

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

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.II
2010 OCT 29 P 2:53
REGIONAL HEARING
CLERK

IN THE MATTER OF

R.B. Robinson Contracting, Inc.
535 Ithaca Road
Willseyville, NY 13827

Respondent.

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

DOCKET NO. SDWA-02-2011-8901

COMPLAINT
NOTICE OF VIOLATION
PROPOSED ADMINISTRATIVE ORDER
WITH CIVIL PENALTY
AND
OPPORTUNITY TO REQUEST A HEARING

COMPLAINT AND NOTICE OF VIOLATION

I. STATUTORY & REGULATORY AUTHORITIES

- 1) This Complaint, Notice of Violation, Proposed Administrative Order with Civil Penalty and Opportunity to Request a Hearing, is hereinafter referred to as "Complaint" and is issued under the authority vested in the Administrator of the Environmental Protection Agency ("EPA") by Section 1423(c) of the Safe Drinking Water Act ("Act"), 42 U.S.C. §300h-2(c). The Administrator has delegated the authority to take these actions to the Regional Administrator for Region 2, who in turn delegated them to the Director, Division of Enforcement and Compliance Assistance of EPA, Region 2 ("Complainant").
- 2) Pursuant to Section 1423(c) of the Act, 42 U.S.C. §300h-2(c), and in accordance with the Consolidated Rules of Practice ("CROP"), 40 C.F.R. Part 22, Complainant hereby requests that the Regional Administrator assess a civil penalty against Respondent for violations of the Act and the regulations promulgated thereunder and require Respondent to take certain actions to achieve compliance with the Act and the regulations promulgated thereunder.

- 3) Section 1422 of the Act, 42 U.S.C. §300h-1, requires EPA to administer the Underground Injection Control ("UIC") Program in states that do not have approved state programs. New York is a "state" within the meaning of Section 1401(13) of the Act, 42 U.S.C. §300f (13) and 40 C.F.R. §144.3. New York has not acquired primacy over the UIC program. Therefore, the UIC program for the State of New York is administered by the EPA and, pursuant to 40 C.F.R. §147.1651, the effective date of the program is June 25, 1984.
- 4) Section 1401(12) of the Act, 42 U.S.C. §300f (12) and 40 C.F.R. §144.3 defines "person" among other things, as an individual, corporation, company, association, partnership or municipality.
- 5) Class V underground injection wells are regulated by EPA and defined by 40 C.F.R. §146.5(e) and 144.81.
- 6) Pursuant to 40 C.F.R. §144.87(f), where a State elects not to delineate Other Sensitive Ground Water areas, the additional requirements specified at 40 C.F.R. §144.88 apply statewide. The State of New York elected not to delineate Other Sensitive Ground Water Areas. Therefore, pursuant to 40 C.F.R. §144.88(b)(1)(vi), all existing Motor Vehicle Waste Disposal Wells within New York State were required to be closed or permitted by no later than January 1, 2008.
- 7) 40 C.F.R. §144.11(a) prohibits any underground injection, except as authorized by rule or permit under the UIC program.
- 8) All Class V wells are authorized by rule pursuant to 40 C.F.R. §144.24(a), which authorizes injection into Class V wells provided the owner or operator submits inventory information in a timely manner and also submits any additional information requested by EPA in a timely manner.
- 9) 40 C.F.R. §144.83 requires owners and/or operators of Class V wells who did not submit inventory pursuant to 40 C.F. R. §144.26 to cease injection as of January 1, 2008.
- 10) Owners and/or operators who were required to cease injection pursuant to 40 C.F.R. §144.83 are required to continue to cease injection until authorized by conditions detailed in 40 C.F.R. §144.83(a)(1).
- 11) Authorization by rule to inject also terminates if additional information requested by EPA, under authority of 40 C.F.R. §144.27 and §144.83, is not submitted to EPA in a timely manner.
- 12) If a permit application is submitted pursuant to 40 C.F.R. §144.25 or §144.84, authorization by rule to inject terminates upon issuance of the permit to inject or upon denial of the permit application.

- 13) 40 C.F.R. §144.12(a) prohibits movement of fluid containing any contaminant into underground sources of drinking water (“USDW”), 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.

II. JURISDICTIONAL FINDINGS

- 1) R.B. Robinson Contracting, Inc. (“Respondent”) is a person within the meaning of Section 1401(12) of the Act, 42 U.S.C. §300f (12) and 40 C.F.R. §144.3.
- 2) Respondent owns and operates a facility at 535 Ithaca Road, Willseyville, NY 13827 (the “facility”). The RMVS # for this facility is 4540108. This excavating/trucking contracting facility contains one elongated service area floor drain and one elongated wash area storm drain.
- 3) Respondent operates at least one motor vehicle servicing injection well at the facility. The injection well(s) at the facility are Class V injection wells as defined at 40 C.F.R. §144.81 or §146.5.
- 4) Based on the above, Respondent is subject to the requirements of Part C of the Act, 42 U.S.C. §§300h-300(j) and implementing regulations found at 40 C.F.R. Parts 124, 144, 146 and 147 Subpart HH.

III. FINDINGS OF VIOLATION

A. Unauthorized Injection

- 1) Complainant re-alleges Paragraphs 1-4, Section 11
- 2) Respondent did not submit an inventory pursuant to 40 C.F.R. §144.26 or pursuant to 40 C.F.R. §144.83.
- 3) On December 7, 2009, a duly authorized EPA representative inspected the facility.
- 4) During the inspection on December 7, 2009, the owner/operator indicated that floor drains receive vehicle runoff and that the storm drain receives rain/snow runoff and equipment wash wastewater. He indicated all floor drains lead into an oil/water separator, then to one drywell, while the storm drain leads into another oil/water separator before leading into another drywell.
- 5) During the inspection on December 7, 2009, the owner/operator indicated water is supplied by a private well.

- 6) To date, Respondent has not ceased injection.
- 7) Based upon the Findings above, Respondent violated 40 C.F.R. §144.11 by injection without authorization to inject.

**B. Failure To Prevent Movement Of Fluids
Into Underground Sources of Drinking Water**

- 8) Complainant re-alleges Paragraphs 18 – 24 above.
- 9) Automotive service bay wastewater (which is at issue in this case) typically contains hazardous substances as defined by EPA at 40 C.F.R. Part 302.3. The wastewater typically has constituents, such as heavy metals and volatile organic compounds, that pose risks to human health. Ethylene glycol, found in antifreeze, is of special environmental and human health concern due to its toxicity. New vehicle service waste injection wells were banned effective April 2005 and existing wells are to be phased out or permitted if they endanger underground sources of drinking water.
(See EPA 816-F-99-016, UIC Class V Wells, New Regulatory Requirements, Nov. 1999 or http://water.epa.gov/type/groundwater/uic/class5/upload/2007_12_12_uic_class5_guide_uic-class5_small_ent_compl.pdf).
- 10) Based upon the Findings above, Respondent violated 40 C.F.R. §144.12(a) by injection which may endanger USDWs.

IV. PROPOSED ADMINISTRATIVE ORDER

- 1) **Penalty:** EPA proposes to issue a Final Administrative Order (“Final Order”). The Final Order will be based on the foregoing Findings of Violation, and pursuant to the authority of Section 1423(c) of the Act, 42 U.S.C. §300h-2(c), and the Debt Collection Improvement Act of 1996 31 U.S.C. §§3701-3733 and 40 C.F.R. Part 19. EPA, Region 2, hereby proposes to issue a Final Administrative Order against the Respondent, assessing a penalty of **\$17,000**. EPA determined the proposed penalty in accordance with the terms of the Safe Drinking Water Act, which takes into account 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; the economic impact of the penalty on the violator; and such other matters as justice may require.

- 2) **Compliance Measures:** In addition to paying a penalty, Respondent shall be ordered to:
- a) **Cease Injection:** As of the effective date of this Order, Respondent shall discontinue the use of the drain disposal system as currently utilized.
 - b) **Remediation Plan Submittal:** Within 30 days of the effective date of this Order, Respondent shall submit a remediation plan (“Plan”), developed in accordance with well remediation requirements incorporated into this Order as Attachment 1, detailing how the injection well subject to this Order will be properly remediated and, if applicable, permanently closed. Please note that continued use of the injection well or wells subject to this Order, for any purpose, after remediation is completed must be approved by EPA pursuant to Paragraph 5 below. EPA will review the Plan and approve or provide comments within 30 days after receipt of the Plan from Respondent.
 - c) **Well Remediation:** Within 180 days of the effective date of this Order, Respondent shall complete the remediation of the injection well or wells in accordance with the EPA approved Plan.
 - d) **Well Remediation/Closure Report:** Within 210 days of the effective date of this Order, Respondent shall submit a final report to EPA, summarizing the work completed in fulfillment of the requirements of this Order and as required by the EPA approved remediation plan. EPA shall notify Respondent in writing as to whether or not the well remediation and report are adequate or if additional measures must be taken.
 - e) **Request for Permit:** Should Respondent desire to continue to utilize any or all injection wells subject to this Order, after the remediation required pursuant to Paragraph (c) of this section is completed, for the disposal of any fluids, Respondent must submit a written request (“Request”) to EPA within 120 days of the effective date of this Order indicating your desire to obtain a permit for continued injection. This Request must include, at a minimum:
 - 1) The source(s) and type(s) of fluid(s) Respondent wishes to dispose of into the injection well or wells.
 - 2) Any treatment of the wastes that will be done prior to injection of the wastes.
 - 3) 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 under either Authorization By Rule or Authorization By Permit.

- 3) The Final Order does not constitute a waiver, suspension or modification of the requirements of 40 C.F.R. §147, Subpart HH, which remain in full force and effect. Issuance of the Final Order is not an election by EPA to forego any civil or criminal action otherwise authorized under the Act.
- 4) 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). Failure to act in accordance with this Order truthfully and accurately within the time provided may subject Respondent to sanctions authorized by federal law. In addition, making a knowing submission of materially false information to the U.S. Government may be a criminal offense.

V. OPPORTUNITY FOR A HEARING

- 1) Respondent may, within thirty (30) days of receipt of this Complaint and as part of any Answer filed in this matter, request a Hearing on the proposed civil penalty assessment and the actions proposed to achieve compliance with the Act, as detailed in Section IV above. At the Hearing, Respondent may contest the factual allegations set forth in the Findings sections above; the appropriateness of any penalty amount, and; appropriateness of any compliance measures contained in Section IV, above. The procedures for the Hearing, if one is requested, are set out in the Consolidated Rules of Practice, including Subpart I. A copy of the Consolidated Rules of Practice is attached.
- 2) Should Respondent request a hearing on this proposed penalty assessment and/or compliance measures, members of the public, to whom EPA is obligated to give notice of this proposed action, will have a right under Section 1423(c)(3) of the Act, 42 U.S.C. §300h-2(c)(3), to be heard and to present evidence on the appropriateness of the penalty assessment and compliance measures. Should Respondent not request a hearing, EPA will issue a Final Order and only members of the public who submit timely comment on this Complaint will have an additional thirty (30) days to petition EPA to set aside the Final Order and to hold a hearing thereon. EPA will grant the petition and will hold a hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order.

A. FILING AN ANSWER

- 3) If Respondent wishes to avoid being found in default, Respondent must file a written Answer to this Complaint with the Regional Hearing Clerk no later than thirty (30) days from the date of receipt of this Complaint. Under authority of 40 C.F.R. §22.17 EPA may file a motion seeking a default order thirty (30) days after Respondent's receipt of the Complaint, unless Respondent files an Answer within that time. If a default order is entered, the entire proposed penalty may be assessed and the proposed compliance measures may be required, without further proceedings.
- 4) The Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint with respect to which Respondent has knowledge, or, clearly state that Respondent has no knowledge as to particular factual allegations in the Complaint. The Answer also shall state:
 - i) circumstances or arguments which are alleged to constitute grounds of any defense;
 - ii) facts which the Respondent disputes;
 - iii) basis for opposing the proposed relief;
 - iv) whether a Hearing has been requested.
- 5) Failure of Respondent to admit, deny or explain any material factual allegations in the Complaint shall constitute admissions of the allegation.

B. FILING OF DOCUMENTS

- 6) The Answer and any Hearing Request and all subsequent documents filed in this action should be sent to:

Regional Hearing Clerk
U.S. EPA, Region 2
290 Broadway – 16th Floor
New York, New York 10007-1866

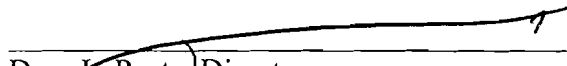
- 7) A copy of the Answer, any Hearing Request, and all subsequent documents filed in this action shall be sent to:

Diane T. Gomes
Assistant Regional Counsel
Water & General Law Branch
Office of Regional Counsel
U.S. EPA, Region 2
290 Broadway – 16th Floor
New York, New York 10007

VI. GENERAL PROVISIONS

- 1) Respondent has the right to be represented by an attorney at any stage of these proceedings.
- 2) This Complaint does not constitute a waiver, suspension or modification of the requirements of the Act, regulations promulgated thereunder or any applicable UIC permit.
- 3) Complainant specifically reserves all rights to pursue criminal enforcement as well as the right to initiate an action for imminent and substantial endangerment, including the right to seek injunctive relief and/or the imposition of statutory penalties for those violations not addressed by this Complaint. This reservation of right does not waive any other rights Complainant may have but has not stated herein.

COMPLAINT ISSUED THIS 23rd DAY OF OCTOBER, 2010.



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

ATTACHMENT 1

Instructions for Underground Injection Control Class V Remediation Plans

To ensure Underground Injection Control (UIC) Class V well remediation in an environmentally sound manner, the EPA requires the following information to be included in your Class V well remediation plan. Please note that, for sanitary systems where a connection to the sewer is not possible, the sanitary system may remain in use as long as the chemical contamination is cleaned out and the chemical discharge is ceased:

- A. Schematic diagram displaying the injection well system; the diagram must include all drains, piping, processing units such as oil/water separators or septic tanks, and final discharge mechanisms such as drywells, leach fields or open underground pipe. Note that, for sanitary waste disposal systems, the diagram must clearly indicate whether the facility uses a septic system or a cesspool where cesspools and septic systems are defined as follows:
 - A cesspool is a drywell/leach pit that directly receives untreated sanitary waste containing human excreta. A cesspool system does not utilize a septic tank to retain and treat sanitary waste.
 - In a septic system, sanitary waste is first discharged through a septic tank, where solids are removed and biologic treatment occurs, and the treated sanitary waste is then discharged to a drywell/leachpit or to a drainfield.
- B. Description of all fluids which enter the Class V well;
- C. Statement indicating that the connection between all drains of concern and the injection well (cesspool, drywell, open pipe or leachfield), will be verified;
- D. Description of plug emplacements (if applicable);
- E. Statement indicating that all contaminated liquids, sludges, and contaminated soil will be removed from in and around the Class V injection well until visibly clean soil is reached, or structural integrity of the excavation or buildings or other significant structures near the excavation, may be compromised;
- F. Description of on-site storage while awaiting proper disposal, of liquids, sludges and contaminated soil removed from the Class V well system;
- G. Statement indicating that all wastes will be characterized for disposal purposes, in accordance with Federal, State, and local regulations;

- H. End-point sample shall be collected from the cleaned out Class V well, below the point of discharge. The end-point sample shall be analyzed according to well use and injectate constituents. A statement must be included indicating what analytical methods will be used. Recommended EPA methods are included below:
- For large capacity cesspool wells (20 or more people per day), which receive only sanitary waste, an end-point sample and analysis is not required.
 - For motor vehicle waste disposal wells, the end-point sample shall be analyzed for volatile organic compounds (EPA Test Method SW-846 8260), semi-volatile organic compounds (EPA Test Method SW-846 8270 base/neutral extraction), and arsenic, cadmium, chromium, and lead by a total metals analysis.
 - For industrial discharge wells, the end-point sample shall be analyzed for contaminants present in the injected discharge (analyses may include volatile organic compounds - EPA Test Method SW-846 8260; semi-volatile organic compounds - EPA Test Method SW-846 8270 base/neutral extraction, and metals, herbicides or pesticides).
- I. Clean inert soil or sand will be used as backfill;
- J. Statement must be included indicating that a final report outlining the remediation procedures used, and including all initial and end-point analyses results and waste disposal manifests shall be submitted to:

Nicole Kraft, Chief
Ground Water Compliance Section
2DECA-WCB, 20th Floor
U.S. Environmental Protection Agency
290 Broadway
New York, NY 10007-1866.

The Class V well work plan must be submitted to EPA and approved by EPA prior to initiation of well initial sampling and/or clean-out activities. You shall be notified that EPA has approved your work plan or that you will be required to modify your work plan to meet the requirements listed above.

In order to receive a letter from the EPA documenting proper initial sampling and/or clean-out of your wells, you must submit a final remediation report outlining the remediation procedures that were used, and including all sampling results and waste disposal manifests.