



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

AUG 22 2007

Ref: 8ENF-UFO

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Scott Heim, Owner
Yankee Fourteen Aviation
47010 Great Planes Place
Tea, SD 57064

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

Dear Mr. Heim:

The enclosed document is a Penalty Complaint and Notice of Opportunity for Hearing (Complaint) for violations of the Safe Drinking Water Act (SDWA). Please carefully read the Complaint soon, since it describes your rights and responsibilities in this matter as well as EPA's authority, the factual basis of the violations, and the background for the proposed penalties. Also enclosed is a copy of the Rules of Practice that govern these proceedings, the required Public Notice associated with this Complaint and, in case you meet the criteria, an information sheet about the Small Business Regulatory Enforcement Fairness Act.

Mr. Heim, you are required to take action within 30 calendar days of your receipt of this Complaint to avoid the possibility of having a default judgment entered against you that could impose the penalty amount proposed in the Complaint.

Whether or not you request a hearing, we encourage an informal conference with EPA concerning the alleged violations in an effort to negotiate a settlement. You may wish to appear at an informal conference and/or be represented by legal counsel. To arrange for such a conference, you should contact Jim Eppers, Enforcement Attorney, Legal Enforcement Program, at the number provided below. Request for such a conference does not extend the 30 calendar day period during which a request for hearing must be submitted.

Public Notice of EPA's Complaint and the opportunity to provide written comments on the Complaint is being provided pursuant to section 1423 (c)(3)(B) of the SDWA, 42 U.S.C. § 300h-2(c)(3)(B). Should a hearing be held, any person who comments on the Complaint has a right to participate in the hearing.

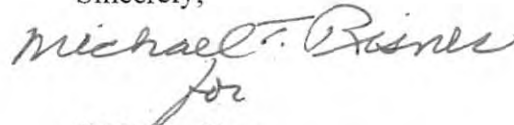
If you have technical questions relating to this matter, the person most knowledgeable on my staff is Carol L. Hutchings, UIC Enforcement Team, Technical Enforcement Program, at 1-800-227-8917 ext. 6485 or (303) 312-6485. For all legal questions, the person most knowledgeable on my staff is Jim Eppers at 1-800-227-8917 ext. 66893 or (303) 312-6913. Mrs. Hutchings and Mr. Eppers can also be reached at the following addresses:

Carol L. Hutchings (Mail Code 8ENF-UFO)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129, or

Jim Eppers (Mail Code 8ENF-L)
Enforcement Attorney
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

We urge your prompt attention to this matter.

Sincerely,



Eddie A. Sierra
Acting Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures:

Penalty Complaint and Notice of Opportunity for Hearing
40 C.F.R. Part 22
Public Notice
U.S. EPA Small Business Resources Fact Sheet

cc: Daryl Elcock, Registered Agent
Great Planes Aviation, Inc.
400 4th Street
Tea, SD 57064-0220

Ms. Anita Yan
SD DENR
523 East Capitol
Pierre, SD 57501-3181



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Daryl Elcock, Secretary/Treasurer and Registered Agent
Great Planes Aviation, Inc.
400 4th Street
Tea, SD 57064-0220

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

Dear Mr. Elcock:

The enclosed document is a Penalty Complaint and Notice of Opportunity for Hearing (Complaint) for violations of the Safe Drinking Water Act (SDWA). Please have Great Planes Aviation, Inc. (Great Planes Aviation) carefully read the Complaint soon, since it describes Great Planes Aviation's rights and responsibilities in this matter as well as EPA's authority, the factual basis of the violations, and the background for the proposed penalties. Also enclosed is a copy of the Rules of Practice that govern these proceedings, the required Public Notice associated with this Complaint and, in case Great Planes Aviation meets the criteria, an information sheet about the Small Business Regulatory Enforcement Fairness Act.

Great Planes Aviation is required to take action within 30 calendar days of your receipt of this Complaint to avoid the possibility of having a default judgment entered against Great Planes Aviation that could impose the penalty amount proposed in the Complaint.

Whether or not Great Planes Aviation requests a hearing, we encourage an informal conference with EPA concerning the alleged violations in an effort to negotiate a settlement. Great Planes Aviation may wish to appear at an informal conference and/or be represented by legal counsel. To arrange for such a conference, Great Planes Aviation should contact Jim Eppers, Enforcement Attorney, Legal Enforcement Program, at the number provided below. Request for such a conference does not extend the 30 calendar day period during which a request for hearing must be submitted.

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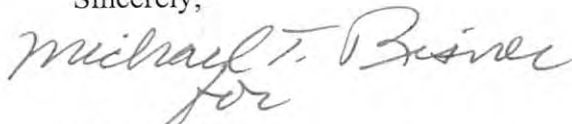
If Great Planes Aviation has technical questions relating to this matter, the person most knowledgeable on my staff is Carol L. Hutchings, UIC Enforcement Team, Technical Enforcement Program, at 1-800-227-8917 ext. 6485 or (303) 312-6485. For all legal questions, the person most knowledgeable on my staff is Jim Eppers at 1-800-227-8917 ext. 6893 or (303) 312-6913. Mrs. Hutchings and Mr. Eppers can also be reached at the following addresses:

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Jim Eppers (Mail Code 8ENF-L)
Enforcement Attorney
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

We urge Great Planes Aviation's prompt attention to this matter.

Sincerely,



Eddie A. Sierra
Acting Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures:

Penalty Complaint and Notice of Opportunity for Hearing
40 C.F.R. Part 22
Public Notice
U.S. EPA Small Business Resources Fact Sheet

cc: Scott Heim
Yankee Fourteen Aviation
47010 Great Planes Place
Tea, SD 57064

Ms. Anita Yan
SD DENR
523 East Capitol
Pierre, SD 57501-3181

Great Planes Aviation, Inc.
Scott Heim, dba Yankee Fourteen Aviation
Docket No. SDWA-08-2007-0073

CERTIFICATE OF SERVICE

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

Daryl Elcock
Secretary/Treasurer and Registered Agent
Great Planes Aviation, Inc.
400 4th Street
Tea, SD 57064-0220

and to Scott Heim dba Yankee Fourteen Aviation at the following address:

Scott Heim, Owner
Yankee Fourteen Aviation
47010 Great Planes Place
Tea, SD 57064

Dated: _____

8/22/07

By: _____

Judith McTernan
Judith McTernan

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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8
Docket No. **SDWA-08-2007-0073**

2007 AUG 22 AM 10:02

EPA REGION VIII
HEARING CLERK

In the Matter of:)
)
Great Planes Aviation Inc.,) **PENALTY COMPLAINT AND NOTICE OF**
a South Dakota Corporation; and) **OPPORTUNITY FOR HEARING**
)
Scott Heim, dba)
Yankee Fourteen Aviation)
)
Respondent.)

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INTRODUCTION

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1. This civil administrative enforcement action is authorized by Congress in section 1423 of the Public Health Service Act, commonly known as the Safe Drinking Water Act (the Act). 42 U.S.C. § 300h-2. The Environmental Protection Agency (EPA) regulations authorized by the statute are set out in part 144 of title 40 of the Code of Federal Regulations (C.F.R.), and violations of the statute, permits or EPA regulations constitute violations of the Act. The rules for this proceeding are the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits (Rules of Practice)," 40 C.F.R. part 22, a copy of which is enclosed.

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2. The undersigned EPA official has been properly delegated the authority to issue this action.

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3. EPA alleges that Great Planes Aviation, Inc., and Scott Heim dba Yankee Fourteen Aviation (Respondents) have violated the regulations and therefore the Act and proposes the assessment of a civil penalty, as more fully explained below.

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NOTICE OF OPPORTUNITY FOR A HEARING

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4. Respondents have the right to a public hearing before a presiding officer within the Agency to disagree with (1) any fact stated (alleged) by EPA in the complaint, (2) the grounds for any legal defense or (3) the appropriateness of the proposed penalty.

1 11. Respondent Great Planes Aviation, Inc., owns the property and facility located at
2 47010 Great Planes Place, Tea, South Dakota, (facility).
3

4 12. Respondent Scott Heim, dba Yankee Fourteen Aviation, operates the airport,
5 aviation/flight school, and aircraft maintenance/repair service located at the facility.
6

7 13. On June 7, 2004, EPA Region 8 received a completed Shallow Well Injection Well
8 Inventory Request form prepared by Scott Heim of Yankee Fourteen Aviation, Inc. dated May
9 31, 2004 (Inventory Form). The Inventory Form indicated that sanitary waste and waste from
10 floor drain(s) or sink(s) in a shop area, engine service area or maintenance bay are connected to a
11 septic system, drainfield, or cesspool; and that other wastes are stored and are hauled off-site
12 (recycled).
13

14 14. Motor vehicle waste disposal wells are defined at 40 C.F.R. §144.81(16) as follows:
15 "Motor vehicle waste disposal wells that receive or have received fluids from vehicular repair or
16 maintenance activities, such as an auto body repair shop, automotive repair shop, new and used
17 car dealership, specialty repair shop (e.g., transmission and muffler repair shop), or any facility
18 that does any combustion engine repair/maintenance work."
19

20 15. Respondents' disposal system, as identified in the Inventory Form above, is classified
21 as a "Class V Injection Well" as defined by 40 C.F.R. §144.6 and §146.5 and is a motor vehicle
22 waste disposal well as defined by 40 C.F.R. §144.81(16). Respondents are subject to applicable
23 requirements of 40 C.F.R. §§ 124, 144 and 146.
24

25 16. On April 5, 2005, an authorized EPA employee entered the facility with the consent
26 of Scott Heim to inspect it for compliance with the law.
27

28 17. As of that date, it was verified that Respondents owned and were operating a motor
29 vehicle waste disposal well(s).
30

31 18. By letter dated June 27, 2005, EPA, pursuant to 40 CFR 144.12 (c) & (d) , directed
32 Scott Heim dba Yankee Fourteen Aviation and Great Planes Aviation, Inc. to either permit or
33 close the well(s), by October 24, 2005.
34

35 19. Respondents never applied for a permit for the well(s).
36

37 20. On August 22, 2006, an authorized EPA employee again entered the facility with the
38 consent of Scott Heim to inspect it for compliance with the law.
39

40 21. As of the day of the August 2006 inspection, Respondents continued to own and
41 operate the motor vehicle waste disposal well(s).
42
43

1 22. By letter dated March 27, 2007, EPA informed each Respondent the facility was in
2 violation of EPA regulations and directed the Respondents to close the well.
3

4 23. Additionally, **all** owners and operators of motor vehicle waste disposal systems that
5 existed prior to the April 5, 2000, ban of construction of new motor vehicle waste disposal
6 systems, were required by 40 C.F.R. § 144.88(b) to have submitted a completed permit
7 application or have completed the closure of the motor vehicle waste disposal systems by
8 January 1, 2007. Respondents were notified of this ban in the March 27, 2007 letter.
9

10 24. On May 31, 2007, EPA received a letter prepared by Daryl Elcock, of Great
11 Planes Aviation, Inc., documenting the closure of the motor vehicle waste disposal well on
12 May 16, 2007.
13

14 25. Lying underneath the disposal system are underground sources of drinking water
15 (USDWs), including but not limited to unconsolidated sand and gravel aquifers approximately
16 100 feet below land surface.
17

18 26. Respondents' ownership and operation of the well after the October 24, 2005 was in
19 violation of the following EPA regulations and therefore the Act. 42 U.S.C. § 3000h-2 (c)(1):
20

21 -144.12(a) and 40 C.F.R. §144.82(a)(1) for owning, operating, and maintaining a Class V
22 disposal facility which, through injection activity, allows the movement of fluid
23 containing any contaminant into underground sources of drinking water, if the presence
24 of that contaminant may cause a violation of any primary drinking water regulation under
25 40 C.F.R. part 142 or may otherwise adversely affect the health of persons;
26

27 -40 C.F.R. §144.12(c)(1) and (2) and 40 C.F.R. §144.88(b) for failure to close or retrofit
28 the Class V disposal system in a manner that would keep contaminants from entering a
29 USDW; and
30

31 -40 C.F.R. § 144.88(b) for operating a motor vehicle waste disposal system after the
32 January 1, 2007 ban of all motor vehicle disposal wells.
33

34 **PROPOSED CIVIL PENALTY**

35

36 27. For an administrative proceeding, the Act authorizes the assessment of a civil
37 penalty of up to \$11,000 per day, for each violation of the Act, up to a maximum of \$157,500.
38 42 U.S.C. § 3000h-2 (c)(1). The Act requires EPA to take into account appropriate factors in
39 assessing a civil penalty, including the seriousness of the violations, the economic benefit
40 resulting from the violations, any history of such violations, and good-faith efforts to comply
41 with the requirements, the economic impact on the violator, and such other matters as justice
42 may require.
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1
2 28. In light of the statutory factors and the specific facts of this case, EPA proposes that a
3 penalty of thirty seven thousand-eight hundred dollars (\$37,800.00), be assessed against
4 Respondents for the violations alleged above, as explained below:
5

6 Seriousness of the Violation
7

8 Each of the violations is serious because of the threats to the quality and health of the
9 underlying USDWs and the potential threats to health of persons posed by Respondents'
10 noncompliance. Further, although the total economic benefit Respondents have enjoyed
11 by not coming into compliance is nominal, Respondents took almost two years to come
12 into compliance, even after direct notice from EPA. Respondents have been responsible
13 for maintaining compliance and have been in complete control of the facility from the
14 effective date of the program. Despite this, EPA, for penalty purposes, is only
15 considering Respondents' non-compliance from the closure date specified in the Permit
16 or Close Letter (October 24, 2005) through the date Great Planes Aviation, Inc.
17 documented the closure of the system by installing a holding tank (May 16, 2007).
18

19 Economic Benefit
20

21 As noted above, for both counts Respondents enjoyed a nominal economic benefit by not
22 expending money to come into compliance. The period for which EPA is calculating
23 economic benefit also begins on October 24, 2005, and ends May 16, 2007.
24

25 Prior Compliance History
26

27 EPA Region 8 has not taken any prior formal enforcement actions against Respondents
28 requiring compliance with the applicable UIC regulations.
29

30 Degree of Culpability
31

32 Respondent Scott Heim dba Yankee Fourteen Aviation operates the Facility. Respondent
33 Great Planes Aviation, Inc. owns the facility. Since at least June 2005, Respondents have
34 had actual notice of the requirements and ample opportunity to spend the small amount of
35 time and money it took to come into compliance. Respondents were also aware of the
36 threats to the aquifers during this time.
37

38 Good-Faith Efforts to Comply
39

40 Respondents have recently come into compliance. Given the relatively low cost of
41 coming into compliance, together with, the amount of time it took to comply after
42 formal notice, EPA does not believe it is reasonable to reduce the proposed penalty for
43 this factor.

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Economic Impact on Respondents

Because little information is available at this time to document financial status of the Respondents, and the EPA's knowledge of the facility and surrounding area indicates the Respondents run small businesses, EPA did reduce the proposed penalty due to this factor. EPA will consider information Respondents may present regarding Respondents' ability to pay the proposed penalty.

Other Factors that Justice may Require

Because no information is available to EPA upon which an adjustment for this factor can be made, EPA has made no additional adjustments to the penalty.

29. Respondent's payment of the penalty shall be made by money order or certified check made payable to "Treasurer, United States of America" and mailed to the following address:

EPA - Region 8
Regional Hearing Clerk
P.O. Box 360859
Pittsburgh, PA 15251.

A copy of said check shall be mailed to the following address:

Jim Eppers (8ENF-L)
Enforcement Attorney
U.S. EPA - Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

30. As required by the Act, prior to the assessment of a civil penalty, EPA will provide public notice of the proposed penalty, and reasonable opportunity for the people to comment on the matter, and present evidence in the event a hearing is held. 42 U.S.C. § 3000h-2 (c)(3)(B).

31. The Administrative Law Judge is not bound by EPA's penalty policy or the penalty proposed by EPA, and may assess a penalty above the proposed amount, up to the \$11,000 per day per violation authorized in the statute.

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

3
4 United States Environmental Protection Agency
5 Region 8, Office of Enforcement, Compliance and
6 Environmental Justice, Complainant
7 1595 Wynkoop (ENF-L)
8 Denver, CO 80202
9

10
11
12 Date: 8/21/07

13 By: Michael T. Bigner
14 Eddie A. Sierra
15 Acting Assistant Regional Administrator
16 Office of Enforcement, Compliance
17 And Environmental Justice
18
19