

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

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II

2010 NOV -1 A 11: 28

HEARING
CLERK

IN THE MATTER OF:

Genesee County Highway
Department
153 Cedar Street
Batavia, NY 14020

Respondent

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

**CONSENT AGREEMENT
AND
FINAL ORDER**

**DOCKET NO.
SDWA-02-2009-8902**

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, Notice of Violation, Proposed Administrative Order with Civil Penalty and Opportunity to Request a Hearing” (“Complaint”) to Genesee County Highway Department (“Respondent”) on February 20, 2009.

Complainant and Respondent, 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 for compliance with the Safe Drinking Water Act pursuant to Section 1423(c) of the Safe Drinking Water Act, 42 U.S.C. §300h-2(c).
2. The Complaint alleges violations of the Safe Drinking Water Act Part C – Underground Injection Control, as they pertain to a Class V injection well located

at 153 Cedar Street in Batavia, New York. The Complaint alleges that the Class V well is owned and operated by the Genesee County Highway Department.

3. This action was public noticed on May 18, 2009.
4. This Consent Agreement and Final Order shall apply to and be binding on Respondent, the business officers, directors, employees, successors and assigns, including but not limited to, subsequent purchasers.
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, 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 (\$4,000) Dollars** (this penalty represents a capture of the economic benefit otherwise gained by the Respondent for noncompliance).
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 date of issuance of the executed Final Order signed by the Regional Administrator, EPA, Region 2, Respondent shall pay the penalty of **Four Thousand (\$4,000) 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 GENESEE COUNTY HIGHWAY DEPARTMENT**, and shall bear thereon **Docket Number SDWA-02-2009-8902**. 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: Genesee County Highway Department.
- g. Case Number: SDWA-02-2009-8902

Such EFT must be received on or before 45 days after the Effective Date 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:

Nadine Orrell, 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) 637-3244
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 date of signature of the Final Order (at the end of this document). 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 date the order is effective. 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.

B. Compliance Measures

7. **Cease injection:** As of the effective date of this Order, Respondent shall discontinue the use of the drain disposal system as currently utilized.
8. **Remediation Plan Submittal:** **Within 30 days** of the effective date of this Order, Respondent shall submit a remediation plan ("Plan"), developed in accordance with well remediation requirements incorporated into this Order as Attachment 1, detailing how the injection well(s) subject to this Order will be properly remediated and, if applicable, permanently closed. Please note that continued use of the injection well or wells subject to this Order, for any purpose, after remediation is completed must be approved by EPA pursuant to Paragraph 11 of this section. EPA will review the Plan and approve or provide comments within 30 days after receipt of the Plan from Respondent.
9. **Well Remediation:** **Prior to April 30, 2012**, Respondent shall complete the remediation of the injection well or wells in accordance with the EPA approved plan.
10. **Well Remediation/Closure Report:** **Prior to May 31, 2012**, 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.

11. **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 9 of this section is completed, for the disposal of any fluids, Respondent must submit a written request (“Request”) to EPA within 120 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:

- a. The source(s) and type(s) of fluid(s) Respondent wishes to dispose of into the injection well or wells.
- b. Any treatment of the wastes that will be done prior to injection of the wastes.
- c. 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.

III. GENERAL PROVISIONS

1. Respondent shall transmit all notices, reports and submissions required by this Consent Agreement and Final Order to:

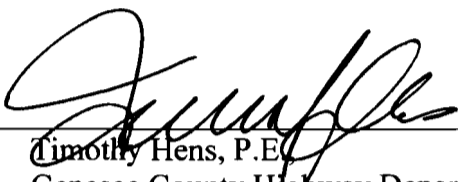
Nicole Kraft, Chief
Ground Water Compliance Section
Water Compliance Branch
U.S. EPA, Region 2
290 Broadway, 20th Floor
New York, NY 10007-1866

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 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).

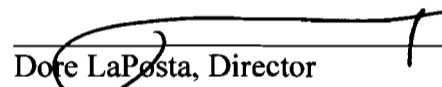
4. This Consent Agreement and Final Order shall not relieve Respondent of Respondent's obligations to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.
5. Nothing 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 constitutes 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: 
Timothy Hens, P.E.
Genesee County Highway Department.

DATE: 9/9/10

COMPLAINANT:

BY: 
Dore LaPosta, Director
Division of Enforcement and Compliance Assistant
U.S. EPA, Region 2
290 Broadway, 21st Floor
New York, New York 10007-1866

DATE: SEPTEMBER 28, 2010

IV. FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, 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 30 days after the date of signature.

DATE: 9/29/10



JUDITH A. ENCK
Regional Administrator
United States Environmental
Protection Agency - Region 2
290 Broadway
New York, New York 10007-1866

Attachment 1
Instructions for Underground Injection Control Class V Remediation Plans

To ensure Underground Injection Control (UIC) Class V well remediation in an environmentally sound manner, the EPA requires the following information to be included in your Class V well remediation plan. Please note that, for sanitary systems where a connection to the sewer is not possible, the sanitary system may remain in use as long as the chemical contamination is cleaned out and the chemical discharge is ceased:

- A. Schematic diagram displaying the injection well system; the diagram must include all drains, piping, processing units such as oil/water separators or septic tanks, and final discharge mechanisms such as drywells, leach fields or open underground pipe. Note that, for sanitary waste disposal systems, the diagram must clearly indicate whether the facility uses a septic system or a cesspool where cesspools and septic systems are defined as follows:
 - 1. A cesspool is a drywell/leach pit that directly receives untreated sanitary waste containing human excreta. A cesspool does not utilize a septic tank to retain and treat sanitary waste.
 - 2. In a septic system, sanitary waste is first discharged through a septic tank, where solid are removed and biologic treatment occurs, and the treated sanitary waste is then discharged to a drywell/leach pit or to a drain field.
- B. Description of all fluids which enter the Class V well;
- C. Statement indicating that the connection between all drains of concern and the injection well (cesspool, drywell, open pipe or leach field), will be verified;
- D. Description of plug emplacements (if applicable);
- E. Statement indicating that all contaminated liquids, sludge, and contaminated soil will be removed from in and around the Class V injection well until visibly clean soil is reached or structural integrity of the excavation or buildings or other significant structures near the excavation, may be compromised;
- F. Description of on-site storage while awaiting proper disposal of liquids, sludge and contaminated soil removed from the Class V well system;
- G. Statement indicating that all wastes will be characterized for disposal purposes, in accordance with Federal, State, and local regulations;
- H. End-point sample shall be collected from the cleaned out Class V well, below the point of discharge. The end-point sample shall be analyzed according to well use and injectate constituents. A statement must be included indicating what

analytical methods will be used. Recommended EPA methods are included below:

- a. For large capacity cesspool wells (20 or more people per day), which receive only sanitary waste, an end-point sample and analysis is not required.
 - b. For motor vehicle waste wells, the end-point sample shall be analyzed for volatile organic compounds (EPA Test Method SW-846 8260), semi-volatile organic compounds (EPA Test Method SW-846 8270 base/neutral extraction), and arsenic, cadmium, chromium, and lead by a total metals analysis.
 - c. For funeral home waste disposal wells, the end-point sample shall be analyzed for volatile organic compounds (EPA Test Method SW-846 8260); phenol, 2-methylphenol and 4-methylphenol (EPA Test Method SW-846 8270 base/neutral extraction, or EPA Test Method SW-846 8041); formaldehyde (EPA Test Method SW-846 8315); mercury, arsenic, cadmium, chromium, copper, and lead by total metals analyses.
 - d. For industrial discharge wells, the end-point sample shall be analyzed for contaminants present in the injected discharge (analyses may include volatile organic compounds – EPA Test Method SW-846 8260; semi-volatile organic compounds – EPA Test Method SW-846 8270 base/neutral extraction, and metals, herbicides or pesticides).
- I. Clean inert soil or sand will be used as backfill;
 - J. Statement must included indicating that a final report outlining the remediation procedures used, and including all initial and end-point analyses results and waste disposal manifests shall be submitted to:

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

The Class V well work must be submitted to EPA and approved by EPA prior to initiation of well initial sampling and/or clean-out activities. You shall be notified that EPA has approved your work plan or that you will be required to modify your work plan to meet the requirements listed above.

In order to receive a letter from EPA documenting proper initial sampling and/or clean-out of your wells, you must submit a final remediation report outlining the remediation procedures that were used, and including all sampling results and waste disposal manifests.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
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IN THE MATTER OF:

Genesee County Highway
Department
153 Cedar Street
Batavia, NY 14020

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

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**DOCKET NO.
SDWA-02-2009-8902**

CERTIFICATE OF SERVICE

I certify that on NOV 1 - 2010, I served the above-cited Consent Agreement
And Final Order for Compliance, bearing the above referenced docket number, on the
persons listed below, in the following manner:

Original and One Copy

By Hand:

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

Copy by Certified Mail, Return
Receipt Requested:

Timothy Hens, P.E.
Genesee County Highway Department
153 Cedar Street
Batavia, NY 14020

Dated: NOV 1 - 2010

Ana Madera