

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

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

SEP 21 2007

Ref: 8ENF-UFO

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Steven R. Becquart  
dba Steve's Auto Body  
1648 U.S. Highway 2N  
Troy, MT 59935-9702

Re: UNDERGROUND INJECTION  
CONTROL PROGRAM (UIC)  
Penalty Complaint and Notice of  
Opportunity for Hearing

Dear Mr. Becquart:

The enclosed document is a Penalty Complaint and Notice of Opportunity for Hearing (Complaint) for violations of the Safe Drinking Water Act (SDWA). Please carefully read the Complaint soon, since it describes your rights and responsibilities in this matter as well as EPA's authority, the factual basis of the violations, and the background for the proposed penalties. Also enclosed is a copy of the Rules of Practice that govern these proceedings, the required Public Notice associated with this Complaint and, in case you meet the criteria, an information sheet about the Small Business Regulatory Enforcement Fairness Act.

**You are required to take action within 30 calendar days of your receipt of this Complaint** to avoid the possibility of having a default judgment entered against you that could impose the penalty amount proposed in the Complaint.

Whether or not you request a hearing, we encourage an informal conference with EPA concerning the alleged violations in an effort to negotiate a settlement. You may wish to appear at an informal conference and/or be represented by legal counsel. To arrange for such a conference, you should contact the EPA attorney listed below. The request for such a conference does not extend the 30 calendar day period during which a request for hearing must be submitted.

Public Notice of EPA's Complaint and the opportunity to provide written comments on the Complaint is being provided pursuant to section 1423 (c)(3)(B) of the SDWA, 42 U.S.C. § 300h-2(c)(3)(B). Should a hearing be held, any person who comments on the Complaint has a right to participate in the hearing.

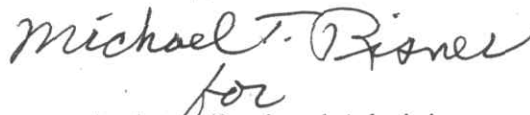
If you have technical questions relating to this matter, the person most knowledgeable on my staff is Britta Copt, UIC Enforcement Team, Technical Enforcement Program, at 1-800-227-8917 ext. 312-6229 or (303) 312-6229. For all legal questions, the person most knowledgeable on my staff is Jim Eppers at 1-800-227-8917 ext. 6893 or (303) 312-6893. Ms. Copt and Mr. Eppers can also be reached at the following addresses:

Britta Copt (Mail Code 8ENF-UFO)  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202-1129

James Eppers (Mail Code 8ENF-L)  
Enforcement Attorney  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202-1129

We urge your prompt attention to this matter.

Sincerely,

Handwritten signature of Michael T. Dixon in cursive script.

Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosures:

Complaint and Opportunity to Request Hearing  
40 C.F.R. Part 22  
Public Notice  
U.S. EPA Small Business Resources Fact Sheet

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY** 2007 SEP 24 PM 1:25  
**REGION 8**

Docket No. **SDWA-08-2007-0090**

FILED  
EPA REGION VIII  
HEARING CLERK

In the Matter of: )

Steven R. Becquart dba )  
Steve's Auto Body )

Respondent )

**PENALTY COMPLAINT AND NOTICE OF  
OPPORTUNITY FOR HEARING**

**INTRODUCTION**

1. This civil administrative enforcement action is authorized by Congress in section 1423(c) of the Public Health Service Act, also known as the Safe Drinking Water Act (the Act). 42 U.S.C. § 300h-2(c). 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 (40 C.F.R.), and violations of 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 Penalty Complaint and Notice of Opportunity for Hearing (complaint).
3. EPA alleges that Steven R. Becquart dba Steve's Auto Body (Respondent) has violated the regulations and therefore the Act and proposes the assessment of a civil penalty and compliance measures, as more fully explained below.

**NOTICE OF OPPORTUNITY FOR A HEARING**

4. Respondent has the right to a public hearing before an administrative law judge to disagree with any factual allegation made by EPA in the complaint or the appropriateness of the proposed penalty, or to present the grounds for any legal defense it may have.

5. To disagree with the complaint and assert your right to a hearing, Respondent must file a written answer (and one copy) with the Region 8 Hearing Clerk at the following address:

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

within 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 you may dispute, and your 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 FOR HEARING WITHIN 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 THE PENALTY PROPOSED IN THE COMPLAINT, OR UP TO THE MAXIMUM AUTHORIZED BY THE ACT.**

#### **SETTLEMENT NEGOTIATIONS**

6. EPA encourages discussing whether cases can be settled through informal settlement conferences. If you want to pursue the possibility of settling this matter, or have 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 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 of this complaint:

7. The Respondent, Steven R. Becquart, is an individual who is doing business in the State of Montana as Steve's Auto Body, a sole proprietorship.

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 and/or operates a Class V well located at 1648 U.S. Highway 2N in Troy, Montana (Facility).
10. The Class V well is located in the facility's paint shop where the floor drain is connected to a septic system.
11. Authorized EPA employees entered the facility with the consent of Respondent on October 15, 2004 to inspect it for compliance with the law. For the purposes of this complaint, as of that date, Respondent owned and/or was a "Class V Injection Well" as defined by 40 C.F.R. § 144.6 and § 146.5 and specifically a motor vehicle waste disposal well.
12. Motor Vehicle Waste Disposal (MVWD) wells are defined in the regulations as follows:

"Motor vehicle waste disposal 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 combustion engine repair/maintenance work." 40 C.F.R. §144.81(16)
13. Respondent is subject to the applicable Underground Injection Control (UIC) requirements of 40 C.F.R. §§ 124, 144 and 146.
14. In addition to the Class V well requirements, **all** owners and operators of MVWD wells that existed prior to the April 5, 2000, ban of construction of new MVWD wells, were required to have submitted a completed permit application or have completed the closure of the MVWD systems by January 1, 2007. 40 C.F.R. § 144.88(b).
15. By letter dated November 9, 2004, EPA directed Respondent to either permit or close the well by April 5, 2005.
16. By letter dated June 23, 2006, EPA informed the Respondent the facility was still in violation of EPA regulations and directed the Respondent to close the well.
17. On August 16, 2006, authorized EPA employees entered the facility with the consent of Respondent to inspect it for compliance with the law. This inspection revealed that the Class V system had not been closed.
18. To date, Respondent has never applied to EPA for a permit for the well.

19. To date, EPA has not received any documentation that Respondent's Class V system has been closed.

20. Lying underneath the disposal system are underground sources of drinking water (USDWs), including but not limited to unconsolidated sand and gravel aquifers approximately 100 to 200 feet below land surface.

21. Respondent's owning and/or operating of the well is in violation of EPA regulations and therefore the Act, 42 U.S.C. § 3000h-2 (c)(1), as follows:

- for owning and/or operating, and maintaining a Class V disposal facility from April 5, 2005 through August 31, 2007 which, through injection activity, 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 C.F.R. part 142 or may otherwise adversely affect the health of persons. 40 C.F.R. §144.12(a) and 40 C.F.R. §144.82(a)(1);
- for failure from April 5, 2005 through August 31, 2007 to close or retrofit the Class V disposal system in a manner that would keep contaminants from entering a USDW. 40 C.F.R. §144.12(c)(1) and (2) and 40 C.F.R. §144.88(b); and
- for owning and/or operating a MVWD system after the January 1, 2007 ban of all motor vehicle disposal wells. 40 C.F.R. § 144.88(b).

#### **PROPOSED CIVIL PENALTY**

22. For an administrative proceeding, the Act authorizes the assessment of a civil penalty of up to \$11,000.00 per day, for each violation of the Act, up to a maximum of \$157,500.00. 42 U.S.C. § 300h-2(c)(1). The Act requires EPA to take into account the following factors in assessing a civil penalty, including the seriousness of the violations, the economic benefit resulting from the violations, any history of the Respondent of such violations; any good-faith efforts to comply with the Act's requirements, the economic impact on the violator, and such other matters as justice may require. 42 U.S.C. § 300h-2(c)(4)(B).

23. In light of the statutory factors and the specific facts of this case, EPA proposes that the Respondent be ordered to pay a penalty of fifty thousand-four hundred and sixty dollars (\$50,460.00) for owning and operating the prohibited Class V well, as explained below:

### Seriousness of the Violations

Respondent's owning and operating the prohibited MVWD Class V well is serious because the injection of dangerous motor vehicle waste constituents have been shown to be hazardous to human health and the environment and can render an underlying USDW unfit for human consumption. The more than two year duration of noncompliance makes it even more serious. Respondent has been responsible for maintaining compliance and has been in complete control of the facility from the effective date of the program, for purposes of calculating a proposed penalty. Despite this, for penalty purposes EPA is only considering Respondent's non-compliance from the closure date specified in the Permit or Close Letter (April 5, 2005) through the date by which we estimate Respondent will document the closure of the system (August 31, 2007).

### Economic Benefit

Respondent enjoyed a minimal economic benefit by not expending money to come into compliance.

### Prior Compliance History

EPA Region 8 has not taken any prior formal enforcement actions against Respondent requiring compliance with applicable UIC regulations.

### Good-Faith Efforts to Comply

Given the relatively low cost of coming into compliance, together with the fact that Respondent has had over two years to come into compliance after formal notice and has still not yet done so, EPA did not reduce the proposed penalty for this factor.

### Economic Impact on Respondent

Because little information is available at this time to document financial status, and the EPA's knowledge of the facility and surrounding area indicates it is a small business, EPA did reduce the proposed penalty due to this factor. EPA will consider information Respondent may present regarding Respondent's ability to pay the proposed penalty.

### Other Matters that Justice May Require

EPA has made no additional adjustments to the penalty based on this factor.

24. Respondent's payment of the penalty shall be made by money order or certified check made payable to "Treasurer, United States of America" and mailed to the following address:

EPA - Region 8  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

A copy of said check shall be mailed to the following address:

Jim Eppers (8ENF-L)  
Senior Enforcement Attorney  
U.S. EPA - Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202

#### **PROPOSED COMPLIANCE ORDER**

25. Respondent shall comply with the following:

By no later than October 15, 2007, Respondent shall submit to EPA in writing, plans for closure of the Class V well, including a schedule for plugging the drains or retrofitting the disposal systems, and a plan for alternative disposal for the waste in accordance with the requirements of 40 C.F.R. § 144.12 (a), (c), and (d). EPA will promptly review the proposed plan and schedule and either approve them or provide Respondent with written comments. Once the closure or retrofitting has been accomplished, documentation must be provided including an as-built sketch of the drain system(s) showing where changes have been made. The drain system(s) must be closed or retrofitted in a manner that will permanently prevent future use.

26. Respondent shall submit all documentation to:

Britta Campbell Copt (MC 8ENF-UFO)  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202



## GENERAL PROVISIONS

27. 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 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).

28. The Presiding Officer will not be bound by EPA's penalty policy or the penalty proposed by EPA, and may assess a penalty above the proposed amount, up to \$11,000 per day per violation as authorized in the statute.

29. To discuss settlement or ask any questions you may have about this case or process, please contact Jim Eppers, Enforcement Attorney, at 303-312-6893, or the address below.

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

Date:

9/21/07

By:

for Michael T. Busine  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

Steven R. Becquart dba Steve's Auto Body  
Docket No. SDWA-08-2007- 0090

CERTIFICATE OF SERVICE

I hereby certify that the original and one true copy of this Penalty Complaint and Notice of Opportunity for Hearing were hand carried to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado, and that a true copy was sent via Certified Mail; Return Receipt Requested to the following address:

Steven R. Becquart  
dba Steve's Auto Body  
1648 U.S. Highway 2N  
Troy, MT 59935-9702

Dated: 9/24/07

By: Judith McTernan  
Judith McTernan