



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

SEP 27 2010

Ref: 8ENF-UFO

CERTIFIED MAIL 7009 3410 0000 2592 1612
RETURN RECEIPT REQUESTED

Ted Miller, Owner
Black Hills Aero, Inc.
420 Aviation Place
Spearfish, SD 57783-6350

Re: Proposed Compliance Order, Penalty Complaint,
And Notice Of Opportunity For Hearing
Docket No. **SDWA-08-2010-0081**

Dear Mr. Miller:

Enclosed is a *Proposed Compliance Order, Penalty Complaint, And Notice Of Opportunity For Hearing* (complaint) issued by the Environmental Protection Agency (EPA) as authorized by the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300h-2. The complaint describes the United States Environmental Protection Agency's allegation that Black Hills Aero, Inc. has violated the SDWA. The complaint proposes both compliance requirements and the assessment of a civil penalty.

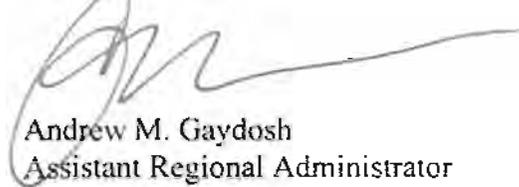
Please be advised, however, that if Black Hills Aero fully complies with the compliance order requirements in a timely manner as set out in the complaint, EPA will evaluate the civil penalty factors at 42 U.S.C. § 300h-2(c)(4)(B), and may settle this case without the assessment of a civil penalty, if appropriate. Please note that there are deadlines in the complaint that must be followed. In particular, Black Hills Aero has thirty (30) calendar days from the date it is received by Black Hills Aero, or its agents or employees, to file an answer to dispute the contents of the complaint.

In an effort to assist your understanding of EPA's administrative hearing process, a copy of EPA's administrative rules of practice is enclosed. In addition, because Black Hills Aero appears to be a small business, a Small Business Resources Fact Sheet is also enclosed. Finally, because public notice is required by the Act, a copy of our public notice for this matter is also enclosed.

If you have any technical questions, please contact Cynthia Peterson at the above address (with the mail code 8ENF-UFO) or by phone at (303) 312-6879. Charles Figur is the EPA attorney assigned to this matter. He can be reached at the above address (with the mail code 8ENF-L) or by phone at (303) 312-6915.

We urge your prompt attention to this matter.

Sincerely,



Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures:

Proposed Compliance Order, Penalty Complaint,
and Notice of Opportunity for Hearing
Part 22 Rules of Practice
Public Notice
U.S. EPA Small Business Resources Fact Sheet

cc: Tom Brandner, Groundwater Section Engineering Director
South Dakota DENR
523 E. Capitol
Pierre SD 57501

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

Docket No. SDWA-08-2010-0081

2010 SEP 27 AM 10:48

FILED
EPA REGION VIII
HEARING CLERK

In the Matter of:)
)
Black Hills Aero, Inc.,)
)
Respondent.)

**PROPOSED COMPLIANCE ORDER,
PENALTY COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING**

INTRODUCTION

1. This Proposed Compliance Order, Penalty Complaint and Notice of Opportunity for Hearing (complaint) is authorized by Congress in section 1423 of the Public Health Service Act, commonly known as the Safe Drinking Water Act (the Act). 42 U.S.C. § 300h-2. The Environmental Protection Agency (EPA) regulations authorized by the Act are set out in part 144 of Title 40 of the Code of Federal Regulations (C.F.R.), and violations of the Act, permits issued under the Act, or EPA regulations constitute violations of the Act.

2. The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits* (Rules of Practice), govern this proceeding. They are found at 40 C.F.R. Part 22. A copy of the Rules of Practice is enclosed with this complaint.

3. The undersigned EPA official has been properly delegated the authority to issue this complaint.

4. EPA alleges that Black Hills Aero, Inc. (Respondent or Black Hills Aero) has violated the regulations and therefore the Act, as more fully explained in the "Allegations" section below.

NOTICE OF OPPORTUNITY FOR A HEARING

5. Black Hills Aero has the right to a public hearing before a presiding officer within the Agency to (1) disagree with any fact alleged by EPA in the complaint, (2) state the grounds for any legal defense or (3) disagree with the appropriateness of the proposed penalty.

6. Black Hills Aero must file a written answer (and one copy) with the Regional Hearing Clerk (1595 Wynkoop Street (8RC); Denver, Colorado 80202) within thirty (30) calendar days of receiving this complaint or Black Hills Aero's right to a hearing, and its right to disagree with the complaint is waived. The answer must clearly admit, deny or explain the factual

allegations of the complaint, the grounds for any defense, the facts Black Hills Aero may dispute, and Black Hills Aero's specific request for a public hearing. Please see section 22.15 of the Rules of Practice for a complete description of what must be in the answer. **FAILURE TO FILE AN ANSWER AND REQUEST A HEARING WITHIN THIRTY (30) CALENDAR DAYS OF RECEIPT OF THE COMPLAINT MAY WAIVE BLACK HILLS AERO'S RIGHT TO A HEARING, AND TO DISAGREE WITH THE ALLEGATIONS AND THE PROPOSED PENALTY. IN ADDITION, A DEFAULT JUDGMENT AND ASSESSMENT OF PENALTY UP TO THE MAXIMUM AUTHORIZED BY THE ACT MAY BE IMPOSED WITHOUT FURTHER INPUT FROM BLACK HILLS AERO.**

SETTLEMENT NEGOTIATIONS

7. EPA encourages discussing whether cases can be settled through informal settlement conferences. If Black Hills Aero wants to pursue the possibility of settling this matter, or has any other questions, contact the attorney listed at the end of this complaint. **Please note that calling the attorney or requesting a settlement conference does NOT delay the running of the thirty (30) day period for filing an answer and requesting a hearing.**

ALLEGATIONS

The following allegations apply to all times relevant to this action and to the violation alleged herein.

8. Respondent is a corporation doing business in the State of South Dakota.

9. Respondent is a "person" as defined in the Act, and is therefore subject to the requirements of the Act and regulations promulgated thereunder. 42 U.S.C. § 300f(12).

10. Respondent owns and/or operates the facility located at 420 Aviation Place, Spearfish, South Dakota (facility).

11. On or around April 5, 2002, EPA sent a letter to Respondent informing Respondent of the requirement to complete an Underground Injection Control Class V Injection Well Inventory Form. No completed form was returned to EPA.

12. On July 12, 2010, authorized EPA employees entered the facility, with Respondent's consent, to inspect the facility for compliance with the Act. The inspection revealed that Respondent operates an aircraft servicing and maintenance facility with a floor drain that is connected to a septic system with a drain field.

13. Based on the observations made during the July 12, 2010, inspection, Respondent owns and/or operates a motor vehicle waste disposal well.

14. Lying beneath Respondent's motor vehicle waste disposal well are underground sources of drinking water (USDW's), including but not limited to, the Northern Great Plains Aquifer.

15. Respondent's motor vehicle waste disposal well is a Class V Injection Well as defined at 40 C.F.R. §§ 144.6, 144.81(16), and 146.5.

16. Because Respondent's motor vehicle waste disposal well is a Class V Injection Well, Respondent is subject to applicable requirements of 40 C.F.R. §§ 124, 144 and 146.

17. Pursuant to 40 C.F.R. § 144.85, Respondent's operation of its motor vehicle waste disposal well (a Class V Injection Well) is subject to the requirements of 40 C.F.R. § 144.88.

18. Pursuant to 40 C.F.R. § 144.88(b)(1) Respondent was required to close its motor vehicle waste disposal well by January 1, 2007. Class V Injection Well closure requirements are set forth in 40 C.F.R. § 144.89.

19. Respondent has not properly closed its motor vehicle waste disposal well.

20. Because Respondent's motor vehicle waste disposal well remains operable, it allows for the movement of fluid containing any contaminant (including motor vehicle waste) into underground sources of drinking water.

21. Respondent is in violation of 40 C.F.R. § 144.88(b), for operating a motor vehicle waste disposal well after January 1, 2007.

PROPOSED COMPLIANCE ORDER

22. Respondent shall:

(a) within thirty (30) calendar days of Respondent's receipt of this complaint, submit to EPA, in writing, a schedule for permanently closing the disposal system, and a plan for alternative disposal of the waste that would otherwise have been disposed of in the disposal system. If closure includes the use of a self-contained holding tank, the plan must address the specific type, specifications and size of tank to be installed. EPA will promptly review the proposed plan and either approve it or provide Respondent with written comments;

(b) within sixty (60) calendar days of the receipt of this complaint, permanently close the disposal well according to the EPA-approved plan; and

(c) within thirty (30) calendar days of completing closure, provide EPA with documentation of the closure.

23. Respondent shall submit all documentation to:

Cynthia Peterson (Mail Code 8ENF-UFO)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202

PROPOSED CIVIL PENALTY

24. In an administrative proceeding EPA is authorized to assess a civil penalty of up to \$16,000 per day, for each violation of the Act, up to a maximum of \$177,500. 42 U.S.C. § 300h-2 (c)(1). The Act requires EPA to take into account specific factors in assessing a civil penalty, including the seriousness of the violations, the economic benefit resulting from the violations, any history of such violations, any good-faith efforts to comply with the requirements, the economic impact on the violator, and such other matters as justice may require.

25. As required by the Act, prior to the assessment of a civil penalty, EPA will provide public notice of the proposed penalty, and reasonable opportunity for the public to comment on the matter and present evidence in the event a hearing is held. 42 U.S.C. § 300h-2 (c)(3)(B).

26. To discuss settlement or ask any questions you may have about this case or the administrative process, please contact Charles Figur, Senior Enforcement Attorney, at (303) 312-6915, or the address below (Mailcode ENF-L).

United States Environmental Protection Agency
Region 8, Office of Enforcement, Compliance and
Environmental Justice
1595 Wynkoop Street
Denver, CO 80202

Date: _____

2/25/10

By: _____


Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance
And Environmental Justice

In the Matter of: **Black Hills Aero, Inc.**
Docket No.: **SDWA-08-2010-0081**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the PROPOSED COMPLIANCE ORDER, PENALTY COMPLAINT, AND NOTICE OF OPPORTUNITY FOR HEARING with the Consolidated Rules of Practice (40 C.F.R. Part 22), a Public Notice, and the U.S. EPA Small Business Resources Fact Sheet were hand-carried to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street; Denver, Colorado 80202-1129, and that a true copy of the same was sent via Certified Mail to:

Ted Miller, Owner
Black Hills Aero, Inc.
420 Aviation Place
Spearfish, SD 57783-6350

9/27/2010
Date

Ann Maxwell

**U.S. ENVIRONMENTAL PROTECTION AGENCY
PUBLIC NOTICE
OPPORTUNITY FOR PUBLIC COMMENT ON
*PROPOSED COMPLIANCE ORDER, PENALTY COMPLAINT,
AND NOTICE OF OPPORTUNITY FOR HEARING*
AGAINST
BLACK HILLS AERO, INC.
FOR FAILURE TO COMPLY WITH
UNDERGROUND INJECTION CONTROL REGULATIONS**

PURPOSE OF PUBLIC NOTICE

The purpose of this notice is to solicit written comments on a *Proposed Compliance Order, Penalty Complaint, and Notice of Opportunity for Hearing* (complaint) [Docket No. **SDWA-08-2010-0081**] that Region 8 of the United States Environmental Protection Agency (EPA) proposes to issue to Black Hills Aero, Inc., for alleged violations at the facility it owns or operates at 420 Aviation Place, Spearfish, South Dakota. The complaint alleges violations of the Safe Drinking Water Act (SDWA) and the regulations detailing the requirements of the SDWA's Underground Injection Control (UIC) program. These regulations govern the injection of fluids that may endanger an underground source of drinking water (USDW). The complaint proposes compliance requirements and monetary penalties for the alleged violation.

EPA desires to receive written comments from any interested party having knowledge of the alleged violations or who can provide any information useful to ensure that the complaint is appropriate. EPA will review and consider all comments received, and will thereafter determine whether the comments, if any, justify the modification or withdrawal of the complaint.

BACKGROUND

Part C of the SDWA (40 U.S.C. § 300h *et seq.*) requires EPA to regulate underground injection of fluid through wells to assure that underground sources of drinking water (USDWs) are not endangered. Section 1421 of the SDWA (40 U.S.C. § 300h) requires EPA to administer UIC programs in States that do not have approved State UIC programs. Because the State of South Dakota does not have an approved UIC program, EPA administers the program in South Dakota in accordance with Title 40 of the Code of Federal Regulations (40 C.F.R.) parts 124, 144, 146, 147, and 148.

Pursuant to 40 C.F.R. §§ 144.6, 144.81, and 146.5, a Class V injection well is a shallow injection well that injects fluids into or above a USDW. The Class V motor vehicle waste disposal well that is the subject of this complaint is located at 420 Aviation Place, Spearfish, South Dakota.

The complaint alleges that Black Hills Aero is in violation of certain UIC regulations and is subject to appropriate penalties for failing to prevent movement of fluids into a USDW that may cause a violation of a primary drinking water regulation under 40 C.F.R. Part 142 or otherwise adversely affect the health of persons. The complaint explains that EPA may assess an administrative civil penalty of up to \$16,000 per