

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

Ref: 8ENF-UFO

SEP 25 2008

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Douglas M. Forest, Registered Agent
Mr. Green Lawn Care, Inc.
2311 13th Street South
Great Falls, MT 59405

Re: Proposed Compliance Order, Penalty Complaint,
And Notice Of Opportunity For Hearing
Docket No. **SDWA-08-2008-0114**

Dear Mr. Forest:

Enclosed is a Proposed Compliance Order, Penalty Complaint, And Notice Of Opportunity For Hearing (complaint) issued by the Environmental Protection Agency (EPA) under the authority of the Safe Drinking Water Act, 42 U.S.C. § 300h-2. The enclosed document describes how Mr. Green Lawn Care, Inc. has violated the Safe Drinking Water Act and proposes both compliance requirements and the assessment of a civil penalty.

However, if Mr. Green Lawn Care, Inc. fully complies with the compliance order requirements in a timely manner as set out in the complaint, EPA will settle this case without the assessment of a civil penalty. Please note that there are deadlines in the complaint that must be followed. The complaint is effective upon the receipt date and you have thirty (30) calendar days to file an answer to dispute the contents of the complaint.

If you have any technical questions, contact Phil Strobel at the above address (with the mail code 8ENF-UFO) or by phone at (303) 312-6704. For legal questions, the attorney assigned to this matter is Jim Eppers, who can be reached at the above address (with the mail code 8ENF-L) or by phone at (303) 312-6893.

We urge your prompt attention to this matter.

Sincerely,



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

Enclosures:

Proposed Compliance Order, Penalty Complaint,
and Notice of Opportunity for Hearing
Part 22 Rules of Practice
Public Notice
U.S. EPA Small Business Resources Fact Sheet

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

Docket No. SDWA-08-2008-0114

2008 SEP 25 PM 1:50

EPA REGION VIII
HEARING CLERK

In the Matter of:)
)
Mr. Green Lawn Care, 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 (the Act). 42 U.S.C. § 300h-2. The Environmental Protection Agency (EPA) regulations authorized by the statute are set out in part 144 of title 40 of the Code of Federal Regulations (C.F.R.), and violations of the statute, permits or 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 complaint.

3. EPA alleges that Mr. Green Lawn Care, Inc. (Respondent) has violated the regulations and therefore the Act, 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 ACT.**

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 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 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, Mr. Green Lawn Care, Inc., is a corporation, incorporated in the State of Montana and 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 operates the facility located at 2311 13th Street South, in Great Falls, Montana ("facility").

10. On August 26, 2005, authorized EPA employees entered the facility with the consent of Mr. Jody Staats to inspect it for compliance with the law. The Inspection identified a floor drain in the vehicle storage and maintenance area which is connected to a septic system.

11. 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 and 146.5. Respondent is subject to applicable requirements of 40 C.F.R. §§124, 144 and 146.

12. In two telephone communications with Mr. Staats (2/13/06 and 4/17/2008) after the August 26, 2005 inspection, it was also determined by EPA that Respondent operated the type of Class V Injection Well known as a "Motor Vehicle Waste Disposal Well" defined by 40 C.F.R. §144.81(16) as follows: "Motor vehicle waste disposal 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."

13. Lying underneath the disposal well are underground sources of drinking water (USDWs), including but not limited to a Basin and Range, basin-fill aquifer.

14. 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 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 motor vehicle waste disposal well after the January 1, 2007 ban of all motor vehicle waste disposal wells.

Respondent's operation of the well in violation of the EPA regulations is therefore in violation of the Act, 42 U.S.C. § 3000h-2 (c)(1).

PROPOSED COMPLIANCE ORDER

15. 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 disposal well, 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. 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 disposal well; and

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

16. Respondent shall submit all documentation to:

Philip Strobel (Mail Code 8ENF-UFO)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202

PROPOSED CIVIL PENALTY

17. For an administrative proceeding, the Act authorizes the assessment of a civil penalty of up to \$11,000 per day, for each violation of the Act, up to a maximum of \$157,500. 42 U.S.C. § 3000h-2 (c)(1). The Act 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, and good-faith efforts to comply with the requirements, the economic impact on the violator, and such other matters as justice may require.

18. 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 the 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).

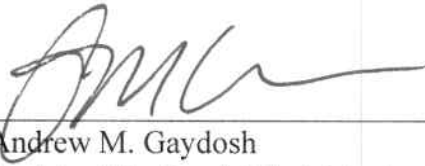
19. To discuss settlement or ask any questions you may have about this case or process, please contact Jim Eppers, Enforcement Attorney, at 303-312-6893, or the address below.

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

Date:

2/25/08

By:


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

**U.S. ENVIRONMENTAL PROTECTION AGENCY
PUBLIC NOTICE
OPPORTUNITY FOR PUBLIC COMMENT ON
PROPOSED COMPLIANCE ORDER, PENALTY COMPLAINT AND
NOTICE OF OPPORTUNITY FOR HEARING
AGAINST
MR. GREEN LAWN CARE
FOR FAILURE TO COMPLY WITH
UNDERGROUND INJECTION CONTROL REGULATIONS**

PURPOSE OF PUBLIC NOTICE

The purpose of this notice is to solicit written comments on a Proposed Compliance Order, Penalty Complaint, and Notice of Opportunity for Hearing (Complaint) [Docket No. SDWA-08-2007-] that Region 8 of the United States Environmental Protection Agency (EPA) proposes to issue to Mr. Green Lawn Care, Inc. for alleged violations at the facility located at 2311 13th Street South, Great Falls, MT 59405. 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 monetary penalties for the alleged violations.

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 proposed penalty is appropriate. EPA will review all and consider all comments received, and will thereafter determine whether the comments, if any, justify the modification or withdrawal the Complaint..

BACKGROUND

Part C of the SDWA requires the EPA to regulate underground injection of fluid through wells to assure that underground sources of drinking water (USDW) are not endangered. Section 1421 of the SDWA 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 Montana; 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 motor vehicle waste disposal system which is the subject of this Complaint, is operated by Mr. Green Lawn Care, Inc., and is located at 2311 13th Street South, Great Falls, Montana. 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 well subject to this Complaint is of the subclass titled "motor vehicle waste disposal well," and is used to dispose of internal combustion engine repair and maintenance facility waste.

The complaint alleges that Mr. Green Lawn Care, Inc. is in violation of UIC regulations and is subject to appropriate penalties for failing to prevent movement of fluids into a USDW that may cause a violation of a primary drinking water regulation under 40 C.F.R. part 142 or otherwise adversely affect the health of persons. The complaint cites that EPA may assess an administrative civil penalty of up to \$11,000 per day, for each violation of the Act, up to a maximum of \$157,500 and proposes certain compliance measures, including the permanent closure of the well.

PUBLIC COMMENTS

Written comments on the Complaint are encouraged and will be accepted at the address listed below for a period of thirty (30) days after the publication of this notice. Written comments submitted by the public as well as information submitted by Mr. Green Lawn Care, Inc. will be available for public review as part of the Administrative Record, subject to the provisions of law restricting the disclosure of confidential information. Mr. Green Lawn Care, Inc. 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 Jim Eppers, Enforcement Attorney, Legal Enforcement Program, EPA Region 8, at (303) 312-6893 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 80202-1129

Any person interested in receiving their own copy of this or any future public notice of a UIC administrative action can call Philip Strobel in the UIC program, EPA Region 8, at (303) 312-6704.

THE DECISION

EPA will review all and consider all comments received, and will thereafter determine whether the comments, if any, justify the modification or withdrawal the Complaint. If the Complaint is revised, copies shall be provided to all parties and to all members of the public who have commented.



Mark Chalfant, Director
Technical Enforcement Program
Office of Enforcement, Compliance, and
Environmental Justice
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129