



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

1595 WYNKOOP STREET  
DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

RECEIVED - J PM 3:43  
MAR 11 2009

DOCKET NO.: SDWA-08-2008-0113

IN THE MATTER OF:

GARY D. SMITH d/b/a  
GARY'S AUTO BODY AND GLASS

Respondent

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FINAL ORDER

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 3<sup>rd</sup> DAY OF March, 2009

Eiyana R. Sutin  
Regional Judicial Officer

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

Docket No.: SDWA-08-2008-0113

In the Matter of: )  
 )  
Gary D. Smith dba )  
Gary's Auto Body and Glass ) **CONSENT AGREEMENT**  
 )  
**Respondent.** )

Complainant, United States Environmental Protection Agency, Region 8 (EPA), and Respondent Gary D. Smith dba Gary's Auto Body and Glass (Respondent), by their undersigned representatives, hereby consent and agree as follows.

BACKGROUND

1. On September 25, 2008, EPA issued a Proposed Compliance Order, Penalty Complaint and Notice of Opportunity for Hearing (Complaint) to Respondent for certain violations of Part C of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300h et seq., and the underground injection control (UIC) regulations promulgated thereunder.
2. Respondent admits the jurisdictional allegations of the Complaint and neither admits nor denies the specific factual allegations of the Complaint.
3. Respondent waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in the Complaint or this Consent Agreement.
4. This Consent Agreement, upon incorporation into a final order, applies to and is binding upon EPA and upon Respondent and Respondent's heirs, successors or assigns. Any

change in the ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement. This Consent Agreement contains all terms of the settlement agreed to by the parties.

5. EPA acknowledges that in closing the violating Class V well, Respondent timely complied with paragraphs 24 and 25 of the Complaint.
6. Respondent consents and agrees to pay a civil penalty in the amount of one thousand dollars (\$1,000.00), in the manner described below in this paragraph:
  - a. Payment is due within 30 calendar days from the date written on the Final Order, issued by the Regional Judicial Officer, that adopts this Consent Agreement. If the due date falls on a weekend or legal federal holiday, the due date is the next business day. The date the payment is made is considered to be the date of the deposit ticket issued by the bank or finance center described below. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.
  - b. The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case, for this amount, payable to "Treasurer, United States of America," to:

**REGULAR MAIL:**

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

**WIRE TRANSFERS:**

Wire transfers should be directed to the Federal Reserve Bank of New York

Federal Reserve Bank of New York

ABA = 021030004

Account = 68010727

SWIFT address = FRNYUS33

33 Liberty Street

New York NY 10045

Field Tag 4200 of the Fedwire message should read “ D 68010727 Environmental Protection Agency “

**OVERNIGHT MAIL:**

U.S. Bank

1005 Convention Plaza

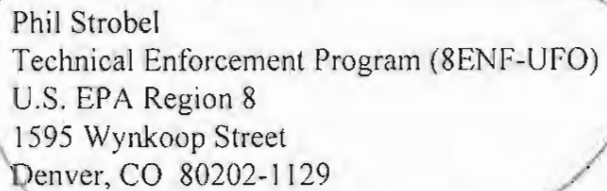
Mail Station SL-MO-C2GL

St. Louis, MO 63101

Contact: Natalie Pearson

314-418-4087

A copy of the check shall be sent ~~simultaneously~~ to:



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

and to:

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

- c. In the event payment is not received by the specified due date, interest accrues from the date of the final order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (i.e., on the 1<sup>st</sup> late day, 30 days of interest accrues).
- d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed on the 31<sup>st</sup> day from the date of the final order, and each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (i.e., the 121<sup>st</sup> day from the date the final order is signed). Payments are first applied to handling charges, 6% penalty interest, late interest, and any balance is then applied to the outstanding principal amount.
- e. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

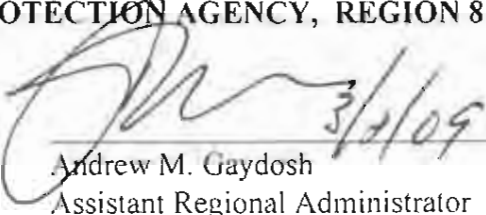
7. EPA finds this penalty amount is reasonable, taking into consideration the statutory factors in section 1423(c)(4)(B) of the SDWA and the facts and circumstances of the case. After receiving from Respondent requested financial documents, EPA reviewed same and determined that Respondent did not have the financial ability to pay the Complaint's proposed penalty.

8. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with the SDWA and its implementing regulations.
9. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the Consent Agreement and may result in referral of the matter to the United States Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.
10. Nothing in this Consent Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Agreement.
11. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to the terms and conditions of this Consent Agreement.
12. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.
13. Each party shall bear its own costs and attorneys fees in connection with this matter.

14. This Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the Complaint.

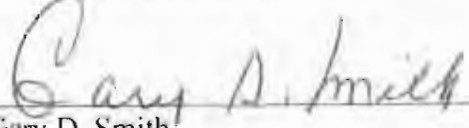
**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 8**

Date: FEB 27 2009

By:  3/2/09  
Andrew M. Gaydosh  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

**GARY D. SMITH dba  
GARY'S AUTO BODY AND GLASS**

Date: 2-9-09

By:   
Gary D. Smith

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter **GARY D. SMITH d/b/a GARY'S AUTO BODY AND GLASS; DOCKET NO.: SDWA-08-2008-0113**. These documents were filed with the Regional Hearing Clerk on March 3, 2009.

Further, the undersigned certifies that a true and correct copy of the documents were delivered to Jim Eppers, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on March 3, 2009, to:

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


Hand-delivered to:

Honorable Elyana R. Sutin  
Regional Judicial Officer  
U. S. EPA – Region 8  
1595 Wynkoop Street (8RC)  
Denver, CO 80202-1129

E-mailed to:

Michelle Angel  
U. S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive (MS-0002)  
Cincinnati, Ohio 45268

March 3, 2009



Tina Artemis  
Paralegal/Regional Hearing Clerk

