



SAVE OUR RURAL TOWN

The Honorable Michael S. Regan
Administrator, Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N.W.
Mail Code: 1101A
Washington, DC 20460
(sent certified mail return receipt requested)

June 17, 2022

Subject: Notice of Violation of 42 U.S.C. §300f et seq. AND
Notice of Intent to bring Civil Action Pursuant to 42 U.S.C. 300j-8(b)(2).

Reference: Unpermitted Trailer Park Operating Two Large Capacity Cesspools at
3740 Smith Street in Acton, California

To the Administrator of the U.S. Environmental Protection Agency;

Notice is hereby given pursuant to 42 U.S.C. 300j-8(b)(2) that a violation of 42 U.S.C. §300f et seq. exists and has existed since at least January 1, 2000 at the following location:

3740 Smith Avenue
Acton, California 93510

Notice is also hereby given pursuant to 42 U.S.C. 300j-8(b)(2) that Save Our Rural Town intends to commence a civil action sixty days from your receipt of this letter against EPA and you in your official capacity as Administrator for failure to perform the nondiscretionary duty of enforcing the Underground Injection Control program at the aforementioned address as required by the Safe Drinking Water Act (SDWA) [42 U.S.C. 300f et seq.].

Notice is also hereby given pursuant to 42 U.S.C. 300j-8(b)(1) that Save Our Rural Town intends to commence a civil action sixty days from receipt of this letter against Eric Hauck as record owner of the property located at 3740 Smith Avenue in Acton, CA for failure to comply with the Underground Injection Control program as required by the Safe Drinking Water Act (SDWA) [42 U.S.C. 300f et seq.].

I. Regulatory Background

The Final Rule that was promulgated as 40 CFR Part 144 on December 7, 1999 sets forth requirements for the Underground Injection Control (UIC) Program established under Part C of the Safe Drinking Water Act (SDWA) [42 U.S.C. 300f et seq.]. Among other things, these

regulations expanded the application of the UIC Program to include “large capacity” cesspools as “Class V” wells that are subject to SDWA requirements. Large capacity cesspools include cesspools that serve multiple dwellings or community/regional needs and which receive sanitary wastes containing human excreta and have an open bottom and sometimes perforated sides [40 CFR § 144.81]. Specifically, the Final Rule banned all new large capacity cesspools and mandated that all existing large capacity cesspools be closed by April 5, 2005 [40 CFR § 144.88]. The State of California is not a Primacy Agency for enforcing Class V well regulations under the UIC Program; therefore, the obligation to enforce the violations identified herein rests with the Environmental Protection Agency.

II. Violations Identified

Save Our Rural Town just became aware that an unpermitted mobilehome park located at 3740 Smith Avenue within the Community of Acton in the County of Los Angeles, California has been continually maintaining and utilizing two large-capacity cesspools. These cesspools constitute the only waste treatment facilities that serve the dwellings on the property (there are no municipal sewer facilities in the community) and anecdotal historical information indicates that these cesspools have served multiple dwellings for decades. County inspection records reveal that, as of 2017, 10 occupied dwellings were accommodated at 3740 Smith Avenue. Both cesspools that serve these dwellings meet the definition of a “large capacity” cesspool as set forth in 40CFR § 144.81 and are therefore subject to UIC Program regulations. Insofar as can be determined, the owner/operator of the property failed to submit inventory information to the EPA regarding these Class V wells as required by 40 CFR § 144.26; furthermore, the owner/operator failed to close the wells by the April 5, 2005 deadline established by 40 CFR § 144.88. In fact, the Class V large capacity cesspools remain in full operation to this day. Importantly, the property upon which these cesspools are located lies within 700 feet of, and upgradient to, the floodplain area of the Santa Clara River in which the Los Angeles County Waterworks District (“District”) maintains municipal wells that provide drinking water to the Community of Acton. The nitrate levels in the groundwater extracted from these wells have increased over the years, and have become so elevated that the District has had to import more water from outside the basin to “blend” with the groundwater to ensure conformance with adopted drinking water standards. Imported water is very expensive, and the need to import more water to offset increased nitrate levels in the local ground water has caused municipal water rates to increase and thereby harmed Acton residents. Moreover, the Acton groundwater basin warrants special protection because it supplies a public water system and therefore meets the definition of an “Underground Source of Drinking Water” as set forth in 40 CFR § 144.3.

Given these facts, it is certain that the cesspools located at 3740 Smith Avenue in Acton constitute “underground injection” that “endangers drinking water sources” because it meets the criteria established by 42 U.S.C §300h (d) as an injection that “may result in the presence in underground water which supplies or can reasonably be expected to supply any public water system of any contaminant, and if the presence of such contaminant may result in such system's not complying with any national primary drinking water regulation or may otherwise adversely affect the health of persons.”

For all these reasons, Save Our Rural Town contends that the owner/operator of the unpermitted mobilehome park at 3740 Smith Avenue in Acton is in violation of the Federal Safe Drinking Water Act and further asserts that enforcement action is warranted.

III. State And Local Agencies Had Constructive Knowledge of the Cesspools at 3740 Smith Avenue in Acton for Many Years and Never Notified the EPA.

Records obtained from the Los Angeles County Department of Public Health and the California Waterboards reveal that, for years, both of these government agencies have had constructive knowledge that two large capacity cesspools were in operation at 3740 Smith Avenue in Acton. Yet, neither of these agencies have taken any enforcement action to compel closure of these cesspools; insofar as can be determined, they have never even notified the EPA that these cesspools existed. These agencies have been informed, and are fully aware, of the upgradient proximity of these cesspools to the local Underground Source of Drinking Water which supplies fresh drinking water to the Community of Acton, yet they have refused to act. Worse yet, the County Health Department has withheld information from the public regarding the wastewater treatment facilities and has dodged records requests submitted by members of the public pursuant to the California Public Records Act. Save Our Rural Town can no longer stand aside and allow the property owner/operator to violate the Safe Drinking Water Act.

III. EPA has Failed to Comply with Its Nondiscretionary Duty to Enforce the SDWA in California.

42 U.S. Code §300h-2(a)(2) mandates that, in any state which does not have primary enforcement responsibility under the Safe Drinking Water Act, the EPA Administrator shall issue an order requiring any person in violation of UIC Program requirements to comply with such requirements. The State of California does not have primary enforcement responsibility under the Safe Drinking Water Act for Class V wells; thus, the Administrator has a non-discretionary duty to issue an order to the owner/operator of the cesspools located at 3470 Smith Avenue in Acton to comply with UIC Program requirements. Specifically, the Administrator has a mandatory obligation to order the property owner to immediately cease all injections into said cesspools, prepare a closure plan for each cesspool, and close the cesspools as soon as the closure plan is approved. The Administrator has not discharged this duty, and has thus failed to comply with a nondiscretionary duty to enforce the Safe Drinking Water Act.

IV Conclusion

By failing to timely close the two cesspools at 3740 Smith Avenue in Acton, California, the owner/operator has violated the Safe Drinking Water Act [42 U.S.C. §300f et seq.]. By failing to issue an order to, or initiate civil action against, the owner/operator of this property prohibiting injections into, and effecting closure of, the cesspools at this location, EPA has violated its nondiscretionary duties under the Safe Drinking Water [42 U.S.C. §300h-2(a)(2)]. These violations continue, and local waterworks district customers have been harmed by the failure of both the property owner/operator and the EPA to fulfill their statutory obligations. Pursuant to sections 42 U.S.C. §300j-8(a)(1), 42 U.S.C. §300j-8(a)(2), 42 U.S.C. §300j-8(b)(1), and 42 U.S.C. §300j-8(b)(2), Save Our Rural Town hereby gives notice of its intent to sue to remedy

the property owner/operator's failure to comply with the Safe Drinking Water Act and the EPA's failure to perform the above-described nondiscretionary duties. If the EPA and the owner/operator of the and unpermitted mobilehome park at 3740 Smith Avenue in Acton, California fail to cure these violations within sixty days of receipt of this letter, SORT intends to file suit in federal district court seeking declaratory relief, injunctive relief, and litigation costs, as appropriate.

As required by 40 C.F.R. § 135.12(b), the name, address, and telephone number of the person giving notice is as follows:

Jacqueline Ayer
2010 West Avenue K, #701
Lancaster, CA 93536
(949) 645-7193

As required by 40 C.F.R. § 135.12(c), the name, address, and telephone number of the legal counsel representing Save Our Rural Town is as follows:

Alene Taber, Counsel
Hanson Bridgett LLP
777 S. Figueroa Street, Suite 4200
Los Angeles, CA 90017
(213) 839-7708

Please do not hesitate to contact us if you would like to discuss this matter further; we can be reached at SORTActon@gmail.com.

Respectfully,
/S/ Jacqueline Ayer
Save Our Rural Town

cc: Attorney General Merrick Garland (via certified mail, return receipt requested)
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Regional Administrator Martha Guzman (via certified mail, return receipt requested)
US EPA Pacific Southwest, Region 9
75 Hawthorne St.
San Francisco, CA 94105

Attorney General Rob Banta (via certified mail, return receipt requested)
State of California
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David Albright
Manager, Groundwater Protection Section, WTR-4-2
U.S. EPA, Region 9
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San Francisco, CA 94105

E. Joaquin Esquivel, Chair
State Water Resources Control Board
P.O. Box 100
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Keith Lilley
Deputy Director, Water Resources
Los Angeles County Department of Public Works
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Liza Frias
Director, Environmental Health
Los Angeles County Department of Public Health
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Eric Hauck at the following addresses (certified mail return receipt requested):

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Victorville, CA 92395-5888

Trustee, Acton Holding Trust
485 East Foothill Blvd. Unit A 353
Upland, CA 91786

Trustee, Acton Holding Trust
3740 Smith Avenue
Acton, CA 93510

Trustee, Acton Holding Trust
989 El Mirador
Upland, CA 91784-1889

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