UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

March 23, 2011

REPLY TO THE ATTENTION OF:

C-14J

BY HAND DELIVERY

Marcy Toney
Regional Judicial Officer
U.S. Environmental Protection Agency, Region V
77 West Jackson Boulevard (C-14J)
Chicago, Illinois 60604

Re: Robert Christensen d/b/a Bob's Repair, SDWA-05-2010-0001

Dear Judge Toney:

Please find enclosed a copy of the Complainant's Motion for Default and Memorandum in Support of Complainant's Motion for Default, filed recently in the above-captioned matter. If you have any questions, please contact me at (312) 886-0566.

Yours very truly,

Robert S. Guenther
Associate Regional Counsel

Enclosures

cc: Robert Christensen
d/b/a Bob's Repair
1014 3d Avenue, NE
Brainerd, Minnesota 56401

Ray Urchel (WU-16J)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	)	
	)	
ROBERT CHRISTENSEN,	)	**Docket No.: SDWA-05-2010-0001**
d/b/a BOB'S REPAIR,	)	
1014 3RD AVE, NE,	)	
BRAINERD, MINNESOTA,	)	**Before the Regional Judicial Officer**
	)	
RESPONDENT.	)	
	)	

MOTION FOR DEFAULT

Complainant, Director of the Water Division, United States Environmental Protection Agency Region 5 (EPA), moves that the Presiding Officer in this matter, the Regional Judicial Officer, issue an Order for Default against Respondent Robert Christensen, doing business as Bob's Repair in Brainerd, Minnesota, for failure to timely file an Answer under 40 C.F.R. § 22.17(a). In support of this Motion, Complainant states as follows:

1. Complainant filed an Administrative Complaint in this matter on September 17, 2010. Respondent received service of the Complaint on September 27, 2010.

2. The Complaint alleges Respondent violated the Safe Drinking Water Act (SDWA) by failing to close a motor vehicle waste disposal well (MVWDW) at his place of business located at 15455 County Road 25, in Crow Wing County, Brainerd, Minnesota, as required by 40 C.F.R. § 144.87(c). In its Complaint, EPA

seeks a penalty of $3,600 and an order compelling Respondent's compliance with SDWA under section 1423(c) of SDWA, 42 U.S.C. § 300h-2(c). The accompanying Memorandum in Support of Complainant's Motion for Default elaborates on the legal sufficiency of this motion.

3. Pursuant to 40 C.F.R. § 22.15(a), Respondent had 30 days from the filing of the Complaint to file his Answer.

4. The Consolidated Rules of Practice, at 40 C.F.R. § 22.17(a), permit Complainant, upon motion, to seek a Default Order when Respondent fails to timely file an answer to the Complaint, and that "[d]efault by respondent constitutes, for purposes of this proceeding only, an admission of all facts alleged in the complaint and a waiver of respondent's right to contest such factual allegations."

5. The Consolidated Rules of Practice, at 40 C.F.R. § 22.17(b), further state that where a motion for default requests the assessment of a penalty, the movant must specify the penalty and state the legal and factual grounds for the relief requested.

6. The Complaint in this matter specifies a penalty as well as the legal and factual grounds for that relief. The Memorandum in Support of Complainant's Motion for Default provides further analysis of the legal and factual bases for the penalty requested.

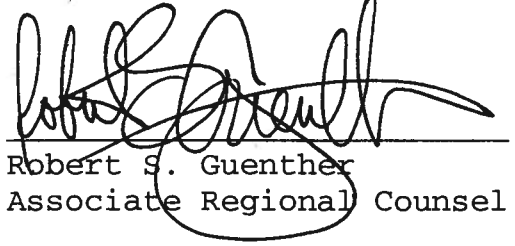
7. The Consolidated Rules of Practice, at 40 C.F.R. § 22.17(c), provides that when a Presiding Officer determines that a default has occurred, she "shall issue a default order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued."

8. As of the date of this motion, Respondent has not filed an Answer to the Complaint with the Regional Hearing Clerk.

9. A proposed Default Order Accompanies this Motion.

THEREFORE, based on the statements above and the accompanying Memorandum in Support, Complainant respectfully requests that the Presiding Officer issue the proposed Default Order 1) finding Respondent liable for the violations alleged in the Complaint, 2) assessing the proposed penalty of $3,600 and 3) ordering Respondent to comply with the requirements of SDWA, specifically the requirement to close the MVWDW at his place of business in Brainerd, Minnesota.

Respectfully submitted,



Robert S. Guenther
Associate Regional Counsel

3/22/2011
Date

Attachment
Memorandum In Support Of Complainant's Motion For Default

In the Matter of:
Robert Christensen, d/b/a Bob's Repair
Docket No. SDWA-05-2010-0001

CERTIFICATE OF SERVICE

I certify that the originals of this Motion for Default and Memorandum in Support of Complainant's Motion for Default were filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region V, on March 23, 2011, and that true and accurate copies were hand-delivered or mailed by first-class U.S. Mail by the next business day to:

Marcy Toney
Regional Judicial Officer
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

and

Robert Christensen
d/b/a Bob's Repair
1014 3rd Avenue, NE
Brainerd, Minnesota 56401

Dated: March 23, 2011

Robert S. Guenther
Associate Regional Counsel

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	)	
	)	
ROBERT CHRISTENSEN,	)	**Docket No.: SDWA-05-2010-0001**
d/b/a BOB'S REPAIR,	)	
1014 3RD AVE, NE,	)	
BRAINERD, MINNESOTA,	)	**Before the Regional Judicial**
	)	**Officer**
RESPONDENT.	)	
	)	

MEMORANDUM IN SUPPORT OF COMPLAINANT'S MOTION FOR DEFAULT

By accompanying motion, Complainant, Director of the Water Division, United States Environmental Protection Agency Region 5 (EPA), moves pursuant to 40 C.F.R. § 22.17(a) that the Presiding Officer issue an Order of Default against Respondent Robert Christensen, doing business as Bob's Repair in Brainerd, Minnesota, for failure to timely file an Answer to a filed Administrative Complaint.

This Memorandum will demonstrate the legal sufficiency of Complainant's Motion for Default. As set forth below, Respondent has failed to file an Answer to an Administrative Complaint as required by 40 C.F.R. § 22.15; therefore, default is appropriate under 40 C.F.R. § 22.17(a). Complainant requests that the Presiding Officer issue the accompanying draft Default Order finding the Respondent liable for the violations alleged in the Complaint, assessing the $3,600 penalty as proposed and

ordering compliance with the terms of the Safe Drinking Water Act (SDWA).

STATUTORY AND REGULATORY BACKGROUND

The purpose of the Safe Drinking Water Act (SDWA), 42 U.S.C. §§ 300f - 300j-26, is to protect the nation's drinking water by regulating public water supply systems to ensure they meet minimum standards to protect public health. *United States v. Jolly*, 2000 U.S. App. LEXIS 29907 p. 10 (6th Cir. 2000) (citations omitted). Part C of SDWA, 42 U.S.C. §§ 300h - 300h-8, establishes a program within EPA to protect potential and actual underground sources of drinking water from contamination from underground injection wells. If a state submits a program to protect its underground sources of drinking water that is at least as rigorous as the federal requirements for all or a portion of the federal program, EPA may delegate that program to the state to implement. *Id.* at 10 - 11.

Pursuant to section 1421 of SDWA, 42 U.S.C. § 300h, the Administrator published minimum requirements for state underground injection control (UIC) programs, which prohibit underground injection of fluids not authorized by permit which may threaten underground aquifers. Under this authority, the Agency promulgated UIC regulations at 40 C.F.R. parts 144-147. These UIC regulations, at 40 C.F.R. § 144.6, define five classes of injection wells, including deep hazardous waste injection

wells (Class I), wells for the reinsertion of brines associated with the production of petroleum and natural gas (Class II), wells for the extraction of minerals (Class III), shallow wells for the disposal of hazardous waste (Class IV), and any well not included in the above descriptions (Class V).

A motor vehicle waste disposal well (MVWDW), according to 40 C.F.R. § 144.81(16), is a well which receives or has received fluids from vehicular repair or maintenance activities, such as auto body repair shops, automotive repair shops or any facility that does vehicular repair work, and is denominated as a Class V well. The UIC regulations, at 40 C.F.R. §§ 144.87(c) and 144.88, generally require that the owner of a MVWDW in existence or under construction prior to April 5, 2000, must close the well by January 1, 2007, or obtain a permit to operate it as another type of well.[1]

The State of Minnesota has not obtained approval from EPA to implement and enforce an equivalent UIC program with regard to Class V wells within the State pursuant to section 1422(b) of SDWA, 42 U.S.C. § 300h-1(b). Therefore, EPA maintains authority

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[1] This rule applies in areas where EPA (in a state without a federally-approved Class V well program) has not designated groundwater protection areas or other sensitive ground water areas by January 1, 2004, a condition which is not at issue here. EPA did not delineate groundwater protection areas or other sensitive ground water areas, as defined at 40 C.F.R. § 144.86, for the State of Minnesota pursuant to 40 C.F.R. § 145.23(12) by January 1, 2004. (Dec. RU, ¶9.)

to directly implement and enforce the federal UIC program with regard to Class V wells within the State of Minnesota.

Under section 1423(a)(2) of SDWA, 42 U.S.C. § 300h-2(a)(2), in states which have not received approval to implement and enforce their own UIC programs, the Administrator may issue orders requiring compliance with a requirement of the federal UIC program if the Administrator finds any person is violating that requirement. Additionally, section 1423(c)(1) of SDWA, 42 U.S.C. § 300h-2(c)(1), authorizes the Administrator, if she finds any person in violation of a regulation or other requirement of an applicable UIC program, to either issue an order seeking penalties or requiring compliance with such regulation or other requirement, or both.

EVIDENCE OF VIOLATION

Respondent is Mr. Robert Christensen, an individual who is the owner and operator of Bob's Repair in Brainerd, Minnesota. (Complaint, ¶3; declaration of Ray Urchel, ¶3) Bob's Repair is an automobile repair facility (the facility) located at 15455 County Road 25, in Crow Wing County, Brainerd, Minnesota, providing automotive repair services, including the draining and replacement of motor oil from automobiles and other motor vehicles it services. (Comp. ¶15; dec. RU, ¶3) The facility houses a drain which feeds a septic tank drain field and receives fluids from its automotive repair services. This drain

was in operation prior to April 5, 2000. (Comp. ¶18; dec. RU, ¶4).

On September 25, 2007, Respondent operated the floor drain and septic tank drain field at its facility in Brainerd. From September 25, 2007, until the present, Respondent has neither closed this drain and septic tank drain field nor obtained a permit to operate it. (Comp. ¶22; dec. RU, ¶5)

CONCLUSIONS OF LIABILITY

Mr. Christensen is a "person," as that term is defined at section 300f(12) of SDWA, 42 U.S.C. § 1401(12). (Comp. ¶14)

The drain and septic tank drain field at Mr. Christensen's automobile repair facility located at 15455 County Road 25, in Crow Wing County, Brainerd, Minnesota, is a MVWDW. (Comp. ¶¶ 18, 19)

The MVWDW at Mr. Christensen's facility in Brainerd has not been closed as required by 40 C.F.R. §§ 144.87(c) and 144.88. (Comp. ¶22)

Mr. Christensen is in violation of 40 C.F.R. §§ 144.87(c) and 144.88, which is in turn a violation of an applicable UIC program and authorizes the Administrator to impose a civil penalty under section 1423(c) of SDWA, 42 U.S.C. § 300h-2(c). (Comp. ¶24)

Mr. Christensen's violation of 40 C.F.R. §§ 144.87(c) and 144.88 further authorizes EPA to seek an order requiring compliance with that provision. (Comp. ¶24)

GROUNDS FOR DEFAULT

Under the Consolidated Rules of Practice, at 40 C.F.R. § 22.17(a), a party may be found to be in default upon failure to answer an Administrative Complaint. Moreover, default by a respondent constitutes an admission of all facts alleged in the complaint and a waiver of respondent's right to contest those factual allegations.

On September 17, 2010, EPA Region 5 filed a Complaint under SDWA section 1423(c)(1). (Declaration of LaDawn Whitehead, ¶3) Mr. Christensen received service of the Complaint by U.S. Mail on September 27, 2010. (Dec. LW, ¶3) Mr. Christensen failed to file an answer to the Complaint. (Dec. LW, ¶5)

Consequently, default is appropriate in this matter for failure to file an Answer. Furthermore, an order of default constitutes an admission of the factual allegations made in the Complaint.

CALCULATION OF PENALTY

In its Complaint, the Region proposed a penalty of $100 for each month of noncompliance. Consequently, between September 25, 2007, and the filing of the Complaint, 36 months have elapsed, yielding the penalty of $3,600 proposed in the

Complaint. (Dec. RU, ¶8) Of course, each additional month of noncompliance should subject Respondent to further penalties.

Proposed penalties under SDWA within Region 5 are governed by the statutory factors provided in section 1423(c)(4)(B) of SDWA, 42 U.S.C. § 300h-2(c)(4)(B), and informed by the *Region 5 Underground Injection Control Proposed Administrative Order Penalty Policy* (September 21, 1994). The statutory factors include the seriousness of the violation, the economic benefit (if any) resulting from the violation, any history of violations, good faith efforts to comply with SDWA, the economic impact of the penalty on the violator and other matters as justice may require. A specific analysis of these factors in light of the facts of this case is included as an attachment to Mr. Urchel's declaration accompanying this motion and memorandum. Mr. Urchel's declaration further provides an application of the penalty policy to the facts of this matter.

Under the rubric of "other factors as justice may require," however, the Region departs from the penalty calculated under the penalty policy because 1) the policy yields a very large penalty, 2) the Region's principal, though not exclusive, concern in this matter is closure of the well rather than collection of a substantial penalty. (Dec. RU, ¶8, att. A)

IMPOSITION OF COMPLIANCE ORDER

Pursuant to section 1423(c)(1) of SDWA, 42 U.S.C. § 300h-2(c)(1), because Respondent is in violation of a requirement of an applicable UIC program, EPA further requests the Presiding Officer order Respondent to take all actions reasonable and necessary to assure full compliance with the UIC regulations, including, but not limited to, permanently closing the MVWDW at its facility according to 40 C.F.R. § 144.89.

CONCLUSION

For the reasons set forth above, Complainant moves the Presiding Officer for a Default Order that includes: 1) finding all of the facts in the Complaint admitted and determining Respondent's liability; and 2) assessing a civil penalty in the amount of $3,600 as pled in the Complaint and 3) ordering Respondent to comply with the requirements of the SDWA, including closing the MVWDW at his facility. A draft Default Order is attached to this Memorandum for the Presiding Officer's convenience.

Respectfully Submitted,

Robert S. Guenther
Associate Regional Counsel
(312) 886-2242

ATTACHMENTS

Declaration of LaDawn Whitehead
Declaration of Ray Urchel
Default Order (DRAFT)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	)	
	)	
ROBERT CHRISTENSEN,	)	**Docket No.: SDWA-05-2010-0001**
d/b/a BOB'S REPAIR,	)	
1014 3RD AVE, NE,	)	
BRAINERD, MINNESOTA,	)	**Before the Regional Judicial Officer**
	)	
RESPONDENT.	)	
	)	

DECLARATION OF LADAWN WHITEHEAD

I, LADAWN WHITEHEAD, declare and state as follows:

1. I currently am employed as the Regional Hearing Clerk (RHC) with Region 5 of the U.S. Environmental Protection Agency (EPA). I have been employed with EPA since September of 1988 and have held the position of RHC since April of 2009.

2. The general responsibilities of an RHC are set forth in 40 C.F.R. part 22. As RHC, I am responsible for maintaining the official files for all pleadings, including final orders and any documents filed subsequent to a final order, in administrative cases initiated by EPA Region 5 for violations of the Safe Drinking Water Act (SDWA), 42 U.S.C. §§ 300f - 300j-26. As part of my duties, I receive, date-stamp and file all pleadings served on the Region in SDWA administrative cases. Additionally, I am designated and required to create and maintain a docket or index of the administrative record. 40 C.F.R. § 24.03.

3. On September 17, 2010, EPA Region 5 filed a complaint under SDWA in *In the matter of: Robert Christensen, d/b/a Bob's Repair*, Docket No. SDWA-05-2010-0001. Att. A. Respondent received the Complaint on September 27, 2010, evidenced by a return receipt from the U.S. Postal Service. Att. B. I certify that the attached Administrative Complaint is a true and correct copy of the document I received from U.S. EPA, Region 5 and that

the attached return receipt is a true and accurate copy of EPA's proof of service of the Complaint.

4. On March 2, 2011, I compiled a docket sheet for SDWA-05-2010-0001, which is a complete record of all documents filed by the parties or issued by the Presiding Officer in this matter. Att. C. The docket sheet reflects that Mr. Christensen has filed no Answer to the Administrative Complaint or any other document or response subsequent to the filing of the Administrative Complaint.

5. I certify that, based on a complete record for this matter and my current knowledge, Mr. Christensen has filed no Answer to the Administrative Complaint as of the date of this Declaration.

I declare under penalty of perjury that the foregoing is accurate and correct.

Executed on: March 2, 2011

By: LaDawn Whitehead
LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency,
Region 5

Attachments

Attachment A: Administrative Complaint *In the matter of: Robert Christensen d/b/a Bob's Repair*, Docket No. SDWA-05-2010-0001.
Attachment B: Copy of original return receipt.
Attachment C: Docket Sheet for Case No. SDWA-05-2010-0001, dated March 2, 2011.

ATTACHMENT A

DECLARATION OF LADAWN WHITEHEAD

IN RE: ROBERT CHRISTENSEN d/b/a BOB'S REPAIR

DOCKET NO.: SDWA-05-2010-0001

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 17 2010

REPLY TO THE ATTENTION OF:
WU-16J

CERTIFIED MAIL NO. 7009 1680 0000 7643 1422
RETURN RECEIPT REQUESTED

Robert Christensen
d/b/a Bob's Repair
1014 3d Avenue, NE
Brainerd, Minnesota 56401

Re: Administrative Complaint for Violations of the Federal Safe Drinking Water Act filed against Bob's Repair

Docket No. **SDWA-05-2010-0001**

Dear Mr. Christensen:

Enclosed please find an Administrative Complaint that has been filed against Bob's Repair for violations of the applicable Underground Injection Control ("UIC") program for the State of Minnesota, as promulgated pursuant to Section 1421 of the Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300h.

These violations pertain to the United States Environmental Protection Agency ("U.S. EPA") UIC regulations. Bob's Repair is located in Crow Wing County, Minnesota.

The complaining party in this case (known as the "Complainant") is the Director of the Water Division at the U.S. EPA Region 5 office in Chicago, Illinois. As the party named in the Administrative Complaint, Bob's Repair is identified by the term "Respondent."

The Complainant filed this Complaint pursuant to Section 1423(c) of the SDWA, 42 U.S.C. § 300h-2(c), which authorizes U.S. EPA to issue compliance orders and assess civil penalties. The Complainant seeks: 1) an order for permanent closure of the well; and 2) payment of a $3,600.00 penalty.

This action will be resolved before a neutral U.S. EPA hearing officer, the Regional Judicial Officer ("RJO"), who is located at U.S. EPA's Region 5 office. The RJO is a U.S. EPA employee who has no personal interest in the case or knowledge of the case beyond the official administrative record of this proceeding. The procedures applicable to this case 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" ("Consolidated Rules"), which are codified at 40 C.F.R. Part 22, and particularly invoke Subpart I therein.

I highly recommend that you carefully read and analyze the enclosed copy of the Consolidated Rules to determine the alternatives available in responding to the alleged violations and the proposed order and civil penalty. Please note that each new day the violations cited herein continue constitutes a new and separate violation for which additional penalties may be imposed.

If you choose to request a hearing to contest the facts alleged in the Administrative Complaint, you must request the hearing in your Answer, which you must file with the Regional Hearing Clerk within the prescribed time limit of 30 days following service of this Administrative Complaint. 40 C.F.R. § 22.15(a). A copy of the Answer and Request for Hearing (as well as copies of all other documents filed by Respondent in this proceeding) should be sent to:

Robert Guenther
Assistant Regional Counsel
U.S. EPA, Region 5 (C-14J)
77 West Jackson Boulevard
Ch icago, Illinois 60604-3590

Mr. Guenther's telephone number is (312) 886-0566.

Failure to respond to this Administrative Complaint by specific Answer within 30 days of your receipt of this Administrative Complaint constitutes your admission of the allegations made in the Complaint, 40 C.F.R. § 22.15(d). Such failure may result in the issuance of a Default Order imposing the proposed civil penalties.

Whether or not you request a hearing, you may request an informal conference to discuss the facts of this case and to discuss the possibility of settlement. If you have any questions about this matter or desire to request an informal conference for the purpose of settlement, please contact the attorney whose name, address and telephone number are provided above.

You have the right to be represented by an attorney at any time during the process and at any informal settlement conference.

We urge your prompt attention to this matter.

Sincerely yours,

Tinka G. Hyde
Director, Water Division

Enclosures: Administrative Complaint
Consolidated Rules

cc: Bruce.Olsen@health.state.mn.us
Gretchen.Sabel@mpca.state.mn.us
Regional Hearing Clerk (w/ original Complaint) U.S. EPA, Region 5 (E-19J)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

SDWA-05-2010-0001

IN THE MATTER OF:	)	PROCEEDING SEEKING A
	)	COMPLIANCE ORDER AND
ROBERT CHRISTENSEN,	)	ASSESSMENT OF A CIVIL
d/b/a BOB'S REPAIR,	)	ADMINISTRATIVE
1014 3RD AVE, NE,	)	PENALTY UNDER SECTION
BRAINERD, MINNESOTA,	)	1423(c) OF THE SAFE
	)	DRINKING WATER ACT,
RESPONDENT.	)	42 U.S.C. § 300h-2(c)
	)	

ADMINISTRATIVE COMPLAINT

1. This is a civil administrative action instituted pursuant to section 1423(c) of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300h-2(c).

2. Complainant is, by lawful delegation, the Director of the Water Division, United States Environmental Protection Agency Region 5 (U.S. EPA).

3. Respondent is Robert Christensen, an individual doing business as Bob's Repair, a business in Brainerd, Minnesota.

REGULATORY AND STATUTORY BACKGROUND

4. Section 1421 of SDWA, 42 U.S.C. § 300h, requires U.S. EPA to promulgate regulations for State underground injection control (UIC) programs to prevent endangering underground sources of drinking water, including inspection, monitoring, recordkeeping and reporting requirements.

5. Pursuant to section 1421 of SDWA, 42 U.S.C. § 300h, U.S. EPA promulgated UIC regulations at 40 C.F.R. parts 144-147.

6. Section 1422(c) of SDWA, 42 U.S.C. § 300h-1(c), reserves authority to U.S. EPA to implement and enforce the federal UIC program, found at 40 C.F.R. parts 144-147, or a portion of that program, in a state which has not obtained approval of an equivalent state program under section 1422(b) of SDWA, 42 U.S.C. § 300h-1(b).

7. Federal regulations, at 40 C.F.R. § 144.3, define "well" as "a bored, drilled, or driven shaft whose depth is greater than the largest surface dimension; or, a dug hole whose depth is greater than the largest surface dimension; or, an improved sinkhole; or a subsurface fluid distribution system."

8. Federal regulations, at 40 C.F.R. § 144.6, define five classes of injection wells, including deep hazardous waste injection wells (Class I), wells for the reinsertion of brines associated with the production of petroleum and natural gas (Class II), wells for the extraction of minerals (Class III), shallow wells for the disposal of hazardous waste (Class IV), and any well not included in the above descriptions (Class V).

9. Federal regulations, at 40 C.F.R. § 144.81(16), define "motor vehicle waste disposal well" (or MVWDW), as a Class V well which receives or has received fluids from vehicular repair or maintenance activities, such as, among other things, an auto body repair shop, automotive repair shop or any facility that does any vehicular repair work.

10. Federal regulations, at 40 C.F.R. §§ 144.87(c) and 144.88, require that owners of a MVWDW in existence or under construction prior to April 5, 2000, in an area where U.S. EPA (in a state without a federally-approved Class V well program) has not designated groundwater protection areas or other sensitive ground water areas by January 1, 2004, must close the well by January 1, 2007, or obtain a permit to operate the well as another type of well.

11. Section 1423(a)(2) of SDWA, 42 U.S.C. § 300h-2(a)(2), provides that, in states which have not received approval to implement and enforce their own UIC programs, the Administrator may issue orders requiring compliance with a requirement of the federal UIC program if the Administrator finds any person is violating that requirement.

12. Section 1423(c)(1) of SDWA, 42 U.S.C. § 300h-2(c)(1), authorizes the Administrator, if she finds any person in violation of a regulation or other requirement of

an applicable UIC program, to either issue an order seeking penalties or requiring compliance with such regulation or other requirement, or both.

GENERAL ALLEGATIONS

13. The State of Minnesota has not obtained approval from U.S. EPA to implement and enforce an equivalent UIC program with regard to Class V wells within the State pursuant to section 1422(b) of SDWA, 42 U.S.C. § 300h-1(b). Therefore, U.S. EPA maintains authority to implement and enforce the federal UIC program with regard to Class V wells within the State of Minnesota.

14. Respondent is a "person," as that term is defined at section 300f(12) of SDWA, 42 U.S.C. § 1401(12).

15. Respondent owns and operates an automobile repair facility (the Facility) located at 15455 County Road 25, in Crow Wing County, Brainerd, Minnesota, providing automotive repair services, including the draining and replacement of motor oil from automobiles and other motor vehicles it services.

16. Respondent is subject to the UIC regulations for Class V wells found in 40 C.F.R. parts 144-147.

17. U.S. EPA did not delineate groundwater protection areas or other sensitive ground water areas, as

defined at 40 C.F.R. § 144.86, for the State of Minnesota pursuant to 40 C.F.R. § 145.23(12) by January 1, 2004.

SPECIFIC ALLEGATIONS OF LIABILITY

18. Respondent's Facility houses a drain which feeds a septic tank drain field and receives fluids from its automotive repair services. This drain was in operation prior to April 5, 2000.

19. The drain at the Facility is a MVWDW.

20. Because U.S. EPA did not designate groundwater protection areas or other sensitive ground water areas for the State of Minnesota by January 1, 2004, all MVWDWs in Minnesota were required to be closed or receive a permit to operate by January 1, 2007.

21. On September 25, 2007, Respondent operated the MVWDW.

22. From September 25, 2007, until the present, Respondent has neither closed its MVWDW nor obtained a permit to operate it.

23. Respondent's failure to close its MVWDW or obtain a permit to operate it by January 1, 2007, is a violation of 40 C.F.R. §§ 144.87(c).

24. Respondent's violation of 40 C.F.R. §§ 144.87(c) is a violation of an applicable UIC program, and consequently authorizes the Administrator to impose a civil

penalty under section 1423(c) of SDWA, 42 U.S.C. § 300h-2(c), to seek an order requiring compliance with that provision, or both.

PROPOSED CIVIL PENALTY

25. Section 1423(c)(4)(B) of SDWA, 42 U.S.C. § 300h-2(c)(4)(B), provides that, in assessing a civil penalty under section 1423(c), U.S. EPA must take into account (i) the seriousness of the violation, (ii) the economic benefit (if any) resulting from the violation, (iii) any history of such violations, (iv) any good faith efforts to comply with the applicable requirements, (v) the economic impact of the penalty on the violator, and (vi) such other matters as justice may require.

26. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. part 19, increased the statutory maximum penalty to $11,000 per day of violation under section 1423(c)(1) of SDWA, 42 U.S.C. § 300h-2(c)(1), for SDWA violations occurring after January 30, 1997, through January 12, 2009, and to $16,000 per day for violations occurring after January 12, 2009. This statute and its regulations also increased the maximum penalty EPA may seek in this action to $157,500 for violations occurring after March 15, 2004,

through January 12, 2009, and to $177,500 for violations occurring after January 12, 2009.

27. Complainant derived the penalties proposed in this Complaint by applying the factors enumerated above to the particular allegations that constitute the violations charged in this action. The reasoning for the specific penalty assessed for each count is set forth in the *Region 5 Underground Injection Control Proposed Administrative Order Penalty Policy* (September 21, 1994). Based upon the factors set forth at section 1423(c)(4)(B) of SDWA, 42 U.S.C. § 300h-2(c)(4)(B), and applicable penalty policies, Complainant proposes that Respondent be assessed a civil penalty of **$3,600** for the violation alleged in this Complaint.

ORDER FOR COMPLIANCE

28. Based on the violations alleged in this Complaint, and pursuant to the authority of section 1423(c)(1) of SDWA, 42 U.S.C. § 300h-2(c)(1), Complainant proposes that Respondent be issued a Compliance Order requiring Respondent to take all actions reasonable and necessary to assure full compliance with the applicable UIC regulations, including, but not limited to, permanently closing the MVWDW at its Facility according to 40 C.F.R. § 144.89.

RULES GOVERNING THIS PROCEEDING

The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) at 40 C.F.R. part 22 govern this proceeding to assess a civil penalty, with particular attention to subpart I of part 22. Enclosed with the Complaint served on Respondent is a copy of the Consolidated Rules.

FILING AND SERVICE OF DOCUMENTS

Respondent must file with the U.S. EPA Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Robert S. Guenther to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Mr. Guenther at (312) 886-0566. His address is:

Robert S. Guenther (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

ANSWER AND OPPORTUNITY TO REQUEST A HEARING

If Respondent contests any material fact alleged in this Complaint or the appropriateness of any penalty amount, or contends that it is entitled to judgment as a matter of law, Respondent may request a hearing before the Regional Judicial Officer. To request a hearing, Respondent must file a written Answer within 30 days of receiving this Complaint and must include in that written Answer a request for a hearing. Any hearing will be conducted in accordance with the Consolidated Rules.

In counting the 30-day period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

To file an Answer, Respondent must file the original written Answer and one copy with the Regional Hearing Clerk at the address specified above.

Respondent's written Answer must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint or must state clearly that Respondent has no

knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied. Respondent's failure to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the allegation.

Respondent's Answer must also state:

a. the circumstances or arguments which Respondent alleges constitute grounds of defense;

b. the facts that Respondent disputes;

c. the basis for opposing the proposed penalty; and,

d. whether Respondent requests a hearing.

If Respondent does not file a written Answer within 30 calendar days after receiving this Complaint, the Regional Judicial Officer may issue a default order, after motion, under section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the Complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of the Administrator of U.S. EPA under Section 22.27(c) of the Consolidated Rules.

SETTLEMENT CONFERENCE

Whether or not Respondent requests a hearing, Respondent may request an informal conference to discuss the facts alleged in the Complaint and to discuss settlement. To request an informal settlement conference, Respondent may contact Mr. Urchel at (312)353-6292. Respondent's request for an informal settlement conference will not extend the 30-day period for filing a written Answer to this Complaint. Respondent may simultaneously pursue an informal settlement conference and the adjudicatory hearing process. Complainant encourages all parties against whom it proposes to assess a civil penalty to pursue settlement through informal conference. However, Complainant will not reduce the penalty simply because the parties hold an informal settlement conference.

PUBLIC NOTICE

Pursuant to section 1423(c)(3)(B) of SDWA, 42 U.S.C. § 300h-2(c)(3)(B), Complainant is providing public notice of and a reasonable opportunity to comment on the proposed assessment of an administrative penalty and order for compliance against Respondent. If a hearing is held in this proceeding, then according to section 1423(c)(3)(C) of SDWA, 42 U.S.C. § 300h-2(c)(3)(C), members of the public

who submitted timely comments on this proposed penalty will have the right to be heard and present evidence at the hearing.

Dated: 9/17/10

Tinka G. Hyde, Director
Water Division
U.S. EPA, Region 5 (W-15J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

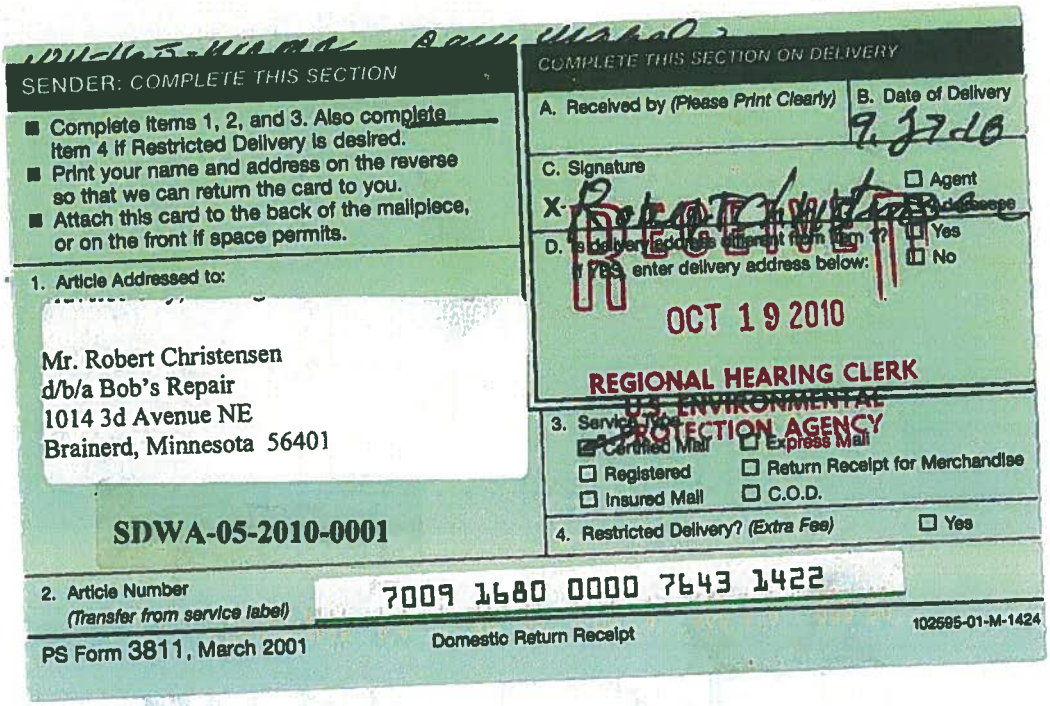
SDWA-05-2010-0001

ATTACHMENT B

DECLARATION OF LADAWN WHITEHEAD

IN RE: ROBERT CHRISTENSEN d/b/a BOB'S REPAIR

DOCKET NO.: SDWA-05-2010-0001



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Robert Christensen
d/b/a Bob's Repair
1014 3d Avenue NE
Brainerd, Minnesota 56401

SDWA-05-2010-0001

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery 9.17.10

C. Signature X Agent Addressee

D. Is delivery address different from item 1? Yes No
If YES, enter delivery address below:

OCT 19 2010

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL PROTECTION AGENCY

3. Service Type
Certified Mail Express Mail
Registered Return Receipt for Merchandise
Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number (Transfer from service label) 7009 1680 0000 7643 1422

PS Form 3811, March 2001 Domestic Return Receipt 102595-01-M-1424

ATTACHMENT C

DECLARATION OF LADAWN WHITEHEAD

IN RE: ROBERT CHRISTENSEN d/b/a BOB'S REPAIR

DOCKET NO.: SDWA-05-2010-0001

CERTIFICATION OF THE ADMINISTRATIVE RECORD BEFORE EPA Region 5

I, Ladawn Whitehead, am the Regional Hearing Clerk for EPA Region 5. My duties include maintenance of the official records for all adjudicatory oral arguments before .

I hereby certify that the attached index constitutes a true and correct index to the administrative record pertaining to the EPA's adjudication in the proceeding listed below.

I swear or affirm under penalty of perjury that the foregoing is true and correct.

Date: March 2, 2011 LaDawn Whitehead

Ladawn Whitehead, Hearing Clerk
EPA Region 5
77 West Jackson Blvd, Chicago, IL 60604

Docket Index for:
Robert Christensen, d/b/a Bob's Repair (Brainerd, Minnesota)
SDWA-05-2010-0001

Filing Date	Filing #	Description	Originator
11/22/2010	3	If Answer Is Not Filed With Regional Hearing Clerk Within 10 Days Of Your Receipt Of Letter, EPA Will Seek Default	EPA, REGION 5
10/19/2010	2	Certified Post Card	EPA, REGION 5
9/17/2010	1	Administrative Complaint for Violations of the Federal Safe Drinking Water Act filed against Bob's Repair	EPA, REGION 5

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	)	
	)	
ROBERT CHRISTENSEN,	)	**Docket No.: SDWA-05-2010-0001**
d/b/a BOB'S REPAIR,	)	
1014 3RD AVE, NE,	)	
BRAINERD, MINNESOTA,	)	**Before the Regional Judicial Officer**
	)	
RESPONDENT.	)	
	)	

DECLARATION OF RAY URCHEL

I, RAY URCHEL, declare and state as follows:

1. I am currently employed as an Environmental Protection Specialist in the Direct Implementation Section, Underground Injection Control Branch, Water Division, of the U.S. Environmental Protection Agency (EPA) Region 5. I have held this position since November 2006.

2. My responsibilities as an Environmental Protection Specialist include compliance assistance with the requirements of the Underground Injection Control Program under the Safe Drinking Water Act (SDWA), 42 U.S.C. §§ 300f - 300j-26. My responsibilities may also include enforcement of SDWA and its implementing regulations where warranted. Prosecuting enforcement actions requires me to gather sampling data and other information, analyze that information, make recommendations to my management regarding enforcement options and then participating in any proceedings needed to achieve compliance with the goals of SDWA.

3. In the course of my development of this enforcement matter, I have learned that Robert Christensen is an individual who owns an automotive repair facility located at 15455 County Road 25, Brainerd, Minnesota, and operates this facility as Bob's Repair. Among other things, this facility drains and replaces oil and other fluids in the course of its business.

4. I have also learned in developing this matter that Bob's Repair operates a floor drain connected to a septic tank drain field, which has been in operation since prior to April 5, 2000.

5. Additionally, I have learned that Mr. Christensen's floor drain and septic drain field were operational on September 25, 2007, and that he has neither closed the drain and septic tank field nor obtained a permit to operate the system.

6. I was also responsible for the calculation of the proposed penalty in this enforcement action.

7. I understand that in determining the amount of a penalty assessed under section 1423(c) of SDWA, 42 U.S.C. § 300h-2(c), the Administrator must take into account the seriousness of the violation, the economic benefit (if any) resulting from the violation, any history of violations, any good faith efforts to comply with SDWA, the economic impact of the penalty on the violator and such other matters as justice may require.

8. Attachment A of this Declaration is a penalty memorandum I prepared for the above-referenced matter justifying the penalty of $3,600 proposed in the Complaint. It describes the facts and circumstances that I considered and applies the statutory penalty criteria found in section 1423(c)(4)(B) of SDWA, 42 U.S.C. § 300h-2(c)(4)(B), consistent with the *Region 5 Underground Injection Control Proposed Administrative Order Penalty Policy* (September 21, 1994). Attachment B of this Declaration is a copy of this penalty policy.

9. After investigation, I have also learned that EPA did not delineate groundwater protection areas or other sensitive ground water areas, as defined at 40 C.F.R. § 144.86, for the State of Minnesota pursuant to 40 C.F.R. § 145.23(12) by January 1, 2004.

I declare under penalty of perjury that the foregoing is accurate and correct.

Executed on: March 3, 2011

By: Ray Urchel

Ray Urchel
Environmental Protection Specialist
U.S. Environmental Protection Agency,
Region 5

Attachments

Attachment A: Memorandum Justifying Proposed Penalty, authored by Ray Urchel, dated September 15, 2010

Attachment B: *Region 5 Underground Injection Control Proposed Administrative Order Penalty Policy* (September 21, 1994).

ATTACHMENT A

DECLARATION OF RAY URCHEL

IN RE: ROBERT CHRISTENSEN d/b/a BOB'S REPAIR

DOCKET NO.: SDWA-05-2010-0001

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF MAILCODE:
WU-16J

Date: **September 15, 2010**

Subject: Bob's Repair, Brainerd, Minnesota: Penalty justification for violating Underground Injection Control (UIC) regulations

From: Ray Urchel, Enforcement Officer
Underground Injection Control Branch

To: File

Issue: This memo will explain how we calculated the proposed **$3,600** penalty in this matter. As a matter of background, owners and operators of Motor Vehicle Waste Disposal Wells (MVWDWs) were required to close their wells by January 1, 2007. The goal is to protect underground sources of drinking water from contamination. These businesses include automotive service stations, auto body shops, farm machinery dealers and light airplane maintenance facilities that are in areas without sewers and that dispose of water on-site and may have MVWDWs. Generally, MVWDWs are floor drains or sinks in service bays that are tied into a shallow disposal system. Most commonly, these shallow disposal systems are septic systems or drywells, but any underground system that receives motor vehicle waste is considered a MVWDW.

For an administrative proceeding, SDWA and updating statutes and regulations increased the statutory maximum penalty to $11,000 per day of violation under section 1423(c)(1) of SDWA, 42 U.S.C. § 300h-2(c)(1), for SDWA violations occurring after January 30, 1997, through January 12, 2009, and to $16,000 per day for violations occurring after January 12, 2009. This statute and its regulations also increased the maximum penalty EPA may seek in this action to $157,500 for violations occurring after March 15, 2004, through January 12, 2009, and to $177,500 for violations occurring after January 12, 2009. 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, good-faith efforts to comply with the requirements, the economic impact on the violator, and such other matters as justice may require. These factors are also considered in the "Region 5 Underground Injection Control Proposed Administrative Order Penalty Policy (September 21, 1994)."

In this case, a Region 5 UIC inspector visited the facility in September 2007 and told Robert Christensen, the owner and sole proprietor, that he needed to close his floor drain, which existed prior to April 5, 2000. Despite many attempts by Region 5 staff to encourage him to voluntarily close the well, he has refused to close it. He remains in violation, almost three years after the initial contact.

The SDWA Statutory Factors

The seriousness of the violation: By refusing to close the floor drain, Bob's Repair is violating 40 C.F.R. §§ 144.87(c), an applicable UIC program requirement. Failure to close a MVWDW could pose a serious environmental threat by allowing used oil and other automotive waste to spread to underground sources of drinking water, especially in rural areas where many people obtain their drinking water from wells.

Economic benefit: None that we know of.

History of past violations: None that we are aware of.

Economic impact: The D & B report for Bob's Repair did not show revenues, just recent purchases. All purchases were less than $1,000.00. We consider Bob's Repair to be a very small business.

Good faith efforts: None. Mr. Christensen has shown a disregard for the UIC regulations.

Other factors as justice may require: The UIC program principally seeks compliance with the UIC regulations, not a large penalty.

The 1994 Region 5 Penalty Policy

The penalty policy took effect before the UIC Class 5 well program was implemented, so refusing to close a MVWDW is not specifically listed as a violation. Nevertheless, the 1994 policy establishes three categories of violations: high, medium and low.

Failure to close the floor drain increases the possibility that an underground source of drinking water may be contaminated. We believe this is a "high level" violation, comparable to unauthorized injection of any UIC well. The policy sets $1,000 per month of violation as the minimum penalty. This case has 36 months of violations.

Under a strict implementation of the Region 5 UIC penalty policy, this would be the calculation:

$1,000 per month of violation
X 36 months
$36,000

However, as an "other factor as justice may require," we propose that a **$3,600** penalty be assessed to Bob's Repair -- a 90 percent reduction -- because:

a) It's a small shop – according to D & B, Mr. Christensen is the only person who works there.
b) We're striving principally for compliance with the UIC regulations, not to put the firm out of business. As a small shop, $3,600.00 remains a significant penalty.

cc: Robert Guenther, ORC (C-14J)

ATTACHMENT B

DECLARATION OF RAY URCHEL

IN RE: ROBERT CHRISTENSEN d/b/a BOB'S REPAIR

DOCKET NO.: SDWA-05-2010-0001

REGION 5
UNDERGROUND INJECTION CONTROL
PROPOSED ADMINISTRATIVE ORDER
PENALTY POLICY

EFFECTIVE DATE: SEPTEMBER 21, 1994

Preface

This Administrative Order Civil Penalty Policy should be used by Region 5 personnel to calculate administrative penalties assessed against owners and operators who violate the Safe Drinking Water Act and Underground Injection Control regulations. It supersedes the Interim Proposed Administrative Order Penalty Policy adopted by Region 5 on March 25, 1991.

This policy should not be used for either civil or criminal judicial enforcement in federal court. However, if an administrative penalty amount exceeds the $125,000 statutory maximum, Regional personnel should consider whether to refer the case for civil enforcement action.

Section 1423 of the Safe Drinking Water Act (SDWA), requires that the Administrator consider six factors when assessing a civil penalty. 42 U.S.C. § 300h-2. The authority to assess penalties under section 1423 of the SDWA has been delegated from the Administrator of the United States Environmental Protection Agency to the Region 5 Regional Administrator and then to the Director of Region 5's Water Division. The factors are:

1. The seriousness of the violation(s);

2. The economic benefit, if any, resulting from the violations;

3. Any history of such violations by the owner/operator;

4. Good faith efforts by the violator to comply with the appropriate UIC requirements;

5. The economic impact of the penalty on the violator.

6. Such other matters as justice may require.

Typically, the seriousness of the violation(s) is the major factor considered when calculating a penalty. This administrative penalty policy uses both a matrix, with ranges of penalty amounts for different types of violations, and a narrative approach to address all of the pertinent statutory factors in a particular case. The narratives in the Appendix are to be used, in a proposed penalty calculation memorandum, to explain each violation and what impact it may have on the environment.

I. STATUTORY PENALTY FACTOR 1: SERIOUSNESS OF THE VIOLATION

The penalty for seriousness of the violation(s) shall be calculated by multiplying a penalty number (A), which reflects the level of seriousness and the number of wells in violation; by the length of violation (B): (A) x (B) = C

A. The seriousness of the violation should reflect the potential of a particular violation to endanger underground sources of drinking water (USDW). [1]/ This factor is, in turn, dependent on the number of wells in violation, as well as the importance of maintaining the integrity of the SDWA's regulatory scheme. Each violation is assigned a penalty level (High, Medium or Low) which indicates the seriousness of each violation.

Major UIC violations can be categorized in terms of seriousness, with the High Level category listing the most severe violations and the Low Level category listing the least severe violations.

TABLE I: SERIOUSNESS OF THE VIOLATION

	HIGH LEVEL	MEDIUM LEVEL	LOW LEVEL
1.	Failure to comply with an Administrative Order	Failure to demonstrate financial responsibility.	Failure to retain records
2.	Unauthorized injection.	Failure to report within 24 hours.	Failure to submit monitoring report.
3.	Failure to demonstrate Mechanical Integrity.	Failure to provide written report of noncompliance.	Failure to submit required information.
4.	Failure to conduct a mechanical integrity test.	Failure to provide access to site for inspection.	
5.	Failure to prevent movement into a USDW of fluids that may cause a violation of maximum contamination levels (MCLs).	Failure to submit plugging and abandonment plan.	Failure to submit fluid analysis.

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[1]/ Part C of the SDWA, 42 U.S.C. § 300h, indicates that EPA has a duty to insure USDWs will not be endangered by underground injection. See 42 U.S.C. § 300h(b)(2), (b)(3)(B)(i), (ii), (c) and (d): 42 U.S.C. § 300h-1(a). The term "endanger" is defined in the SDWA to include any injection which may result in the presence of the contaminants in USDWs. 42 U.S.C. § 300h(d)(2).

	HIGH LEVEL	MEDIUM LEVEL	LOW LEVEL
6.	Construction conversion of new well prior to permit issuance.	Failure to submit final plugging and abandonment report.	
7.	Failure to submit well inventory.	Failure to submit permit application in a timely manner.	
8.	Substantial failure to comply with Operating Requirements.	Failure to properly transfer a well permit.	
9.	Failure to Comply with a Compliance Schedule in a Permit.	Failure to submit transfer of ownership.	
10.	Exceeding maximum injection pressure.	Failure to monitor in accordance with permit	
11.	Failure to case and cement to prevent fluid movement into USDW.		
12.	Failure to notify Region 5 of well abandonment or conversion.		
13.	Failure to plug a well 2 years after cessation of operation		

The maximum penalty amount which can be administratively assessed for Class II wells is $5,000 per day per violation. Other classes of wells are statutorily limited to the collection of $10,000 per day, per violation.

U.S. EPA should choose a number within the penalty range using Table II, which best signifies: (1) the seriousness of each violation within the penalty cluster, based on the facts of the case and the potential of contamination of underground sources of drinking water; (2) the number of wells in violation, and (3) the importance of the violation to the regulatory scheme which protects underground sources of drinking water.

If an owner/operator is operating more than one well in violation, this fact mandates the selection of a penalty figure at the higher end of the penalty range.

TABLE II: PENALTY RANGE BASED ON SERIOUSNESS LEVEL

SERIOUSNESS LEVEL	All Classes of Wells
Low	$200 - $1000
Medium	$500 - $1500
High	$1,000 - $10,000

B. The length of violation should also be a factor in calculating the seriousness of each violation because each additional day of violation multiplies the risk of underground sources of drinking water contamination. One day of violation in any month constitutes one month of violation for that particular month for the purpose of this penalty policy. However, U.S. EPA enforcement personnel should consider choosing a penalty figure at the high end of the penalty range if the Respondent had several days of violation within a particular month. The number chosen from Table II, above, should be multiplied by the number of months in violation:

A * B = C

where A= penalty range from Table II, B= number of months in violation, and C= seriousness of violation. Cases which include reporting violations may be impacted by the Paperwork Reduction Act a factor which should be considered when calculating the gravity portion of the penalty. For a "failure to submit an annual report" violation or a "failure to submit a quarterly report" violation involving a well which is not in operation, see Appendix II. The "seriousness of violation" level for all other "failure to report" violations should be calculated in accordance with Table II.

II. STATUTORY PENALTY FACTOR 2: THE ECONOMIC BENEFIT WHICH ACCRUED FROM NONCOMPLIANCE

In order to insure that the proposed penalty reflects the economic benefit of noncompliance mandated by the SDWA, it is necessary to have reliable methods to calculate economic benefit. Economic Benefit should address two areas: (1) costs delayed by noncompliance; (2) costs avoided completely by noncompliance.

A. Benefit from delayed costs

In many instances, the economic advantage to be derived from noncompliance is the ability to delay making the expenditures necessary to achieve compliance. For example, a class II operator may not conduct a mechanical integrity test until an enforcement action is brought by U.S. EPA or the state. By deferring this cost until after the enforcement action is

not been corrected satisfactorily, a factor should be applied in determining the penalty amount. That factor should increase the penalty from 5 to 100%.

Evidence that the U.S. EPA or a state agency has previously brought an enforcement action against a party demonstrates that the party was not deterred by a previous governmental enforcement response. In addition, it is important to consider compliance at other sites owned or operated by the violator and violations of state or local UIC regulations, as well as capitalize the violator's response to correcting such violations. **THIS FACTOR MAY ONLY BE USED TO INCREASE A PENALTY.**

In determining the size of the adjustment, the following points should be considered:

-similarity of the prior violations to the violation(s) in question;
-time elapsed since the prior violation;
-the number of prior violations;
-the violator's response to a prior violation.

A violation should generally be considered similar if it involves:

-violation of the same permit
-violation of the same UIC standard
-violation at the same injection well
-violation of the same or similar statutory or regulatory provision
-a similar act or omission.

A prior violation includes any act or omission resulting in a state, local or federal enforcement response with regard to an injection well, i.e. notice of violation or noncompliance, warning letter, administrative order, federal compliance order or complaint, consent decree or judicial order. It also includes an act or omission for which the violator was previously given written notification, however informal, that a regulating agency believes a violation exists. The written notification of the prior violation must have been issued within five years of Region 5's discovery of the violation alleged in the Proposed Administrative Order. Written notification dated earlier than five years before U.S. EPA's discovery of the violation may not be considered in determining whether there is a prior history of noncompliance.

With regard to large corporations with many divisions or wholly owned subsidiaries, U.S. EPA will begin with the assumption that the parent corporation was involved in the previous violation only if the violations at several different sites indicate a corporate indifference to environmental

protection. The adjustment factor for a history of noncompliance should apply unless the violator can demonstrate to the Region that the other violating corporate facilities are under totally independent control.

IV. STATUTORY PENALTY FACTOR 4: ECONOMIC IMPACT OF THE PENALTY

Section 1423(c)(4)(B) of the SDWA requires the U.S. EPA to consider the economic impact of the penalty on the Respondent, when determining the amount of the civil penalty. The U.S. EPA shall make every effort to obtain information concerning the Respondent's ability to pay by reviewing Dunn & Bradstreet reports, tax forms, or financial statements. Based on the collected information, the U.S. EPA will determine whether the Respondent has the ability to pay at the time the Proposed Administrative Order is issued.

Generally, the U.S. EPA will not seek a penalty that clearly is beyond the Respondent's ability to pay. However, after U.S. EPA has gathered information which indicates that the Respondent is able to pay a penalty, the Respondent has the burden to rebut U.S. EPA's assumption if it raises an inability to pay argument. Sufficient documentation should be obtained by U.S. EPA on the Respondent's inability to pay claim. Sufficient documentation may include tax returns for three (3) successive years, balance sheet, and income statements. **THIS FACTOR MAY ONLY BE USED TO DECREASE THE PENALTY.**

V. STATUTORY PENALTY FACTOR 5: GOOD FAITH EFFORTS OF RESPONDENT TO COMPLY WITH UIC REQUIREMENTS

Section 1423(c)(4)(B) of the SDWA requires the U.S. EPA to consider the Respondent's good faith efforts to comply with the UIC requirements. The civil penalty may be adjusted downward by as much as 50% if the Respondent has attempted in good faith to comply with the SDWA. However, the penalty may be adjusted upward by as much as 50% if the violator has taken no steps to comply or has ignored the violations.

Good faith efforts to comply may include the following:

1. <u>Prompt reporting of noncompliance</u>

Prompt reporting of noncompliance by the violator can show cooperation. The violator's self reporting may result in a downward adjustment of the penalty, if the self reporting is not required by law.

2. Prompt correction of environmental problems

The penalty may be adjusted downward, when the Respondent promptly corrects an environmental problem prior to discovery of the violation by the U.S. EPA or state or subsequent to an inspection but prior to the formal commencement of an enforcement action by a governmental entity.

VI. STATUTORY PENALTY FACTOR 6: OTHER FACTORS AS JUSTICE MAY REQUIRE

Should a case arise in which U.S. EPA determines that there are no grounds for adjustment of the proposed civil penalty based on financial information or other facts, or no showing of inability to continue in business, and that equity would not be served by adjusting the proposed penalty by only the allowable 50% good faith effort adjustment, the Regional Program Division Director may approve an extraordinary adjustment to the proposed penalty for up to an additional 20%. This adjustment is only appropriate in extraordinary circumstances, including significant litigation risk, and is not to be used routinely.

If a "special circumstances" reduction of the proposed civil penalty is granted, the case file must include substantive reasons why the extraordinary reduction of the civil penalty was appropriate, including: (1) setting forth the facts of the case; (2) why the facts of the case would indicate that the penalty assessed under this Penalty Policy is inequitable; (3) how all other methods for adjusting or revising the proposed penalty would not adequately resolve the inequity; and (4) the manner in which the extraordinary adjustment of the penalty effectuated the purposes of the SDWA. The Regional Program Division Director's written concurrence for the extraordinary reduction must be incorporated into the case file.

Supplemental Environmental Projects ("SEP") may be employed by the Respondent to reduce the penalty paid to the United States. Any SEP must conform to U.S. EPA's current SEP policy, and may not be used to mitigate the penalty to a value below the economic benefit component.

APPENDIX I

Unauthorized Injection

The rule at 40 C.F.R. § 144.11 prohibits all injection that is not authorized either by rule or permit. An owner/operator required to obtain a permit for a well that is not authorized by rule must do so, and receive authorization to inject before injection can begin. Failure to obtain the required permit demonstrates a disregard for the UIC program requirements.

Region 5 has established a formal permitting process to ensure that wells are properly constructed in an environmentally sound manner and with community involvement. Unauthorized injection shortcuts and eliminates the review and comment processes. Most importantly, unauthorized injection creates the possibility that a well might be operated without proper safeguards in place to protect underground sources of drinking water.

Failure to Maintain Permitted Pressure on the Annulus

1. positive pressure

Under the terms of a permit issued by Region 5, the Respondent must maintain a positive pressure of at least [varies from well to well] psi, measured at the surface, at all times except during workovers or maintenance, on the annulus.

If the ability to maintain annulus pressure is lost, the mechanical integrity of the well may be compromised. In response, the respondent must cease injection, determine if

mechanical integrity has been lost, and make any necessary repairs.

2. positive pressure differential

Under the terms of a permit issued by Region 5, the Respondent must maintain a positive pressure differential in the annulus of at least [varies from well to well] psi, measured at the surface, at all times throughout the entire length of the tubing, except during workovers or times of annulus maintenance

If the ability to maintain the pressure differential in the annulus is lost, the mechanical integrity of the well may have been compromised. The Respondent must cease injection, determine if mechanical integrity has been lost, and make any necessary repairs. Failure to maintain this minimum pressure differential could lead to contamination in the event of a mechanical integrity loss.

Exceedance of Maximum Injection Pressure

Pursuant to 40 C.F.R. § 147.1154, the owner or operator of a rule-authorized Class II enhanced oil recovery or a hydrocarbon storage well is required to inject at pressure no greater than that established by the Regional Administrator. For permitted wells, pursuant to 40 C.F.R. § 144.52(a)(3), the permit shall establish any maximum injection pressures necessary to assure that fractures are not initiated in the confining zone, that injection fluids do not migrate into any underground source of drinking water, that formation fluids are not displaced into any underground source of drinking water, and to assure that

Respondent maintains compliance with the part 146 operating requirements. The pressure is pre-determined by an established mathematical formula using fluid and rock characteristics and other significant variables.

By exceeding the maximum injection pressure, operators can inject fluids at a greater rate and volume than allowed. Formation damage may occur, and may subsequently reduce rock permeability, thus harming the well by restricting the amount of fluid that can be injected. Exceedance of maximum injection pressure may also fracture the rock, allowing more fluids to be injected and to potentially migrate through the fractures to the USDW. These fractures can rarely "heal" or decrease and indicate permanent damage. Damage is unpredictable due to rock and fluid composition, pressure, temperature, and depth. Therefore, this violation is considered serious and a higher penalty is assessed.

Failure to Retain Records

The regulation for rule-authorized wells at 40 C.F.R. § 144.28(i) and for permitted wells at § 144.51(j)(2), requires owners/operators to retain information about well monitoring, calibration records for either well gauges or strip charts and fluid analyses, showing the nature and composition of all injected fluid.

The Respondent is required to retain all records, unless asked to provide them to the Region or, if the Respondent is given written authorization by USEPA, to discard them after 3 years. Because well problems can develop over time, it is vital

that owners/operators retain all copies of the key monitoring records and other information, so that the history and operation of the well can be examined if problems occur. A factual and accurate paper trail helps the Regional and on-site experts make informed decisions about the well. Recordkeeping noncompliance is categorized as a less serious violation.

Failure to Submit a Transfer of Ownership

The rule for permitted wells at 40 C.F.R. § 144.38 describes two methods to properly transfer a well permit to a new owner or operator: (a) permit modification or (b) automatic transfer of the permit. Information needed for the permit modification may include the name of the new owner or operator and other data required under provisions of the SDWA.

For the automatic transfer method, Region 5 must receive 30 days prior notice by the transferor of the pending transfer of ownership, a copy of the written agreement between the parties, including the date of transfer, and evidence that the new owner or operator has adequate financial responsibility to plug and abandon the well, and the Director has not notified the existing permittee and the proposed new permittee of his or her intent to modify or revoke and reissue the permit. The rule at 40 C.F.R. § 144.28(l) requires the owner or operator of a rule-authorized Class I, II or III well, who has transferred ownership of the well to another owner or operator, to notify the Regional Administrator of such transfer at least 30 days in advance of the

transfer. Section 144.38(a) and (b) details transfer Section 144.38(a) requirements for permitted wells.

Operators are obligated to submit well transfer information promptly to Region 5 so that our well records can stay current and so we can ensure that all information required to complete the transfer, such as financial responsibility coverage, has been supplied to Region 5 for review and approval. In addition, proper well transfers also clarify which owner(s) is/are responsible for violations of the SDWA.

Failure to Prevent Movement into a USDW of Fluids that May Cause a Violation of MCLs

The rule at 40 C.F.R. § 144.12 prohibits an owner or operator of an injection well from constructing, maintaining, converting or plugging the well in a manner that allows any contaminant into an Underground Source of Drinking Water (USDW), if the presence of that contaminant may result in the violation of a primary drinking water standard, pursuant to 40 C.F.R. § 141. If such a violation is identified, the Water Division Director is authorized to prescribe corrective action, which may include additional construction, monitoring or reporting requirements.

Failure to Prohibit Movement of Fluid into an USDW

The rule at 40 C.F.R. § 144.28(f) for rule-authorized wells prohibits injection between the outermost casing and the well bore. The outermost casing is designed to protect the USDW from possible contamination. Any injection occurring between the

outermost casing and the well bore has the potential to contaminate USDWs. It is of the utmost importance that timely corrective action be taken promptly to halt fluid movement into an USDW to prevent its contamination.

Failure to Comply with an Administrative Order

Pursuant to Section 1423 of the SDWA, the Region is authorized to develop either civil or criminal actions or administrative orders. These criminal and civil actions will be filed or Administrative Orders will be issued against operators who fail to comply with UIC Program requirements.

Failure to Comply with Permit Conditions

The rule at 40 C.F.R. § 144.51(a) specifies that failure to comply with a permit condition can result in either enforcement action or permit denial, modification or revocation; and 40 C.F.R. § 144.51(e) also addresses improper operation of injection wells. This includes improper operation of the well, insufficient or inadequate funding or maintenance. Failure to comply with a permit condition can result in the contamination of USDWs.

Failure to Comply with a Compliance Schedule in a Permit

The rules at 40 C.F.R. § 144.53 and § 144.51(l)(5), outline what a compliance schedule is and how the well owner or operator should comply with the deadlines and time frames established in the schedule. Typically, these time frames do not exceed one year.

Respondent's failure to comply with the requirements contained in the schedule constitutes a permit violation,

resulting in this enforcement action. Owners and operators must comply with prescribed schedules to ensure that the well(s) is/are properly maintained and operating, and the environment is safeguarded.

Failure to Demonstrate Mechanical Integrity ("MI")

The rules at 40 C.F.R. § 146.8(a)(1) and (a)(2) state that a well has mechanical integrity if there is no significant leak in the casing, tubing or packer; and there is no significance movement into an USDW through vertical channels adjacent to the injection well bore.

The rule at 40 C.F.R. § 144.28 (a)(2)(iv)(A) states that the operator of rule-authorized wells shall demonstrate MI at least once every 5 years. The rule at 40 C.F.R. § 144.28(g)(2)(iv)(B) may require the owner or operator to demonstrate MI on a schedule established by the Regional Administrator. The rule at 40 C.F.R. § 144.51(q) requires a MI demonstration for permitted wells. Mechanical integrity is one of the cornerstones of an effective UIC program because it is the simplest and most appropriate method to show mechanical soundness of the well both in construction and operation and lack of migration of fluids to USDWs. A leak in the casing, tubing or packer of a well or any fluid movement adjacent to the wellbore, may cause contamination of an underground source of drinking water. Even if a well is not currently operating and is temporarily abandoned, the mechanical integrity must be demonstrated because the well may

function as a conduit for injected or formation fluids and has the potential to contaminate a USDW.

Failure to Submit Inventory

The rule at 40 C.F.R. § 144.26(e) required injection well owners or operators to submit well inventory information within 1 year after the effective date of the UIC program in the State. The UIC Program for the State of Michigan took effect on June 25, 1984. Therefore, injection well operators in Michigan were required to file inventory information on or before June 25, 1985 to qualify for rule authorization.

An accurate inventory of injection wells is vital for the operation of an effective UIC program. All existing injection wells need to be identified and reported to the Region, so that they can be properly tracked by UIC Program staff.

Nonsubmittal of Required Information

The rule at 40 C.F.R. § 144.17 authorizes the Regional Administrator to request information from owners or operators of rule-authorized or permitted wells to determine whether the wells may be endangering an underground source of drinking water, or are in compliance with requirements. This information may include, but is not limited to, ground water monitoring or an analysis of injected fluids.

Nonsubmittal of this information hinders Region 5's ability to make informed decisions about the environmental safety of an injection well. Failure to comply with an information request

will result in the termination of the rule-authorized status for the injection well.

Inspection and Entry

The rule at 40 C.F.R. § 144.51 requires owners or operators of permitted injection wells to provide access at reasonable hours to USEPA officials or their representatives at the well site or the facility where records are stored.

Refusal to provide access to either the well site or the building where the records are kept prohibits U.S. EPA representatives from determining compliance with UIC regulations, including regulations designed to protect USDWs.

Monitoring Reports

The rule at 40 C.F.R. § 144.28(h)(2)(i) requires that owners and operators of rule-authorized Class II wells must submit an annual report to USEPA, summarizing the results of monitoring the operation of the well, which is required by 40 C.F.R. § 144.28(g)(2). The rule at 40 C.F.R. § 144.51(l)(4) requires monitoring reports for permitted wells as specified in the permit.

Monitoring is required because major changes in volume and pressure of the fluid injected may be the first indication of malfunctions or leaks in the well below the surface, where problems cannot be seen. Furthermore, if monitoring is ignored by the operator, it prevents the owner/operator from detecting problems which could escalate if not fixed promptly.

By failing to submit the report, the owner/operator has not complied with a key UIC reporting requirement.

Financial Responsibility

The rule at 40 C.F.R. § 144.28(d), the owner or operator of a rule-authorized Class I, II or III well is required to maintain financial responsibility and resources to close, plug and abandon the underground injection well in a manner acceptable to a Regional Administrator of the USEPA. The rule at 40 C.F.R. § 144.52(a)(7) requires the same for permitted wells. The Regional Administrator may also require revised demonstration of financial responsibility to reflect inflation of such costs.

This safeguard is needed to discourage owners/operators from abandoning wells after use by not plugging them properly. If a well is not properly plugged, contamination of an underground source of drinking water could result. To demonstrate financial responsibility, an operator must establish a letter of credit, surety bond or similar instrument as proof that money exists to plug the well.

Failure to Plug a Well After Two Years of Cessation of Operation

The rule at 40 C.F.R. § 144.28(c)(2)(iv), requires the owner or operator of a rule-authorized Class I, II or III well to plug and abandon the well after two years of cessation of operation in accordance with an approved plan unless notice is provided to the Regional Administrator, describing satisfactory procedures that the owner or operator will take to ensure that the well will not endanger USDWs during the period of temporary abandonment (TA).

These procedures shall include compliance with technical requirements applicable to active injection wells unless waived by the Regional Administrator.

Pressure differences inside the wellbore may cause fluid to move into the wellbore and then up toward the surface, depending on the depth, pressure, and fluid characteristics. Under the right conditions, formation fluid or injection fluid could migrate upward into a USDW and contaminate it, unless the well is plugged properly. After many years, the additional fluids from an injection formation may corrode the casing or other equipment in the well and increase the possibility of leaks. Outside influences, such as waterflooding from nearby wells, could cause fluid to move horizontally to the wellbore then migrate vertically toward the surface or USDW, with the wellbore acting as a channel for the fluids to move through. Therefore, the failure to plug a well creates the potential of contaminating USDWs.

Failure to Submit Adequate Plugging and Abandonment Plan

Pursuant to 40 C.F.R. § 144.28(c), the owner or operator of a rule-authorized Class I, II, or III well is required to prepare, maintain, and comply with a plan for plugging and abandoning the well that meets the requirements of 40 C.F.R. § 146.10 and is acceptable to the Regional Administrator. The rule at 40 C.F.R. § 144.51 describes the same requirement for permitted wells.

These plans must indicate how wells will be plugged and also be protective of USDWs. The plans are reviewed by the USEPA to ensure compatibility with the casing and cementing of the well. An effective P & A is required to ensure that underground injection wells which are plugged and abandoned no longer pose a threat to USDWs.

Failure to Submit a Plugging And Abandonment Report

The rule at 40 C.F.R. § 144.28(k) states that the owner or operator of a rule-authorized Class I, II or III well is required to submit a report to the Regional Administrator concerning the plugging of a well no later that 60 days after the plugging occurs. The report must be certified by the person who did the plugging. The rule at § 144.51(O) describes the same requirements for permitted wells.

This report is important to ensure that the plugging and abandonment procedures were appropriate and the approved plugging and abandonment plan was followed. If not, corrective action should be taken to assure protection of USDWs.

Failure to Properly Case and Cement

The rule at 40 C.F.R. § 144.28(e) requires the owners and operators of Class II rule-authorized enhanced recovery and hydrocarbon storage wells to case and cement the wells to prevent movement of fluids into or between underground sources of drinking water. The adequate casing and cementing demonstrates a second aspect of mechanical integrity, i.e., prevention of fluid movement outside of casing for Class II wells. This is a serious

violation because the Respondent's failure could lead directly to contamination of a USDW.

Nonsubmittal of fluid analysis

The rule at 40 C.F.R. § 144.28(g)(2) requires owners and operators of rule-authorized Class II wells to monitor and 40 C.F.R. § 144.28(h)(2)(i) requires owners and operators of rule-authorized Class II wells to submit to U.S. EPA an analysis of the injected fluid within one year after the effective date of the program, and thereafter when changes are made to the fluid. The rule at 40 C.F.R. § 144.51(j) requires monitoring of injected fluids in permitted wells.

This reporting violation is significant because only fluids authorized by rule or permit can be injected. If fluid migrates into a USDW and contaminates drinking water, remediation or treatment could be better implemented when the fluid components are known. Specific gravity is used to determine the maximum injection pressure. An increase in the specific gravity means that the maximum injection pressure must decrease to prevent fracturing or illegal injection.

Failure to Submit Permit Application in a Timely Manner

The rules at 40 C.F.R. §§ 144.25(a)(4) and 144.31(c)(1) require the owner or operator of a rule-authorized salt water disposal injection well to submit a permit application to the U.S. EPA on a schedule established by the Regional Administrator, but, in any case, no later than June 25, 1988. A permit is essential to insure that U.S. EPA accurately tracks and monitors

well operation thereby insuring well compliance, with the goal of protecting USDWs.

Notice of Abandonment or Conversion

The rule at 40 C.F.R. § 144.28(j) requires the owner or operator of any rule-authorized Class I, II or III well to notify the Regional Administrator prior to the plugging and abandonment or conversion of the well.

Notice is required to review the procedure to ensure that it is adequate, to ensure that the plugging and abandonment plan is followed, and that there is an opportunity to witness the procedure. If the well is plugged poorly or improperly, corrective action would be required at considerable cost.

Construction of New Well Prior to Issuance of Permit

The rule at 40 C.F.R. §§ 144.11 and 144.31 requires the owner or operator to secure a permit for any well in which underground injection will take place, (unless that well is an existing Class II injection well authorized by rule.) All new Class II injection wells must obtain UIC permits. Section 144.11 prohibits the construction of any well required to have a permit until such permit has been issued.

Failure to comply with this requirement may result in the construction of a well which is not environmentally sound.

Failure to Report Within 24 Hours

The rule at 40 C.F.R. § 144.28(b) requires that the owner or operator of rule-authorized Class I, II and III wells report to U.S. EPA by telephone within 24 hours after the owner or operator

becomes aware of the circumstances of any noncompliance which may endanger health or the environment. This includes a review of monitoring reports showing injection of a contaminant which may endanger USDWs, or a malfunction of the injection system which may cause fluid migration into or between USDWs. The oral notification must be followed by a written submission within five (5) days after the owner or operator becomes aware of the circumstances.

U.S. EPA must be notified, whether or not an emergency situation exists, so that the Agency can respond either by monitoring the well repairs, or providing technical advice. Prompt reporting is very important and essential in preventing further contamination.

Failure to Report

The rule at 40 C.F.R. § 144.51(l) requires that owners of federally permitted UIC wells to notify the Agency as soon as possible about: (1) planned changes; (2) activity or changes at the permitted facility that may result in noncompliance; (3) transfers of well ownership; (4) monitoring reports (which should be submitted at the specified periods listed in the permit); (5) compliance schedules (compliance schedules must be submitted within 30 days of the scheduled date) and (6) 24-hour reporting.

This notice is required because Agency officials must have adequate opportunity to review and comment on proposed changes involving the well, and to make any necessary permit modifications. Owners and operators of injection wells must

communicate information about any planned well changes to Region 5 to ensure that our files stay current. This ensures that the Agency has the latest information, if an emergency arises.

APPENDIX II

For wells which are not in operation, the seriousness level for "failure to report" (see p.25 - 26 of Appendix I), shall be calculated as specified below:

FAILURE TO SUBMIT A ANNUAL REPORT ..... $1,400 per year not submitted

FAILURE TO SUBMIT A QUARTERLY REPORT ..... $450 per quarter not submitted

The above-mentioned violations are continuing violations.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	)	
	)	
ROBERT CHRISTENSEN,	)	**Docket No.: SDWA-05-2010-0001**
d/b/a BOB'S REPAIR,	)	
1014 3RD AVE, NE,	)	
BRAINERD, MINNESOTA,	)	**Before the Regional Judicial Officer**
	)	
RESPONDENT.	)	
	)	

DEFAULT ORDER

Pursuant to section 22.17(a) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. § 22.17(a), I find Respondent to be in default. I further find:

1. Complainant, the U.S. Environmental Protection Agency, filed the Administrative Complaint (Complaint) in this matter on September 17, 2010.

2. Complainant perfected service of process of the Complaint on Respondent, Robert Christensen, on September 27, 2010, by service of the Complaint by U.S. Postal Service First Class Mail.

3. Respondent failed to file an Answer to the Complaint.

4. The record in this matter does not show good cause why a default order should not be issued against Respondent for the violations alleged in the Complaint.

5. For the reasons stated above, Complainant's Motion for Default Order against Respondent is granted.

6. Pursuant to 40 C.F.R. § 22.17, for the purposes of the pending proceeding only, all of the facts alleged in the Complaint are deemed admitted and Respondent has waived its right to contest such factual allegations.

7. Pursuant to 40 C.F.R. § 22.17, the penalty proposed in the Complaint of $3,600 shall become due and payable without further proceedings 30 days after this Default Order becomes final under 40 C.F.R. § 22.27(c).

8. Pursuant to 40 C.F.R. § 22.17, Complainant's request in the Complaint for a Compliance Order under section 1423 of SDWA, 42 U.S.C. § 300h-2(c), is granted and Respondent will have 30 days from the date this Default Order becomes final to comply with the requirements of SDWA, including the requirement to close his well or obtain a permit to operate it as required by 40 C.F.R. § 144.89.

_____ Date: _____

Marcy Toney
Regional Judicial Officer
U.S. Environmental Protection Agency Region 5