

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

1595 Wynkoop Street  
DENVER, CO 80202-1129  
Phone 800-227-8917  
<http://www.epa.gov/region08>

SEP 26 2007

Ref: 8ENF-UFO

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Glacier Well Service, Inc.  
14 Lewis Road  
Cut Bank, MT 59427

Attn: David Withers, Registered Agent and President

Re: UNDERGROUND INJECTION  
CONTROL PROGRAM (UIC)  
Penalty Complaint and Notice of  
Opportunity for Hearing

Dear Mr. Withers:

The enclosed document is a Penalty Complaint and Notice of Opportunity for Hearing (Complaint) for violations of the Safe Drinking Water Act (SDWA). Please carefully read the Complaint soon, since it describes Glacier Well Service, Inc.'s 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 Glacier Well Service, Inc. meets the criteria, an information sheet about the Small Business Regulatory Enforcement Fairness Act.

**Glacier Well Service, Inc. is required to take action within 30 calendar days of its receipt of this Complaint** to avoid the possibility of having a default judgment entered against it that could impose the penalty amount proposed in the Complaint.

Whether or not Glacier Well Service, Inc. requests a hearing, we encourage an informal conference with EPA concerning the alleged violations in an effort to negotiate a settlement. Glacier Well Service, Inc. 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.

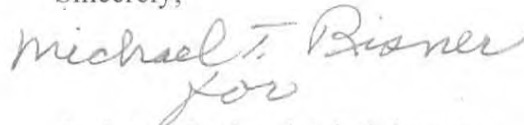
If you have technical questions relating to this matter, the person most knowledgeable on my staff is Britta Copt, UIC Enforcement Team, Technical Enforcement Program, at 1-800-227-8917 ext. 312-6229 or (303) 312-6229. For all legal questions, the person most knowledgeable on my staff is Jim Eppers at 1-800-227-8917 ext. 6893 or (303) 312-6893. Ms. Copt and Mr. Eppers can also be reached at the following addresses:

Britta Copt (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 Glacier Well Service, Inc.'s prompt attention to this matter.

Sincerely,

Handwritten signature of Michael T. Bisner in cursive script.

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

2007 SEP 25 AM 0:19

Docket No. SDWA-08-2007-0091

In the Matter of: )

Glacier Well Service, Inc. )

Respondent )

)  
)  
) **PENALTY COMPLAINT AND NOTICE OF**  
) **OPPORTUNITY FOR HEARING**  
)  
)

**INTRODUCTION**

1. This civil administrative enforcement action is authorized by Congress in section 1423(c) of the Public Health Service Act, also known as the Safe Drinking Water Act (the Act). 42 U.S.C. § 300h-2(c). The Environmental Protection Agency (EPA) regulations authorized by the Act are set out in part 144 of title 40 of the Code of Federal Regulations (40 C.F.R.), and violations of 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 Glacier Well Service, Inc. (Respondent) has violated the regulations and therefore the Act and proposes the assessment of a civil penalty and compliance measures, as more fully explained below.

**NOTICE OF OPPORTUNITY FOR A HEARING**

4. Respondent has the right to a public hearing before an administrative law judge 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.

5. To disagree with the complaint and assert your right to a hearing, Respondent must file a written answer (and one copy) with the Region 8 Hearing Clerk at the following address:

U.S. EPA-Region 8  
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 you want to pursue the possibility of settling this matter, or have 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 violation of this complaint:

7. The Respondent, Glacier Well Service, Inc., is a Montana corporation which is doing business in the State of Montana.

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 and/or operates a Class V well located at 14 Lewis Road in Cut Bank, Montana (Facility).
10. The Class V well is located in the facility's garage where four floor drains are connected to a septic system.
11. On October 12, 2005 EPA received an Inventory Request Form from Respondent. For the purposes of this complaint, as of that date, Respondent owned and /or was operating a "Class V Injection Well" as defined by 40 C.F.R. § 144.6 and § 146.5.
12. Respondent is subject to the applicable Underground Injection Control (UIC) requirements of 40 C.F.R. §§ 124, 144 and 146.
13. By letter dated November 29, 2005, EPA directed Respondent to either permit or close the well no later than March 15, 2006.
14. On March 22, 2006, authorized EPA employees visited the facility to inspect it for compliance with the law. Access to the facility was denied to the EPA employees by David Withers, President of Glacier Well Service, Inc.
15. On August 15, 2006, authorized EPA employees entered the facility with the consent of Respondent to inspect it for compliance with the law. This inspection revealed that the Class V system had not been closed. The inspection also revealed that the type of Class V Injection Well at the facility is a "Motor Vehicle Waste Disposal Well."
16. A "Motor Vehicle Waste Disposal Wells" are defined as "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." 40 C.F.R. §144.81(16).
17. On August 29, 2006, EPA received a plan from Respondent to close its Class V system.
18. By letter dated April 6, 2007, EPA approved Respondent's plan to close its Class V system.
19. On June 1, 2007, EPA received documentation that Respondent closed its Class V system on May 3, 2007.
20. Lying underneath the disposal system are underground sources of drinking water (USDWs), including but not limited to unconsolidated sand and gravel aquifers approximately 100 to 200 feet below land surface.

21. Respondent's owning and/or operating of the well is in violation of EPA regulations and therefore the Act, 42 U.S.C. § 3000h-2 (c)(1), as follows:

- for owning and/or operating, and maintaining a Class V disposal facility from March 15, 2006 through August 29, 2006 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); and
- for failure from March 15, 2006 through August 29, 2006 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).

### **PROPOSED CIVIL PENALTY**

22. For an administrative proceeding, the Act authorizes the assessment of a civil penalty of up to \$11,000.00 per day, for each violation of the Act, up to a maximum of \$157,500.00. 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 seriousness of the violations, the economic benefit resulting from the violations, any history of the Respondent of such violations; any good-faith efforts to comply with the Act's requirements, the economic impact on the violator, and such other matters as justice may require. 42 U.S.C. § 300h-2(c)(4)(B).

23. In light of the statutory factors and the specific facts of this case, EPA proposes that the Respondent be ordered to pay a penalty of fourteen thousand-five hundred dollars (\$14,500.00) for owning and operating the prohibited Class V well, as explained below:

#### Seriousness of the Violations

Respondent's owning and operating the prohibited Class V well is serious because the injection of dangerous motor vehicle waste constituents has been shown to be hazardous to human health and the environment and can render an underlying USDW unfit for human consumption. The five month 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 purposes of calculating a proposed penalty. Despite this, for penalty purposes EPA is only considering Respondent's non-compliance from the closure date specified in the Permit

or Close Letter (March 15, 2006) through the date which Respondent submitted a closure plan for the system (August 29, 2006).

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 applicable UIC regulations.

Good-Faith Efforts to Comply

Given the relatively low cost of coming into compliance, together with the fact that Respondent had five months to come into compliance after formal notice, EPA did not reduce the proposed penalty for this factor.

Economic Impact on Respondent

According to Dun and Bradstreet, Respondent has sales of \$1,400,000 per year. EPA did adjust the proposed penalty due to this factor. EPA will consider information Respondent may present regarding Respondent's ability to pay the proposed penalty.

Other Matters that Justice May Require

EPA has made no additional adjustments to the penalty based on this factor.

24. 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:

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:

Jim Eppers (8ENF-L)  
Senior Enforcement Attorney  
U.S. EPA - Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202

### GENERAL PROVISIONS

25. 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 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).
26. The Presiding Officer will not be bound by EPA's penalty policy or the penalty proposed by EPA, and may assess a penalty above the proposed amount, up to \$11,000 per day per violation as authorized in the statute.
27. To discuss settlement or ask any questions you may have about this case or process, please contact Jim Eppers, Enforcement Attorney, at 303-312-6893, or the address below.

Complainant  
United States Environmental Protection Agency  
Region 8, Office of Enforcement, Compliance and  
Environmental Justice  
1595 Wynkoop (ENF-L)  
Denver, CO 80202

Date:

9/25/07

By:

Michael T. Bisner  
for Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice



Glacier Well Service, Inc.  
Docket No. SDWA-08-2007- 0091

CERTIFICATE OF SERVICE

I hereby certify that the original and one true copy of this Penalty Complaint and Notice of Opportunity for Hearing were hand carried to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado, and that a true copy was sent via Certified Mail; Return Receipt Requested to the following address:

Glacier Well Service, Inc.  
14 Lewis Road  
Cut Bank, MT 59427

Attn: David Withers, Registered Agent and President

Dated: 9/26/2007

By: Judith McTernan  
Judith McTernan