



**ADVOCATES** for the West  
P.O. Box 1612 | Boise, ID 83701

November 10, 2016

*Via Certified Mail, Return Receipt Requested*

Brian Ness, Director  
Idaho Transportation Department  
3311 W. State Street  
Boise, Idaho 83707

Sue Sullivan, Environmental Section  
Manager  
Idaho Transportation Department  
3311 W. State Street  
Boise, Idaho 83707

Idaho Transportation Board Members:  
Jerry Whitehead  
R. James Coleman  
Janice Vasser  
Julie DeLorenzo  
Jim Kempton  
Dwight Horsch  
Lee Gagner  
3311 W. State Street  
Boise, Idaho 83707

**Re: Notice of Intent to Sue Under the Safe Drinking Water Act for Failing to Close and Continuing to Operate Motor Vehicle Waste Disposal Wells Throughout Idaho**

Dear Mr. Ness, Ms. Sullivan, Mr. Whitehead, Mr. Coleman, Ms. Vasser, Ms. DeLorenzo, Mr. Kempton, Mr. Horsch, and Mr. Gagner:

On behalf of Idaho Conservation League, I provide this 60-day notice of intent to sue you in your official capacity with the Idaho Department of Transportation (ITD) under the citizen suit provision of the federal Safe Drinking Water Act, 42 U.S.C. § 300j-8(a)(1)(A), for failing to close and continuing to operate 75 motor vehicle waste disposal wells, as detailed below. Because of the unacceptable risks to water quality posed by motor vehicle waste disposal wells, the U.S. Environmental Protection Agency (EPA) and the Idaho Department of Water Resources (IDWR) required all such wells to be closed and decommissioned by January 1, 2005. It is now more than ten years past this deadline, yet ITD has failed to close and decommission 75 wells it owns or operates, placing Idaho's water supplies at unlawful risk of contamination from harmful motor vehicle wastes.

The Idaho Conservation League brought these issues to ITD's attention in a September 8, 2016 letter to Sue Sullivan, ITD Environmental Section Manager. We appreciated meeting with Ms. Sullivan and Renee Hollander-Vogelpohl, ITD Deputy Attorney General, to discuss this matter in October 2016. However, in light of ITD's unwillingness to commit to promptly closing the wells by a specific deadline, the Idaho Conservation League intends to file suit against you in U.S. District Court upon the expiration of the mandatory 60-day notice period, seeking declaratory and injunctive relief for ITD's ongoing violations of the Safe Drinking Water Act and the recovery of litigation costs, including attorney fees.

## **Party Giving Notice**

The full name, address, and telephone numbers of the party giving notice is:

Idaho Conservation League  
Att'n: Austin Hopkins  
P.O. Box 844  
Boise, ID 83701  
208.345.6933

## **Idaho Conservation League's Commitment to Protecting Water Quality**

Since 1973, the Idaho Conservation League has been Idaho's voice for clean water, clean air, and wilderness—values that are the foundation of Idaho's extraordinary quality of life. The Idaho Conservation League works to protect these values through public education, outreach, advocacy, and policy development. As Idaho's largest state-based conservation organization, it represents over 20,000 supporters, many of whom have a deep personal interest in protecting surface and ground water quality throughout Idaho. The Idaho Conservation League has staff, members, and supporters throughout the state who live, recreate, work, and/or drink water in locations near ITD's motor vehicle waste disposal wells and who are adversely impacted by ITD's ongoing failure to cease using these waste disposal wells and properly decommission them.

## **Threats Posed by Motor Vehicle Waste Disposal Wells**

A motor vehicle waste disposal well is a shallow disposal system that receives fluids from vehicle repair or maintenance activities at automotive service stations and other shops and facilities. Typical motor vehicle waste disposal wells are floor drains or sinks in service bays that connect to a septic system or dry well. However, any underground system that receives motor vehicle waste is considered a motor vehicle waste disposal well.

During vehicle repair and maintenance activities, fluids can drip, spill, be poured, or otherwise enter floor drains or sinks in service areas. If the floor drains and/or sinks are connected to a septic system, dry well, log crib, drain tank, or any other type of underground disposal system, then waste fluids may be entering drinking water.

Motor vehicle waste includes engine oil, transmission fluid, power steering fluid, brake fluid, antifreeze, solvents, and degreasers. Disposing of these fluids through underground injection may contaminate groundwater. According to EPA, "human health may be impacted if even small amounts of [motor vehicle] waste fluids get into the drinking water supply."<sup>1</sup>

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<sup>1</sup> EPA Office of Compliance & Enforcement, Groundwater Unit, UIC Program, *How your motor vehicle facility can affect your community's drinking water*, available at <https://www.epa.gov/uic/underground-injection-control-region-10-ak-id-or-and-wa> (visited Nov. 3, 2016).

Because of the threats posed by motor vehicle waste disposal wells, they are banned in Idaho (as discussed further below), and existing wells must be closed. Closing a well requires permanently plugging the well, or otherwise closing the well in a way that ensures groundwater is protected. Closure may also require sampling a septic tank, well, surrounding soils, and/or groundwater to ensure there is no contamination.

After closing a well, motor vehicle service wastewater can be managed by other methods, including dry shops, holding tanks, or sanitary sewer hookups.

### **Regulation of Underground Injection Wells Under the Safe Drinking Water Act, and the Requirement to Close All Motor Vehicle Waste Disposal Wells by January 1, 2005**

The Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*, is the key federal law for protecting public water supplies from harmful contaminants. First enacted in 1974 and substantially amended in 1986 and 1996, the Safe Drinking Water Act is administered through programs that establish standards and treatment requirements for public water supplies, control underground injection of wastes, finance infrastructure projects, and protect sources of drinking water.

Motor vehicle waste disposal wells are regulated under the Safe Drinking Water Act's underground injection control (UIC) program, 42 U.S.C. §§300h–300h-7, and EPA regulations promulgated thereunder, 40 C.F.R. §§ 144.1–146.95. Among other minimum requirements, EPA's UIC regulations prohibit unauthorized underground injection, 40 C.F.R. 144.11, and prohibit the movement of fluids containing any contaminant into any underground sources of drinking water that may violate drinking water standards or may otherwise adversely affect health, 40 C.F.R. § 144.12.

The Idaho Department of Water Resources has primacy of the UIC program in Idaho. To carry out that program, IDWR adopted *Rules and Minimum Standards for the Construction and Use of Injection Wells*, IDAPA 37.03.03.<sup>2</sup> It is a violation of the Rules for any owner or operator<sup>3</sup> to fail to comply with a UIC permit or authorization, or “any person to construct, operate, maintain, convert, plug, decommission or conduct any other activity in a manner which results or may result in the unauthorized injection of a hazardous waste or of a radioactive waste

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<sup>2</sup> Section 1421 of the Safe Drinking Water Act authorizes the establishment of state UIC programs to protect underground sources of drinking water. EPA has issued mandated regulations imposing minimum requirements for state UIC programs to prevent underground injection that endangers drinking water sources and that requires states to prohibit any underground injection not authorized by state permit. Section 1422 of the Act authorizes states to submit plans to EPA for implementing UIC programs and, if approved, to assume primary enforcement responsibility of the program. In 1985, EPA approved IDWR's UIC program for the State of Idaho.

<sup>3</sup> IDWR's Rules define owner and operator as follows: “Owner: Any individual, group of individuals, partnership, company, corporation, municipality, county, state agency, taxing district, federal agency or other entity owning land on which any injection well exists or is proposed to be constructed.”, IDAPA 37.03.03.010.63; “Operator: Any individual, group of individuals, partnership, company, corporation, municipality, county, state agency, taxing district, federal agency or other entity that operates or proposes to operate any injection well.”, IDAPA 37.03.03.010.62. IDWR's Rules broadly define “Operate” as “To allow fluids to enter an injection well by action or inaction of the operator.” IDAPA 37.03.03.010.61.

by an injection well.” IDAPA 37.03.03.015. The Rules also command: “No owner or operator shall construct, operate, maintain, convert, plug, abandon, or conduct any other injection activity in a manner that allows or causes the movement of fluid containing any contaminant into underground sources of drinking water” if presence “may” cause the violation of a drinking water regulation or “may otherwise adversely affect the health of persons.” IDAPA 37.03.03.040.02.c. (emphases added).

In recognition of the threat of harmful contamination from motor vehicle waste disposal wells, both EPA and IDWR require the closure and decommissioning of all such wells by the year 2005. “Motor Vehicle Injection Well” is defined as: “Injection wells that receive or have received fluids from vehicle repair or maintenance activities, such as an auto body repair shop, automotive repair shop, new and used car dealership, specialty repair shop (transmission and muffler repair shop), or any facility that does any vehicular repair work.” IDAPA 37.03.03.0101.58. *See also* 40 C.F.R. 144.81(16) (EPA regulations providing virtually same definition). EPA’s Safe Drinking Water Act regulations require all motor vehicle waste disposal wells to be closed by January 1, 2005, for states like Idaho. 40 C.F.R. § 144.88(b)(1)(v). Accordingly, IDWR’s Rules require: “All motor vehicle waste disposal wells must be properly decommissioned by January 1, 2005.” IDAPA 37.03.03.040.02.i.<sup>4</sup>

### **ITD’s Unlawful Failure to Close Approximately 75 Motor Vehicle Waste Disposal Wells**

The Idaho Conservation League received from IDWR via public records request a copy of ITD’s November 12, 2010, “Facility Floor/Parts Drain Inventory.” The Inventory is attached to this letter. The Inventory includes information on 116 motor vehicle waste disposal wells owned and/or operated by ITD.<sup>5</sup> The Inventory shows that 41 of ITD’s wells have been connected to city sewer, but that the remaining 75 motor vehicle waste wells remained unclosed. Upon reasonable information and belief, most—if not all—of these 75 waste wells remain unclosed to date, have not been properly decommissioned, and may continue to operate.

ITD’s ongoing failure to close these wells nearly 11 years past the required deadline has placed and continues to place groundwater at risk of unlawful contamination at 75 locations throughout Idaho and violates the Safe Drinking Water Act. Specifically, ITD is in violation of IDWR’s and EPA’s regulations requiring closure and decommissioning by January 1, 2005. IDAPA 37.03.03.040.02.i; 40 C.F.R. § 144.88(b)(1)(v). ITD is also in violation of IDWR’s and EPA’s regulations prohibiting the unauthorized use of underground injection wells (IDAPA 37.03.03.015; 40 C.F.R. 144.11) and in violation of regulations prohibiting the movement of fluids containing any contaminant into any underground sources of drinking water that may

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<sup>4</sup> IDWR’s Rules define “Decommission” as “To remove a well from operation such that injection through the well is not possible.” IDAPA 37.03.03.010.20. The Rules also define “Permanent Decommission” to be in part “The discontinuance of use of an injection well in a method approved by the Director such that the injection well no longer has the capacity to inject fluids and the upward or downward migration of fluid is prevented.” IDAPA 37.03.03.010.66. The Rules define “Unauthorized Decommission” as “The decommissioning of any injection well that has not received the approval of the Department prior to decommissioning, or was not decommissioned in a method approved by the director.” IDAPA 37.03.03.010.94.

violate drinking water standards or may otherwise adversely affect health (IDAPA 37.03.03.040.02.c; 40 C.F.R. § 144.12).

ITD's decade-long delinquency is particularly inexcusable in light of the short, one-year timeframe within which these wells were supposed to be closed. In states like Idaho, it was known by January 1, 2004, that all wells had to be closed one year later (by January 1, 2005). See 40 C.F.R. § 144.88(b)(1)(v).

### **Idaho Conservation League's Intent to File Suit Against ITD**

The Safe Drinking Water Act authorizes citizen suits in United States District Court against any person who is alleged to be in violation of any requirement prescribed by or under the Act. 42 U.S.C. § 300j-8(a)(1). Upon expiration of the required 60-day notice period, the Idaho Conservation League intends to file such suit in the District of Idaho against each of you in your official capacity for failing to close the motor vehicle waste disposal wells described above (and any other such wells owned or operated by ITD that the Idaho Conservation League may discover) in ongoing violation of EPA's Safe Drinking Water Act regulations and in violation of Idaho's EPA-approved Safe Drinking Water Act UIC program. The Idaho Conservation League will seek declaratory and injunctive relief and the recovery of litigation costs, including reasonable attorney fees under 42 U.S.C. § 300j-8(d) and any other relevant authority.

As the U.S. Supreme Court and other courts have held, one of the purposes of the notice requirement under federal environmental statutes is to allow the parties to discuss resolution of claims short of litigation. The Idaho Conservation League is sending this notice letter, in part, to encourage settlement negotiations that could avoid the need for litigation. Austin Hopkins and I will be available to discuss possible settlement prior to the expiration of the notice period. The Idaho Conservation League may be willing to resolve this matter if ITD promptly ceases using any and all motor vehicle waste disposal wells it owns or operates and agrees to properly decommission all wells within one year.

If you wish to discuss any aspect of this notice or settlement, please contact Mr. Hopkins at the Idaho Conservation League (contact information above) or myself (contact information below). Additionally, should you have any facts, documents or other information which you believe might bear upon the alleged violations set forth in this letter, please provide those to us now in order to avoid any unnecessary litigation.

Respectfully,



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