respondent of the requirements, EPA did not reduce the proposed penalty for this factor.

Economic Impact on Respondent

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

23. 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:

U.S. 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:

Technical Enforcement Program ATTN: Philip Strobel (8ENF-UFO)
U.S. EPA - Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

PROPOSED COMPLIANCE ORDER

24. Respondent shall comply with the following:

Submit to EPA within thirty (30) calendar days of Respondent's receipt of this Complaint, plans in writing for closure of the Class V well, including a schedule for plugging the drain or retrofitting the disposal system, and a plan for alternative disposal for the waste in accordance with the requirements of 40 C.F.R. § 144.12 (a), (c), and (d). If closure includes the use of a 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. Once the closure or retrofitting has been accomplished, documentation must be provided including an as-built sketch of the drain system showing where changes have been made. The drain system must be permanently

closed or retrofitted in a manner that will prevent future use by November 28, 2008.

25. Respondent shall submit all documentation to:

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

26. 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).

27. 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.

28. 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.

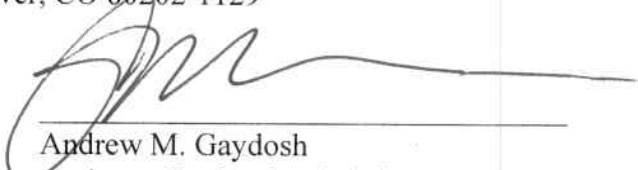
Complainant:

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: _____

9/25/24

By: _____


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

**U.S. ENVIRONMENTAL PROTECTION AGENCY
PUBLIC NOTICE
OPPORTUNITY FOR PUBLIC COMMENT ON
PROPOSED COMPLIANCE ORDER, PENALTY COMPLAINT AND
NOTICE OF OPPORTUNITY FOR HEARING
AGAINST
GARY SMITH, DBA GARY'S AUTO BODY AND GLASS
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. SDWA-08-2008- 00] that Region 8 of the United States Environmental Protection Agency (EPA) proposes to issue to Gary Smith, doing business as (dba) Gary's Auto Body and Glass, for alleged violations at the facility located at 31017 US Hwy 24, Stratton, CO, 80836. 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 monetary penalties for the alleged violations.

The 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 proposed penalty 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 requires the EPA to regulate underground injection of fluid through wells to assure that underground sources of drinking water (USDW) are not endangered. Section 1421 of the SDWA 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 Colorado; 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 system which is the subject of this Complaint, is owned and operated by Gary Smith, and is located at 31017 US Hwy 24, Stratton, CO, 80836. A Class V injection well, pursuant to 40 C.F.R. 144.6 and 146.5, is a shallow injection well that injects fluids into or above a USDW. The well subject to this Complaint is of the subclass titled "motor vehicle waste disposal well," and is used to dispose of internal combustion engine repair and maintenance facility waste.

The Complaint alleges that Gary Smith is in violation of UIC regulations and is subject to appropriate penalties for: (a) 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, (b) failing to close or retrofit the Class V disposal system in a timely manner that would keep contaminants from entering a USDW, and (c) operating a banned motor vehicle waste disposal system. The Complaint proposes that EPA assess an administrative civil penalty in the amount of \$16,632.00.

PUBLIC COMMENTS

Written comments on the Complaint are encouraged and will be accepted at the address listed below for a period of thirty (30) days after the publication of this notice. Written comments submitted by the public as well as information submitted by Gary Smith, will be available for public review as part of the Administrative Record, subject to the provisions of law restricting the disclosure of confidential information. Gary Smith 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 Jim Eppers, Enforcement Attorney, Legal Enforcement Program, EPA Region 8, at (303) 312-6893 before visiting the 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 80202-1129

A copy of the Complaint will also be available for public review Monday-Friday between 8:00 a.m. and 4:00 p.m. at the Kit Carson County Assessor/Recorder/County Clerk Office, 251 16th Street, Burlington, CO.

Any person interested in receiving their own copy of this or any future public notice of a UIC administrative action can call Phil Strobel in the UIC program, EPA Region 8, at (303) 312-6704.

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.

A handwritten signature in cursive script that reads "Mark A.R. Chalfant". The signature is written in black ink and is positioned above the typed name and title.

Mark A.R. Chalfant, Director
Technical Enforcement Program
Office of Enforcement, Compliance, and
Environmental Justice
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129