



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

AUG 13 2009

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RETURN RECEIPT REQUESTED

Mr. Douglas L. Mortimer
P. O. Box 149
Salyersville, Kentucky 41465

Re: Consent Agreement and Final Order (CA/FO)
Docket No. SDWA-04-2009-1008(b)

Dear Mr. Mortimer:

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 Officer, at (404) 562-9793.

Sincerely,

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

James D. Giattina
Director
Water Protection Division

Enclosure

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF

Douglas L. Mortimer
P. O. Box 149
Salyersville, Kentucky 41465

Respondent

Consent Agreement
and
Final Order

Docket No. SDWA-04-2009-1008(b)

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CONSENT AGREEMENT

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 (CA/FO) with Douglas L. Mortimer (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

The parties hereby stipulate and find as follows:

4. 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.

5. Respondent owns and/or operates the following injection well (subject well):

<u>EPA ID No.</u>	<u>EPA Permit No.</u>	<u>Lease & Well No.</u>	<u>Status</u>
KYS1530112	KYI0608	Douglas Mortimer #4	Active

6. The subject well, located in Magoffin County, Kentucky, constitutes a "facility" as that term is defined in 40 CFR § 144.3.

7. The subject well is authorized under UIC Permit No. KYI0608, which was issued and became effective on October 19, 1993.

8. 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.

9. Part II, Section G, Paragraph 3 of Respondent's permit requires a demonstration of mechanical integrity at least once every five (5) years.

10. The records file for the subject well indicates that the mechanical integrity of the well was demonstrated on September 23, 2003, and was therefore due to be demonstrated again no later than September 23, 2008. Respondent failed to demonstrate the mechanical integrity of the subject well by that date.

11. Therefore, Respondent violated 40 CFR § 144.51(a), its permit, and the SDWA by failing to timely demonstrate the mechanical integrity of the subject well.

12. Part I, Section D, Paragraph 2 of Respondent's permit requires the submittal of annual monitoring reports.

13. There are no annual monitoring reports in the records file for the subject well.

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

15. Part I, Section D, Paragraph 2, of Respondent's permit requires the submittal of annual injection fluid analysis reports to EPA.

16. There are no annual injection fluid analysis reports in the records file for the subject well.

17. Therefore, Respondent is in violation of 40 CFR § 144.51(a), its permit, and the SDWA for failure to submit annual injection fluid analysis reports for the subject well.

18. On April 16, 2009, EPA issued a Notice of Violation and Notice of Opportunity to Show Cause for the subject well, alleging Respondent to be in violation of its permit, the SDWA and its implementing regulations.

19. On May 20, 2009, EPA received Respondent's MIT report for the subject well dated May 13, 2009.

20. On May 20, 2009, EPA received Respondent's annual summary monitoring reports for the subject well for the years 2004, 2005, 2006, 2007, and 2008.

21. On May 20, 2009, EPA received Respondent's annual injection fluid analysis report for the subject well dated May 12, 2009.

STIPULATIONS AND FINDINGS

22. 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.

23. 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 Stipulations and Findings, the parties hereby agree and consent to entry of the following Order:

24. Respondent shall pay a civil penalty of **Five Thousand Dollars (\$5000)** in accordance with the terms set forth below:

- a. Respondent shall pay the penalty in six (6) installments. The first five (5) installments shall be in the amount of eight hundred and thirty three dollars (\$833) each. The sixth and final installment shall be in the amount of eight hundred and thirty five dollars (\$835).
- b. Respondent shall pay the first installment within thirty (30) days of Respondent's receipt of a fully-executed copy of this Order. Thereafter, the remaining payments shall be submitted every ninety (90) days until paid in full.

25. 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
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

26. Respondent shall note the title and docket number of the case on the penalty payment certified or cashier's check. 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, Georgia 30303-8960

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

27. Pursuant to Section 1423(c)(7) of the Act, 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.

28. 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 fifteen dollars (\$15) for each subsequent thirty (30) day period. EPA will also assess on a monthly basis a six percent (6%) per annum penalty on any principal amount not paid within ninety (90) days of the due date.

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

For Respondent:

Mr. Douglas L. Mortimer
P. O. Box 149
Salyersville, Kentucky 41465
606-349-3299

For EPA:

Ms. Zylpha Pryor, Attorney
U.S. EPA Region 4 / OEA
61 Forsyth St., S.W.
Atlanta, Georgia 30303
404-562-9535

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 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.

32. 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.

33. 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.

34. 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.

35. The parties acknowledge and agree that final approval by 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.

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

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

38. 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: 6-23-09



Douglas L. Mortimer, Owner

COMPLAINANT

Date: 7/31/09



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 AGENCYDate: August 12, 2009

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 Douglas L. Mortimer, Docket No. SDWA-04-2009-1008(b), on the parties listed below in the manner indicated:

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

Ms. Zylpha Pryor, Associate Regional Counsel (Via EPA internal Mail)
EPA, Region 4

Mr. Douglas L. Mortimer, Owner (Via Certified Mail - Return Receipt Requested)
P. O. Box 149
Salyersville, Kentucky 41465

Date: 8/13/09


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