



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

FEB 10 2009

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG-11
2009 FEB 18 PM 2:50
REGIONAL HEARING
CLERK

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article number: 7005 3110 0000 5926 8506

Tim Hens
Genesee County Highway Department
153 Cedar Street
Batavia, NY 14020

Re: In The Matter Of: Genesee County Highway Department
Docket Number: SDWA-02-2009-8902

Dear Mr. Hens:

Enclosed is a Complaint issued to Genesee County Highway Department (Respondent) by the U.S. Environmental Protection Agency (EPA). The EPA has determined that Respondent violated Part C of the Safe Drinking Water Act (the Act) and the regulations promulgated thereunder, relating to underground injection. Respondent failed to submit requested well inventory information and additional information to the EPA. Therefore, pursuant to §1423(c) of the Act, 42 U.S.C. §300h-2(c), EPA seeks (1) to assess a penalty in the amount of **\$14,000** against Respondent for these violations, and, (2) to require Respondent to take certain actions to achieve compliance with the Act.

Respondent has the right to a hearing to contest the factual allegations in the Complaint. If the allegations are admitted, or they are found to be true after an opportunity for a hearing on them, Respondent has the right to contest the penalty and the compliance measures proposed in the Complaint. I have enclosed a copy of the Proposed Consolidated Rules of Practice (CROP)(40 C.F.R. Part 22) which EPA follows in cases of this kind. Please take particular note of 40 C.F.R. §22.15 with regard to filing an Answer in this matter. Also note 40 C.F.R. Part 22 Subpart I. **If Respondent wishes to contest the allegations in the Complaint or the penalty proposed or the proposed compliance measures detailed in the Complaint, an Answer must be filed within thirty (30) days of your receipt of the enclosed Complaint. The Answer must be mailed to the EPA Regional Hearing Clerk at the following address:**

Regional Hearing Clerk
U.S. EPA, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

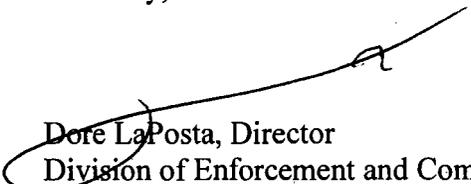
If Respondent does not file an Answer within thirty (30) days of receipt of this Complaint, you may be judged to have defaulted. In the event of default, each allegation in the Complaint will be deemed to be admitted. Respondent will have waived your right to appear in this action and the entire proposed penalty and all proposed compliance measures may be ordered without further proceedings.

Whether or not a hearing is requested, Respondent may confer informally with the EPA concerning the alleged violations, the amount of the proposed penalty and/or the compliance measures. The EPA encourages all parties against whom it files a Complaint to pursue settlement discussions. The EPA also encourages the use of Supplemental Environmental Projects, where appropriate, as part of the settlement. Enclosed is a copy of the EPA Supplemental Environmental Projects Policy (May 1, 1998) for your consideration. Respondent may represent yourself or be represented by an attorney at any stage of the proceedings, including any informal discussions, whether in person or by telephone. Please note that a request for an informal conference does not substitute for a written Answer or effect what may be asserted in an Answer, nor does it extend the thirty (30) days by which to file an Answer or a Hearing Request. Any hearing held in this matter will be conducted in accordance with the CROP.

If you have any questions or wish to discuss settlement of this matter with the EPA by an informal conference, please immediately contact:

Nadine Orrell
Assistant Regional Counsel
Water & General Law Branch
U.S. EPA, Region 2
290 Broadway - 16th Floor
New York, New York 10007-1866
(212) 637-3244

Sincerely,



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

1. CROP
2. SEP Policy
3. U.S. EPA Small Business Resource Information Sheet
4. Notice of Security and Exchange Commission Registrant's Duty to Disclose Environmental Legal Proceedings

cc: Karen Maples, Regional Hearing Clerk
(W/Complaint only)

James DeZolt, P.E., Director
Division of Water
New York State Department of Environmental Conservation

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, NY 10007-1866

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2009 FEB 18 PM 2:50
REGIONAL HEARING
CLERK

IN THE MATTER OF

Genesee County Highway
Department
153 Cedar Street
Batavia, NY 14020

Respondent.

Proceedings Under Section 1423(c)
of the Safe Drinking Water Act,
42 U.S.C. §300h-2(c)

DOCKET NO. SDWA-02-2009-8907

COMPLAINT
NOTICE OF VIOLATION
PROPOSED ADMINISTRATIVE ORDER
WITH CIVIL PENALTY
AND
OPPORTUNITY TO REQUEST A HEARING

COMPLAINT AND NOTICE OF VIOLATION

I. STATUTORY & REGULATORY AUTHORITIES

- 1) This Complaint, Notice of Violation, Proposed Administrative Order with Civil Penalty and Opportunity to Request a Hearing, is hereinafter referred to as "Complaint" and is issued under the authority vested in the Administrator of the Environmental Protection Agency ("EPA") by Section 1423(c) of the Safe Drinking Water Act ("Act"), 42 U.S.C. §300h-2(c). The Administrator has delegated the authority to take these actions to the Regional Administrator for Region 2, who in turn delegated them to the Director, Division of Enforcement and Compliance Assistance of EPA, Region 2 ("Complainant").
- 2) Pursuant to Section 1423(c) of the Act, 42 U.S.C. §300h-2(c), and in accordance with the Consolidated Rules of Practice ("CROP") 40 C.F.R. Part 22, Complainant hereby requests that the Regional Administrator assess a civil penalty against Respondent for violations of the Act and the regulations promulgated thereunder and require Respondent to take certain actions to achieve compliance with the Act and the regulations promulgated thereunder.
- 3) Section 1422 of the Act, 42 U.S.C. §300h-1, requires EPA to administer the Underground Injection Control ("UIC") Program in states that do not have approved state programs. New York is a "state" within the meaning of Section 1401(13) of the Act, 42 U.S.C. §300f (13) and 40 C.F.R. §144.3. New York has not acquired primacy over the UIC program. Therefore, the UIC program for the State of New York is administered by the EPA and, pursuant to 40 C.F.R. §147.1651, the effective date of the program is June 25, 1984.

- 4) Section 1401(12) of the Act, 42 U.S.C. §300f (12) and 40 C.F.R. §144.3 defines “person” among other things, as an individual, corporation, company, association, partnership or municipality.
- 5) Class V underground injection wells are regulated by EPA and defined by 40 C.F.R. §146.5(e).
- 6) 40 C.F.R. §144.11(a) prohibits any underground injection, except as authorized by rule or permit under the UIC program.
- 7) All Class V wells are authorized by rule pursuant to 40 C.F.R. §144.24, which authorizes injection into Class V wells provided the owner or operator submits inventory information in a timely manner and also submits any additional information requested by EPA in a timely manner.
- 8) 40 C.F.R. §144.83 requires owners and/or operators of Class V wells who did not submit inventory pursuant to 40 C.F. R. §144.26 to cease injection as of December 7, 1999.
- 9) Owners and/or operators who were required to cease injection pursuant to 40 C.F.R. §144.83 are required to continue to cease injection until authorized by conditions detailed in 40 C.F.R. §144.83(a)(1).
- 10) Authorization by rule to inject also terminates if additional information requested by EPA, under authority of 40 C.F.R. §144.27 and §144.83, is not submitted to EPA in a timely manner.
- 11) If a permit application is submitted pursuant to 40 C.F.R. §144.25 or §144.84, authorization by rule to inject terminates upon issuance of the permit to inject or upon denial of the permit.
- 12) 40 C.F.R. §144.12(a) prohibits movement of fluid containing any contaminant into underground sources of drinking water (“USDW”), if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 C.F.R. Part 141 or may otherwise adversely affect the health of persons.
- 13) Pursuant to 40 C.F.R. 144.88(b) all vehicle service waste injection wells were required to be closed or permitted by no later than January 1, 2007.

II. JURISDICTIONAL FINDINGS

- 14) Genesee County Highway Department (“Respondent”) is a person within the meaning of Section 1401(12) of the Act, 42 U.S.C. §300f (12) and 40 C.F.R. §144.3.

- 15) Respondent owns and operates a facility at 153 Cedar Street in Batavia, New York (the "facility"). Respondent is the operator of an automotive repair facility used for maintaining highway maintenance vehicles.
- 16) Respondent operates an injection well at the facility. The injection well at the facility is a Class V injection well as defined at 40 C.F.R. §144.81.
- 17) Based on the above, Respondent is subject to the requirements of Part C of the Act, 42 U.S.C. §300h *et seq.* and implementing regulations found at 40 C.F.R. Parts 124, 144, 146 and 147 Subpart HH.

III. FINDINGS OF VIOLATION

A. Unauthorized Injection

- 18) Complainant re-alleges Paragraphs 14 – 17 above.
- 19) Respondent did not submit an inventory pursuant to 40 C.F.R. §§144.26 and 144.83.
- 20) On October 23, 2007, an EPA contracted inspector inspected the facility.
- 21) The inspector noted that the floor drainage system in the vehicle maintenance area received snow melt. In a letter from the Respondent dated June 13, 2008, it was stated that the floor drainage system located in the fleet maintenance area of the facility leads to a septic tank/leachfield (injection well) and receives snow melt and water tracked from outside.
- 22) To date, Respondent has not ceased injection.
- 23) Based upon the Findings above, Respondent violated 40 C.F.R. §144.11 by injection without authorization to inject.

B. Failure To Prevent Movement Of Fluids Into Underground Sources of Drinking Water

- 24) Complainant re-alleges Paragraphs 14 – 17 above.
- 25) On October 23, 2007, a contracted EPA representative inspected the facility including the automobile service bay area.
- 26) EPA brochure #EPA/530-SW-90-027a indicates that automobile service station bay waste water discharges typically contain hazardous substances as defined and designated by EPA in 40 C.F.R. Part 302, such as heavy metals and volatile organic compounds ("VOCs"), metals, especially lead (7439921*), zinc (7440666*), cadmium (7440439*) and chromium (7440473*) are of special environmental and human health concern in service station discharges due to their high concentration and toxicity. VOCs found in service station

discharges include compounds that are known or suspected carcinogens such as benzene (71432*), and 1,4 dichlorobenzene (106467*). These compounds, when found in service station discharges, commonly exceed water quality standards set out in 40 C.F.R. Part 141. Acrolein (107028*), ethylbenzene (100414*), toluene (108883*), 1,2 dichlorobenzene (95501*) and 1,3-dichlorobenzene (95501*) which are designated hazardous substances as listed in 40 C.F.R. §302.4, have been found in service station bay discharges as well. (* denotes Chemical Abstracts Service Registry Numbers (“CASRN”) used by EPA to identify hazardous substances as designated in 40 C.F.R. §302.4).

<http://www.epa.gov/region2/water/compliance/vehiclemaintenance.pdf>.

- 27) During the inspection on October 23, 2007, the inspector noted that the floor drainage system in the vehicle maintenance area received snow melt. In a letter from the Respondent dated June 13, 2008, it was stated that the floor drainage system located in the fleet maintenance area of the facility leads to a septic system (injection well) and receives snow melt and water tracked from outside.
- 28) The floor drains lead to a Class V injection well which, based on an EPA aquifer map, discharges above a New York State designated primary aquifer.
- 29) Based upon the Findings above, Respondent violated 40 C.F.R. §144.12(a) by injection which may endanger USDWs.

PROPOSED ADMINISTRATIVE ORDER

- 1) **Penalty:** EPA proposes to issue a Final Administrative Order (“Final Order”). The Final Order will be based on the foregoing Findings of Violation, and pursuant to the authority of Section 1423(c) of the Act, 42 U.S.C. §300h-2(c), and the Debt Collection Improvement Act of 1996. EPA, Region 2, hereby proposes to issue a Final Administrative Order against the Respondent, assessing a penalty of **\$14,000**. EPA determined the proposed penalty in accordance with the terms of the Safe Drinking Water Act, which takes into account statutory factors, including the seriousness of the violation(s); the economic benefit (if any) resulting from the violation(s); the history of such violation(s); the good-faith efforts to comply with the applicable requirements; the economic impact of the penalty on the violator; and such other matters as justice may require.
- 2) **Compliance Measures:** In addition to paying a penalty, Respondent shall be ordered to:
 - a) **Cease Injection:** As of the effective date of this Order, Respondent shall discontinue the use of the drain disposal system as currently utilized.
 - b) **Remediation Plan Submittal:** Within 30 days of the effective date of this Order, Respondent shall submit a remediation plan (“Plan”), developed in accordance with well remediation requirements incorporated into this Order as Attachment 1, detailing how the injection well subject to this Order will be properly remediated and, if applicable, permanently closed. Please note that continued use of the injection well or wells subject to this Order, for any purpose, after remediation is completed must be

approved by EPA pursuant to Paragraph 5 below. **EPA will review the Plan and approve or provide comments within 30 days after receipt of the Plan from Respondent.**

- c) **Well Remediation:** Within 180 days of the effective date of this Order, Respondent shall complete the remediation of the injection well or wells in accordance with the EPA approved Plan.
- d) **Well Remediation/Closure Report:** Within 210 days of the effective date of this Order, Respondent shall submit a final report to EPA, summarizing the work completed in fulfillment of the requirements of this Order and as required by the EPA approved remediation plan. EPA shall notify Respondent in writing as to whether or not the well remediation and report are adequate or if additional measures must be taken.
- e) **Request for Permit:** Should Respondent desire to continue to utilize any or all injection wells subject to this Order, after the remediation required pursuant to Paragraph 37(c) of this section is completed, for the disposal of any fluids, Respondent must submit a written request ("Request") to EPA within 120 days of the effective date of this Order indicating your desire to obtain a permit for continued injection. This Request must include, at a minimum:
 - 1) The source(s) and type(s) of fluid(s) Respondent wishes to dispose of into the injection well or wells.
 - 2) Any treatment of the wastes that will be done prior to injection of the wastes.
 - 3) Any available analytical data demonstrating the levels of contaminants in the fluid(s) Respondent wishes to dispose of into the injection well or wells.

Once EPA completes its review of the Request, EPA will send Respondent a written response detailing any additional information that may be needed to evaluate the Request and may include additional requirements that must be met in order for the Request to be approved under either Authorization By Rule or Authorization By Permit.

- 3) The Final Order does not constitute a waiver, suspension or modification of the requirements of 40 C.F.R. §147 Subpart HH, which remain in full force and effect. Issuance of the Final Order is not an election by EPA to forego any civil or criminal action otherwise authorized under the Act.
- 4) Violations of the terms of the Final Order after its effective date or date of final judgment as described in Section 1423(c)(6) of the Act, 42 U.S.C. §300h-2(c)(6), may subject Respondent to further enforcement action, including a civil action for enforcement of the Final Order under Section 1423(b) of the Act, 42 U.S.C. §300h-2(b), and civil and criminal penalties for violations of the compliance terms of the Final Order under Section 1423(b)(1) and (2) of the

Act, 42 U.S.C. §300h-2(b)(1) and (2). Failure to act in accordance with this Order truthfully and accurately within the time provided may subject Respondent to sanctions authorized by federal law. In addition, making a knowing submission of materially false information to the U.S. Government may be a criminal offense.

OPPORTUNITY FOR A HEARING

- 1) Respondent may, within thirty (30) days of receipt of this Complaint and as part of any Answer filed in this matter, request a Hearing on the proposed civil penalty assessment and the actions proposed to achieve compliance with the Act, as detailed in Section IV above. At the Hearing, Respondent may contest the factual allegations set forth in the Findings sections above; the appropriateness of any penalty amount, and; appropriateness of any compliance measures contained in Section IV, above. The procedures for the Hearing, if one is requested, are set out in the Consolidated Rules of Practice, including Subpart I. A copy of the Consolidated Rules of Practice is attached.
- 2) Should Respondent request a hearing on this proposed penalty assessment and/or compliance measures, members of the public, to whom EPA is obligated to give notice of this proposed action, will have a right under Section 1423(c)(3) of the Act, 42 U.S.C. §300h-2(c)(3), to be heard and to present evidence on the appropriateness of the penalty assessment and compliance measures. Should Respondent not request a hearing, EPA will issue a Final Order and only members of the public who submit timely comment on this Complaint will have an additional thirty (30) days to petition EPA to set aside the Final Order and to hold a hearing thereon. EPA will grant the petition and will hold a hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order.

FILING AN ANSWER

- 3) If Respondent wishes to avoid being found in default, Respondent must file a written Answer to this Complaint with the Regional Hearing Clerk no later than thirty (30) days from the date of receipt of this Complaint. Under authority of 40 C.F.R. §22.17 EPA may file a motion seeking a default order thirty (30) days after Respondent's receipt of the Complaint, unless Respondent files an Answer within that time. If a default order is entered, the entire proposed penalty may be assessed and the proposed compliance measures may be required, without further proceedings.
- 4) The Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint with respect to which Respondent has knowledge, or, clearly state that Respondent has no knowledge as to particular factual allegations in the Complaint. The Answer also shall state:
 - i) circumstances or arguments which are alleged to constitute grounds of any defense;
 - ii) facts which the Respondent disputes;
 - iii) basis for opposing the proposed relief;
 - iv) whether a Hearing has been requested.

- 5) Failure of Respondent to admit, deny or explain any material factual allegations in the Complaint shall constitute admissions of the allegation.

FILING OF DOCUMENTS

- 6) The Answer and any Hearing Request and all subsequent documents filed in this action should be sent to:

Regional Hearing Clerk
U.S. EPA, Region 2
290 Broadway – 16th Floor
New York, New York 10007-1866

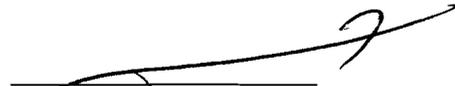
- 7) A copy of the Answer, any Hearing Request, and all subsequent documents filed in this action shall be sent to:

Nadine Orrell
Assistant Regional Counsel
Water & General Law Branch
Office of Regional Counsel
U.S. EPA, Region 2
290 Broadway – 16th Floor
New York, New York 10007

GENERAL PROVISIONS

- 1) Respondent has the right to be represented by an attorney at any stage of these proceedings.
- 2) This Complaint does not constitute a waiver, suspension or modification of the requirements of the Act, regulations promulgated thereunder or any applicable UIC permit.
- 3) Complainant specifically reserves all rights to pursue criminal enforcement as well as the right to initiate an action for imminent and substantial endangerment, including the right to seek injunctive relief and/or the imposition of statutory penalties for those violations not addressed by this Complaint. This reservation of right does not waive any other rights Complainant may have but has not stated herein.

COMPLAINT ISSUED THIS 9th DAY OF FEBRUARY, 2009.



Dore LaPosta, Director
Division of Enforcement
and Compliance Assistance

ATTACHMENT 1

Instructions for Underground Injection Control Class V Remediation Plans

To ensure Underground Injection Control (UIC) Class V well remediation in an environmentally sound manner, the EPA requires the following information to be included in your Class V well remediation plan. Please note that, for sanitary systems where a connection to the sewer is not possible, the sanitary system may remain in use as long as the chemical contamination is cleaned out and the chemical discharge is ceased:

- A. Schematic diagram displaying the injection well system; the diagram must include all drains, piping, processing units such as oil/water separators or septic tanks, and final discharge mechanisms such as drywells, leach fields or open underground pipe. Note that, for sanitary waste disposal systems, the diagram must clearly indicate whether the facility uses a septic system or a cesspool where cesspools and septic systems are defined as follows:
 - A cesspool is a drywell/leach pit that directly receives untreated sanitary waste containing human excreta. A cesspool system does not utilize a septic tank to retain and treat sanitary waste.
 - In a septic system, sanitary waste is first discharged through a septic tank, where solids are removed and biologic treatment occurs, and the treated sanitary waste is then discharged to a drywell/leachpit or to a drainfield.
- B. Description of all fluids which enter the Class V well;
- C. Statement indicating that the connection between all drains of concern and the injection well (cesspool, drywell, open pipe or leachfield), will be verified;
- D. Description of plug emplacements (if applicable);
- E. Statement indicating that all contaminated liquids, sludges, and contaminated soil will be removed from in and around the Class V injection well until visibly clean soil is reached, or structural integrity of the excavation or buildings or other significant structures near the excavation, may be compromised;
- F. Description of on-site storage while awaiting proper disposal, of liquids, sludges and contaminated soil removed from the Class V well system;
- G. Statement indicating that all wastes will be characterized for disposal purposes, in accordance with Federal, State, and local regulations;
- H. End-point sample shall be collected from the cleaned out Class V well, below the point of discharge. The end-point sample shall be analyzed according to well use and injectate constituents. A statement must be included indicating what analytical methods will be used. Recommended EPA methods are included below:

- For large capacity cesspool wells (20 or more people per day), which receive only sanitary waste, an end-point sample and analysis is not required.
 - For motor vehicle waste disposal wells, the end-point sample shall be analyzed for volatile organic compounds (EPA Test Method SW-846 8260), semi-volatile organic compounds (EPA Test Method SW-846 8270 base/neutral extraction), and arsenic, cadmium, chromium, and lead by a total metals analysis.
 - For funeral home waste disposal wells, the end-point sample shall be analyzed for volatile organic compounds (EPA Test Method SW-846 8260); phenol, 2-methylphenol and 4-methylphenol (EPA Test Method SW-846 8270 base/neutral extraction, or EPA Test Method SW-846 8041); formaldehyde (EPA Test Method SW-846 8315); mercury, arsenic, cadmium, chromium, copper, and lead by total metals analyses.
 - For industrial discharge wells, the end-point sample shall be analyzed for contaminants present in the injected discharge (analyses may include volatile organic compounds - EPA Test Method SW-846 8260; semi-volatile organic compounds - EPA Test Method SW-846 8270 base/neutral extraction, and metals, herbicides or pesticides).
- I. Clean inert soil or sand will be used as backfill;
- J. Statement must be included indicating that a final report outlining the remediation procedures used, and including all initial and end-point analyses results and waste disposal manifests shall be submitted to:

Nicole Foley Kraft, Chief
Ground Water Compliance Section
2DECA-WCB, 20th Floor
U.S. Environmental Protection Agency
290 Broadway
New York, NY 10007-1866.

The Class V well work plan must be submitted to EPA and approved by EPA prior to initiation of well initial sampling and/or clean-out activities. You shall be notified that EPA has approved your work plan or that you will be required to modify your work plan to meet the requirements listed above.

In order to receive a letter from the EPA documenting proper initial sampling and/or clean-out of your wells, you must submit a final remediation report outlining the remediation procedures that were used, and including all sampling results and waste disposal manifests.

IN THE MATTER OF:

Genesee County Highway Department
153 Cedar Street
Batavia, NY

Proceedings under Section 1423(c)
of the Safe Drinking Water Act,
42 U.S.C. §300h-2(c)

Docket No. SDWA-02-2009-8902

CERTIFICATE OF SERVICE

I certify that the foregoing "Complaint, Notice of Violation, Proposed Administrative Order and Opportunity to Request a Hearing" was sent to the following persons, in the manner specified, on the date below:

Original hand delivered:

Karen Maples
Regional Hearing Clerk
U.S. EPA, Region 2
290 Broadway
New York, New York 10007-1866

Copy by certified mail
return receipt requested:

Tim Hens
Genesee County Highway Department
153 Cedar Street
Batavia, NY 14020

Date:

2/18/2009

Signed:

