



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

AUG 29 2008

CERTIFIED MAIL 7005 1820 0005 9166 9720
RETURN RECEIPT REQUESTED

Mr. Jim Schouman
16376 Middlebelt Road
Livonia, Michigan 48154

RE: Consent Agreement and Final Order (CA/FO)
Docket No. SDWA-04- SDWA-04-2008-1005(b)

Dear Mr. Schouman:

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 is effective immediately. Please make note of the provisions under "PENALTY AND INJUNCTION RELIEF" with respect to payments and stipulated penalties.

Thank you for your cooperation in settling this matter. Should you have any questions or concerns please contact Mr. Bob McCann at (404) 562-9784.

Sincerely,

A handwritten signature in black ink that reads "Jim Stewart for".

James D. Giattina
Director
Water Management Division

Enclosure

cc: Kentucky Environmental and Public Protection Cabinet
Division of Enforcement

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF

Tuco Operating Partners, Inc.
16376 Middlebelt Road
Livonia, Michigan 48154

Respondent

**CONSENT AGREEMENT
and
FINAL ORDER**

HEARING CLERK

2009 AUG 29 PM 12:53

RECEIVED
EPA REGION 4

Docket No. SDWA-04-2008-1005(b)

CONSENT AGREEMENT

I. Statutory Authority

1. This is a civil penalty proceeding pursuant to Section 1423(c) of the Safe Drinking Water Act ("SDWA" or "the Act"), 42 U.S.C. § 300h-2(c), and 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"), published at 64 Fed. Reg. 40176 (July 23, 1999) and codified at 40 Code of Federal Regulations ("CFR") Part 22.
2. The authority to take action under Section 1423(c) of the SDWA, 42 U.S.C. § 300h-2(c), is vested in the Administrator of the U.S. Environmental Protection Agency ("EPA"). The Administrator has delegated this authority to the Regional Administrator Region 4, who in turn has delegated this authority to the Director of the Water Management Division ("Complainant").

II. Allegations

3. At all times relevant to this action, Tuco Operating Partners, Inc. ("Respondent") was a corporation organized under the laws of the State of Michigan with a principal place of business located at 16376 Middlebelt Road, Livonia, Michigan, 48154.
4. At all times relevant to this action, Respondent was a "person" as that term is defined at Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12) and 40 CFR § 144.3.
5. At all times relevant to this action, Respondent was subject to the "applicable underground injection control program" in the Commonwealth of Kentucky as that term is defined at Section 1422(d) of the SDWA, 42 U.S.C. § 300h-1(d) and 40 CFR § 147.901.

6. At all times relevant to this action, Respondent owned and/or operated an “injection well” as that term is defined at 40 CFR § 144.3. The injection well is specifically identified as follows:

<u>EPA ID No.</u>	<u>Permit No.</u>	<u>Lease Name/Well #</u>	<u>Status</u>
KYS1010467	KYI0408	Claude Boswell No. 1	Shut In

7. The Claude Boswell Well No. 1 (hereinafter, subject well) is located in Henderson, Kentucky and constitutes a “facility” as that term is defined at 40 CFR § 144.3.
8. Respondent and the subject well are subject to regulation under the SDWA and the applicable underground injection control (UIC) program for the Commonwealth of Kentucky. The SDWA provides that all underground injections are unlawful and subject to penalties unless authorized by a permit or a rule. See Section 1422(c) of the SDWA, 42 U.S.C. § 300h-1(c).
9. 40 CFR § 144.51(a) requires that the permittee comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the SDWA.
10. Permit KYI0408 authorizes the injection activity for the subject well. The permit became effective on August 22, 1990. On October 24, 2001, the permit was modified to reflect a change in ownership from Hercules Petroleum Co., Inc. to Tuco Operating Partners, Inc.
11. Part II, Section G. 3. of permit KYI0408 requires that the mechanical integrity of the subject well be demonstrated at least once every five (5) years. The permittee is required to report the results of a mechanical integrity demonstration within 90 days after completion in accordance with Part II, Section E, item 11 of the permit.
12. Respondent failed to demonstrate the mechanical integrity of the injection well for a period in excess of five (5) years.
13. Part I, Section D. 2. of permit KYI0408 requires the submission of annual monitoring reports for the subject well no later than September 28th of each year. Specifically, the annual monitoring reports were not submitted in 2004, 2005 and 2006.
14. Therefore, Respondent violated the SDWA by failing to demonstrate mechanical integrity at least once every five (5) years; and failing to submit the monitoring reports for calendar years 2004, 2005, and 2006.
15. On January 18, 2008, EPA sent Respondent a Notice of Violation for failure to demonstrate the mechanical integrity of the Claude Boswell No. 1 injection well.

16. On February 13, 2008, EPA conducted a Show Cause meeting with Respondent to discuss the allegation of violations. Respondent agreed to conduct the mechanical integrity test for the Claude Boswell No. 1 injection well and submit the monitoring reports for calendar years 2004, 2005, and 2006.

III. Stipulations and Findings

17. 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 allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 CFR § 22.13(b), this Consent Agreement and Final Order ("CA/FO") will simultaneously commence and conclude this matter.
18. Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the specific factual allegations of violation as alleged herein.
19. 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.

IV. Payment

20. Pursuant to Section 1423(c) of the SDWA, 42 U.S.C. § 300h-2(c), and 40 CFR Part 19, and considering appropriate factors which include the seriousness of the violation; the economic benefit resulting from the violation; any history of such violations; any good-faith efforts to comply with the applicable requirements; the economic impact of the penalty of the violator; and such other matters as justice may require, EPA has determined that two thousand nine hundred and forty dollars (\$2,940.00) is an appropriate civil penalty to settle this action.
21. Respondent shall pay the civil penalty of two thousand nine hundred forty dollars (\$2,940.00) in six (6) monthly installments. The installment payments are to be made as follows: the initial payment of four hundred and forty dollars (\$440.00) is due no later than thirty (30) days of the effective date of this Order, and the remaining five (5) payments of five hundred dollars (\$500.00) are due each month thereafter, on the same day of the month as the initial payment.
22. Pursuant to Section 1423(c)(7) of the SDWA, 42 U.S.C. § 300h-2(c)(7), failure by Respondent to pay the penalty or any portion thereof assessed by this CA/FO in full by its due date may subject Respondent to a civil action in an appropriate district court to recover the amount assessed (plus costs, attorneys' fees, and interest at currently prevailing rates from the date the Order is effective). In such an action, the validity, amount and appropriateness of the penalty shall not be subject to review.

23. Pursuant to 40 CFR Part 13 and 31 U.S.C. § 3717 et seq., if EPA does not receive payment of the penalty assessed by this CA/FO in full by its due date, interest shall accrue on the unpaid balance from the due date through date of payment at an annual rate equal to the rate of the current value of funds to the United States Treasury as prescribed and published by the Secretary of the Treasury. If all or part of the payment is overdue, EPA will assess a late-payment handling charge of \$15, with an additional delinquent notice charge of \$15 for each subsequent thirty (30) day period. EPA will also assess on a monthly basis a six per cent (6%) per annum penalty on any principal amount not paid within ninety (90) days of the due date.
24. Respondent shall make payments to EPA by sending a certified or cashier's check payable to the "Treasurer, United States of America" at the following address:

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

Respondent shall note the title and docket number of the case on the penalty payment certified or cashier's check.

25. Respondent shall submit copies of the check to the following persons:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

and

Mary Halback
Central Enforcement Section
U. S. Environmental Protection Agency
Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

26. In addition to payment of the penalty described above, Respondent shall perform the following:

Within ninety (90) days of receipt of a fully-executed copy of this CA/FO, Respondent shall either (1) plug and abandon the subject injection well, in accordance with an EPA-

approved plugging and abandonment plan; or (2) demonstrate the mechanical integrity of the well.

27. Respondent agrees to pay stipulated civil penalties for the failure to specifically comply with the provisions of Paragraph 25 above as follows:
- (A). \$300 per day for any portion of the first seven (7) calendar days any noncompliance continues; and
 - (B). \$200 per day for each day following the first seven (7) calendar days that the noncompliance continues.
28. Stipulated penalties shall become due and payable no later than thirty (30) days after receipt of demand from 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
Cincinnati Accounting Operations
Mellon Lockbox 371099M
Pittsburgh, PA 15251-7099

A copy of the check shall be sent to the Central Enforcement Section, Water Programs Enforcement Branch, U. S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, GA 30303-8960. Respondent shall state the docket number of this CA/FO 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 EPA.

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

For Respondent: **Mr. Jim Schouman**
16376 Middlebelt Road
Livonia, MI 48154
(734) 421-1123

For EPA: **William Jones**
Assistant Regional Counsel
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9582

V. General Provisions

30. 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.
31. 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 EPA's rights to obtain penalties or injunctive relief under Section 1423 of the SDWA or other federal statutes and regulations with the exception that EPA will not bring a future civil action against Respondent for the specific claims alleged in this matter.
32. Payment of the penalty agreed to in this CA/FO shall not in any way 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. 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 agrees not to claim a deduction for any penalty payment made pursuant to this CA/FO. Any attempt to deduct such penalty (or any portion thereof) 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 EPA orally within four (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 EPA within ten (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. 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 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 understand that final approval by EPA of this CA/FO is subject to the provisions of 40 CFR § 22.45(c)(4) which sets forth requirements under which a non-party to this proceeding may petition to set aside the consent agreement and final order on the basis that material evidence was not considered.
37. Each party shall bear its own costs and attorney's fees in connection with this action.
38. This CA/FO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit. Other than as expressed herein, compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by the EPA.
39. Nothing in this CA/FO shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Respondent's violation of this CA/FO or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any federal or state statute, regulation or permit.
40. Except as otherwise set forth herein, this CA/FO constitutes a settlement by Complainant and Respondent of all claims for civil penalties pursuant to the SDWA with respect to only those violations alleged in this CA/FO. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent, or other liability resulting from violations that were not alleged in this CA/FO. Other than as expressed herein, Complainant does not waive any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.
41. Each undersigned representative of the parties to this CA/FO certifies that he or she is fully authorized to enter into the terms and conditions of this CA/FO and to execute and legally bind that party to it.

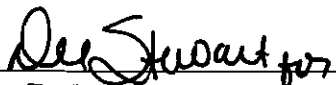
- 42. This CA/FO applies to and is binding upon Respondent and its officers, directors, employees, agents, successors and assigns.
- 43. Any change in the legal status of Respondent including, but not limited to, any transfer of assets of real or personal property, shall not alter Respondent's responsibilities under this CA/FO.

VI. Effective Date

- 44. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:



James D. Giattina, Director
Water Management Division
U.S. EPA Region 4

Date: 8/21/08

For RESPONDENT, TUCO OPERATING PARTNERS, INC.:



Jim Schouman
Tuco Operating Partners, Inc.
16376 Middlebelt Road
Livonia, MI 48154

Date: 6-16-08

Docket No. SDWA-04-2008-1005(b)

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: August 27, 2008

Susan B. Schub
Susan B. Schub, Regional Judicial Officer

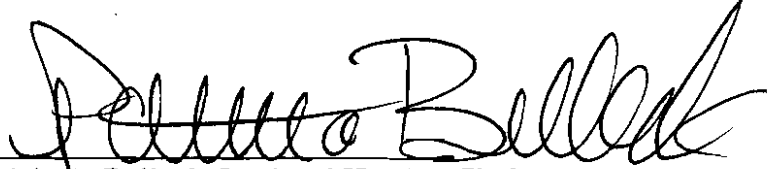
CERTIFICATE OF SERVICE

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: Tuco Operating Partners; Docket Number SDWA-04-2008-1xxx(b), on the parties listed below in the manner indicated:

Robert J. McCann, Enforcement Officer (Via EPA internal Mail)

William Jones, Attorney (Via EPA internal Mail)

Jim Schouman (Via Certified Mail - Return Receipt Requested)
Tuco Operating Partners
16476 Middlebelt Road
Livonia, Michigan 48154

Date: 8-29-08 
Patricia A. Bullock, Regional Hearing Clerk
United States Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960
(404) 562-9511