



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101-3140

FEB 19 2019

OFFICE OF
COMPLIANCE AND ENFORCEMENT

Reply To: OCE-201

**SETTLEMENT CONFIDENTIAL
FOR SETTLEMENT PURPOSES ONLY**

CERTIFIED MAIL — RETURN RECEIPT REQUESTED

Ms. Mary Leith
City Administrator
City of Delta Junction
P.O. Box 229
Delta Junction, Alaska, 99737

**Re: Notice of Intent to Seek Penalties for Violation of the Safe Drinking Water Act;
Opportunity to Confer Prior to Filing**

Dear Ms. Leith:

The purpose of this letter is to inform you that the U.S. Environmental Protection Agency (EPA) intends to take an enforcement action against the City of Delta Junction (Delta Junction), for violations of Part C of the Safe Drinking Water Act (SDWA). EPA wants to provide you with the opportunity to discuss this matter with EPA prior to issuing a Compliance and Penalty Order.

EPA has identified that Delta Junction violated certain requirements of the Underground Injection Control (UIC) regulations at 40 C.F.R. Part 144 adopted pursuant to Section 1422 of the SDWA, 42 U.S.C. § 300h-2. Specifically, Delta Junction violated 40 C.F.R. §§ 144.12(a) and 144.82(a)(1) by allowing for the movement of fluids into an Underground Source of Drinking Water (USDW) that may contain contaminants, which may cause a violation of a primary drinking water regulation under 40 C.F.R. Part 141 or may otherwise adversely affect the health of persons. Furthermore, Delta Junction violated 40 C.F.R. § 144.87(b)(1)(i) by failing to close the well in accordance with 40 C.F.R. § 144.89(b)(1)(v) by January 1, 2005.

EPA's understanding of the history regarding these matters is summarized as follows:

1. On July 11, 2018, EPA inspected three City of Delta Junction facilities to determine Delta Junction's compliance with the UIC program including: the Landfill Shop, the Public Works Department Shop, and the Volunteer Fire Department Shop located at 3305 Richardson Highway; 1325 Delta Avenue; and 1328 Richardson Highway, Delta Junction, Alaska, 99737. During the inspections, EPA discovered three Class V injection wells that disposed of fluid collected through four floor drains located in the automotive body repair sections of the shop. On the date of inspection, all three wells were determined to be active.

2. The floor drains within each shop are connected to the sanitary septic systems, which flow to drainfields. These are Class V injection wells and are motor vehicle waste disposal wells (MVWDW).
3. The EPA banned the construction and operation of new MVWDWs after April 5, 2000, and all MVWDWs were required to be closed throughout the state of Alaska no later than January 1, 2005. According to the inspection reports, the facility operators told the inspector the businesses have been operating in those locations from between 4 to 14 years.
4. Injection activity that allows the movement of fluids containing any contaminant into a USDW endangers drinking water sources and is prohibited if the presence of the contaminant may cause a violation of any primary drinking water regulation or may otherwise adversely affect the health of persons. Fuels and other motor vehicle fluids may contain contaminants, such as benzene, toluene, ethylbenzene, xylenes, cadmium, chromium, and lead, in concentrations which exceed Maximum Contaminant Levels as established in the primary drinking water regulations under 40 C.F.R. Part 141, and therefore may cause a violation of primary drinking water regulations or may otherwise adversely affect the health of persons, if allowed to move to a USDW.
5. The MVWDWs should have been permanently closed in accordance with the requirements of 40 C.F.R. § 144.82, § 144.87, § 144.88, and § 144.89. These regulations include requirements to close your MVWDW in an environmentally sound manner. 40 C.F.R. § 144.88(b)(1)(vii) requires owners of MVWDWs to submit an injection well closure plan at least 30 days prior to closing the MVWDW.

Section 1423(c) of the Safe Drinking Water Act, 42 U.S.C. § 300h-2(c)(1), and 40 C.F.R. Part 19, authorizes EPA to take enforcement action for endangerment of an Underground Source of Drinking Water and for unauthorized operation of a banned Class V Motor Vehicle Waste Disposal Well. Penalties associated with such violations may result in civil penalties of up to \$22,363 per day of violation. Under the terms of Section 1423, EPA must consider the following factors in determining the amount of penalty it will seek: the seriousness of the violation(s), economic benefit resulting from the violation(s), any history of such violations, and good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require.

Please refer to the enclosed EPA's *UIC Program Judicial and Administrative Order Settlement Penalty Policy* (Policy) for guidance on appropriate penalties in settlement of civil administrative and judicial actions. The Policy can also be found online at the following website: <http://www2.epa.gov/sites/production/files/documents/uicpenaltypolicy.pdf>. Please note that the penalties within the Policy must be adjusted for inflation, as described in the *Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective January 15, 2018)*. EPA's *Small Business Resources Information Sheet*, which provides information on compliance assistance that may be helpful to you, is also attached.

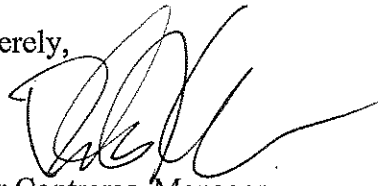
In general, EPA favors pre-filing discussions, which help ensure that we have relevant information and may lead to resolution that avoids the time and expense of litigation. If we are able to reach a settlement, we would resolve the case with an administrative Consent Agreement and Final Order, and EPA would not file a complaint. Once a Consent Agreement and Final Order, as well as a Compliance Order is signed by all parties, EPA generally issues a press release announcing the settlement.

If Delta Junction and EPA do not reach a settlement **within 90 days of this notice**, EPA may either file an administrative complaint and the case will be assigned to an administrative law judge, or refer the matter to the Department of Justice for filing in federal district court. EPA reserves the right to seek the maximum allowable penalty in litigation of this case should Delta Junction and EPA fail to reach a settlement in the time-period allotted.

To reach settlement within 90 days, we will need to begin pre-filing negotiations within 30 days. If you wish to set up an initial meeting to discuss this matter, please contact Clarke Thurmon in the Office of Regional Counsel via Thurmon.Clarke@epa.gov, or by telephone at (206) 553-2585 **within 14 days of this notice**. EPA is willing to meet with you at our Seattle office or by conference call. If we do not hear from you within 14 days, EPA intends to initiate formal enforcement action unilaterally.

Thank you for your prompt attention to this important matter.

Sincerely,



Peter Contreras, Manager
Ground Water Unit

Enclosures:

1. UIC Program Judicial and Administrative Order Settlement Penalty Policy
2. Small Business Resources Information Sheet

cc: Clarke Thurmon, Environmental Protection Agency
Tonya Bear, Alaska Department of Environmental Conservation