



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

DEC 10 2009

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7005 3110 0000 5943 2498

Kenneth Rothwell
Rothwell Funeral Home, Inc.
30 Little Plains Road
Southampton, NY 11968

Re: In The Matter Of: Rothwell Funeral Home, Inc.
Docket Number: SDWA-02-2010-8901

Dear Mr. Rothwell:

Enclosed is a Complaint against the Rothwell Funeral Home, Inc. (Respondent), issued 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. Therefore, pursuant to Section 1423(c) of the Act, 42 U.S.C. §300h-2(c), EPA seeks to (1) assess a penalty in the amount of **\$33,000** against Respondent for these violations, and, (2) require Respondent to take certain actions to achieve compliance with the Act. Most notably, Respondent is required to remediate its Class V injection well in accordance with the remediation plan approved by EPA on August 17, 2007 and submit a well remediation/closure report and either request a Permit or Authorization by Rule for the existing Class V injection well.

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

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REGION 2
2009 DEC 15 AM 9:45
REGIONAL HEARING
CLERK


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:

Nina Dale, Esq.
Assistant Regional Counsel
Water & General Law Branch
U.S. EPA, Region 2
290 Broadway - 16th Floor
New York, New York 10007-1866
(212) 637-3231

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 DEC 15 AM 9:46
REGIONAL HEARING
CLERK

IN THE MATTER OF

Rothwell Funeral Home, Inc.
30 Little Plains Road
Southampton, NY 11968,

Respondent.

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

DOCKET NO. SDWA-02-2010-8901

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 by no later than April 5, 2000.
- 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 application.
- 12) 40 C.F.R. §144.12(a) prohibits injection activity that allows 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 142 or may otherwise adversely affect the health of persons.

II. JURISDICTIONAL FINDINGS

- 13) Rothwell Funeral Home, Inc. ("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.
- 14) Respondent owns and operates a facility at 30 Little Plains Road, Southampton, NY 11968 (the "facility"). The facility is a funeral home where embalming takes place.
- 15) Respondent operates an injection well at the facility.
- 16) The injection well at the facility is a Class V injection well as defined at 40 C.F.R. §144.81.
- 17) The facility in Southampton, Long Island, NY, overlies a sole-source aquifer, which is a USDW. See, <http://www.epa.gov/Region2/water/aquifer/>.
- 18) 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

- 19) Complainant re-alleges Paragraphs 13 – 18 above.
- 20) On July 19, 2006, a duly authorized EPA representative inspected the facility.
- 21) During the inspection on July 19, 2006, the inspector noted that the facility has a sink drain in the embalming area leading to the sanitary disposal system (Class V well) which receives or received embalming waste.
- 22) Respondent did not submit an inventory pursuant to 40 C.F.R. §144.26 and did not submit an inventory pursuant to 40 C.F.R. §144.83.
- 23) Based on the failure to submit inventory, Respondent lost authorization by rule to inject into the Class V well.

- 24) On March 27, 2007, EPA issued a Notice of Safe Drinking Water Act Violations and Proposed Administrative Order for Compliance to the Respondent, docket number SDWA-02-2007-8529 (“Notice”).
- 25) The Notice advised the Respondent of SDWA violations at the facility and the need to remediate the injection well in accordance with an EPA approved plan and submit a final report to EPA.
- 26) Respondent acknowledged receipt of the Notice on or about April 6, 2007.
- 27) Respondent did not file an Answer and did not request a Hearing with regard to the Notice.
- 28) By email dated April 16, 2007, Respondent notified EPA that it retained Envirotrac Environmental Services.
- 29) By letter dated April 26, 2007, Envirotrac Environmental Services notified EPA that Respondent had ceased injecting fluid waste from the embalming procedure.
- 30) Based upon the Findings above, Respondent violated 40 C.F.R. §144.11 by injecting without authorization to inject for the period of at least July 19, 2006 until at least April 26, 2007.

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

- 31) Complainant re-alleges Paragraphs 13 – 18 above.
- 32) On July 19, 2006, a duly authorized EPA representative inspected the facility.
- 33) The EPA representative inspecting the facility on July 19, 2006, noted that the facility has a sink drain in the embalming area leading to the sanitary disposal system (Class V well) which receives or received embalming waste.
- 34) The sanitary disposal system injects fluid above an USDW.
- 35) On March 27, 2007, EPA issued a Notice of Safe Drinking Water Act Violations and Proposed Administrative Order For Compliance to the Respondent, docket number SDWA-02-2007-8529 (“Notice”).
- 36) The Notice advised the Respondent of SDWA violations at the facility and the need to remediate the injection well in accordance with an EPA approved plan and submit a final report to EPA.

- 37) Respondent acknowledged receipt of the Notice on or about April 6, 2007.
- 38) By email dated April 16, 2007, Respondent notified EPA that it retained Envirotrac Environmental Services.
- 39) On August 17, 2007, EPA approved a remediation and closure plan submitted by Envirotrac Environmental Services on behalf of Respondent.
- 40) On August 17, 2007, EPA issued a Final Administrative Order for Compliance, docket number SDWA-02-2007-8529 (Compliance Order).
- 41) The Compliance Order required the Respondent to remediate the injection well in accordance with the EPA-approved plan and submit a final report to EPA. The final report was due on March 17, 2008.
- 42) By report dated December 17, 2007, Envirotrac Environmental Services indicated that it sampled the Class V well on October 16, 2007.
- 43) By report dated December 17, 2007, Envirotrac Environmental Services verified the presence of Formaldehyde in the Class V well that "exceed[s] permissible regulatory levels" and therefore may adversely affect the health of persons.
- 44) To date Respondent has not submitted a final report to EPA confirming proper remediation of the injection well in accordance with the EPA-approved plan.
- 45) Based upon the Findings above, Respondent violated 40 C.F.R. §144.12(a) by injecting fluid waste that may enter a USDW and which may violate a primary drinking water regulation under 40 C.F.R. Part 142 or may otherwise adversely affect the health of persons, for the period of at least July 19, 2006 until at least November 1, 2009.

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 **\$33,000**. 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, if it is currently used.
- b) **Well Remediation:** Within 60 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, approved by letter dated August 17, 2007.
- c) **Well Remediation/Closure Report:** Within 90 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.
- d) **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 2) b) of this section is completed, for the disposal of any fluids, Respondent must submit a written request ("Request") to EPA within 30 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.
- 5) This Final Order supersedes Final Administrative Order for Compliance, Docket Number SDWA-02-2007-8529.

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:

Nina Dale, Esq.
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 7th DAY OF DECEMBER, 2009.



Dore LaPosta, Director
Division of Enforcement
and Compliance Assistance