

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

KARLSON MOTORS, INC.
Ketchikan, Alaska

Respondent.

DOCKET NO. SDWA-10-2017-0160

**ADMINISTRATIVE ORDER ON
CONSENT**

I. STATUTORY AUTHORITY

1.1. In accordance with Section 1423(a) and (c) of the Safe Drinking Water Act (“SDWA”), 42 U.S.C. § 300h-2(a), (c), the U.S. Environmental Protection Agency (“EPA”) proposes to issue, and Karlson Motors, Inc. (“Respondent”) voluntarily agrees to issuance of, this Administrative Order on Consent (“Order”).

1.2. This Order is issued under the authority vested in the Administrator of the EPA by Section 1423(c) of the SDWA, 42 U.S.C. § 300h-2(c), and will go into effect 30 days after receipt by Respondent.

1.3. Congress authorized EPA to administer the Underground Injection Control (“UIC”) program within any state that does not have an approved UIC program. SDWA § 1422(c), 42 U.S.C. § 300h-1(c).

1.4. The State of Alaska does not have an approved UIC program for Class V injection wells. Therefore, EPA Region 10 directly implements the Class V UIC program in the State of Alaska. 40 C.F.R. § 147.101.

1.5. Section 1423(a)(2) of the SDWA, 42 U.S.C. § 300h-2(a)(2), grants EPA enforcement authority whenever the Administrator finds that any person subject to any requirement of any applicable UIC program is violating that requirement. EPA's enforcement authority includes commencing a civil action under Section 1423(b) of the SDWA, 42 U.S.C. § 300h-2(b), or issuing an administrative order to require compliance with UIC regulations, to assess penalties, or both under Section 1423(c) of the SDWA, 42 U.S.C. § 300h-2(c).

1.6. Section 1445 of the SDWA, 42 U.S.C. § 300j-4, authorizes EPA to conduct inspections and to request information to determine whether the owner or operator of an injection well has acted or is acting in compliance with the UIC program.

1.7. Section 1445 of the SDWA, 42 U.S.C. § 300j-4, authorizes EPA to require an owner or operator of an injection well to establish and maintain records, make reports, conduct monitoring, and provide other information as is deemed necessary to determine whether the owner or operator has acted or is acting in compliance with Part C of the SDWA or its implementing regulations.

II. APPLICABILITY

2.1. The Director of the Office of Compliance and Enforcement, EPA Region 10 ("Complainant") has been delegated the authority, pursuant to Section 1423(c) of the SDWA, 42 U.S.C. § 300h-2(c), to issue proposed administrative orders for compliance, and the authority to issue, withdraw, or amend final orders if no hearing is requested.

2.2. Respondent is voluntarily entering into the terms of this Order, and as a result, Respondent agrees not to request a hearing on this Order after issuance. SDWA § 1423(c)(3)(A), 42 U.S.C. § 300h-2(c)(3)(A).

2.3. Respondent is voluntarily entering into the terms of this Order, and as a result, Respondent agrees not to seek judicial review of this Order after issuance. SDWA § 1423(c)(6), 42 U.S.C. § 300h-2(c)(6).

2.4. Respondent agrees not to contest EPA's jurisdiction or authority to enter into or enforce this Order. Respondent agrees not to contest the validity of any terms and conditions of this Order in any action to enforce, or any action arising from, this Order.

2.5. This Order shall bind Respondent and its agents, employees, attorneys, successors, and assigns, and all persons, contractors, and consultants acting in concert with Respondent.

III. FINDINGS AND CONCLUSIONS

Statutory and Regulatory Background

3.1. Underground injection is prohibited, except as authorized by rule or permit under the UIC program. 40 C.F.R. § 144.11.

3.2. Injection activity that allows the movement of fluids containing any contaminant into an Underground Source of Drinking Water endangers drinking water sources and is prohibited if the presence of that contaminant may cause a violation of any primary drinking water regulation or may otherwise adversely affect the health of persons. SDWA § 1421(b)(1), (d)(2), 42 U.S.C. § 300h(b)(1), (d)(2); 40 C.F.R. §§ 144.12(a), 144.82(a)(1).

3.3. A "contaminant" is any physical, chemical, biological, or radiological substance or matter in water. SDWA § 1401(6), 42 U.S.C. § 300f(6); 40 C.F.R. § 144.3.

3.4. A "motor vehicle waste disposal well" ("MVWDW") is a Class V well that receives or has received fluids from gasoline service stations and other facilities at which vehicular repair or maintenance occurs. Fluids disposed in these wells may contain organic and

inorganic chemicals in concentrations that exceed the maximum contaminant levels (“MCLs”) established by federally mandated primary drinking water regulations. These fluids also may include waste petroleum products and may contain contaminants, such as heavy metals and volatile organic compounds, which pose risks to human health. 40 C.F.R. § 144.81(16); 64 Fed. Reg. 68546.

3.5. The UIC regulations prohibit the construction of any MVWDW on or after April 5, 2000 and require that all MVWDWs in Alaska that were operational or under construction on April 5, 2000 be closed by January 1, 2005. 40 C.F.R. §§ 144.87(b)(1)(i), 144.88(b)(1)(v).

3.6. Respondent is a corporation organized under the laws of the State of Alaska. Respondent is therefore a “person” within the meaning of the SDWA. SDWA § 1401(12), 42 U.S.C. § 300f(12); 40 C.F.R. § 144.3.

3.7. Respondent is the “owner” and “operator” of Karlson Motors (“the Site”) located at 510 North Tongass Highway in Ketchikan, Alaska. 40 C.F.R. § 144.3.

3.8. The Site includes a service area, in which Respondent conducts repair and maintenance on motor vehicles, including new and used cars.

3.9. At all times relevant to this Order, Respondent owned and operated a septic system with a leachfield (“Injection Well”) at the Site.

3.10. Respondent has a floor drain in a service bay within the service area. Fluids that enter the floor drain are discharged through the Injection Well.

3.11. The Injection Well exists for the purpose of underground injection of fluids and is therefore a Class V injection well. 40 C.F.R. §§ 144.3, 144.6, 144.81, and 146.5.

3.12. As the “owner or operator” of a Class V injection well, Respondent is subject to regulation under the UIC program. 40 C.F.R. § 144.3.

3.13. The Injection Well received fluids from vehicular repair or maintenance activities, and is therefore a MVWDW. 40 C.F.R. § 144.81(16); 64 Fed. Reg. 68546.

3.14. The Injection Well at the Site overlies the regional aquifer system, and is not within the area of an exempted aquifer. 40 C.F.R. § 146.4.

3.15. The aquifer system underneath the Site provides drinking water for nearby public water systems and is an Underground Source of Drinking Water (“USDW”). 40 C.F.R. § 144.3.

Count 1: Endangerment of an Underground Source of Drinking Water

3.16. 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 (“MCLs”), as established in the primary drinking water regulations under 40 C.F.R. Part 141.

3.17. Fuels, other motor vehicle fluids, and/or other contaminants may cause a violation of primary drinking water regulations or may otherwise adversely affect the health of persons if allowed to move into an Underground Source of Drinking Water.

3.18. Respondent is in violation of 40 C.F.R. §§ 144.12(a) and 144.82(a)(1) by owning, operating or maintaining a Class V injection well which, through injection activity, allows the movement of fluid containing contaminants into Underground Sources of Drinking Water, where that contaminant may cause a violation of the primary drinking water regulations or may otherwise adversely affect the health of persons. 40 C.F.R. §§ 144.12(a), 144.82(a)(1); 42 U.S.C. § 300h(d)(2).

Count 2: Failure to close a MVWDW by January 1, 2005

3.19. Respondent is in violation of 40 C.F.R. § 144.87(b)(1)(i) and 40 C.F.R. § 144.88(b)(1)(v) because it failed to close the Injection Well, which is a MVWDW, by January 1, 2005, in accordance with the closure requirements in 40 C.F.R. § 144.89.

3.20. Under Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), and 40 C.F.R. Part 19, Respondent is liable for administrative civil penalties up to \$21,563 per violation per day during which the violation continued. 81 Fed.Reg. 43095.

IV. ADMINISTRATIVE ORDER ON CONSENT

4.1. Based upon the FINDINGS AND CONCLUSIONS in Part III of this Order, and pursuant to Section 1423(a)(2) of the SDWA, 42 U.S.C. § 300h-2(a)(2), Respondent is ORDERED and AGREED to the following:

4.2. **Prohibition of Injection:** Respondent shall not inject any fluid into the Injection Well.

4.3. **Implementation of Well Closure Requirements:** Respondent shall implement the Well Closure requirements described in Paragraph 4.12.

4.4. **Notifications:**

a. Respondent shall provide EPA's Project Coordinator, identified in Paragraph 4.9, notification by email no less than five days prior to commencement of any activity under this Order.

b. Respondent shall provide a copy of this Compliance Order to any contractor and/or consultant retained to perform any work described in this Compliance Order at least 48 hours prior to the initiation of such work. Respondent shall simultaneously

provide EPA's Project Coordinator, identified in Paragraph 4.9, written notice that the notice required in this subparagraph was given. No contract between Respondent and a contractor and/or a consultant shall affect Respondent's obligation to comply fully with this Order.

c. Respondent shall provide a copy of this Order to any successor in ownership, control, operation, or any other interest in all or part of the Injection Well, at least 30 days prior to the transfer. Respondent shall simultaneously provide EPA's Project Coordinator, identified in Paragraph 4.9, written notice that the notice required in this subparagraph was given. A transfer of property rights at the Site will not affect Respondent's obligation to comply fully with this Order.

4.5. **Site Access:** This Order does not affect EPA's authority to enter, inspect, sample, or monitor compliance under any law, permit, court order, or agreement. Respondent shall provide EPA or its authorized representatives access to the Site upon reasonable notice. EPA or its authorized representatives will be permitted to move freely at the Site and appropriate off-site areas to determine compliance with this Order and to conduct actions in accordance with this Order.

4.6. **Site Data:** Upon EPA's request, Respondent shall provide the requestor access to all records and documentation related to the conditions at the Site and to results or data pertaining to the restoration and mitigation activities conducted under this Order.

4.7. **Record Preservation:** Respondent shall preserve and retain, and shall instruct its consultant and other persons acting on its behalf, to preserve and retain all records and documents relating in any manner to the Requirements of Paragraph 4.12 for three years after EPA has issued a written approval of Respondent's final report. At the end of that three-year

period, EPA may request Respondent to provide EPA with copies of any records and documents related to this Order or implementation of the Requirements of Paragraph 4.12. If EPA requests records and documents, Respondent shall, at no cost to EPA, but subject to a claim of privilege, provide EPA the original or copies of the records and documents within 30 days of EPA's request. If EPA makes no request at the end of the three-year period, Respondent may dispose of the records and documents.

4.8. **Modification:** EPA may, after consultation with Respondent, make a preliminary determination that tasks in addition to those defined in the Requirements of Paragraph 4.12, including any approved modifications, are necessary to accomplish the Well Closure Requirements. EPA shall notify Respondent of preliminary determinations in writing, and Respondent shall have seven days from receipt to submit a written response. Modifications of this Order, including oral modifications, shall be memorialized in writing and shall take effect only when agreed to in writing by all parties.

4.9. **Project Coordinator:**

a. Donna Ortiz is the EPA Project Coordinator who will oversee implementation of this Order. The Project Coordinator shall receive communications, which include, but are not limited to, all documents, reports, comments, approvals, and other correspondence submitted or exchanged under this Order. All submissions required by this Compliance Order shall be sent to:

Donna Ortiz
U.S. Environmental Protection Agency
Ground Water Unit
1200 Sixth Avenue, Suite 900, OCE-101
Seattle, WA 98101
Phone: 206-553-8293
Email: Ortiz.donna@epa.gov

b. Within 10 days of the effective date of this Order, Respondent must identify a project coordinator for purpose of receipt of all communication and implementation of this Order. The contact information for this project coordinator must be sent to the EPA Project Coordinator.

4.10. **Failure to comply:** Failure to timely and appropriately implement to EPA's satisfaction any element of the Requirements of Paragraph 4.12 shall be deemed a violation of this Order and the SDWA.

4.11. **Scope of Order:**

a. This Order is not and shall not be construed to be a permit under the SDWA, nor shall it relieve or affect Respondent's obligation under the SDWA, or any other applicable federal or state laws, regulations or permits. Compliance with this Order shall be no defense to any actions commenced pursuant to applicable laws, regulations, or permits.

b. This Order shall not be construed to preempt or preclude in any way any future administrative order issued by EPA or judicial action brought by the United States. This Order shall not be construed to resolve any claims for administrative or civil penalties that are not set out in this Order and that may be assessed or sought by EPA or the United States.

c. This Order shall in no way affect the rights of EPA or the United States against any person not a party to this Order.

d. Nothing in this Order shall be deemed to constitute a precedent by any party for any future administrative order, consent decree or civil action relating to the Site and/or any restoration work undertaken at the Site.

4.12. ***Well Closure Requirements:*** To successfully implement the well closure requirements, Respondent must comply with the following standards and requirements:

a. *Well Closure:*

1. Closure Plan: For the Injection Well at the Site, Respondent submitted a Closure Plan to EPA, and EPA issued a conditional approval of that Closure Plan in a letter dated July 17, 2017.

2. Closure: Respondent must close the well by September 30, 2017, following the approved Closure Plan. Closure must be in accordance with 40 C.F.R. §§ 144.82, 144.89 and 146.10(c), including removal of all contaminated liquids, sludge, and soil from in and around the injection well. Sample results will be compared to State of Alaska cleanup levels, SDWA maximum contaminant levels, and other EPA regulatory or risk-based screening and cleanup levels as appropriate to determine whether the materials are contaminated at levels that endanger drinking water resources (and require additional work by Respondent).

3. Final Well Closure Report: Respondent must submit to EPA a Final Well Closure Report for the well by October 30, 2017, with documentation of all closure activity for the Injection Well, including a narrative statement describing the closure procedures, photographic documentation of all closure activities, and confirmatory sample results and any waste manifests from the closure of the injection well, in accordance with the EPA Region 10 *Guidance for Underground Injection Control (UIC) Class V Well Closures* and Paragraph 4.12.

4. EPA will review and approve or disapprove the Final Well Closure Report. All revisions to the Final Well Closure Report must be completed within 14 calendar days of notice that the Final Well Closure Report has been disapproved.

b. Well Reclassification:

1. If Respondent requests to reclassify the Injection Well to a well for disposal of sanitary waste only, the Closure Plan submitted for EPA's review must include a proposal for reclassification. Any pathways that may allow motor vehicle waste to enter the injection well must first be closed, after which the injection point must be sampled according to the requirements of Paragraph 4.12, and the sample results provided to EPA by August 30, 2017.

2. EPA will review the sample results to determine whether reclassification can be approved, and if so, whether additional steps will be required to meet the non-endangerment standard of 40 C.F.R. § 144.12 prior to reclassifying the well for other uses. EPA will then notify Respondent regarding EPA's decision.

3. If closure of the Injection Well is required, Respondent will follow the well closure procedures, and must submit the Final Well Closure Report for the motor vehicle waste disposal portion of the well, including sampling results by October 30, 2017.

c. Performance Standards for Well Closure: Closures of all Class V injection wells must be conducted in a manner that protects Underground Sources of Drinking Water and complies with all applicable laws and regulations related to removal of

materials from the well and adjacent to the well: 40 C.F.R. §§ 144.12(a), 144.82, 144.89, and 146.10(c).

d. Sampling Requirements: Respondent must collect an end-point sample from the cleaned-out injection well, beneath the point of discharge. Respondent must propose an appropriate sampling location for sampling the injection well to be closed. The proposed location must be based on the construction of the injection well and likelihood of detecting any contaminants that were injected beneath the ground surface. Respondent must select a certified or accredited laboratory to analyze the end-point sample for the following constituents, consistent with the prior use of this well as a MVWDW:

1. Volatile organic compounds by the most current version of EPA Method 8260;
2. Semivolatile organic compounds by the most current version of EPA Method 8270; and
3. Arsenic, cadmium, chromium, and lead by an EPA approved metals analysis method.

e. Reporting Requirements: Respondent must submit to EPA's Project Coordinator, identified in Paragraph 4.9, the Final Well Closure Report for the Injection Well by October 30, 2017.

f. Deliverables: The schedule of activities under the Requirements of Paragraph 4.12 may be summarized as follows:

Deliverables	Due Date
<i>Only for well reclassification requests:</i> Provide sample results to EPA for review	August 30, 2017
Completion of Injection Well closure work	September 30, 2017

Final Well Closure Report of all closure activities	October 30, 2017
---	------------------

4.13. **Termination and Satisfaction**: In accordance with Paragraph 4.12, Respondent shall submit to EPA the Final Well Closure Report documenting the completion of all requirements described in Paragraph 4.12. Upon receipt of the Final Well Closure Report, EPA may schedule an inspection of the Injection Well with Respondent and other interested state and/or federal agencies. After completion of the inspection, EPA will notify Respondent in writing whether the compliance with this Order is fully completed. EPA's Project Coordinator will provide this notification by telephone as promptly as possible. With the exception of Paragraphs 4.5 through 4.7, this Order shall terminate after EPA has issued a written approval of Respondent's Final Well Closure Report.

General Provisions

4.14. This Order constitutes a settlement by EPA of all claims for civil penalties pursuant to the SDWA for the violations alleged in Part III. Nothing in this Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Order does not waive, extinguish or otherwise affect Respondent's obligations to comply with all applicable provisions of the SDWA and regulations or permits issued thereunder.

4.15. Violation of, or failure to comply with, this Order may subject Respondent to (1) civil penalties of up to \$54,789 per day of violation pursuant to Section 1423(b) of the SDWA, 42 U.S.C. § 300h-2(b), and 40 C.F.R. Part 19; or (2) administrative penalties of up to \$21,916 per day for each violation alleged up to a maximum administrative penalty of \$273,945, pursuant to Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), and 40 C.F.R. Part 19.

4.16. Pursuant to Section 1423(c)(3) of the SDWA, 42 U.S.C. § 300h-2(c)(3), EPA provided public notice of this Order served on the parties, and provided public notice that any interested person may, within 30 days of issuance of this Order, obtain judicial review of the penalty order pursuant to Section 1423(c)(6) of the SDWA, 42 U.S.C. § 300h-2(c)(6).

4.17. This Order shall become effective 30 days after both parties have signed their respective signature blocks, at the end of this Part.

4.18. Except as described in Paragraph 4.8 of this Order, each party shall bear its own costs in bringing or defending this action.

4.19. For the purposes of this proceeding, Respondent expressly waives any right to contest the allegations contained in this Order. SDWA § 1423(c)(3), 42 U.S.C. § 300h-2(c)(3).

4.20. The provisions of this Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.21. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Order and to bind Respondent to this document.

4.22. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this Order, and to any stated permit action.

4.23. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

FOR RESPONDENT:

JOHN D. KARLSON, Owner
Karlson Motors, Inc.

DATED:

FOR COMPLAINANT:

EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10