

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2013 SEP 26 A 9:35
REGIONAL HEARING
CLERK

IN THE MATTER OF:

Serafini Nissan-Volvo
3101 Vestal Parkway East
Steward Road Building
Vestal, NY 13350

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-02-2013-8901**

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

I. LEGAL AUTHORITY

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 United States Environmental Protection Agency ("EPA") by Section 1423(c) of the Safe Drinking Water Act ("SDWA" or "Act"), 42 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 has delegated the authority to the Director of the Division of Enforcement and Compliance Assistance, Region 2 ("Complainant").
2. 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"), found at 40 C.F.R. Part 22, Complainant hereby requests that the Regional Administrator assess a civil penalty against a person for violations of the Act and the regulations promulgated thereunder and requires such person to take certain actions to achieve compliance with the Act and the regulations promulgated thereunder.
3. Section 1421(a) and (b) of the Act, 42 U.S.C. §300h(a) and (b), requires 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.

4. Section 1401(12) of the Act, 42 U.S.C. §300f(12) and 40 C.F.R. §144.3 defines “person” as, among other things, an individual, corporation, company, association, partnership or municipality.
5. Section 1422(c) of the SDWA, 42 U.S.C. §300h-1(c) requires EPA to administer the Underground Injection Control (“UIC”) program in states which do not have approved state programs. The State of New York has not acquired primacy of 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.
6. 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.
7. 40 C.F.R. §144.3 defines “contaminant” as any physical, chemical, biological, or radiological substance or matter in water.
8. 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 an 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.
9. 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.
10. 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. “Subsurface fluid distribution system” is defined as an assemblage of perforated pipes, drain tiles, or other similar mechanisms intended to distribute fluids below the surface of the ground.
11. 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.

12. 40 C.F.R. §144.3 defines “ground water” as water below the land surface in a zone of saturation.
13. 40 C.F.R. §144.11 prohibits any underground injection, except as authorized by rule or permit under the UIC program.
14. 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.
15. 40 C.F.R. §144.26 requires the owner or operator of an injection well which is authorized by rule to submit inventory information to the Director. *See also*, 40 C.F.R. §144.83.
16. Pursuant to 40 C.F.R. §144.6, injection wells are classified as Class I, II, III, IV, or V. 40 C.F.R. §144.80(e) indicates that Class V wells 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 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.
17. Pursuant to 40 C.F.R. §144.24, all Class V injection operations (as defined by 40 C.F.R. §§144.3, 144.6(e), 146.3 and 146.5(e)) are authorized to operate, provided that the owner and/or operator is in compliance with 40 C.F.R. Part 144, where applicable.
18. Pursuant to 40 C.F.R. §144.84(b)(2), certain Class V wells, including motor vehicle waste disposal wells 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 motor vehicle disposal wells are prohibited as of April 5, 2000. (*See also*, 40 C.F.R. §144.85, the additional requirements under § 144.88 apply, when there is an existing motor vehicle waste disposal well 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 motor vehicle wells in the State).

19. Pursuant to 40 C.F.R. §144.87(a), an owner or operator of an existing motor vehicle well 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 motor vehicle disposal wells 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 motor vehicle waste disposal wells 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 motor vehicle disposal well).
20. 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 motor vehicle waste disposal wells within New York State were required to be closed or permitted by no later than January 1, 2008.
21. 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. Serafini Nissan-Volvo ("Respondent") is a "person" within the meaning of Section 1401(12) of the SDWA, 42 U.S.C. §300f(12) and 40 C.F.R. §144.3 because it is a company.
2. Respondent owns and/or operates an automotives sales, service, parts and body shop facility ("Site") located at 3101 Vestal Parkway East, Vestal, NY 13350. Respondent is either the "owner" and/or "operator" of the Facility within the meaning of 40 C.F.R. §144.3.
3. There is a Class V injection well (motor vehicle waste disposal well) located at the Site, as defined at 40 C.F.R. §§144.6, 144.80(e), and 144.81.
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 SDWA, 32 U.S.C. §300h *et seq.* and the implementing regulations found at 40 C.F.R. Parts 124, 144, 146 and 147, Subpart HH.

III. FINDINGS OF FACT AND VIOLATION

1. The paragraphs above are re-alleged and incorporated herein by reference.
2. On January 7, 2013 and March 4, 2013, a duly authorized EPA representative conducted inspections (“Inspections”) at Respondent’s Site.
3. During the Inspections, dye testing by the EPA representative indicated that a floor drain in the vehicle wash area that receives vehicle wash and wastewater leads to a drywell for passive injection into the ground.
4. Based on the Inspections finding in Paragraph 3 above, the drywell is a Class V injection well or motor vehicle waste disposal well (“UIC Well”), and receives motor vehicle wastewater.
5. 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).
6. Respondent did not submit an inventory pursuant to 40 C.F.R. §§144.26 or 144.83.
7. To date, Respondent has not ceased injection.
8. The Site is located above a sole-source aquifer, the Clinton Street Ball Park Aquifer, which is a USDW. See <http://www.epa.gov/Region2/water/aquifer/>.
9. Based on the Findings above, the Site’s UIC Well discharges into or above an USDW.
10. An injection activity that allows the movement of fluid containing any contaminant into an 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, is prohibited.

11. Based on the Findings above, Respondent is in violation of 40 C.F.R. §144.11 by injection without authorization to inject and 40 C.F.R. §144.12 by injection which may endanger USDWs.

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 **\$16,000**. EPA has determined the proposed penalty in accordance with the terms of the SDWA, 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 will be ordered to:
 - a. **Cease Injection:** As of the date the Final Order is issued and signed by the Complainant (“Effective Date”), Respondent must discontinue the use of the floor drain and UIC Well as currently utilized.
 - b. **Remediation/Closure Plan Submittal:** Within 30 days of the Effective Date of the Final Order, Respondent must submit a Remediation/Closure Plan detailing how the UIC Well subject to this Complaint will be properly remediated and, if applicable, permanently closed. The Remediation/Closure Plan must be developed in accordance with the well remediation/closure requirements incorporated into this Complaint as Attachment 1. EPA will review the Remediation/Closure Plan and approve or provide comments within 30 days after receipt from Respondent. (Please note that continued use of the UIC Well subject to this Complaint, for any purpose, after remediation is completed must be approved by EPA pursuant to Paragraph 2.e, below.)
 - c. **UIC Well Remediation/Closure:** Within 180 days of the effective date of the Final Order, Respondent shall complete the remediation of the UIC Well in accordance with the EPA-approved Plan.
 - d. **UIC Well Remediation/Closure Final Report Submittal:** Within 210 days of the Effective Date of the Final Order, Respondent must submit a Final Report to EPA, summarizing the work completed in fulfillment of the requirements of the Final Order and as required by the EPA-approved Remediation/Closure Plan. EPA will notify Respondent in writing as to whether the UIC Well remediation/closure and Final Report are adequate or if additional measures must be taken.

- e. **Request for Authorization of Remediated UIC Wells:** Should Respondent desire to continue to utilize the UIC Well subject to this Complaint for disposal of any fluids after remediation required pursuant to this section is completed, Respondent must submit a written request (“Request”) to EPA within 180 days of the effective date of the Final Order indicating its 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 or wells.
 - 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 or wells.

Once EPA completes its review of the Request, EPA will send Respondent a written response approving or denying the Request, or detailing any additional information 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 rule.

All information required in the Final Order must be sent to the following:

Nicole Foley Kraft, Chief
Groundwater Compliance Section
U.S. EPA, Region 2
290 Broadway, 20th Floor
New York, New York 10007-1866

3. The Final Order does not constitute a waiver, suspension or modification of the requirements of 40 C.F.R. Part 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 additional civil and/or criminal enforcement actions of the Final Order, pursuant to Section 1423(b) of the Act, 42 U.S.C. §300h-2(b). Failure to act in accordance with the Final 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 (“Hearing Request”) 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 CROP, including Subpart I. A copy of the CROP 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.

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 allegation in the Complaint shall constitute an admission of the allegation.

B. Filing of Documents

6. In accordance with the CROP, 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

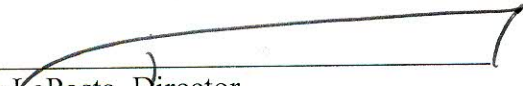
7. A copy of the Answer, any Hearing Request, and all subsequent documents filed in this action shall be sent to:

Kara Murphy, 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

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 24th DAY OF SEPTEMBER, 2013.


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

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

IN THE MATTER OF:

Serafini Nissan-Volvo
3101 Vestal Parkway East
Steward Road Building
Vestal, NY 13350

Respondent

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

**CONSENT AGREEMENT
AND
FINAL ORDER**

**DOCKET NO.
SDWA-02-2013-8901**

CONSENT AGREEMENT

The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, Region 2, United States Environmental Protection Agency (“EPA”), issued a “Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty and Notice of Opportunity to Request a Hearing” (“Complaint”) to Respondent, Serafini Nissan-Volvo on _____.

Complainant and Respondent (collectively, “the Parties”), having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order (“CA/FO”) without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby ordered as follows:

I. PRELIMINARY STATEMENT

1. EPA initiated this proceeding to achieve compliance with the Safe Drinking Water Act (“SDWA” or “Act”) pursuant to Section 1423(c) of the Act, 42 U.S.C. §300h-2(c).
2. The Complaint alleges violations of the SDWA Part C – Underground Injection Control, as the violations pertain to a Class V injection well located at 3101 Vestal Parkway East, NY 13350. The Complaint specifically alleges a violation of 40 C.F.R. §144.11 for injections without authorization and a violation of 40 C.F.R. §144.12 for injections which may endanger an

underground source of drinking water. The Complaint alleges that the Class V well is owned and operated by Respondent.

3. This action was public noticed between _____ and _____.
4. Respondent has not filed an Answer or requested a hearing pursuant to 40 C.F.R. Part 22.
5. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint. Respondent waives any defenses Respondent might have as to jurisdiction and venue, and, without admitting or denying the allegations contained in the Complaint, consents to the terms of this Consent Agreement and Final Order.
6. Respondent hereby waives Respondent's rights to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint or on any terms of this Consent Agreement and Final Order.

II. TERMS OF SETTLEMENT

A. Payment of Civil Penalty

1. Pursuant to Section 1423(c) of the Safe Drinking Water Act, 42 U.S.C. §300h-2(c), EPA has considered 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, and other matters as justice may require.
2. EPA has determined that an appropriate civil penalty to settle this action is in the amount of **Four Thousand Seventy Eight (\$4,078.00) Dollars**.
3. For the purpose of settlement, Respondent consents to the issuance of this Consent Agreement, consents to the payment of the civil penalty cited in Paragraph 2, above.
4. Not more than forty five (45) days after the Effective Date (*see* Final Order) of the executed Final Order, Respondent shall pay the penalty of **Four Thousand Seventy Eight (\$4,078) Dollars** by cashier's or certified check or by Electronic Fund Transfer ("EFT"). If the payment is paid by check, then the check shall be payable to the "Treasurer, United States of America". The check shall be identified with a notation thereon listing the following: **IN THE MATTER OF SERAFINI NISSAN-VOLVO**, and shall bear thereon **Docket Number SDWA-02-2013-8901**. This check shall be mailed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- a. Amount of Payment
- b. SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045
- c. Account Code for Federal Reserve Bank of New York receiving payment: 68010727
- d. Federal Reserve Bank of New York ABA routing number: 021030004
- e. Field Tag 4200 of the Fedwire message should read "D68010727 Environmental Protection Agency"
- f. Name of Respondent: Serafini Nissan-Volvo
- g. Case Number: SDWA-02-2013-8901

Such EFT must be received on or before 45 days after the Effective Date (*see* Final Order) of this CA/FO.

Whether the payment is made by check or by EFT, Respondent shall promptly thereafter furnish reasonable proof that such payment has been made, to both:

Kara Murphy, Esq.
Assistance Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866
(212) 637-3211

and

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

5. Payment must be received on or before forty five (45) calendar days after the Effective Date (*see* Final Order). The date by which payment must be received shall hereafter be referred to as the "due date".
- a. Failure to pay the penalty in full according to the above provisions will result in a referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
 - b. Further, if payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31 U.S.C. §3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of

\$15.00 will be assessed for each 30 day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty will be applied on any principal amount not paid within 90 days of the due date.

- c. In addition, pursuant to Section 1423(c)(7) of the Safe Drinking Water Act, 42 U.S.C. §300h-2(c)(7), if payment is not received by the due date, a civil action may be commenced in Federal District Court to recover the amount assessed, plus costs, attorneys' fees and interest at currently prevailing rates from the Effective Date (*see* Final Order). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.
 - d. Respondent also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.
6. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from the Respondent's federal or state taxes.

III. GENERAL PROVISIONS

1. This Consent Agreement and Final Order shall apply to and be binding on Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns, including but not limited to, subsequent purchasers. No transfer of ownership or operation shall relieve Respondent of its obligations to comply with the CA/FO.
2. Respondent waives any right Respondent may have pursuant to 40 C.F.R. §22.8 or statute to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that the Administrator accept this Consent Agreement and issue the accompanying Final Order.
3. Violations of the terms of the Final Order after its Effective Date (*see* Final Order), 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).
4. This Consent Agreement and Final Order shall not relieve Respondent of Respondent's obligations to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.
5. Nothing in this Consent Agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Consent Agreement or of the statutes and regulations upon which

this Consent Agreement is based, or for Respondent's violation of any applicable provision of law.

6. Issuance of the Final Order is not an election by EPA to forego any civil or criminal action otherwise authorized under the Act.
7. This Consent Agreement and Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the Safe Drinking Water Act for the violations alleged in the Complaint. Nothing in this Consent Agreement and Final Order is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent. Compliance with this Consent Agreement and Final Order shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.
8. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.
9. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this Consent Agreement and Final Order.

RESPONDENT:

BY: _____
Dennis Harding, Owner/General Manager
Serafini Nissan-Volvo

DATE: _____

COMPLAINANT:

BY: _____
Dore LaPosta, Director
Division of Enforcement and Compliance Assistant
U.S. EPA, Region 2
New York, New York 10007-1866

DATE: _____

IV. FINAL ORDER

The Regional Administrator of the United States Environmental Protection Agency, Region 2, vested by authority delegated by the Administrator of the United States Environmental Protection Agency and having further re-delegated such authority to the Regional Judicial Officer, Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the Parties is hereby approved, incorporated herein, and issued as a Final Order. The Effective Date of this Final Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, New York, New York.

DATE: _____

HELEN S. FERRARA
Regional Judicial Officer
U.S. EPA, Region 2
290 Broadway
New York, NY 10007-1866

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Serafini Nissan-Volvo
3101 Vestal Parkway East
Steward Road Building
Vestal, NY 13350

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-02-2013-8901

CERTIFICATE OF SERVICE

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

Original and one copy by hand to:

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 to:

Dennis Harding, Owner/General Manager
Serafini Nissan-Volvo
3101 Vestal Parkway East
Vestal, NY 13350

Date: 9/25/13

Signed:



Name and Title: Marie St. Germain
New York, New York