

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8  
Docket No. SDWA-08-2015-0040

2015 AUG 12 AM 8:12

FILED  
EPA REGION VIII  
HEARING CLERK

IN THE MATTER OF )  
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)  
Artz Equipment, Inc. )  
)  
)  
Respondent. )

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

**INTRODUCTION**

1. This Proposed Compliance Order, Penalty Complaint and Notice of Opportunity for Hearing (Complaint) is authorized by Congress in section 1423 of the Public Health Service Act, commonly known as the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300h-2. The Environmental Protection Agency (EPA) regulations authorized by the SDWA are set forth in part 144 of title 40 of the Code of Federal Regulations (Regulations or C.F.R.), and violations of the Regulations constitute violations of the SDWA. 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 Complaint.

3. EPA alleges that Artz Equipment, Inc. (Respondent), owner and/or operator, has violated the Regulations and therefore the SDWA, 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 (1) disagree with any fact alleged by EPA in the Complaint, (2) state the grounds for any legal defense or (3) disagree with the appropriateness of the proposed penalty.

5. To disagree with the Complaint and assert Respondent's right to a hearing, Respondent must file a written answer (and one copy) with the Regional Hearing Clerk (1595 Wynkoop Street (8RC); Denver, Colorado 80202) within thirty (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 Respondent may dispute and Respondent's

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 A 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 PENALTY UP TO THE MAXIMUM AUTHORIZED BY THE SDWA.**

### 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 Mia Bearley, Enforcement Attorney, at (303) 312-6554 or at the following address:

Mia Bearley (Mail Code 8ENF-L)  
U.S. Environmental Protection Agency, Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202

**Please note that calling Ms. Bearley 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 violation alleged in this Complaint:

7. Respondent is a "person" as defined in the SDWA, and is therefore subject to the requirements of the SDWA and/or Regulations. 42 U.S.C. § 300f (12).

8. Respondent owns and/or operates the facility known as Artz Equipment, Inc., located at 38399 U.S. Highway 12, Aberdeen, South Dakota, 57401-8403 (Facility).

9. On December 17, 2012, authorized South Dakota Department of Environment and Natural Resources personnel conducted a prearranged consensual hazardous waste compliance inspection at the Facility. The Facility is an agricultural equipment dealership with an on-site motor vehicle maintenance service shop. The motor vehicle maintenance area has a floor drain, as well as a sump unit that collects, or has the potential to collect, motor vehicle waste fluid from equipment washing, vehicle run-off, and an aqueous parts washer. Both the floor drain and the sump discharge to a lagoon/drain field.

10. Respondent's disposal system, as identified in the inspection above, is classified as a "Class V Injection Well" as defined by 40 C.F.R. §§ 144.6, 144.81 and 146.5 (Class V Motor

Vehicle Waste Disposal Well). Respondent is subject to applicable requirements of 40 C.F.R. §§ 124, 144 and 146.

11. Based on the inspection described above, Respondent owns and/or operates a Class V Motor Vehicle Waste Disposal Well.

12. Lying beneath Respondent's Class V Motor Vehicle Waste Disposal Well are underground sources of drinking water (USDWs), including but not limited to, the Other Rocks Aquifer.

13. Respondent is in violation of:

(a) 40 C.F.R. §§ 144.12(a) and 144.82(a)(1) by owning, operating or maintaining a Class V Motor Vehicle Waste Disposal Well 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 or may otherwise adversely affect the health of persons; and

(b) 40 C.F.R. § 144.88(b) for operating a Class V Motor Vehicle Waste Disposal Well after the January 1, 2007 ban of all Class V Motor Vehicle Waste Disposal Wells.

Respondent's operation of the Class V Motor Vehicle Waste Disposal Well is in violation of the Regulations and Respondent is therefore in violation of the SDWA. 42 U.S.C. § 300h-2(c)(1).

### **PROPOSED COMPLIANCE ORDER**

14. Respondent shall:

(a) within thirty (30) calendar days of Respondent's receipt of this Complaint, submit to EPA, in writing, a schedule for permanently closing the Class V Motor Vehicle Waste Disposal Well in the motor vehicle maintenance area, and a plan for alternative disposal of the waste. If the closure includes the use of a self-contained holding tank, the plan must address the specific type, specifications and size of tank to be installed. Respondent shall also address, in its plan for alternative disposal of motor vehicle maintenance area waste, its proposed means for preventing the discharge of any motor vehicle waste from the sump into the lagoon/drain field. EPA will promptly review the proposed plan and either approve it or provide Respondent with written comments;

(b) within sixty (60) calendar days of the receipt of this Complaint, permanently close the Class V Motor Vehicle Waste Disposal Well; and

(c) within thirty (30) calendar days of completing this work, provide EPA with subsequent documentation of the closure.

15. Respondent shall submit all documentation to:

Christopher Ajayi (Mail Code 8ENF-UFO)  
U.S. Environmental Protection Agency, Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202

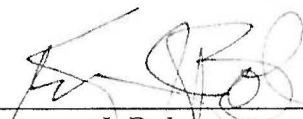
**PROPOSED CIVIL PENALTY**

16. For an administrative proceeding, the SDWA authorizes the assessment of a civil penalty of up to \$16,000 per day, for each violation of the SDWA, up to a maximum of \$187,500. 42 U.S.C. § 300h-2(c)(1). The SDWA 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.

17. As required by the SDWA, prior to the assessment of a civil penalty, EPA will provide public notice of the proposed penalty, and reasonable opportunity for the public to comment on the matter and present evidence in the event a hearing is held. 42 U.S.C. § 300h-2(c)(3)(B).

Date: August 12, 2015

By:

  
\_\_\_\_\_  
Suzanne J. Bohan  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

**IN THE MATTER OF: ARTZ EQUIPMENT, INC.**  
**DOCKET No. SDWA-08-2015-0040**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the date indicated below, the original and one true and correct copy of the foregoing 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 and filed with the Regional Hearing Clerk,

Tina Artemis  
Region 8 Hearing Clerk  
U.S. Environmental Protection Agency, Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202-1129

The undersigned also certifies that on the date indicated below, a true and correct copy of this document was hand delivered at the same time to:

Hon. Elyana R. Sutin  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202-1129

The undersigned also certifies that on the date indicated below, a correct copy of this same document sent via certified mail to:

Artz Equipment, Inc.  
% Douglas Artz, President  
38399 U.S. Highway 12  
Aberdeen, South Dakota 57401-8403  
**CERTIFIED MAIL # 7008 3230 0003 0726 0641**  
**RETURN RECEIPT REQUESTED**

Date: August 12, 2015 By: Dayle Aldinger  
Dayle Aldinger