



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 17 2010

REPLY TO THE ATTENTION OF:
WU-16J

CERTIFIED MAIL NO. 7009 1680 0000 7643 1422
RETURN RECEIPT REQUESTED

Robert Christensen
d/b/a Bob's Repair
1014 3d Avenue, NE
Brainerd, Minnesota 56401

Re: Administrative Complaint for Violations of the Federal Safe Drinking Water Act filed against Bob's Repair

Docket No. **SDWA-05-2010-0001**

Dear Mr. Christensen:

Enclosed please find an Administrative Complaint that has been filed against Bob's Repair for violations of the applicable Underground Injection Control ("UIC") program for the State of Minnesota, as promulgated pursuant to Section 1421 of the Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300h.

These violations pertain to the United States Environmental Protection Agency ("U.S. EPA") UIC regulations. Bob's Repair is located in Crow Wing County, Minnesota.

The complaining party in this case (known as the "Complainant") is the Director of the Water Division at the U.S. EPA Region 5 office in Chicago, Illinois. As the party named in the Administrative Complaint, Bob's Repair is identified by the term "Respondent."

The Complainant filed this Complaint pursuant to Section 1423(c) of the SDWA, 42 U.S.C. § 300h-2(c), which authorizes U.S. EPA to issue compliance orders and assess civil penalties. The Complainant seeks: 1) an order for permanent closure of the well; and 2) payment of a \$3,600.00 penalty.

This action will be resolved before a neutral U.S. EPA hearing officer, the Regional Judicial Officer ("RJO"), who is located at U.S. EPA's Region 5 office. The RJO is a U.S. EPA employee who has no personal interest in the case or knowledge of the case beyond the official administrative record of this proceeding. The procedures applicable to this case 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" ("Consolidated Rules"), which are codified at 40 C.F.R. Part 22, and particularly invoke Subpart I therein.

I highly recommend that you carefully read and analyze the enclosed copy of the Consolidated Rules to determine the alternatives available in responding to the alleged violations and the proposed order and civil penalty. Please note that each new day the violations cited herein continue constitutes a new and separate violation for which additional penalties may be imposed.

If you choose to request a hearing to contest the facts alleged in the Administrative Complaint, you must request the hearing in your Answer, which you must file with the Regional Hearing Clerk within the prescribed time limit of 30 days following service of this Administrative Complaint. 40 C.F.R. § 22.15(a). A copy of the Answer and Request for Hearing (as well as copies of all other documents filed by Respondent in this proceeding) should be sent to:

Robert Guenther
Assistant Regional Counsel
U.S. EPA, Region 5 (C-14J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Mr. Guenther's telephone number is (312) 886-0566.

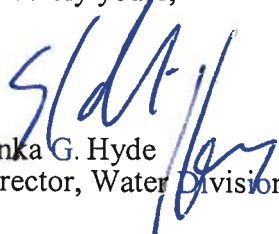
Failure to respond to this Administrative Complaint by specific Answer within 30 days of your receipt of this Administrative Complaint constitutes your admission of the allegations made in the Complaint, 40 C.F.R. § 22.15(d). Such failure may result in the issuance of a Default Order imposing the proposed civil penalties.

Whether or not you request a hearing, you may request an informal conference to discuss the facts of this case and to discuss the possibility of settlement. If you have any questions about this matter or desire to request an informal conference for the purpose of settlement, please contact the attorney whose name, address and telephone number are provided above.

You have the right to be represented by an attorney at any time during the process and at any informal settlement conference.

We urge your prompt attention to this matter.

Sincerely yours,



Tinka G. Hyde
Director, Water Division

Enclosures: Administrative Complaint
Consolidated Rules

cc: Bruce.Olsen@health.state.mn.us
Gretchen.Sabel@mpca.state.mn.us
Regional Hearing Clerk (w/ original Complaint) U.S. EPA, Region 5 (E-19J)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

SDWA-05-2010-0001

IN THE MATTER OF:)
)
ROBERT CHRISTENSEN,)
)
d/b/a BOB'S REPAIR,)
)
1014 3RD AVE, NE,)
)
BRAINERD, MINNESOTA,)
)
RESPONDENT.)
)
_____)

PROCEEDING SEEKING A
COMPLIANCE ORDER AND
ASSESSMENT OF A CIVIL
ADMINISTRATIVE
PENALTY UNDER SECTION
1423 (c) OF THE SAFE
DRINKING WATER ACT,
42 U.S.C. § 300h-2 (c)

RECEIVED
SEP 17 2010

ADMINISTRATIVE COMPLAINT

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

1. This is a civil administrative action instituted pursuant to section 1423(c) of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300h-2(c).

2. Complainant is, by lawful delegation, the Director of the Water Division, United States Environmental Protection Agency Region 5 (U.S. EPA).

3. Respondent is Robert Christensen, an individual doing business as Bob's Repair, a business in Brainerd, Minnesota.

REGULATORY AND STATUTORY BACKGROUND

4. Section 1421 of SDWA, 42 U.S.C. § 300h, requires U.S. EPA to promulgate regulations for State underground injection control (UIC) programs to prevent endangering underground sources of drinking water, including inspection, monitoring, recordkeeping and reporting requirements.

5. Pursuant to section 1421 of SDWA, 42 U.S.C. § 300h, U.S. EPA promulgated UIC regulations at 40 C.F.R. parts 144-147.

6. Section 1422(c) of SDWA, 42 U.S.C. § 300h-1(c), reserves authority to U.S. EPA to implement and enforce the federal UIC program, found at 40 C.F.R. parts 144-147, or a portion of that program, in a state which has not obtained approval of an equivalent state program under section 1422(b) of SDWA, 42 U.S.C. § 300h-1(b).

7. Federal regulations, at 40 C.F.R. § 144.3, define "well" 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."

8. Federal regulations, at 40 C.F.R. § 144.6, define five classes of injection wells, including deep hazardous waste injection wells (Class I), wells for the reinsertion of brines associated with the production of petroleum and natural gas (Class II), wells for the extraction of minerals (Class III), shallow wells for the disposal of hazardous waste (Class IV), and any well not included in the above descriptions (Class V).

9. Federal regulations, at 40 C.F.R. § 144.81(16), define "motor vehicle waste disposal well" (or MVWDW), as a Class V well which receives or has received fluids from vehicular repair or maintenance activities, such as, among other things, an auto body repair shop, automotive repair shop or any facility that does any vehicular repair work.

10. Federal regulations, at 40 C.F.R. §§ 144.87(c) and 144.88, require that owners of a MVWDW in existence or under construction prior to April 5, 2000, in an area where U.S. EPA (in a state without a federally-approved Class V well program) has not designated groundwater protection areas or other sensitive ground water areas by January 1, 2004, must close the well by January 1, 2007, or obtain a permit to operate the well as another type of well.

11. Section 1423(a)(2) of SDWA, 42 U.S.C. § 300h-2(a)(2), provides that, in states which have not received approval to implement and enforce their own UIC programs, the Administrator may issue orders requiring compliance with a requirement of the federal UIC program if the Administrator finds any person is violating that requirement.

12. Section 1423(c)(1) of SDWA, 42 U.S.C. § 300h-2(c)(1), authorizes the Administrator, if she finds any person in violation of a regulation or other requirement of

an applicable UIC program, to either issue an order seeking penalties or requiring compliance with such regulation or other requirement, or both.

GENERAL ALLEGATIONS

13. The State of Minnesota has not obtained approval from U.S. EPA to implement and enforce an equivalent UIC program with regard to Class V wells within the State pursuant to section 1422(b) of SDWA, 42 U.S.C. § 300h-1(b). Therefore, U.S. EPA maintains authority to implement and enforce the federal UIC program with regard to Class V wells within the State of Minnesota.

14. Respondent is a "person," as that term is defined at section 300f(12) of SDWA, 42 U.S.C. § 1401(12).

15. Respondent owns and operates an automobile repair facility (the Facility) located at 15455 County Road 25, in Crow Wing County, Brainerd, Minnesota, providing automotive repair services, including the draining and replacement of motor oil from automobiles and other motor vehicles it services.

16. Respondent is subject to the UIC regulations for Class V wells found in 40 C.F.R. parts 144-147.

17. U.S. EPA did not delineate groundwater protection areas or other sensitive ground water areas, as

defined at 40 C.F.R. § 144.86, for the State of Minnesota pursuant to 40 C.F.R. § 145.23(12) by January 1, 2004.

SPECIFIC ALLEGATIONS OF LIABILITY

18. Respondent's Facility houses a drain which feeds a septic tank drain field and receives fluids from its automotive repair services. This drain was in operation prior to April 5, 2000.

19. The drain at the Facility is a MVWDW.

20. Because U.S. EPA did not designate groundwater protection areas or other sensitive ground water areas for the State of Minnesota by January 1, 2004, all MVWDWs in Minnesota were required to be closed or receive a permit to operate by January 1, 2007.

21. On September 25, 2007, Respondent operated the MVWDW.

22. From September 25, 2007, until the present, Respondent has neither closed its MVWDW nor obtained a permit to operate it.

23. Respondent's failure to close its MVWDW or obtain a permit to operate it by January 1, 2007, is a violation of 40 C.F.R. §§ 144.87(c).

24. Respondent's violation of 40 C.F.R. §§ 144.87(c) is a violation of an applicable UIC program, and consequently authorizes the Administrator to impose a civil

penalty under section 1423(c) of SDWA, 42 U.S.C.

§ 300h-2(c), to seek an order requiring compliance with that provision, or both.

PROPOSED CIVIL PENALTY

25. Section 1423(c)(4)(B) of SDWA, 42 U.S.C. § 300h-2(c)(4)(B), provides that, in assessing a civil penalty under section 1423(c), U.S. EPA must take into account (i) the seriousness of the violation, (ii) the economic benefit (if any) resulting from the violation, (iii) any history of such violations, (iv) any good faith efforts to comply with the applicable requirements, (v) the economic impact of the penalty on the violator, and (vi) such other matters as justice may require.

26. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. part 19, increased the statutory maximum penalty to \$11,000 per day of violation under section 1423(c)(1) of SDWA, 42 U.S.C. § 300h-2(c)(1), for SDWA violations occurring after January 30, 1997, through January 12, 2009, and to \$16,000 per day for violations occurring after January 12, 2009. This statute and its regulations also increased the maximum penalty EPA may seek in this action to \$157,500 for violations occurring after March 15, 2004,

through January 12, 2009, and to \$177,500 for violations occurring after January 12, 2009.

27. Complainant derived the penalties proposed in this Complaint by applying the factors enumerated above to the particular allegations that constitute the violations charged in this action. The reasoning for the specific penalty assessed for each count is set forth in the *Region 5 Underground Injection Control Proposed Administrative Order Penalty Policy* (September 21, 1994). Based upon the factors set forth at section 1423(c)(4)(B) of SDWA, 42 U.S.C. § 300h-2(c)(4)(B), and applicable penalty policies, Complainant proposes that Respondent be assessed a civil penalty of **\$3,600** for the violation alleged in this Complaint.

ORDER FOR COMPLIANCE

28. Based on the violations alleged in this Complaint, and pursuant to the authority of section 1423(c)(1) of SDWA, 42 U.S.C. § 300h-2(c)(1), Complainant proposes that Respondent be issued a Compliance Order requiring Respondent to take all actions reasonable and necessary to assure full compliance with the applicable UIC regulations, including, but not limited to, permanently closing the MVWDW at its Facility according to 40 C.F.R. § 144.89.

RULES GOVERNING THIS PROCEEDING

The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) at 40 C.F.R. part 22 govern this proceeding to assess a civil penalty, with particular attention to subpart I of part 22. Enclosed with the Complaint served on Respondent is a copy of the Consolidated Rules.

FILING AND SERVICE OF DOCUMENTS

Respondent must file with the U.S. EPA Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Robert S. Guenther to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Mr. Guenther at (312) 886-0566. His address is:

Robert S. Guenther (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

ANSWER AND OPPORTUNITY TO REQUEST A HEARING

If Respondent contests any material fact alleged in this Complaint or the appropriateness of any penalty amount, or contends that it is entitled to judgment as a matter of law, Respondent may request a hearing before the Regional Judicial Officer. To request a hearing, Respondent must file a written Answer within 30 days of receiving this Complaint and must include in that written Answer a request for a hearing. Any hearing will be conducted in accordance with the Consolidated Rules.

In counting the 30-day period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

To file an Answer, Respondent must file the original written Answer and one copy with the Regional Hearing Clerk at the address specified above.

Respondent's written Answer must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint or must state clearly that Respondent has no

knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied. Respondent's failure to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the allegation.

Respondent's Answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. the facts that Respondent disputes;
- c. the basis for opposing the proposed penalty; and,
- d. whether Respondent requests a hearing.

If Respondent does not file a written Answer within 30 calendar days after receiving this Complaint, the Regional Judicial Officer may issue a default order, after motion, under section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the Complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of the Administrator of U.S. EPA under Section 22.27(c) of the Consolidated Rules.

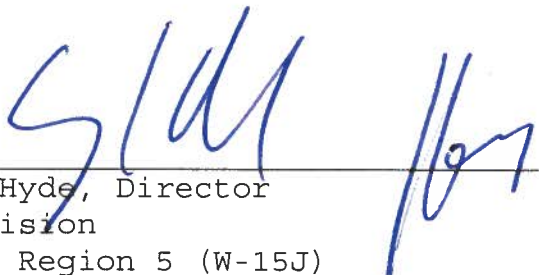
SETTLEMENT CONFERENCE

Whether or not Respondent requests a hearing, Respondent may request an informal conference to discuss the facts alleged in the Complaint and to discuss settlement. To request an informal settlement conference, Respondent may contact Mr. Urchel at (312)353-6292. Respondent's request for an informal settlement conference will not extend the 30-day period for filing a written Answer to this Complaint. Respondent may simultaneously pursue an informal settlement conference and the adjudicatory hearing process. Complainant encourages all parties against whom it proposes to assess a civil penalty to pursue settlement through informal conference. However, Complainant will not reduce the penalty simply because the parties hold an informal settlement conference.

PUBLIC NOTICE

Pursuant to section 1423(c)(3)(B) of SDWA, 42 U.S.C. § 300h-2(c)(3)(B), Complainant is providing public notice of and a reasonable opportunity to comment on the proposed assessment of an administrative penalty and order for compliance against Respondent. If a hearing is held in this proceeding, then according to section 1423(c)(3)(C) of SDWA, 42 U.S.C. § 300h-2(c)(3)(C), members of the public

who submitted timely comments on this proposed penalty will have the right to be heard and present evidence at the hearing.



Tinka G. Hyde, Director
Water Division
U.S. EPA, Region 5 (W-15J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Dated: 9/17/10

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PROTECTION AGENCY

IN THE MATTER OF: Robert Christensen, d/b/a Bob's Repair,
Brainerd, Minnesota
DOCKET NO.: SDWA-05-2010-0001

CERTIFICATE OF SERVICE

I certify that I filed one original and one copy of the attached Administrative Complaint this day with the Regional Hearing Clerk (E-19J), U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I sent a copy to the Respondent, via Certified Mail, Return Receipt Requested, along with the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. part 22, and the applicable enforcement response policy, at the following address:

Robert Christensen
d/b/a Bob's Repair
1014 3rd Avenue, NE
Brainerd, Minnesota 56401

Certified Mail: 7009 1680 0000 7643 1422

Date:

Ray Urchel 9/17/2010
Ray Urchel
Underground Injection Control
Branch (WU-16J)
Water Division
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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