



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAR 11 2010

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RETURN RECEIPT REQUESTED

Mr. James H. Brooker
Brookston Resources, Inc.
4700 Roslin Road
Newburgh, Indiana 47630

SUBJECT: Consent Agreement and Final Order (CA/FO)
Docket No. SDWA-04-2010-1007(b)

Dear Mr. Brooker:

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 filed with the Regional Hearing Clerk 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 Ms. Carol Chen, UIC Enforcement, at (404) 562-9415.

Sincerely,

A handwritten signature in cursive script that reads "James D. Giattina, Jr.".

James D. Giattina
Director
Water Protection Division

Enclosure

cc: Regional Hearing Clerk

Internet Address (URL) • <http://www.epa.gov>

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF

**Mr. James H. Brooker
Brookston Resources, Inc.
4700 Roslin Road
Newburgh, Indiana 47630**

Respondent

Consent Agreement and Final Order

Docket No. SDWA-04-2010-1007(b)

STATUTORY AUTHORITY

1. 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 Brookston Resources, Inc. (Respondent).
2. Section 1450 of the SDWA authorizes the Administrator to prescribe such regulations as are necessary or appropriate to carry out her 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.
3. 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 EPA. See 40 CFR § 147.901(a).

ALLEGATIONS

4. Respondent is a corporation doing business in the Commonwealth of Kentucky, with a business address of 4700 Roslin Road, Newburgh, Indiana 47630.
5. Respondent is a person as that term is defined in Section 1401(12) of the SDWA, 42 U.S.C. Section 300f(12) and 40 CFR §144.3.

6. Respondent owns and/or operates the following Class II injection wells (subject wells):

<u>Permit No.</u>	<u>EPA ID No.</u>	<u>Well</u>
KYI0426	KYS1490099	Lucy Pearl Sandefur #10WI
KYI0621	KYS1010121	G. R. Crafton #4

7. Each of these wells constitutes a "facility" as that term is defined in 40 CFR §144.3, and is subject to the requirements of the SDWA and the UIC regulations.

8. The subject wells are permitted in accordance with 40 CFR § 144.31.

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

10. 40 CFR §144.51(a) states that any permit noncompliance constitutes a violation of the SDWA. Part II, Section G, Paragraph 3 of the permit requires a demonstration of mechanical integrity at least once every five years. The previous mechanical integrity demonstration of the Lucy Pearl Sandefur #10WI was performed on July 24, 2001, and was due again by July 24, 2006. The next mechanical integrity demonstration was not performed until November 10, 2009.

11. Therefore, Respondent violated 40 CFR §144.51 (a), its permit, and the SDWA by failing to demonstrate mechanical integrity by July 24, 2006.

12. 40 CFR §144.51(a) states that any permit noncompliance constitutes a violation of the SDWA. Part I, Section C, Paragraph 2, requires the permittee to weekly monitor the injection pressure and annulus pressure at the wellhead, and the flow rate of the injected fluid. In addition, the cumulative volume of the injected fluid must be recorded each month. Part I, Section D, Paragraph 2, contains the requirement to annually submit these monitoring results.

13. The last monitoring reports contained in the records files for each of the subject wells were for Year 2002.

14. Therefore, Respondent is in violation of 40 CFR §144.51 (a), its permit, and the SDWA for failure to timely submit annual monitoring reports for the subject wells.

15. 40 CFR §144.51(a) states that any permit non-compliance constitutes a violation of the SDWA. Part I, Section C, Paragraph 3, requires the permittee to perform injection fluid analysis at least once every 12 months. Part I, Section D, Paragraph 2, of the permit, requires the results of these injection fluid analyses to be submitted annually.

16. No injection fluid analyses were present in the records files for either of the subject wells.

17. Therefore, Respondent is in violation of 40 CFR §144.51 (a), its permit, and the SDWA for failure to annually perform injection fluid analyses, and to submit these reports to EPA.

18. 40 CFR §144.51(a) states that any permit noncompliance constitutes a violation of the SDWA. Part II, Section B, Paragraph 2, of the permit, states this permit is not transferable to any person except after notice to and approval by the Director, and in compliance with the requirements of 40 CFR §144.38, and may be transferred to a new operator by modification, in accordance with 40 CFR §144.41(d), provided that a written agreement between the current and new operator has been submitted to the Director containing a specific date for transfer of permit responsibility, coverage, and liability.

19. The G. R. Crafton #4 injection well was transferred from Brookston Resources, Inc. to another operator in September of 2008, without providing proper transfer documentation to EPA.

20. Therefore, Respondent is in violation of 40 CFR §144.51 (a), its permit, and the SDWA for failure to provide EPA with the required transfer documentation.

21. On November 10, 2009, Respondent participated in a show cause hearing with EPA representatives via telephone to discuss its permit violations, the SDWA, and the implementing regulations.

22. Respondent and Complainant have negotiated a settlement of the foregoing violations and Respondent has agreed to pay a penalty.

STIPULATIONS AND FINDINGS

23. Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the facts and findings of violation as alleged herein. 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.

PENALTY AND INJUNCTIVE RELIEF

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

25. Respondent shall pay a civil penalty of **\$4,500.00 (Four Thousand Five Hundred Dollars)** in accordance with the terms set forth below.

26. Within thirty (30) days of receipt of a fully-executed copy of this CA/FO, Respondent shall submit a cashiers or certified check in the total amount of the penalty set forth in the preceding paragraph, payable to the Treasurer, United States of America at the following address:

U.S. Environmental Protection Agency
Fines 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 cashiers check.

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

Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street SW
Atlanta, GA 30303-8960

Fred McManus, Chief
Ground Water and SDWA Enforcement Section
U. S. EPA - Region 4
61 Forsyth Street SW
Atlanta, GA 30303-8960

28. Pursuant to Section 1423(c)(7) of the SDWA, 42 U.S.C. § 300h-2(c)(7), failure by Respondent to pay the penalty 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.

29. 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 an administrative fee 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.

30. A copy of the check shall be sent to the Ground Water and SDWA Enforcement Section, Safe Drinking Water Branch, U. S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303-8960. Respondent shall state the docket number of this CA/FO on the face of any such check.

31. Based upon the foregoing Findings of Fact and Conclusions of Law, Respondent is hereby ordered to perform the following injunctive relief set forth in paragraphs 32, 33, and 34 below within thirty (30) days of the effective date of this order.

32. Respondent is hereby ordered to submit to EPA the missing monitoring reports for each of the subject wells.

33. Respondent is hereby ordered to perform fluid analyses for each of the subject wells and submit these analyses to EPA.

34. Respondent is hereby ordered to submit a copy of the written agreement between the parties, and associated transfer documentation for the G. R. Crafton #4 injection well to EPA.

35. Respondent agrees to pay stipulated civil penalties for violation of the conditions set forth in Paragraphs 32 through 34. For failure to comply with each condition described in Paragraphs 32 through 34, Respondent shall pay a stipulated civil penalty according to the following schedule:

- a. \$300 for any portion of the first seven (7) calendar days Respondent is in violation of this Agreement; and
- b. \$200 per day for each day following the first seven (7) calendar days that Respondent is in violation of this Agreement.

36. Stipulated penalties shall become due and payable no later than thirty (30) days after receipt of a demand from EPA. Payment shall be in the form of a certified or cashiers 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

For EPA:

Zylpha Pryor, Attorney
U.S. EPA - Region 4
61 Forsyth Street SW
Atlanta, GA 30303-8960
404-562-9535

GENERAL PROVISIONS

38. 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.

39. 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. 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 other violations of law. Full payment of the penalty and performance of the injunctive relief agreed to in this CA/FO resolves only Respondent's liability for federal civil penalties for the violations and facts stipulated herein.

40. For the purposes of state and federal income taxation, Respondent shall not be entitled to 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.

41. If any event beyond the control of Respondent, its 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.

42. 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 for the cause of the delay.

43. The parties acknowledge and agree that final approval by EPA of this CA/FO is subject to 40 C.F.R. 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.

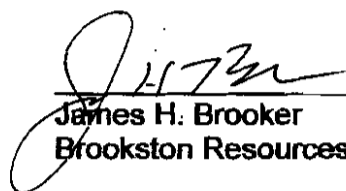
44. Each party shall bear its own costs and attorneys fees in connection with this action.

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

46. 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: 1-29-2010


James H. Brooker
Brookston Resources, Inc.

COMPLAINANT

Date: 3/11/10


James D. Giattina, Director
Water Protection Division

incorporated into this Final Order.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: March 11, 2010

Susan B. Schub
Susan 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 Brookston Resources, Inc.; Docket No. SDWA-04-2010-1007(b), on the parties listed below in the manner indicated:

Carol Chen

Via EPA Internal Mail

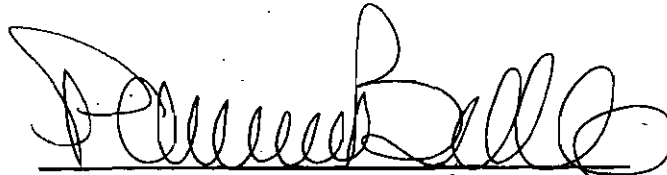
Zylpha Pryor

Via EPA Internal Mail

**Mr. James H. Brooker
Brookston Resources, Inc.
4700 Roslin Road
Newburgh, Indiana 47630**

Via Certified Mail/ Return Receipt
Requested

Date: 3-11-10



Patricia A. Bullock, Regional Hearing Clerk
United States EPA - Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960
(404) 582-9511