

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

REGION 8

Docket No. SDWA-08-2012-0027

2012 MAY 14 PM 3:47

In the Matter of:

Farmers New Holland, Inc.,

Respondent

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

FILED
EPA REGION VIII
MAY 14 2012

INTRODUCTION

1. This civil Penalty Complaint, Proposed Order and Notice of Opportunity for Hearing (Complaint) is authorized by Congress in section 1423(c) of the Public Health Service Act, also known as the Safe Drinking Water Act (SDWA or the Act). 42 U.S.C. § 300h-2(c). The Environmental Protection Agency (EPA) has promulgated regulations to implement the statute, 40 CFR part 144, and violations of the statute, permits or 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 CFR part 22, a copy of which is enclosed.
2. The regulations at 40 CFR part 22, subpart I, apply to this Complaint.
3. The undersigned EPA official has been properly delegated the authority to issue this Complaint.
4. EPA alleges that Farmers New Holland, Inc. (Respondent) has violated the Act by failing to notify to the EPA of a sampling exceedance of dichloromethane (methylene chloride) and proposes the assessment of a civil penalty, as more fully explained below.

NOTICE OF OPPORTUNITY FOR A HEARING

5. Respondent has the right to a public hearing before a Presiding Officer to disagree with any factual allegation made by EPA in the Complaint or the appropriateness of the proposed penalty, or to present the grounds for any legal defense it may have. To disagree with the Complaint and assert your right to a hearing, Respondent must file a written answer (and one copy) with the Regional Hearing Clerk (8RC), 1595 Wynkoop Street, Denver, Colorado 80202 within thirty (30) calendar days of receipt of this Complaint. 40 CFR §22.15 (a). The answer must clearly admit, deny or explain the factual allegations of the Complaint, state 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 THIRTY (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.

QUICK RESOLUTION

6. Respondent may resolve this proceeding by paying the amount proposed in the Complaint ten (10) days after the close of the public comment period described in this Complaint. Such payment need not contain any response to, or admission of, the allegations in the Complaint, and it constitutes a waiver of Respondent's right to contest the allegations and to appeal the final order. See section 22.18 of the Rules of Practice for a full explanation of the quick resolution process, including the method for seeking an extension of the time to file an answer.

SETTLEMENT NEGOTIATIONS

7. EPA encourages discussing whether cases can be settled through informal settlement conferences. If you want to pursue the possibility of settling this matter, or have any other questions, contact Eduardo Quintana, Enforcement Attorney, at 303-312-6924 or quintana.eduardo@epa.gov. **Please note that contacting EPA or requesting a settlement conference does NOT delay the running of the thirty (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:

8. EPA has the authority to enforce the requirements of the underground injection control (UIC) program, found at 40 CFR parts 124, 144, 146, 147, and 148, for the well referred to in this Complaint.
9. For Class V underground injection wells operators are required to comply with all permit conditions, as defined in the regulations. 40 CFR §144.51.
10. Respondent operated a Class V underground injection well in violation of certain conditions in its UIC permit, EPA permit number CO 50978-06142 (Permit).
11. Respondent, Farmers New Holland, Inc., is a corporation and therefore a "person" within the meaning of the Act. 42 U.S.C. § 300f (12).

12. Respondent is the operator of the well identified in this Complaint. This well is a Class V underground injection well, as defined by EPA regulations. 40 CFR § 144.6(e).
13. Respondent is authorized to operate the well identified in this Complaint pursuant to the terms of the Permit. Citations below are to the regulations applicable and to the corresponding regulation that is included in the Permit.
14. The well is located at 46485 W. Highway 24, Burlington, Colorado. The well is referred to by its EPA permit number CO 50978-06142.

VIOLATION

15. Respondent is required by Part II, Section E of the Permit to collect waste fluid samples on a semi-annual basis.
16. Respondent is required by Part III, Section E10(c) of the EPA permit to notify the EPA orally within twenty-four (24) hours of any noncompliance which may endanger health or the environment, and to submit to the EPA written notification within five (5) calendar days of the noncompliance.
17. In a report dated December 5, 2011, Respondent's contractor, Mountain States Accutest Laboratories, sent to the EPA sampling results that showed fluid from well number CO 50978-06142 was greater than the Permit limit for dichloromethane (methylene chloride) of 5 micrograms per liter. Respondent failed to notify the EPA of its Permit exceedance orally and in writing.
18. Respondent's failure to notify the EPA of its Permit exceedance orally and in writing constitutes one violation of section 1423 of the Act, 42 U.S.C. § 300h-2.

PROPOSED ORDER WITH ADMINISTRATIVE CIVIL PENALTY

19. The Act, as amended, authorizes the assessment of a civil penalty of up to \$16,000.00 per day per violation, 42 U.S.C. § 300h-2(c)(1). The Act requires EPA to take into account the following factors in assessing a civil penalty: the nature, circumstances, extent and gravity of the violations; any economic benefit or savings gained resulting from the violations; Respondent's history of such violations; Respondent's culpability for the violations; Respondent's good-faith efforts to comply with applicable requirements; the economic impact of the penalty on the Respondent; and other factors that justice may require. 42 U.S.C. § 300h-2(c)(4)(B).
20. In light of the statutory factors and the specific facts of this case, EPA proposes a penalty of **\$1,200** for the violation alleged in this Complaint. However, the Presiding Officer is not bound by EPA's penalty policy or the penalty proposed by EPA, and may assess a penalty different from the proposed amount, up to \$16,000.00, per day for each violation, as authorized in the Act.

21. EPA, in proposing this penalty, considered the following: (a) there are underground sources of drinking water contained in the geologic formations in the area where this well is located; (b) wells with this type of violation pose an elevated risk to underground sources of drinking water; and (c) Respondent has had continuous ability to address the alleged violations.
22. Respondent's payment of the penalty shall be payable to "Treasurer, United States of America" and submitted according to instructions in the enclosed "Collection Information" sheet.

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

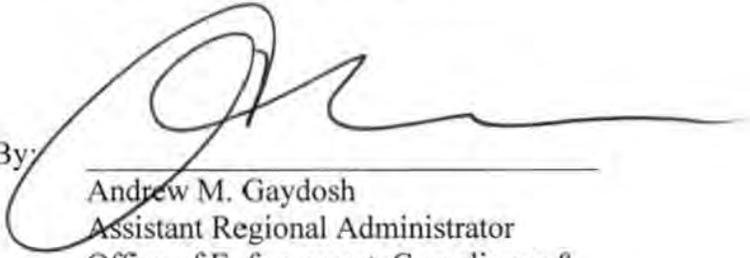
Eduardo Quintana (8ENF-L)
Enforcement Attorney
U.S. EPA - Region 8
1595 Wynkoop Street
Denver, CO 80202-1129, and

Britta Copt (8ENF-UFO)
Environmental Protection Specialist
U.S. EPA - Region 8
1595 Wynkoop Street
Denver, CO 80202-1129.

23. As required by the Act, prior to the final assessment of a civil penalty, EPA will provide public notice of the proposed penalty, and reasonable opportunity for people to comment on the matter, and present evidence in the event a hearing is held.
42 U.S.C. § 300h-2(c)(3)(B).
24. This Complaint does not constitute a waiver, suspension, or modification of the requirements of any applicable provision of the Act or the UIC regulations implementing the Act, which remain in full force and effect. Issuance of this Complaint is not an election by the EPA to forego any civil or any criminal action otherwise authorized under the Act.

United States Environmental Protection
Agency, Region 8, Complainant

Date: MAY 14, 2012

By: 

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

In the Matter of: Farmers New Holland, Inc.
Docket No.:

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the PROPOSED COMPLIANCE ORDER, PENALTY COMPLAINT, AND NOTICE OF OPPORTUNITY FOR HEARING with the Consolidated Rules of Practice (40 C.F.R. Part 22), a Public Notice, and the U.S. EPA Small Business Resources Fact Sheet were hand-carried to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street; Denver, Colorado 80202-1129, and that a true copy of the same was sent via Certified Mail to:

Mr. Michael Trahern
Farmers New Holland
46485 Highway 24
Burlington, CO 80807

and

The Corporation Company
Attn. Farmers New Holland, Inc.
1675 Broadway Ste. 1200
Denver, CO 80202

 MAY 14 2012

Date

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**U.S. ENVIRONMENTAL PROTECTION AGENCY
PUBLIC NOTICE
OPPORTUNITY FOR PUBLIC COMMENT ON
PROPOSED PENALTY COMPLAINT
AND
NOTICE OF OPPORTUNITY FOR HEARING
AGAINST
FARMERS NEW HOLLAND, INC.
FOR FAILURE TO COMPLY WITH
UNDERGROUND INJECTION CONTROL REQUIREMENTS**

PURPOSE OF PUBLIC NOTICE

The purpose of this notice is to solicit written comments on a Proposed Penalty Complaint and Notice of Opportunity for Hearing (complaint), Docket # **SDWA-08-2012-0027** that Region 8 of the United States Environmental Protection Agency (EPA) proposes to issue to Farmers New Holland, Inc. for alleged violations at the facility located in Burlington, Colorado. 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 the assessment of a monetary penalty in the amount of \$1,200.

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 complaint is appropriate. EPA will review and consider all comments received, and will thereafter determine whether to modify or withdraw the complaint.

BACKGROUND

Part C of the SDWA (40 U.S.C. §300h *et seq*) requires the EPA to regulate underground injection of fluid through wells to assure that underground sources of drinking water (USDWs) are not endangered. Section 1421 of the SDWA (40 U.S.C. §300h) 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 disposal system which is the subject of this complaint is located at 46485 W. Highway 24, Burlington, Colorado. 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 complaint alleges that Farmers New Holland is in violation of UIC requirements, and is subject to appropriate penalties and fines. Specifically EPA alleges that Farmers New Holland failed to notify the EPA orally within twenty-four (24) hours its exceedance of dichloromethane,

and to submit the EPA with written notification within five (5) calendar days of the exceedance. Subsequent sampling did not detect dichloromethane.

PUBLIC COMMENTS

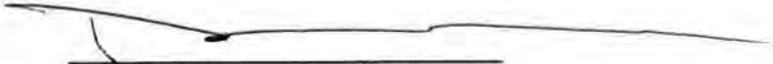
Written comments on the complaint are encouraged and will be accepted at the address listed below for a period of thirty (30) calendar days after the publication of this notice. Written comments submitted by the public as well as information submitted by Farmers New Holland will be available for public review as part of the Administrative Record, subject to the provisions of law restricting the disclosure of confidential information. Farmers New Holland 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 Eduardo Quintana, Enforcement Attorney, Legal Enforcement Program, EPA Region 8, at (303) 312-6924 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

Any person interested in receiving their own copy of this or any future public notice of a UIC administrative action can call Britta Copt in the UIC program, EPA Region 8, at (303) 312-6229.

THE DECISION

EPA will review and consider all public comments received on the public notice and will thereafter determine whether to modify or withdraw the complaint. If the complaint is revised, copies shall be provided to all parties and to all members of the public who have commented.



Darcy O'Connor, Acting Director
UIC/FIFRA/OPA Technical Enforcement Program
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202

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](http://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/epera.htm](http://www.epa.gov/superfund/resources/infocenter/epera.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](http://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

approve or disapprove the State issued statement, in accordance with the requirements of §21.5.

(2) The Regional Administrator will periodically review State program performance. In the event of State program deficiencies the Regional Administrator will notify the State of such deficiencies.

(3) During that period that any State's program is classified as deficient, statements issued by a State shall also be sent to the Regional Administrator for review. The Regional Administrator shall notify the State, the applicant, and the SBA of any determination subsequently made, in accordance with §21.5, on any such statement.

(i) If within 60 days after notice of such deficiencies has been provided, the State has not taken corrective efforts, and if the deficiencies significantly affect the conduct of the program, the Regional Administrator, after sufficient notice has been provided to the Regional Director of SBA, shall withdraw the approval of the State program.

(ii) Any State whose program is withdrawn and whose deficiencies have been corrected may later reapply as provided in §21.12(a).

(g) Funds appropriated under section 106 of the Act may be utilized by a State agency authorized to receive such funds in conducting this program.

§21.13 Effect of certification upon authority to enforce applicable standards.

The certification by EPA or a State for SBA Loan purposes in no way constitutes a determination by EPA or the State that the facilities certified (a) will be constructed within the time specified by an applicable standard or (b) will be constructed and installed in accordance with the plans and specifications submitted in the application, will be operated and maintained properly, or will be applied to process wastes which are the same as described in the application. The certification in no way constitutes a waiver by EPA or a State of its authority to take appropriate enforcement action against the owner or operator of such facilities for violations of an applicable standard.

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION/TERMINATION OR SUSPENSION OF PERMITS

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- Sec.
- 22.1 Scope of this part.
- 22.2 Use of number and gender.
- 22.3 Definitions.
- 22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.
- 22.5 Filing, service, and form of all filed documents; business confidentiality claims.
- 22.6 Filing and service of rulings, orders and decisions.
- 22.7 Computation and extension of time.
- 22.8 *Ex parte* discussion of proceeding.
- 22.9 Examination of documents filed.

Subpart B—Parties and Appearances

- 22.10 Appearances.
- 22.11 Intervention and non-party briefs.
- 22.12 Consolidation and severance.

Subpart C—Prehearing Procedures

- 22.13 Commencement of a proceeding.
- 22.14 Complaint.
- 22.15 Answer to the complaint.
- 22.16 Motions.
- 22.17 Default.
- 22.18 Quick resolution; settlement; alternative dispute resolution.
- 22.19 Prehearing information exchange; prehearing conference; other discovery.
- 22.20 Accelerated decision; decision to dismiss.

Subpart D—Hearing Procedures

- 22.21 Assignment of Presiding Officer; scheduling the hearing.
- 22.22 Evidence.
- 22.23 Objections and offers of proof.
- 22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard.
- 22.25 Filing the transcript.
- 22.26 Proposed findings, conclusions, and order.

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- 22.27 Initial decision.
- 22.28 Motion to reopen a hearing.