



APR 16 2014

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

REGIONAL HEARING  
CLERK

2014 APR 16 PM 2:38

U.S. Environmental  
Protection Agency-Reg 2

**CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

**Article Number: 7005 3110 0000 5940 0579**

Anita Ann Darrah  
FDD, Inc.  
5261 Route 9W  
Newburgh, NY 12550

RE: In The Matter Of: FDD, Inc.  
Docket Number: SDWA-02-2014-8902

Dear Ms. Darrah:

Enclosed is a Complaint issued to FDD, Inc. ("Respondent") by the U.S. Environmental Protection Agency ("EPA"). The EPA has determined that Respondent violated Part C of the Safe Drinking Water Act ("Act") and the regulations promulgated thereunder, relating to underground injection. Respondent failed to comply with 40 Code of Federal Regulations ("C.F.R.") §144.88(b)(1)(vi) by failing to close or obtain a permit for its motor vehicle waste disposal well by no later than January 1, 2008. Therefore, pursuant to §1423(c) of the Act, 42 United States Code ("U.S.C.") §300h-2(c), EPA seeks (1) to assess a penalty in the amount of **\$25,000** against Respondent for this violation 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, 16<sup>th</sup> Floor  
New York, NY 10007-1866

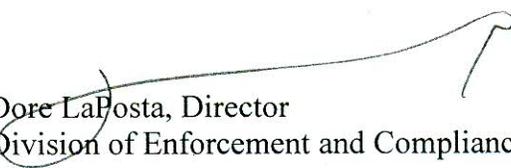
If Respondent does not file an Answer within thirty (30) days of receipt of this Complaint, you may be judged to have defaulted. In the event of default, each allegation in the Complaint will be deemed to be admitted. Respondent will have waived your right to appear in this action and the entire proposed 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 Project 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:

Kara E. Murphy, Esq.  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. EPA, Region 2  
290 Broadway – 16<sup>th</sup> Floor  
New York, New York 10007  
(212) 637-3211

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) ✓

Mark Klotz, Director (w/Complaint only)  
Division of Water  
New York State Department  
of Environmental Conservation  
625 Broadway  
Albany, NY 12233-3500

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
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Protection Agency-Reg 2  
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CLERK

IN THE MATTER OF:

FDD, Inc.  
5261 Route 9W  
Newburgh, NY 12550

**Respondent**

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

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

**DOCKET NO.  
SDWA-02-2014-8902**

**COMPLAINT AND NOTICE OF SAFE DRINKING WATER ACT VIOLATION**

**I. Statutory and 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 ("SDWA" or "Act"), 42 United States Code ("U.S.C.") §300h-2(c). The EPA Administrator has delegated the authority to take these actions to the Regional Administrator for EPA, Region 2, who in turn delegated it to the Director, Division of Enforcement and Compliance Assistance of EPA, Region 2 ("Complainant").
2. Pursuant to Section 1423(a)(2) of the Act, 42 U.S.C. §300h-2(a)(2), whenever the Administrator finds during a period during which a State does not have primary enforcement responsibility for underground water sources that any person subject to any requirement of any applicable underground injection control program in such State is violating such requirement, the Administrator shall issue an order under subsection (c) of this section requiring the person to comply with such requirement or assess a civil penalty or both, or the Administrator shall commence a civil action under subsection (b) of this section.
3. 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.

4. Pursuant to Section 1423(c) of the Act, 42 U.S.C. §300h-2(c), and in accordance with the administrative Consolidated Rules of Practice (“CROP”) 40 C.F.R. Part 22, Complainant may request that the Regional Administrator assess a civil penalty against a person for violations of the Act and the regulations promulgated thereunder and require such person to take certain actions to achieve compliance with the Act and the regulations promulgated thereunder.
5. Sections 1421(a) and (b) of the Act, 42 U.S.C. §§300h(a) and (b), require the EPA Administrator to promulgate regulations establishing minimum requirements for effective programs to prevent underground injection which endangers drinking water sources. *See* 40 C.F.R. Parts 124, 142, 144, 146, and 147, Subpart HH.
6. Section 1422(c) of the Act, 42 U.S.C. §300h-1(c), 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. The State of New York has not acquired primacy over the UIC program. Pursuant to 40 C.F.R. §147.1651, June 25, 1984 is the effective date of the UIC program for New York for all injection activities except those on lands of the Seneca Indian Tribe.
7. Section 1421(d) of the Act, 42 U.S.C §300h(d) defines “underground injection” as the subsurface emplacement of fluids by well injection. Furthermore, underground injection endangers drinking water sources if such injection may result in the presence in underground water which supplies or can reasonably be expected to supply any public water system of any contaminant, and if the presence of such contaminant may result in such system not complying with any national primary drinking water regulation or may otherwise adversely affect the health of persons.
8. 40 C.F.R. §144.3 defines “contaminant” as any physical, chemical, biological, or radiological substance or matter in water.
9. 40 C.F.R. §144.3 defines “owner or operator” as the owner or operator of any “facility or activity” subject to regulation under the UIC program. “Facility or activity” is defined as any UIC “injection well,” or any other facility or activity that is subject to regulation under the UIC program. “Site” is defined as the land or water area where any “facility or activity” is physically located or conducted, including adjacent land used in connection with the facility or activity.
10. 40 C.F.R. §144.3 defines “injection well” as a “well” into which “fluids” are being injected. A “well” is defined 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. “Fluids” are defined as any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.

11. 40 C.F.R. §144.3 defines “drywell” as a well, other than an improved sinkhole or subsurface fluid distribution system, completed above the water table so that its bottom and sides are typically dry except when receiving fluids.
12. 40 C.F.R. §144.3 defines “subsurface fluid distribution system” as an assemblage of perforated pipes, drain tiles, or other similar mechanisms intended to distribute fluids below the surface of the ground.
13. 40 C.F.R. §144.3 defines “underground source of drinking water” as an aquifer or its portion: (a)(1) which supplies any public water system; or (2) which contains a sufficient quantity of ground water to supply a public water system; and (i) currently supplies drinking water for human consumption; or (ii) contains fewer than 10,000 mg/l total dissolved solids; and (b) which is not an exempted aquifer.
14. 40 C.F.R. §144.3 defines “ground water” as water below the land surface in a zone of saturation.
15. 40 C.F.R. §144.11(a) prohibits any underground injection, except as authorized by rule or permit under the UIC program.
16. 40 C.F.R. §144.12 prohibits any injection activity which allows the movement of fluids containing any contaminant into an underground source of drinking water (“USDW”), 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. *See also*, 40 C.F.R. §144.82.
17. Pursuant to 40 C.F.R. §144.6, injection wells are classified as either in Class I, II, III, IV, V or VI. 40 C.F.R. §144.80(e) indicates that Class V wells are not included in Class I, II, III, IV or VI and are typically shallow wells used to place a variety of fluids directly below the land surface. 40 C.F.R. §144.81 describes the types of Class V injection wells as, among other things, drainage wells used to drain surface fluids, primarily storm runoff, into a subsurface formation and dry wells used for the injection of wastes into a subsurface formation. More specifically, 40 C.F.R. 144.81(16) indicates that motor vehicle waste disposal wells (“MVWDW”) are wells that receive or have received fluids from vehicular repair or maintenance activities, such as an auto body repair shop, automotive repair shop, new and used car dealership, specialty repair shop (e.g., transmission and muffler repair shop), or any facility that does any vehicular repair work. Fluids disposed in these wells may contain organic and inorganic chemicals in concentrations that exceed the maximum contaminant levels (MCLs) established by the primary drinking water regulations (*see* 40 C.F.R. Part 141). These fluids also may include waste petroleum products and may contain contaminants, such as heavy metals and volatile organic compounds, which pose risks to human health.
18. Pursuant to 40 C.F.R. §144.81(9), septic systems located at business establishments are classified as Class V injection wells unless the septic system receives solely sanitary waste and does not have the capacity to serve 20 or more persons per day.

19. Pursuant to 40 C.F.R. §144.84(b)(2), certain Class V wells, including MVWDWs in a ground water protection area or sensitive ground water area, are no longer authorized by rule and must either be closed or permitted for continued use as specified in the additional requirements section found at §144.88. All new MVWDWs are prohibited as of April 5, 2000. (*See also*, 40 C.F.R. §144.85, the additional requirements under 40 C.F.R §144.88 apply, when there is an existing MVWDW on April 5, 2000, and the well is located in a ground water protection area or other sensitive ground water area that is identified by your State or EPA Region. If your State or EPA Region fails to identify ground water protection areas and/or other sensitive ground water areas, these additional requirements apply to all Class V MVWDWs in the State).
20. Pursuant to 40 C.F.R. §144.87(a), an owner or operator of an existing MVWDW located in a ground water protection area or an other sensitive ground water area must comply with the new requirements found at §144.88. Section 144.87 provides specific dates when an owner or operator of MVWDWs must obtain a permit based on when the State or EPA delineates those areas that are either ground water protection area or another sensitive ground water area. However, if the State or EPA Region fails to identify these areas within the specified time frames, under §144.87, then these requirements apply to all existing MVWDWs within your State. See also, 40 C.F.R. §144.87(f) (where a State elects not to delineate “Other Sensitive Ground Water Areas,” the additional requirements still apply regardless of the location of the MVWDW).
21. The State of New York elected not to delineate “Other Sensitive Ground Water Areas”. Therefore, pursuant to 40 C.F.R. §144.88 (b)(1)(vi), all existing MVWDWs within the State of New York were required to be closed or permitted by no later than January 1, 2008.
22. Pursuant to 40 C.F.R. §144.27, the Regional Administrator or his/her delegatee can require the owner or operator of an injection well to submit information necessary to determine whether the injection well may endangering a USDW.
23. Section 1445 of the Act, 42 U.S.C. §300j-4, authorizes EPA to conduct inspections to determine whether the owner or operator of an injection well has acted or is acting in compliance with the UIC program.

## **II. Jurisdictional Findings**

1. FDD, 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.
2. Respondent owns the Site located at 5265 Route 9W, Newburgh, NY 12550 (“Facility”), which is used for general vehicle servicing, maintenance and repair activities. Respondent is either the “owner” and/or “operator” of the Site within the meaning of 40 C.F.R. §144.3.

3. There is a Class V injection well at the Site, as defined at 40 C.F.R. §§144.6, 144.80(e), and 144.81. The injection well is a Class V injection well as defined 40 C.F.R. §144.80 (e) and a MVWDW as defined at 40 C.F.R. §144.81(16).
4. Based upon information available to EPA, there are no areas in New York State known not to be underlain by one or more aquifers. Pursuant to Title 6 of the New York Codes, Rules, and Regulations, 6 NYCRR §701.18, ground water in all areas of New York State are considered potential sources of potable drinking water, with the exception of Manhattan. The Site's motor vehicle waste disposal well, therefore, discharges into or above an USDW.
5. 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.
6. Pursuant to Section 1423(c) of the Act, 42 U.S.C. §300h-2(c), and in accordance with the administrative Consolidated Rules of Practice ("CROP") 40 C.F.R. Part 22, Complainant hereby request 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.

### **III. Findings of Fact/Findings of Violation**

1. The paragraphs above are re-alleged and incorporated herein by reference.
2. On October 15, 2002, duly authorized EPA representatives conducted an inspection of Respondent's Site. At the time of inspection, the inspectors noted the following based on their observations and information provided by Michael D. Tamburri, the tenant and business owner of Michael D. Tamburri Auto Repair and Sales:
  - a. Vehicle servicing, maintenance and repair activities were performed on-site.
  - b. One square service area floor drain was located in the service bay area. There was fluid in the drain.
  - c. The discharge point of the floor drain was not known.
  - d. The property owner was Patricia Felicello, 5261 Route 9W, Newburgh, New York
3. On June 27, 2003 EPA sent a letter to Patricia Felicello and Michael D. Tamburri requiring that, among other things, either a closure plan or a permit application be submitted within 30 days of receipt of the letter for any injection well receiving fluids from the service bay floor drain. Mr. Tamburri acknowledged receipt on July 2, 2003. The United States Post Office returned the copy addressed to Ms. Felicello after the letter went unclaimed as of July 17, 2003.

4. On July 22, 2003 Mr. Frank Felicello, Jr. contacted EPA and told an EPA employee that he was calling concerning a letter from EPA that he received on June 27, 2003 and requested that EPA return his call.
5. EPA attempted to contact Mr. Frank Felicello, Jr. by telephone on several occasions during the period starting July 25, 2003 through August 6, 2003 and left messages requesting that he contact EPA.
6. On April 29, 2005 a duly authorized EPA representative inspected the Site. At the time of inspection, the inspector noted the following based on his observations and information provided by Michael D. Tamburri, the tenant and business owner of Michael D. Tamburri Auto Repair and Sales:
  - a. Vehicle servicing, maintenance and repair activities were performed on-site.
  - b. One square service area floor drain was located in the service bay area. There was fluid in the drain and staining on the floor in the vicinity of the drain.
  - c. Mr. Tamburri stated that the discharge from the floor drain went into the Facility's on-site septic system.
  - d. Mr. Tamburri stated that there had been no physical changes made to the floor drain discharge system since the prior inspection in 2002.
  - e. Mr. Tamburri stated that Patricia Felicello had passed away approximately a year prior to the date of inspection and her children took over as property owners.
7. On August 2, 2005 EPA sent a letter to Mr. Frank Felicello, Jr. and Mr. Michael D. Tamburri requiring, among other things, that the discharge point of the floor drain be confirmed and, if the floor drain was confirmed to discharge into the septic system or other Class V injection well, submit either a permit application or closure plan within 30 days of receipt of the letter. Mr. Tamburri acknowledged receipt of the letter on August 9, 2005. The letter addressed to Mr. Felicello was returned to EPA stamped "Attempted – Not Known."
8. On August 22, 2005 Mr. Frank Felicello, Jr. contacted EPA by telephone. He stated that the property in question was still in his mother's name though she is deceased. He further stated that ownership of the facility is in litigation among the heirs and that he expected the litigation to be concluded in approximately 2 months.
9. On October 9, 2008 a duly authorized EPA representative inspected the Site. At the time of inspection, the inspector noted the following based on his observations and information provided by Michael D. Tamburri, the tenant and business owner of Michael D. Tamburri Auto Repair and Sales:
  - a. Vehicle servicing, maintenance and repair activities were performed on-site
  - b. Mr. Tamburri stated that there had been no physical changes made to the floor drain discharge system since the prior inspection in 2005.

- c. A fine metal mesh was observed covering the floor drain. Mr. Tamburri stated he had placed the mesh there to prevent solids from entering drain.
  - d. Mr. Tamburri noted that the drain serves as a crude oil/water separator in that the outlet pipe is set above the bottom of the drain to skim water off the top. He further indicated that they clean out the drain periodically, but that the discharge still goes to the facility's septic system.
  - e. Mr. Tamburri stated that the property owners are Frank Felicello, Jr. and his sisters.
10. On October 29, 2008, EPA sent an information request letter to Mr. Frank Felicello, Jr. and Mr. Michael D. Tamburri requiring, among other things, submittal of the name and address of the legal entity that owns the Site; confirmation that the floor drain discharges into the septic system or, if not, where it does discharge and, if the floor drain discharges to the septic system, a plan for the proper remediation and closure of the MVWDW. EPA required that the response be submitted no later than 30 days after receipt of the letter. Mr. Felicello acknowledged receipt of the letter on November 3, 2008. Mr. Tamburri acknowledged receipt of the letter on or before November 6, 2008. To date, EPA has not received a response to this letter.
  11. On March 16, 2009 EPA sent an information request letter to Respondent requesting, among other things, that Respondent, within 30 days after receipt of the letter, verify the ownership of the Site, confirm the discharge point for the service bay floor drain, provide any available sampling data for the septic tank contents and provide pumpout records for the septic tank. Respondent acknowledged receipt of the letter on or about March 20, 2009. EPA has not received a response to this letter.
  12. On July 23, 2013 a duly authorized EPA representative inspected the Site. The inspector noted the following based on his observations and information provided by Francis Thompson, the tenant and business owner of Balmville Garage:
    - a. Vehicle servicing, maintenance and repair activities are performed on-site
    - b. Balmville Garage is a new business that replaced Michael D. Tamburri Auto Repair and Sales as tenant in 2010.
    - c. There is one floor drain in the service bay area that discharges to the facility's septic tank and leachfield.
    - d. The property owner is FDD, Inc. and the contact person is Anita Felicello.
  13. Based upon a review of the on-line tax maps for Orange County, NY at <http://propertydata.orangecountygov.com/imate/taxmaps.aspx>, EPA determined that Respondent is the owner of the Facility.
  14. The New York State Department of State, Division of Corporations website indicates that FDD, Inc. is located at 5261 Route 9W, Newburgh, NY 12550 and that the Chief Executive Officer of FDD, Inc. is Anita Ann Darrah.

15. Based upon the inspection findings in Paragraph 12, the septic system is a Class V injection well and a MVWDW, subject to the requirements of 40 C.F. R. §§144.87 and 144.88.
16. Automotive wastewater, which is at issue in this case, typically contains hazardous substances as defined by EPA at 40 C.F.R. §302.3. The wastewater typically has constituents, such as heavy metals and volatile organic compounds, that pose risks to human health. Ethylene glycol, found in antifreeze, is of special environmental and human health concern due to its toxicity. New motor vehicle waste disposal wells were banned effective April 2000 and existing wells are to be phased out or permitted if they endanger underground sources of drinking water. (See EPA 816-F-99-016, UIC Class V Wells, New Regulatory Requirements, Nov. 1999 or [http://water.epa.gov/type/groundwater/uic/class5/upload/2007\\_12\\_12\\_uic\\_class5\\_guide\\_uic-class5\\_small\\_ent\\_compl.pdf](http://water.epa.gov/type/groundwater/uic/class5/upload/2007_12_12_uic_class5_guide_uic-class5_small_ent_compl.pdf).)
17. Respondent has not submitted a permit application for its MVWDW pursuant to 40 C.F.R. §144.88(b)(1)(vi).
18. To date, Respondent has not ceased injection.
19. Based on the Findings above, the Site's MVWDW discharges into or above an USDW.
20. Based upon the Findings above, Respondent is in violation of:
  - a. 40 C.F.R. §144.88(b)(1)(vi) by failing to close or obtain a permit for its MVWDW by no later than January 1, 2008.
  - b. 40 C.F.R. §144.12(a) by injecting in a manner that 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 under 40 CFR part 142 or may otherwise adversely affect the health of persons.
  - c. 40 C.F.R. §144.11 by continuing to inject into its MVWDW without a permit.

#### **IV. 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 **\$25,000**. EPA determined the proposed penalty in accordance with the terms of the 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:** Within 10 days after receipt of the Final Order, Respondent shall discontinue the use of the drain disposal system as currently utilized.
- b. **Remediation Plan Submittal:** Within 30 days after receipt of the Final Order, Respondent shall submit a Remediation Plan (“Plan”), developed in accordance with well remediation requirements incorporated into the Final Order as Attachment 1, detailing how the injection well subject to the Final Order will be properly remediated and, if applicable, permanently closed. Please note that continued use of the injection wells subject to this Order, for any purpose, after remediation is completed must be approved by EPA pursuant to Paragraph 2e 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 after receipt of the Final Order, Respondent shall complete the remediation of the injection wells in accordance with the EPA approved Plan.
- d. **Well Remediation/Closure Report:** Within 210 days after receipt of the Final 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 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 Authorization or Permit of Remediated Wells:** Should Respondent desire to continue to utilize any or all injection wells subject to the Final Order, after the remediation required pursuant to Paragraph 2c of this section is completed, for the disposal of any fluids, Respondent must submit a written request (“Request”) to EPA within 120 days after receipt of the Final Order indicating Respondent’s desire to obtain authorization for continued injection. This Request must include, at a minimum:
  - i. The source(s) and type(s) of fluid(s) Respondent wishes to dispose of into the injection well(s).
  - ii. Any treatment of the wastes that will be done prior to injection of the wastes.
  - iii. Any available analytical data demonstrating the levels of contaminants in the fluid(s) Respondent wishes to dispose of into the injection well(s).

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 authorization by permit or authorization by rule.

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.

#### **V. 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 the 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.

#### **A. 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:
  - a. circumstances or arguments which are alleged to constitute grounds of any defense;
  - b. facts which the Respondent disputes;
  - c. basis for opposing the proposed relief;
  - d. whether a Hearing has been requested.
5. Failure of Respondent to admit, deny or explain any material factual allegations in the Complaint shall constitute admission of the allegation.

#### **B. 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 – 16<sup>th</sup> 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:

Kara E. Murphy, Esq.  
Assistant Regional Counsel  
Water & General Law Branch  
Office of Regional Counsel  
U.S. EPA, Region 2  
290 Broadway – 16<sup>th</sup> Floor  
New York, New York 10007

#### **VI. 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 16<sup>th</sup> DAY OF APRIL, 2014.



\_\_\_\_\_  
Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance

# ATTACHMENT 1

## Instructions for Underground Injection Control Class V Remediation Plans

- To ensure UIC Class V well remediation/closure is conducted in accordance with regulatory requirements and in a manner protective of the environment, the United States Environmental Protection Agency Region 2 (EPA) UIC Program requires that the following information be included in a Class V Remediation/Closure Plan (“Plan” or “Workplan”). As outlined in this document, please be advised that the requirements vary depending on the type of UIC structure, the type of facility, and the fluid(s) discharged to the well.
- UIC Class V Remediation/Closure Plans must be submitted to and approved by the EPA prior to initiation of **any** drain sealing, well sampling and/or clean-out activities. You will be notified in writing that EPA has approved your Plan or that the Plan requires modifications to meet the regulatory requirements. *Please Note:* State and/or local regulatory agencies may have additional regulations and requirements.
- Failure to properly implement these requirements will result in EPA considering all available enforcement options.
- All Remediation/Closure Plans and Final Reports must be submitted to EPA Region 2 for review and approval. Documents can be mailed to:

Nicole Foley Kraft, Chief  
Ground Water Compliance Section  
U.S. Environmental Protection Agency  
290 Broadway, 20<sup>th</sup> Floor  
New York, NY 10007-1866

### SECTION I: GENERAL REQUIREMENTS

The following information must be included in a Remediation/Closure Plan (“Plan” or “Workplan”) for all types of Class V wells. If the item is not applicable to your site, please indicate so in the Plan.

**A. Site Schematic and Well-System Diagram.** The diagram must include all buildings; drinking water wells; drains (e.g., floor drains, sink drains, storm drains); piping; all storage areas for chemicals, oils, or wastes; chemical or sanitary waste processing units (e.g., oil-water separators, septic tanks, wastewater treatment systems) and final discharge points for all drainage (e.g., drywells/overflow drywells, septic tanks/leach fields, open underground pipes, retention basins, surface waters/streams, municipal sanitary/storm sewer connections).

**B. Description of business.** Description must include all activities conducted, or known to have been conducted, at the facility and a listing of chemicals and wastes used, generated, disposed of and/or

stored at the facility. In addition, include the Standard Industry Code (SIC) for the current use or, if vacant, the immediate prior use.

**C. Description of all fluids injected.** Description must include fluids which enter, may enter or may have entered the injection well(s); or are suspected or known to have been used at the facility. Include any recent analytical results for pertinent wastewater, sludge and/or soil sampling.

The Workplan for a large capacity cesspool that has received only sanitary waste must include supporting information to affirm the sanitary only discharge (i.e. facility either does not use, generate or store chemicals or chemical wastes; or no drains of any kind are located near chemicals/chemical wastes are delivered, used, stored or generated).

**D. Verification of connection between drain and UIC well.** Connection between all drains and the injection well(s) must be verified by an independent third party. A statement must be included indicating who will be performing the verification and what verification method will be used.

**E. Description of permanent closure.** If applicable, include a description of the plug emplacements or how the drain(s) and/or well(s) will be permanently closed.

As of April 5, 2005, large capacity cesspools were banned and must be permanently closed. As of January 1, 2008, all motor vehicle waste disposal wells must be permanently closed unless permitted.

**F. Contaminant removal:** Describe the procedures to be used to pump, excavate, or otherwise remove all contaminated liquid, sludge, and contaminated soil from within, beneath and around the injection well until: (1) visibly clean soil is reached; or (2) structural integrity of the excavation or buildings/structures near the excavation, may be compromised. If a point of compromised structural integrity is reached, soil borings or other remedial methods may be required to delineate the extent of any remaining contamination within, beneath or around the injection well. If there is a treatment tank (e.g., oil-water separator, septic tank) or associated piping in the drainage system discharging to the injection well(s), the contents of the tank(s) and piping must be cleaned out and disposed of properly. Any cleaning of tank(s) or piping must be done in a manner that does not release contaminants into the environment. The Workplan must describe the procedures to be used.

Please note, excavation of soil is typically not required for large capacity cesspools that have received only sanitary waste. However, the contents of the sanitary only cesspool must be pumped out and disposed of properly by a licensed hauler.

**G. On-site storage of excavated material:** Include a description of on-site storage for excavated material to be used while awaiting proper disposal of all wastes (soil, gravel, sludge, liquids or other materials) removed from the Class V well system (i.e., drain, treatment tank and injection well). The waste storage methodology utilized must ensure that contaminants are not released back into the environment during the period of storage. Dry soils and other dry wastes may be stored on, and covered by, heavy gauge plastic or stored in roll-off containers designed for such a use. Liquid wastes must be stored in covered drums, tanks or roll-off containers designed to contain such wastes.

**H. Waste characterization:** All excavated material (soil, gravel, sludge, liquid or other materials) must be characterized for disposal purposes and disposed of or otherwise managed, in accordance with all applicable Federal, State, and local requirements. The Workplan must describe the procedures to be used.

**I. Minimum sampling and analytical requirements:** Specific sampling and analytical requirements are dependent on the type well structure and type of facility at which the well is being remediated. See Sections II and III for the minimum well sampling and analytical requirements.

Samples should be collected in a manner consistent with the sampling procedures outlined in EPA's compendium of analytical and sampling methods titled "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", also known as SW-846 (see <http://www.epa.gov/epawaste/hazard/testmethods/sw846/online/index.htm>). Workplans must outline sampling collection procedures that will be followed to ensure integrity of the sample during collection, transport and analysis.

Samples must be analyzed by a certified laboratory for all contaminants that could have entered into the groundwater as a result of the owner/operator's activities. The laboratory's Practical Quantitation Limit (PQL) achieved for all initial and/or endpoint samples must be at or below the corresponding Region 2 UIC Clean-up Objectives (see Table 1). If the PQL for any analyte is not at or below the corresponding clean-up objective, a detailed explanation must be included as to why the PQL was not, and/or cannot, be at or below the corresponding soil cleanup objective.

**J. Backfill:** Clean inert soil or sand shall be used as backfill.

**K. Final Report:** A Final Remediation/Closure Report must be completed within 30 days of completion of remediation/closure and must include at a minimum: remediation procedures used; the name, address and telephone number of all entities that supplied backfill material; a summary table comparing the analytical results to Region 2 UIC Clean-up Objectives (see Table 1) by sample and identifying any exceedances; full laboratory report for all analytical results (including quality control analyses, sample dilution if any, clear identification of sample location and depth, chain of custody and detection levels achieved); and waste disposal manifests.

## SECTION II: WELL SPECIFIC SAMPLING REQUIREMENTS

**A. Drywells, Leach Pits, Cesspools, Open Pipes, Floor Drains discharging directly into the ground, and Similar Structures.**

The following information must be included in a Workplan for a drywell, leach pit, cesspool, open pipe, or floor drain discharging directly into the ground.

**1.) Large capacity cesspools that have received only sanitary waste.**

“Large capacity” means serves or designed to serve 20 or more people per day. The cesspool must be pumped out and the wastes must be disposed of properly by a licensed hauler. Excavation, end-point sampling and analysis are typically not required.

**2.) Drywells, cesspools, open pipes, or floor drains that have received industrial contaminants (directly or through a septic tank).**

Endpoint soil samples must be collected after all contaminated liquids, sludges and soils have been removed from in, around and below the well at a depth of 6 inches to 1 foot below the base of the excavation. (If no apparent contamination is present in the injection well, a sample may be collected from a depth of 6 inches to 1 foot below the bottom of the injection well). If ground water is encountered during the remediation, a ground water sample may be collected grab samples of the ground water will be collect from the bottom of the excavation or the excavation side wall(s) seep.

Endpoint samples must be analyzed for the constituents listed in Section III based on facility type and must include all contaminants that could enter into the groundwater as a result of the owner/operator’s activities.

**B. Drainfields, Tile fields, Leachfields and Similar Subsurface Fluid Distribution Structures**

The following information must be included in a Workplan for a drainfield, tile field, leachfield, or other subsurface fluid distribution system that has or may have received industrial waste.

**1.) Pre-excavation sampling.** Due to the expense of excavation of a subsurface fluid distribution structures, EPA Region 2 allows pre-excavation sampling to determine if excavation of the injection well is necessary. Pre-excavation samples must be analyzed for the constituents listed in Section III based on facility type in addition to any contaminants that could enter groundwater as a result of the owner’s or operator’s activities. The pre-excavation sample results shall be tabulated. The summary table shall be submitted to EPA for review. EPA will advise you of any additional sampling and/or remediation that may be necessary. Pre-excavation sampling must be performed as follows:

**a.) Industrial waste discharges to a septic system which then discharges to a drainfield, tile field, leach field or similar structure (i.e. all waste passes through the septic tank).**

i.) If the septic tank has not been pumped out in the last 12 months, collect 1 liquid sample and 1 sludge sample from within the septic tank.

ii.) If the septic tank has been pumped out within the last 12 months, collect 1 soil sample from the center of the drainfield at a depth of 1 foot below the burial depth of the laterals.

**b.) Industrial waste discharges directly to a drainfield, tile field, leachfield or similar structure (i.e. all waste by-passes septic tank).**

i.) Collect 1 soil sample from the center of the drainfield at a depth of 1 foot below the burial

depth of the laterals.

**c.) Industrial waste discharges to a septic system which then discharges to a drainfield, tile field, leach field or similar structure AND industrial wastes discharges directly to a drainfield, tile field, leach field or similar structure (i.e. some waste passes through septic tank, some waste by-passes septic tank).**

i.) If the septic tank has not been pumped out in the last 12 months , collect 1 liquid sample and 1 sludge sample from within the septic tank, AND

ii.) Collect 1 soil sample from the center of the drainfield at a depth of 1 foot below the burial depth of the laterals.

**2.) Post-Excavation Sampling.** If excavation is required, a soil sample must be collected from a depth of between 6 inches to 1 foot below the base of the excavation and analyzed for the constituents listed in Section III based on facility type and must include all contaminants that could enter into the groundwater as a result of the owner/operators activities. If ground water is encountered during the remediation, a ground water sample must be collected. A grab sample of the ground water may be collect from the bottom of the excavation or the excavation side wall(s) seep.

### SECTION III: ANALYTICAL REQUIREMENTS

Samples must be collected in accordance with the collection procedures outlined in SW-846 and analyzed by a certified lab in accordance with EPA approved methods for the constituents listed in the following table and must include all contaminants that could enter into the groundwater as a result of the owner/operator's activities. Please note, composite samples are not allowed for volatile organic compound sampling.

#### Motor Vehicle Waste Disposal Wells:

Compound	Analytical Method	
	Soil	Water
Volatile Organic Compounds (VOCs)	EPA Method 8260B	EPA Method 524.2 Rev 4.1
Semi-volatile organic compounds	EPA Method 8270D	EPA Method 525.2 Rev 2.0
Arsenic, cadmium, chromium, and lead	EPA Method 200.7 Rev. 4.4	EPA Method 200.7 or 200.8 Rev 5.4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

IN THE MATTER OF:

FDD, Inc.  
5261 Route 9W  
Newburgh, NY 12550

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

DOCKET NO. SDWA-02-2014-8902

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

**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:

Anita Ann Darrah  
FDD, Inc.  
5261 Route 9W  
Newburgh, NY 12550

Date: 4/16/2014

Signed: Mary C Coogrove