



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAR 08 2012

CERTIFIED MAIL 7009 1680 0002 0140 6363
RETURN RECEIPT REQUESTED

Mr. J. R. Watts
c/o Ms. Penny Christ
4986 Veach Road
Owensboro, Kentucky 42303-9417

Subject: Consent Agreement and Final Order
Docket No. SDWA-04-2012-1001(b)

Dear Ms. Christ:

Enclosed is a copy of the Consent Agreement and Final Order (CA/FO) in this matter that has been filed with the Regional Hearing Clerk and served on the parties as required by 40 C.F.R. §22.6. This CA/FO was effective upon the date signed by the Regional Judicial Officer and you are hereby ordered to comply immediately with the terms of the subject Order. Please make note of the provisions under "PENALTY AND INJUNCTIVE RELIEF" with respect to compliance actions and stipulated penalties.

Thank you for your cooperation in settling this matter. Should you have any questions or concerns please contact Mr. Randy Vaughn, Underground Injection Control Enforcement, at (404) 562-9793.

Sincerely,

A handwritten signature in black ink, appearing to read "J. D. Giattina".

James D. Giattina
Director
Water Protection Division

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF

J. R. Watts
4920 Veach Road
Owensboro, Kentucky 42303-9417

Respondent

Consent Agreement
and
Final Order

Docket No. SDWA-04-2012-1001(b)

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EPA REGION IV
2012 MAR -9 PM 2:40
HEARING CLERK

CONSENT AGREEMENT

I. Statutory Authority

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules of Practice or Part 22), specifically Subpart I, published at 64 Fed. Reg. 40138 (July 23, 1999) and the delegated authority of the Administrator of the U.S. Environmental Protection Agency (EPA or Complainant) under Part C of the Safe Drinking Water Act (SDWA or the Act), 42 U.S.C. § 1421, et seq., the EPA, as Complainant, hereby enters into the following Consent Agreement and Final Order (CAFO) with J. R. Watts. (Respondent).

Section 1450 of the SDWA authorizes the Administrator to prescribe such regulations as are necessary or appropriate to carry out his functions under the SDWA. These regulations are found at 40 CFR Parts 124, 144, 146, 147, and 148, and set forth requirements for the Underground Injection Control (UIC) program promulgated under Part C of the SDWA, 42 U.S.C. § 300h, et seq.

Injection well owners and operators are required to comply with the UIC program requirements. The UIC program for the Commonwealth of Kentucky, including all Indian lands, is administered by the EPA. See 40 CFR § 147.901(a).

II. Allegations

The parties hereby stipulate and find as follows:

1. Respondent is an individual doing business in the Commonwealth of Kentucky, with a business address of 4920 Veach Road, Owensboro, Kentucky 42303-9417.

2. Respondent is a "person" as that term is defined in § 1401(12) of the SDWA, 42 U.S.C. § 300f(12) and 40 CFR § 144.3.

3. Respondent owns and/or operates the following enhanced recovery injection wells (Subject Wells):

<u>EPA ID No.</u>	<u>EPA Permit No.</u>	<u>Lease & Well No.</u>
KYS0590390	KYI0662	Onstott-Wink W-1
KYS0590391	KYI0669	C. M. Hines W-1

4. The Subject Wells, located in Daviess County, Kentucky, constitute a "facility" as that term is defined in 40 CFR § 144.3.

5. The Onstott-Wink W-1 injection well is authorized under UIC Permit No. KYI0662, which was issued and became effective on May 15, 1996.

6. The C. M. Hines W-1 injection well is authorized under UIC Permit No. KYI0669, which was issued and became effective on April 13, 1997.

7. The SDWA, 42 U.S.C. §300f, et seq., and 40 CFR §144.51(a) require that the permittee comply with all conditions of the permit. Noncompliance constitutes a violation of the SDWA and is grounds for an enforcement action.

8. The Onstott-Wink W-1 injection well has been shut-in and inactive since 2004. Part II, Section F, Paragraph 3 of the EPA UIC permit, requires that after a cessation of injection for 2 years, the permittee shall plug and abandon (P&A) the well in accordance with an EPA-approved plan, or provide a demonstration of mechanical integrity of the well at least once every two years as long as the well remains inactive.

9. The EPA's records indicate that the last mechanical integrity test (MIT) for the Onstott-Wink W-1 injection well was conducted on April 5, 2000.

10. Therefore the Respondent is in violation of the SDWA, 42 U.S.C. §300f, et seq., its UIC permit and 40 CFR §144.51(a) for failure to comply with mechanical integrity demonstration requirements for the Onstott-Wink W-1 injection well.

11. Part I, Section C, Paragraph 2, of the EPA UIC permit requires the permittee to monitor weekly the operation of the injection well. Part 1, Section D, Paragraph 2, of the EPA UIC permit requires the permittee to submit the monitoring results annually.

12. The EPA's records for the Onstott-Wink W-1 injection well indicate that no annual monitoring reports have ever been submitted.

13. Therefore the Respondent is in violation of the SDWA, 42 U.S.C. §300f, et seq., its UIC permit and 40 CFR §144.51(a) for failure to submit annual monitoring reports for the Onstott-Wink W-1 injection well.

14. The EPA's records show that the C. M. Hines W-1 injection well is active. Part II, Section G, Paragraph 3 of the EPA UIC permit, requires a demonstration of

mechanical integrity of the well at least once every five years as long as the well remains active and to notify the EPA at least thirty (30) days prior to such demonstration. Within ninety (90) days after the date of the mechanical integrity demonstration, the permittee is required to provide the EPA with the results.

15. The EPA's records indicate that the last mechanical integrity test (MIT) result for the C. M. Hines W-1 Injection well was submitted on March 30, 2005. The next MIT result was due to be submitted no later than March 30, 2010.

16. Therefore the Respondent is in violation of the SDWA, 42 U.S.C. §300f, et seq., its UIC permit and 40 CFR §144.51(a) for failure to comply with mechanical integrity demonstration requirements for the C. M. Hines W-1 injection well.

17. Part I, Section C, Paragraph 2, of the EPA UIC permit requires the permittee to monitor weekly the operation of the injection well. Part 1, Section D, Paragraph 2, of the EPA UIC permit requires the permittee to submit monitoring results annually.

18. The EPA's records for the C. M. Hines W-1 injection well indicate that no annual monitoring reports have ever been submitted.

19. Therefore the Respondent is in violation of the SDWA, 42 U.S.C. §300f, et seq., its UIC permit and 40 CFR §144.51(a) for failure to submit annual monitoring reports for the C. M. Hines W-1 injection well.

20. Part I, Section C, Paragraph 3, of the EPA UIC permit, requires the Permittee to conduct injection fluid analysis at least once every 12 months and whenever changes are made to the injection fluid. Part I, Section E, Paragraph 1, of the subject permit requires the Permittee to submit the results of these injection fluid analyses to the EPA annually.

21. The EPA's records for the C. M. Hines W-1 injection well indicate that no annual injection fluid analysis reports have ever been submitted.

22. Therefore the Permittee is in violation of SDWA, 42 U.S.C. §300f, et seq., its UIC permit and 40 CFR §144.51(a) for failure to conduct fluid analyses and submit fluid analyses reports for the C. M. Hines W-1 injection well.

III. Stipulations and Findings

23. Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the facts and findings of violations as alleged. Respondent waives any right to a hearing and waives any right to appeal a final order in this matter, and consents to the issuance of a final order without further adjudication.

24. Complainant and Respondent have conferred for the purpose of settlement, pursuant to 40 CFR § 22.18, and desire to resolve this matter and settle the violations described herein without resort to a formal hearing. Therefore, without the taking of any evidence or testimony, the making of an argument, or the adjudication of any issue in this matter, and in accordance with 40 CFR § 22.13(b), this CA/FO will simultaneously commence and conclude this matter.

IV. Penalty and Injunctive Relief

Based upon the foregoing Stipulations and Findings, the parties hereby agree and consent to entry of the following Order:

25. Respondent shall pay a civil penalty of \$15,000, which includes 1% simple interest, in accordance with the terms set forth below:

- a. Respondent shall pay the penalty in 8 installments in the amount of \$1875 each.
- b. Respondent shall pay the first installment within 30 days of Respondent's receipt of a fully-executed copy of this Order. Thereafter, the remaining payments shall be submitted every 90 days until paid in full.

26. In accordance with the subject permit, Respondent shall, within 30 days of receipt of a fully-executed copy of this Order, either demonstrate both internal and external mechanical integrity of the Onstott-Wink W-1 injection well, or P&A the well according to an EPA-approved P&A plan.

27. All reporting required by this Order shall be submitted to the following person:

Mr. Fred McManus, Chief
Ground Water and Safe Drinking Water Act Enforcement Section
U. S. Environmental Protection Agency
Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

28. Respondent agrees to pay stipulated civil penalties for violation of the conditions set forth in Paragraphs 25 through 27 above as follows:

For failure to comply with each condition described in Paragraphs 25 through 27 above, Respondent shall pay a stipulated civil penalty according to the following schedule:

- (a) \$300 for any portion of the first week (seven days) any failure continues; and

- (b) \$200 per day for each day after the first week (seven days) that the failure continues.

Stipulated penalties shall become due and payable no later than 30 days after receipt of demand from the EPA. Payment shall be in the form of a certified or cashier's check made payable to the Treasurer of the United States of America, and sent to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

29. A copy of the check shall be sent to the Ground Water & Safe Drinking Water Act Enforcement Section, Safe Drinking Water Branch, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, GA 30303-8960. Respondent shall state the docket number of this AOC on the face of any such check. The stipulated civil penalties set forth above shall be in addition to any other remedies or sanctions which are or may be available to the EPA.

30. The names, addresses and telephone numbers of the individuals authorized to receive service relating to the proceeding are listed below.

For Respondent: Mr. James R. Watts
4920 Veach Road
Owensboro, Kentucky 42303
270-683-7645

For the EPA: Ms. Wilda Cobb, Attorney
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303
404-562-9530

V. General Provisions

31. The provisions of this CA/FO shall be binding upon Respondent, and its officers, directors, agents, servants, employees, and successors or assigns. Notice of this CA/FO shall be given to any successors in interest prior to transfer of the ownership or operational control of the facility.

32. This CA/FO does not constitute a waiver, suspension, or modification of the requirements of Part C of the SDWA, 42 U.S.C. § 1421, *et seq.*, or any regulations promulgated thereunder. This CA/FO is not, and shall not be interpreted to be, a permit for the injection of fluids under Section 1421 of the SDWA, 42 U.S.C. § 300h, nor shall it

in any way relieve Respondent of any obligation imposed by any permit issued thereunder, or of Respondent's obligation to comply with any provision of the SDWA, its implementing regulations, or any other local, state or federal law. Nothing contained herein shall be construed to prevent or limit the EPA's right to obtain penalties or injunctive relief under Section 1423 of the SDWA or other federal statutes and regulations. Payment of the penalty agreed to in this CA/FO shall not in any way affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. Full payment of the penalty agreed to in this CA/FO resolves only Respondent's liability for federal civil penalties for the violations and facts stipulated herein.

33. For the purposes of state and federal income taxation, Respondent shall not be entitled and agrees not to attempt to claim a deduction for any penalty payment made pursuant to this CA/FO. Any attempt to deduct any such penalty shall constitute a violation of this CA/FO.

34. If any event beyond the control of Respondent, its/their successors or assigns, occurs which causes or may cause a delay in the achievement of any requirement of this CA/FO, Respondent shall notify the EPA orally within 4 days of the time it has knowledge of the occurrence of such event. A written report of said event shall be submitted by certified mail to the EPA within 10 days of the date Respondent received knowledge of the event. Said report shall describe the violation or failure, its cause and all attendant circumstances, and the measures taken or to be taken to prevent or minimize any such violation or failure and to comply with the pertinent requirements of this CA/FO as soon as possible, and the timetable by which those measures are proposed to be implemented.

35. The burden of proving that any violation or failure is caused by circumstances beyond the control of and without fault of Respondent and the length of the delay attributable to such circumstances shall rest with Respondent. Financial, economic, or business conditions or changes in same, unanticipated or increased costs or expenses, or problems relating to reasonably foreseeable technological infeasibility associated with the implementation of actions called for by this CA/FO, shall not relieve Respondent of any obligation imposed under the terms of this CA/FO, nor from payment of any penalty set forth in this CA/FO. The EPA will notify Respondent of its determination that certain circumstances are considered to be beyond Respondent's control and the extension of time, if any, for completion of the affected requirements. Respondent shall waive this right to any extension for failure to provide the EPA with written notice as provided herein or for failure to provide adequate proof of the cause of the delay.

36. The parties acknowledge and agree that final approval by the EPA of this CA/FO is subject to 40 CFR § 22.45(c)(4) which sets forth requirements under which a person not a party to this proceeding may petition to set aside a consent agreement and final order on the basis that material evidence was not considered.

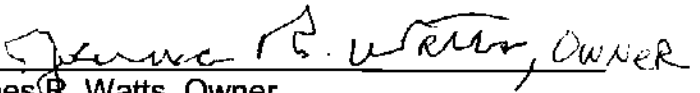
37. Each party shall bear its own costs and attorneys fees in connection with this action.

38. This CA/FO shall become effective upon the date that it is signed by the Regional Judicial Officer.

39. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and to execute and legally bind the Party he or she represents to this Agreement.

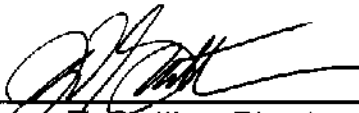
RESPONDENT

Date: 12-18-11


James R. Watts, Owner

COMPLAINANT

Date: 2/29/12


James D. Giattina, Director
Water Protection Division
EPA, Region 4

FINAL ORDER

Pursuant to the Consolidated Rules of Practice and the delegated authority of the Administrator under the SDWA, the above and foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Respondent is ordered to comply immediately with the terms of the Consent Agreement, which are fully incorporated into this Final Order.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 3/8/2012



Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

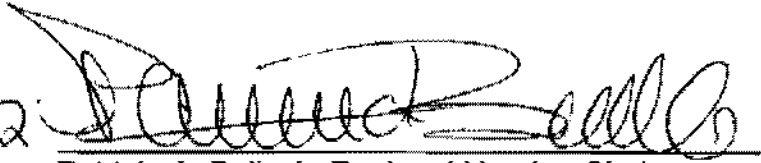
I HEREBY CERTIFY that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, in the Matter of J. R. Watts, Docket No. SDWA-04-2012-1001(b), on the parties listed below in the manner indicated:

Randy Vaughn, UIC Enforcement (Via the EPA internal Mail)
EPA, Region 4

Ms. Wilda Cobb, Associate Regional Counsel (Via the EPA internal Mail)
EPA, Region 4

Mr. James R. Watts (Via Certified Mail - Return Receipt Requested)
4920 Veach Road
Owensboro, Kentucky 42303-9417

Date: 3-8-12


Patricia A. Bullock, Regional Hearing Clerk
United States Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9511