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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO**

IDAHO CONSERVATION LEAGUE,	)	No. 1:17-cv-081
	)	
Plaintiff,	)	
	)	
vs.	)	<b>COMPLAINT</b>
	)	
BRIAN NESS, Director of the Idaho	)	
Transportation Department; JERRY	)	
WHITEHEAD, R. JAMES COLEMAN,	)	
JANICE VASSER, JULIE DELORENZO,	)	
JIM KEPMTON, DWIGHT HORSCH, and	)	
LEE GAGNER, Board Members of the	)	
Idaho Transportation Board,	)	
	)	
Defendants.	)	
_____	)	

**INTRODUCTION**

1. Plaintiff Idaho Conservation League (“ICL”) brings this citizen suit under the Safe Drinking Water Act to require Defendants to comply with their legal duties to close and decommission numerous “motor vehicle waste disposal wells” that the Idaho Transportation Department (“ITD”) owns and operates throughout Idaho.

2. ITD owns and operates 116 motor vehicle waste disposal wells in communities throughout Idaho. Most of the wells are located in ITD vehicle maintenance facilities. Vehicle maintenance and related activities can generate harmful wastes, including engine oil, transmission fluid, power steering fluid, brake fluid, antifreeze, solvents, and degreasers. Motor vehicle waste disposal wells, which typically consist of floor drains, allow liquid wastes to be injected and disposed of underground.

3. Because motor vehicle waste disposal wells can contaminate drinking water, Safe Drinking Water Act regulations adopted in 1999 prohibit new wells and require existing wells in Idaho to be decommissioned by January 1, 2005. Yet ITD has taken few steps toward decommissioning its numerous motor vehicle waste disposal wells. As a result, now—12 years past the legal deadline—ITD has failed to close and decommission the majority of its wells.

4. ICL thus seeks injunctive and declaratory relief holding Defendants in violation of the Safe Drinking Water Act and implementing regulations, and ordering them to require ITD to cease using and promptly decommission its motor vehicle waste disposal wells.

#### **JURISDICTION AND VENUE**

5. The Court has subject matter jurisdiction over this action pursuant to the Safe Drinking Water Act, 42 U.S.C. § 300j-8(a), and the federal question jurisdiction statute, 28 U.S.C. § 1331. The Court may award Plaintiff all necessary injunctive relief pursuant to the Safe Drinking Water Act, 42 U.S.C. § 300j-8(a), (d), and (e), and declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201–02.

6. Plaintiff ICL furnished Defendants with at least 60 days' written notice of the violations alleged here in the form and manner required by the Safe Drinking Water Act. 42 U.S.C. § 300j-8(b); 40 C.F.R. § 135.11–13.

7. Venue is proper in the District of Idaho pursuant to 28 U.S.C. § 1391(b)(1) and (2) because all Defendants reside in this district and the events or omissions giving rise to the claims occurred in this district.

### **PARTIES**

8. Plaintiff IDAHO CONSERVATION LEAGUE is a non-profit conservation organization incorporated under the laws of Idaho with its principal place of business in Boise, Idaho.

9. ICL's mission is to protect and restore the quality of life, clean water, wildlands, and wildlife of Idaho. ICL and its approximately 25,000 supporters are dedicated to protecting and conserving Idaho's natural resources, including its water resources. ICL, as an organization and on behalf of its staff and supporters, is greatly concerned with protecting and improving drinking water quality and human health throughout the State of Idaho. ICL and its supporters are active in public education, administration, legislation, and litigation of conservation issues in Idaho, including water quality and human health issues.

10. ICL staff and supporters drink water in Idaho and enjoy Idaho's waters for a variety of health, recreational, scientific, and aesthetic purposes. ICL staff and supporters derive health, recreational, scientific, and aesthetic benefits from drinking, fishing, boating, swimming, study, contemplation, photography, and other activities in and around the waters of the state. ICL staff and supporters rely on proper

implementation of the Safe Drinking Water Act to protect their interests in drinking clean water, including from contamination threats posed by ITD's unlawful motor vehicle waste disposal wells.

11. These interests of ICL and its staff and supporters have been harmed and continue to be harmed by the Idaho Transportation Department's longstanding failure to close and properly decommission its motor vehicle waste disposal wells around the state. By failing to close and properly decommission its wells, ITD causes and/or risks contamination of water from harmful wastes by continuing to inject motor vehicle and other wastes underground and by failing to remediate or protect against contamination from past injections. Contamination and the risk of contamination harm ICL's staff and supporters who drink, fish, and otherwise use or would use water connected hydrologically to the well sites. ICL staff, supporters, and their families drink, eat fish caught from, and physically contact water in and near the communities where ITD's motor vehicle waste disposal wells are located, which causes serious concern, impairs their enjoyment of these activities, and causes or poses a risk of physical harm.

12. ITD's ongoing failure to close and properly decommission its motor vehicle waste disposal wells also injures ICL by diverting and depleting the organization's time, resources, and efforts. Ensuring clean and healthy water in Idaho is a core part of ICL's mission. To fulfill its mission in light of ITD's long-standing violations of the Safe Drinking Water Act, ICL has spent and continues to spend time, resources, and effort to ensure ITD closes and properly decommissions its motor vehicle waste disposal wells, adheres to the Safe Drinking Water Act and its implementing regulations, and protects water quality.

13. ITD's failures also impair ICL's ability to gather and disseminate information to its supporters, the public, policymakers, and others, which impairs ICL's ability to advocate for clean drinking water and environmental remediation, and to protect its supporters and the public from contamination risks. Through the well decommissioning process that ITD has outlined but has failed to implement, ITD and IDWR would work together to investigate ITD's wells; where necessary ITD would conduct field sampling to determine whether and to what extents soils and groundwater surrounding its motor vehicle waste disposal wells are contaminated; and ITD would identify proposals for cleaning up contaminated sites. ITD has not completed these investigations and has not field sampled its well sites.

14. Granting the relief prayed for here will redress these harms to ICL and its staff and supporters. If Defendants are ordered to require that ITD promptly cease using and properly decommission ITD's motor vehicle waste disposal wells, this will prevent further contamination and/or risk of further contamination from motor vehicle and other wastes and result in the identification of contaminated sites in need of cleanup. ICL and its staff and supporters will thereby obtain critical information needed to assess the scope and extent of possible groundwater contamination from ITD's motor vehicle waste disposal wells, including in communities and areas where they live, work, and recreate that are threatened by such contamination.

15. Defendant BRIAN NESS is sued in his official capacity as Director of the Idaho Transportation Department. As Director, Mr. Ness is in the highest position at the agency, where he has authority and responsibility to oversee the agency's budget and

employees, and the authority and responsibility to ensure ITD's compliance with all laws and regulations, including the Safe Drinking Water Act.

16. Defendants JERRY WHITEHEAD, R. JAMES COLEMAN, JANICE VASSER, JULIE DELORENZO, JIM KEMPTON, DWIGHT HORSCH, and LEE GAGNER are sued in their official capacities as Board Members of the Idaho Transportation Board. The Idaho Transportation Board is a seven-member panel of citizens appointed by the Idaho Governor and confirmed by the Idaho Senate. The Idaho Transportation Board has the responsibility and authority to establish ITD policy and supervise ITD's director, and has ultimate responsibility for ensuring ITD's compliance with all laws and regulations, including the Safe Drinking Water Act.

17. Each Defendant is a "person" as defined in the Safe Drinking Water Act, 42 U.S.C. § 300f(12).

### **LEGAL BACKGROUND**

#### **Overview of the Safe Drinking Water Act**

18. 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.

19. The Safe Drinking Water Act has a citizen suit provision which authorizes any person to file a civil action in federal district court against any person who is alleged

to be in violation of any requirement of the Act, and which vests the district courts with jurisdiction to enforce any requirement of the Act. 42 U.S.C. § 300j-8(a).

**Underground Injection Control Programs Under the Safe Drinking Water Act**

20. Part C of the Safe Drinking Water Act (“Protection of Underground Sources of Drinking Water”) requires the Administrator of the United States Environmental Protection Agency (EPA) to promulgate regulations for state underground injection control (UIC) programs containing “minimum requirements for effective programs to prevent underground injection which endangers drinking water sources.” 42 U.S.C. § 300h(a) & (b).

21. The Safe Drinking Water Act defines “underground injection” to mean “the subsurface emplacement of fluids by well injection.” 42 U.S.C. § 300h(d)(1). Under the Act, an underground injection endangers drinking water sources if the injection “may” result in the presence of any contaminant in underground water which supplies or can reasonably be expected to supply any public water system, and if the presence of such contaminant “may” adversely affect human health. 42 U.S.C. § 300h(d)(2). The Act defines “contaminant” to mean “any physical, chemical, biological, or radiological substance or matter in water.” 42 U.S.C. § 300f(6).

22. Motor vehicle waste disposal wells are a category of underground injection wells regulated under the Safe Drinking Water Act’s UIC program, 42 U.S.C. §§ 300h–300h-8, and EPA’s UIC regulations promulgated thereunder, 40 C.F.R. §§ 144.1–148.24.

23. Among other minimum requirements, EPA’s UIC regulations prohibit all unauthorized underground injections, 40 C.F.R. § 144.11, and prohibit the movement of

fluids containing any contaminant into any underground source of drinking water that may violate drinking water standards or otherwise adversely affect health, 40 C.F.R. § 144.12.

24. In recognition of the threat of harmful contamination from motor vehicle waste disposal wells, EPA's UIC regulations require all such wells in Idaho to be closed by January 1, 2005. *See* 40 C.F.R. § 144.88(B)(1)(v).

### **Idaho's EPA-Approved UIC Program**

25. Each state can develop its own UIC program and can apply to EPA for primary enforcement authority. 42 U.S.C. § 300h-1(b). If EPA approves the state's UIC program as meeting the minimum requirements of the Safe Drinking Water Act, then the state's UIC program governs and is enforceable under the Safe Drinking Water Act. *See* 42 U.S.C. § 300h-2.

26. EPA approved Idaho's UIC program in 1985 and has approved additions and revisions to Idaho's UIC program since then. Idaho's UIC program is administered by the Idaho Department of Water Resources (IDWR). Idaho's UIC program is set forth in IDWR's *Rules and Minimum Standards for the Construction and Use of Injection Wells*, IDAPA 37.03.03.

27. In accordance with EPA's minimum regulations, Idaho's UIC program requires that owners and operators of any injection well must obtain and comply with a UIC permit or authorization, and all persons are prohibited from constructing, operating, maintaining, converting, plugging, decommissioning, or conducting "any other activity in a manner which results or may result in the unauthorized injection of a hazardous waste

... by an injection well.” IDAPA 37.03.03.015. Hazardous waste includes oil and other motor vehicle wastes. *See* IDAPA 37.03.03.010.44 & 58.01.05.

28. The Rules also prohibit conducting any “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.

29. IDWR’s Rules define owner and operator broadly 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.” *See* 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.” *See* IDAPA 37.03.03.010.62. IDWR’s Rules also define “Operate” broadly as “To allow fluids to enter an injection well by action or inaction of the operator.” IDAPA 37.03.03.010.61.

30. With respect to motor vehicle waste disposal wells, and in accordance with EPA’s minimum regulations, Idaho’s UIC program prohibits the construction of new wells, IDAPA 37.03.03.040.02.f, and requires that “[a]ll motor vehicle waste disposal wells must be properly decommissioned by January 1, 2005”, IDAPA 37.03.03.040.02.i. “Motor Vehicle Waste Disposal Wells” are defined to be “[i]njection 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 37.03.03.010.58. *See also* 40 C.F.R. § 144.81(16) (EPA regulations providing virtually same definition).

31. IDWR’s Rules define “decommission” as “[t]o 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) “[t]he 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.

### **STATEMENT OF FACTS**

#### **Contamination From Motor Vehicle Waste Disposal Wells**

32. 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.

33. During vehicle repair and maintenance activities (which includes vehicle washing) 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.

34. 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.” 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 Feb. 22, 2017).

35. Because of the threats posed by motor vehicle waste disposal wells, they are banned in Idaho, and existing wells must be closed and decommissioned. Decommissioning a well requires permanently plugging the well, or otherwise closing the well in a way that ensures contaminants can no longer be injected and groundwater is protected. Closure may also require sampling a septic tank, well, surrounding soils, and/or groundwater to ensure there is no contamination.

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

#### **ITD’s Ongoing Failure to Decommission Its Motor Vehicle Waste Disposal Wells**

37. As alleged above, Idaho’s and EPA’s Safe Drinking Water Act regulations require all existing motor vehicle waste disposal wells in Idaho to be decommissioned by January 1, 2005. However, based on documents the Idaho Conservation League received from IDWR and ITD through state public records requests, ITD made no systematic efforts to identify and decommission the agency’s motor vehicle waste disposal wells

around the state prior to 2009. Not until 2009—four years after the Idaho deadline for properly decommissioning all wells—did ITD begin to look into this issue.

38. In March 2010, ITD met with IDWR and the Idaho Department of Environmental Quality (DEQ) regarding motor vehicle waste disposal wells. At this meeting, IDWR and/or DEQ communicated to ITD that it was illegal to construct new motor vehicle waste disposal wells starting in 2000, and illegal to have existing motor vehicle waste disposal wells after January 1, 2005. At the meeting, the agencies outlined a path forward whereby ITD would create an inventory of its motor vehicle waste disposal wells and then take steps to decommission all of ITD's illegal wells.

39. Around November 2010, ITD completed an initial inventory, identifying 116 motor vehicle waste disposal wells owned or operated by ITD. According to the initial inventory, some of ITD's wells had been connected to sanitary sewer systems (one potential method of decommissioning), but 75 of the wells remained open and needed to be closed and properly decommissioned.

40. From November 2010 to the present, ITD has done very little to comply with its duty to close and decommission its motor waste disposal wells. Public records made available to ICL do not indicate that ITD has decommissioned any wells since conducting its inventory in 2010. Over the years, ITD has coordinated with IDWR and DEQ on a few occasions to create a draft memorandum of agreement outlining potential approaches ITD might take to decommission its illegal wells. But the memorandum of agreement includes no deadlines for decommissioning wells, and the agencies never finalized the memorandum of agreement.

41. ICL has communicated its concerns to IDWR, DEQ, and ITD about ITD's ongoing failure to decommission its motor vehicle waste disposal wells, and ICL is informed that ITD is currently working with IDWR to update the inventory of existing ITD motor vehicle waste disposal wells.

42. However, ITD has still failed to decommission all of its motor vehicle waste disposal wells. Based on reasonable information and belief, approximately 75 of ITD's 116 motor vehicle waste disposal wells identified in the 2010 inventory remain in place, have not been properly decommissioned, and are still capable of receiving and injecting fluids, including hazardous wastes, like oil, associated with motor vehicle maintenance activities.

43. Additionally, on reasonable information and belief, ITD continues to maintain and operate each of its motor vehicle waste disposal wells and continues to conduct vehicle repair and maintenance activities, including vehicle washing, and other activities that can and do cause fluids with contaminants to be injected underground via these wells.

**FIRST CLAIM FOR RELIEF:**  
**Violations Of The Safe Drinking Water Act For Failing To Decommission Motor Vehicle Waste Disposal Wells By January 1, 2005**

44. Plaintiff realleges all preceding paragraphs.

45. The State of Idaho UIC program requires all motor vehicle waste disposal wells to be properly decommissioned by January 1, 2005. IDAPA 37.03.03.040.02.i. So to do EPA's minimum UIC regulations. 40 C.F.R. § 144.88(b)(1)(v). The State of Idaho UIC program is EPA-approved and enforceable under the Safe Drinking Water Act.

46. It is now 12 years past the deadline to decommission all motor vehicle waste disposal wells in Idaho; however, ITD has failed to close and decommission approximately 75 of the wells identified in the agency's inventory of motor vehicle waste disposal wells it owns and operates.

47. Defendants are responsible for ensuring ITD's compliance with law, including the Safe Drinking Water Act. For each and every motor vehicle waste disposal well ITD has failed to properly decommission, Defendants are in ongoing violation of the Safe Drinking Water Act and its implementing regulations.

WHEREFORE, Plaintiff prays for relief as set forth below.

**SECOND CLAIM FOR RELIEF:**  
**Violations Of The Safe Drinking Water Act For The Unauthorized Use of  
Underground Injection Wells**

48. Plaintiff realleges all preceding paragraphs.

49. Defendants are also in violation of the State of Idaho's and EPA's regulations prohibiting the unauthorized use of underground injection wells. IDAPA *See* 37.03.03.015 & 37.03.03.040; 40 C.F.R. § 144.11. Under Idaho's UIC Program, it is unlawful for "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 by an injection well." IDAPA 37.03.03.015.02. The State of Idaho UIC program is EPA-approved and enforceable under the Safe Drinking Water Act.

50. By failing to close and decommission motor vehicle waste disposal wells at approximately 75 facilities and by continuing to operate, maintain, and otherwise use these wells, Defendants have allowed and authorized ITD to conduct activities that result

or may result in the unauthorized injection of hazardous waste, in violation of the Safe Drinking Water Act. ITD has no authorization, through UIC permits or otherwise under the Safe Drinking Water Act, to operate, maintain, or conduct other activities related to these 75 wells, and no authorization to inject hazardous motor vehicle wastes through the wells. However, ITD continues to operate, maintain, and conduct other activities related to these wells, and has engaged and continues to engage in vehicle maintenance and repair activities, including vehicle washing, which do and/or may result in the injection of hazardous waste.

51. Defendants are responsible for ensuring ITD's compliance with law, including the Safe Drinking Water Act. For each and every well ITD continues to use without authorization, Defendants are in ongoing violation of the Safe Drinking Water Act and its implementing regulations.

WHEREFORE, Plaintiff prays for relief as set forth below.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

A. Declare that Defendants and ITD are in violation of the Safe Drinking Water Act, and Idaho's and EPA's Safe Drinking Water Act regulations, for failing to properly close and decommission each of ITD's motor vehicle waste disposal wells;

B. Enter injunctive relief ordering Defendants to require ITD promptly to close and cease using each of the ITD motor vehicle waste disposal wells within 30 days and to properly decommission each well within 1 year, or such other timeframe as the

Court deems reasonable and appropriate in light of the relevant facts and legal requirements;

C. Award Plaintiff its reasonable litigation costs and attorney's fees pursuant to the Safe Drinking Water Act, 42 U.S.C. § 300j-8(d), and/or all other applicable authorities; and

D. Grant such other and further relief as the Court deems just and proper, or as Plaintiffs may request, in order to remedy Defendant's violations of the Safe Drinking Water Act.

Dated this 22nd day of February, 2017.

Respectfully submitted,

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