

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

MAR 21 2008

Ref: 8ENF-UFO

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ed Swisher, Owner
Swisher Diesel and Automotive
31455 US Hwy 24
Buena Vista, Colorado 81211

Re: Proposed Compliance Order, Penalty Complaint,
And Notice Of Opportunity For Hearing
Docket No. **SDWA-08-2008-0037**

Dear Mr. Swisher:

Enclosed is a Proposed Compliance Order, Penalty Complaint, And Notice Of Opportunity For Hearing (complaint) issued by the Environmental Protection Agency (EPA) under the authority of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300h-2. The document describes how you have violated the SDWA and proposes both compliance requirements and the assessment of a civil penalty.

However, if you fully comply with the compliance order requirements in a timely manner as set out in the complaint, EPA will settle this case without the assessment of a civil penalty. Please note that there are time deadlines in the complaint that must be followed. The complaint is effective upon the receipt date and you have thirty (30) calendar days to file an answer to dispute the contents of the complaint.

If you have any technical questions, contact Dennis Jaramillo at the above address (with the mailcode 8ENF-UFO) or by phone at (303) 312-6203. For legal questions, the attorney assigned to this matter is Michelle Marcu, who can be reached at the above address (with the mailcode 8ENF-L) or by phone at (303) 312-6921.

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

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

REGION 8

Docket No. SDWA-08-2008-0037

2008 MAR 21 AM 10:49

EPA REGION VIII
HEARING CLERK

In the Matter of:)
)
Ed Swisher, Owner)
Swisher Diesel and)
Automotive)
)
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 statute are set out in part 144 of title 40 of the Code of Federal Regulations (C.F.R.), and violations of the statute, permits or EPA regulations constitute violations of the Act. The rules for this proceeding are 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")," 40 C.F.R. part 22, a copy of which is enclosed.

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

3. EPA alleges that Ed Swisher (Respondent) has violated the regulations and therefore the Act, as more fully explained below.

NOTICE OF OPPORTUNITY FOR A HEARING

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

5. To disagree with the complaint and assert Respondent's right to a hearing, Respondent 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. The answer must clearly admit, deny or explain the factual allegations of the complaint, the grounds for any defense, the facts Respondent may dispute, and Respondent'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 MAY WAIVE RESPONDENT'S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR PROPOSED PENALTY, AND RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF PENALTY UP TO THE MAXIMUM AUTHORIZED BY THE ACT.**

SETTLEMENT NEGOTIATIONS

6. EPA encourages discussing whether cases can be settled through informal settlement conferences. If Respondent 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.**

GENERAL ALLEGATIONS

The following general allegations apply to all times relevant to this action, and to each violation alleged in this complaint:

7. Respondent, Ed Swisher dba Swisher Diesel and Automotive is an individual and doing business in the State of Colorado.

8. Respondent is a "person" as defined in the Act, and therefore subject to the requirements of the statute and/or regulations. 42 U.S.C. § 300f (11).

9. Respondent owns the property and operates the facility located at 31455 US Hwy 24, Buena Vista, Colorado ("facility").

10. On October 10, 2006 EPA Region 8 received a completed *Shallow Injection Well Inventory Request Form* for the facility, prepared by the Respondent dated October 6, 2006 (Inventory Form).

11. The Inventory Form and additional information provided indicated the existence of one septic system that receives wastes from both a sanitary system and a floor drain in the motor vehicle maintenance shop.

12. On April 19, 2007, an authorized EPA employee entered the facility with consent to inspect it for compliance with the law.

13. As of that date, it was verified that Respondent owned and was operating a Class V Motor Vehicle Waste Disposal Well.

14. Respondent's disposal well, as identified in the Inventory Form and the inspection above, is classified as a "Class V Injection Well" as defined by 40 C.F.R. §§ 144.6 and 146.5. Respondent is subject to applicable requirements of 40 C.F.R. §§ 124, 144 and 146.

15. Lying underneath the disposal well are underground sources of drinking water (USDWs), including but not limited to unconsolidated sand and gravel aquifers approximately 100 feet below land surface.

16. Respondent is in violation of:

- (a) 40 C.F.R. §§ 144.12(a) and 144.82(a)(1) by owning, operating or maintaining a Class V disposal well which, through injection activity, allows the movement of fluid containing any contaminant into underground sources of drinking water, where the presence of that contaminant may cause a violation of any primary drinking water regulation or may otherwise adversely affect the health of persons; and
- (b) 40 C.F.R. § 144.88(b) for operating a motor vehicle waste disposal well after the January 1, 2007 ban of all motor vehicle disposal wells.

Respondent's operation of the well in violation of the EPA regulations is therefore in violation of the Act, 42 U.S.C. § 300h-2 (c)(1).

PROPOSED COMPLIANCE ORDER

17. Within thirty (30) calendar days of Respondent's receipt of this complaint, Respondent shall:

(a) submit to EPA, in writing, a schedule for permanently closing the disposal well, and a plan for alternative disposal of the waste. If the closure includes the use of a 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) permanently close the disposal well within sixty (60) calendar days of the receipt of this complaint; and

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

18. Respondent shall submit all documentation to:

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

PROPOSED CIVIL PENALTY

19. For an administrative proceeding, the Act authorizes the assessment of a civil penalty of up to \$11,000 per day, for each violation of the Act, up to a maximum of \$157,500. 42 U.S.C. § 300h-2 (c)(1). The Act requires EPA to take into account appropriate factors in assessing a civil penalty, including the seriousness of the violation, the economic benefit resulting from the violation, any history of such violations, and good-faith efforts to comply with the requirements, the economic impact on the violator, and such other matters as justice may require.

20. 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 people to comment on the matter, and present evidence in the event a hearing is held 42 U.S.C. § 300h-2 (c)(3)(B).

21. To discuss settlement or ask any questions you may have about this case or process, please contact Michelle Marcu Enforcement Attorney, at 303-312-6921, or the address below.

United States Environmental Protection Agency
Region 8
Office of Enforcement, Compliance
and Environmental Justice, Complainant
1595 Wynkoop Street (ENF-L)
Denver, CO 80202-1129

Date:

3/21/08

By

Michael T. Brisner

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

**U.S. ENVIRONMENTAL PROTECTION AGENCY
PUBLIC NOTICE
OPPORTUNITY FOR PUBLIC COMMENT ON
PROPOSED COMPLIANCE ORDER, PENALTY COMPLAINT,
AND
NOTICE OF OPPORTUNITY FOR HEARING
AGAINST
ED SWISHER
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-08-2008-0037] that Region 8 of the United States Environmental Protection Agency (EPA) proposes to issue to Ed Swisher for alleged violations at the facility located in Buena Vista, Colorado. 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.

The EPA desires to receive written comments from any interested party having knowledge of the alleged violation 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 to modify or withdraw the complaint.

BACKGROUND

Part C of the SDWA (40 U.S.C. §300h *et seq*) requires the EPA to regulate underground injection of fluid through wells to assure that underground sources of drinking water (USDWs) are not endangered. Section 1421 (40 U.S.C. §300h) of the SDWA requires EPA to administer UIC programs in States that do not have approved State UIC programs. Regulation of the UIC Class V Program has not been delegated to the State of Colorado therefore, EPA administers the program in accordance with title 40 of the Code of Federal Regulations (40 C.F.R.) parts 124, 144, 146, 147, and 148.

The Class V motor vehicle waste disposal well which is the subject of this complaint, is located at 31455 US Hwy 24 Buena Vista, Colorado. A Class V injection well, pursuant to 40 C.F.R. §§ 144.6 and 146.5, is a shallow injection well that injects fluids into or above a USDW.

The complaint alleges that Ed Swisher is in violation of 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 cites that EPA may assess an administrative civil penalty of up to \$11,000 per day, for each violation of the Act, up to a maximum of \$157,500 and proposes certain compliance measures, including the permanent closure of the well.

PUBLIC COMMENTS

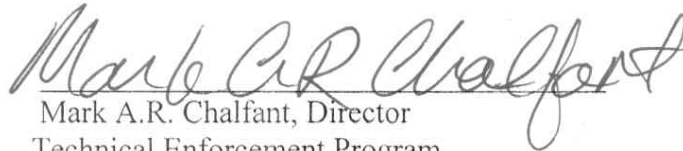
Written comments on the complaint are encouraged and will be accepted at the address listed below for a period of thirty (30) calendar days after the publication of this notice. Written comments submitted by the public as well as information submitted by Ed Swisher will be available for public review as part of the Administrative Record, subject to the provisions of law restricting the disclosure of confidential information. Ed Swisher may request a hearing. Any person submitting written comments will be notified of and has a right to participate in such a hearing. The complaint and the Administrative Record are available for review between 9:00 a.m. and 4:00 p.m. at the address listed below. It is recommended that those wishing to view the Administrative Record call Michelle Marcu, Enforcement Attorney, Legal Enforcement Program, EPA Region 8, at (303) 312-6921 before visiting the EPA Region 8 offices. Please submit written comments to:

Tina Artemis (8RC)
Regional Hearing Clerk
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, Colorado 80202

Any person interested in receiving their own copy of this or any future public notice of a UIC administrative action can call Dennis Jaramillo in the UIC program, EPA Region 8, at (303) 312-6203

THE DECISION

EPA will review and consider all public comments received on the public notice and will thereafter determine whether to modify or withdraw the complaint. If the complaint is revised, copies shall be provided to all parties and to all members of the public who have commented.



Mark A.R. Chalfant, Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202