



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

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2008 JUL 17 11:10:35

DOCKET NO.: SDWA-08-2008-0048

IN THE MATTER OF:

MORRISON INVESTMENTS,  
a Colorado General Partnership

RESPONDENT

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ORDER ON AMENDED  
COMPLAINT AND  
FINAL ORDER

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Amended Complaint and Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 17<sup>th</sup> DAY OF July, 2008

Elyana R. Sutin  
Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

2008-05-17 1:10:35

REGION 8

Docket No. SDWA-08-2008-0048

IN THE MATTER OF:

Morrison Investments,  
a Colorado General  
Partnership

Respondent

**COMBINED AMENDED COMPLAINT  
AND CONSENT AGREEMENT**

Complainant, United States Environmental Protection Agency, Region 8 (“EPA”), and Respondent Morrison Investments (“Respondent”), by their undersigned representatives, hereby consent and agree as follows:

**BACKGROUND**

1. This Combined Amended Complaint and Consent Agreement (“Consent Agreement”) is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3).

2. This Consent Agreement supersedes the Proposed Compliance Order, Penalty Complaint and Notice of Opportunity for Hearing (“Original Complaint”) filed with the Regional Hearing Clerk on May 8, 2008.

3. The Original Complaint identified Cobb Mechanical Contractors, Inc. as the Respondent in the action since it is the operator of the injection well at issue. This Consent

Agreement identifies the current Respondent as Morrison Investments (“Respondent”) since it is the owner of the injection well at issue. The parties agree to that Morrison Investments shall be the Respondent in this action and Cobb Mechanical Contractors, Inc. shall be withdrawn from this action. An answer to the Original Complaint has not been filed as of the date of this Consent Agreement.

4. EPA has jurisdiction over this matter pursuant to section 1423 of the Public Health Service Act, commonly known as the Safe Drinking Water Act (“Act”). 42 U.S.C. § 300h-2. The Environmental Protection Agency (EPA) regulations authorized by the Act are set out in part 144 of title 40 of the Code of Federal Regulations (40 C.F.R.), and violations of EPA regulations constitute violations of the Act. The rules for this proceeding are the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits (“Rules of Practice”),” 40 C.F.R. Part 22, a copy of which has been provided to Respondent.

5. EPA alleges that Respondent has violated the regulations and therefore the Act, as more fully explained below.

6. Respondent admits the jurisdictional allegations contained herein and neither admits nor denies the specific factual allegations set forth herein. Although Respondent expressly denies the specific violations alleged herein it nevertheless wishes to enter into this Consent Agreement.

7. Respondent waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in this Consent Agreement.

8. Complainant asserts that settlement of this matter is in the public interest, and Complainant and Respondent agree that entry of this Consent Agreement without further litigation is the most appropriate means of resolving this matter.

9. This Consent Agreement, upon incorporation into a Final Order, applies to and is binding upon EPA and upon Respondent and Respondent's officers, directors, employees, agents, successors, assigns and successor owners of the facility identified in paragraph 12, below. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this agreement.

10. This Consent Agreement contains all terms of the settlement agreed to by the parties.

### **GENERAL ALLEGATIONS**

11. The Respondent, Morrison Investments is a Colorado General Partnership and therefore a "person" as defined in section 1401(12) of the Act, 42 U.S.C. §300f(12).

12. The Respondent owns the property and the facility located at 2906 W. Morrison, Colorado Springs, Colorado which consists of, among other things, six (6) buildings.

13. On April 10, 2002, EPA Region 8 received a completed *Shallow Injection Well Inventory Request Form* for the facility, prepared by Bobby D. Robbins, Safety Director, representing Respondent dated April 4, 2002 which indicated the existence of one septic system that receives wastes from a sanitary system.

14. On June 21, 2007, authorized EPA employees entered the facility with consent to inspect it for compliance with the law. This inspection revealed a trench drain in the shop of a new building (referred to as #6) that leads to a dry well. Respondent asserts that Building 6 is used primarily as a tool storage facility although work is occasionally done on small motorized hand tools.

15. As of June 21, 2007, relating to the system described in paragraph 14 above, EPA verified that Respondent owned a Class V Motor Vehicle Waste Disposal Well.

16. Before closure, Respondent's disposal system, as identified in the inspection above, is classified as a "Class V Injection Well" as defined by 40 C.F.R. §§144.6 and 146.5. Respondent is subject to applicable requirements of 40 C.F.R. §§124, 144 and 146.

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

18. Prior to closing the well at issue, Respondent was in violation of:

(a) 40 C.F.R. §§ 144.12(a) and 144.82(a)(1) by owning, operating or maintaining a Class V disposal well which, through injection activity, allows the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water regulation or may otherwise adversely affect the health of persons; and

(b) 40 C.F.R. § 144.88(b) for owning a motor vehicle waste disposal well after the January 1, 2007 ban of all motor vehicle waste disposal wells.

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

19. On May 26, 2008, Respondent submitted information to EPA, which among other things, evidenced the closure of the well sometime after the June 21, 2007 inspection.

20. EPA acknowledges that Respondent is a recent owner of Building #6 and that it closed and sealed the Class V Motor Vehicle Waste Disposal well at issue after the June 21, 2007 inspection.

21. Respondent asserts that it has not used the Class V Motor Vehicle Waste Disposal well at issue.

#### **TERMS AND CONDITIONS**

22. Respondent agrees to keep the Class V Motor Vehicle Waste Disposal well at issue permanently closed.

23. Due to Respondent's timely closure of the well and its agreement to keep the well permanently closed, and in accordance with EPA's enforcement strategy for these specific types of cases, EPA agrees to settle this action without the assessment of a civil penalty.

24. This Consent Agreement shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law.


25. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.


26. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to bind the parties to the terms and conditions of this Consent Agreement and to execute and legally bind that party to this Consent Agreement.

27. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a Final Order.

28. This Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete, full and final settlement of the violations alleged in this Consent Agreement.

29. Each party shall bear its own costs and attorneys fees in connection with all issues associated with this Consent Agreement.

**MORRISON INVESTMENTS**  
Date: 7-2-08 By:   
Tom F. Cobb

**U.S. ENVIRONMENTAL PROTECTION AGENCY REGION 8**  
Date: 7/14/08 By:   
for Andrew M. Gaydosh  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **ORDER ON AMENDED COMPLAINT, CONSENT AGREEMENT/FINAL ORDER** in the matter **MORRISON INVESTMENTS**, a Colorado General Partnership, **DOCKET NO.: SDWA-08-2008-0048**. These documents were filed with the Regional Hearing Clerk on July 17, 2008.

Further, the undersigned certifies that a true and correct copy of the documents were delivered to Jim Eppers, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on July 17, 2008, to:

C. David McDermott  
Susemihl, McDermott & Cowan, P. C.  
660 Southpointe Court, Suite 210  
Colorado Springs, CO 80906

E-mailed to:

Michelle Angel  
U. S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive (MS-0002)  
Cincinnati, Ohio 45268

July 17, 2008



Tina Artemis  
Paralegal/Regional Hearing Clerk

