



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

JUN 11 2013

CERTIFIED MAIL 7010 1060 0002 1705 0787
RETURN RECEIPT REQUESTED

Mr. Robert B. Heyer
Owner, Mullpo Carbons, LLC
630 Jacks Creek Road
Richmond, Kentucky 40475-9401

Re: Consent Agreement and Final Order (CA/FO)
Docket No. SDWA-04-2013-1004(b)

Dear Mr. Heyer:

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.

Thank you for your cooperation in settling this matter. Should you have any questions or concerns, please contact Ms. Carol Chen, Underground Injection Control Enforcement at (404) 562-9415.

Sincerely,

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

James D. Giattina
Director
Water Protection Division

Enclosure

cc: Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

RECEIVED
EPA REGION IV
2013 JUN 11 PM12:39
HEARING CLERK

IN THE MATTER OF

Mullpo Carbons, LLC
630 Jacks Creek Road
Richmond, Kentucky 40475-9401

Respondent

Consent Agreement and Final Order

Docket No. SDWA-04-2013-1004(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 Section 1423 of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300h-2, the EPA, as Complainant, hereby enters into the following Consent Agreement and Final Order (CA/FO) with Mullpo Carbons, LLC (Respondent).
2. Section 1450(a)(1) of the SDWA, 42 U.S.C. § 300j-9(a)(1), 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 C.F.R. 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 the EPA. See 40 C.F.R. § 147.901(a).

ALLEGATIONS

4. Respondent is a limited liability company organized under the laws of Delaware, doing business in the Commonwealth of Kentucky, with a business address of 630 Jacks Creek Road, Kentucky 40475-9401.
5. Respondent is the owner and/or operator of the following Class II underground injection well that is subject to this Order.

<u>Permit No.</u>	<u>EPA ID No.</u>	<u>Well</u>	<u>Status</u>	<u>County</u>
KYI0421	KYS2370005	Rush & Daisy Cable #1-1	Active	Wolfe

6. The subject well (Subject Well) is a "facility" as that term is defined in 40 C.F.R. § 144.3.

7. The Subject Well is permitted in accordance with 40 C.F.R. § 144.31 and is subject to the requirements of the SDWA and the UIC regulations.
8. The SDWA, 42 U.S.C. § 300f, et seq. and 40 C.F.R. § 144.51(a) require the permittee, of a permitted UIC well, to comply with all conditions of the permit.
9. Part II, Section G, Paragraph 3, of the UIC permit, requires that a demonstration of mechanical integrity in accordance with 40 C.F.R. § 146.8 be made no later than 5 years from the last approved demonstration.
10. The mechanical integrity demonstration for the following active permitted Subject Well was performed late, as shown below.

<u>Permit No.</u>	<u>EPA ID No.</u>	<u>Well</u>	<u>Status</u>	<u>Previous MIT</u>	<u>MIT Due</u>	<u>MIT Done</u>
KYI0421	KYS2370005	Rush & Daisy Cable #1-1	Active	03/03/05	03/03/10	6/20/12

11. Therefore, the Respondent is in violation of 40 C.F.R. § 146.8, the UIC permit and the SDWA for failure to timely demonstrate the mechanical integrity of the active permitted Subject Well shown above.

12. Part I, Section C, Paragraph 2, of the UIC permit, requires the permittee to weekly monitor the injection and annulus pressures at the wellhead, the flow rate and to monthly monitor the cumulative volume of the injected fluid. Part I, Section D, Paragraph 2, contains the requirement to submit the results of all monitoring to the EPA by January 28 of the subsequent year.

13. Based on the EPA's records, monitoring reports for the following active permitted Subject Well were overdue as shown below.

<u>Permit No.</u>	<u>EPA ID No.</u>	<u>Well</u>	<u>Last Monitoring Report</u>	<u>Next Report</u>
KYI0421	KYS2370005	Rush & Daisy Cable #1-1	Year 1999	Year 2012

14. Therefore, the Respondent is in violation of 40 C.F.R. § 144.51(a), the UIC permit and the SDWA for failure to submit annual monitoring reports for the active permitted Subject Well shown above.

15. On March 12, 2012, Respondent participated in a show cause hearing with representatives of the EPA to discuss his violations of the SDWA and the implementing regulations.

STIPULATIONS AND FINDINGS

16. Respondent admits the jurisdictional allegations and facts and findings of violations 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.

17. Complainant and Respondent have conferred for the purpose of settlement, pursuant to 40 C.F.R. § 22.18, and desire to resolve this matter and settle the violations described herein without resorting 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 C.F.R. § 22.13(b), this CA/FO will simultaneously commence and conclude this matter.

PENALTY

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

18. Respondent shall pay a civil penalty of **\$8,550 (eight thousand five hundred fifty dollars)** in accordance with the terms set forth below.

19. Within 60 days of receipt of a fully-executed copy of this CA/FO, Respondent shall submit a cashiers or certified check in the amount of **\$8,550 (eight thousand five hundred fifty dollars)**. The penalty payment as set forth shall be made 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.

20. 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 UIC Section
U. S. EPA - Region 4
61 Forsyth Street SW
Atlanta, GA 30303-8960

21. Pursuant to Section 1423(2)(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. Additionally, pursuant to 40 C.F.R. Part 13 and 31 U.S.C. § 3717 et seq., if the 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, the EPA shall assess an administrative fee of \$15 for each subsequent 30 day period. The EPA shall assess, on a monthly basis, a 6% per annum penalty on any principal amount not paid within 90 days of the due date.

Richmond, Kentucky 40475-9401
859-544-0630 or 859-623-0407

For EPA:

Wilda Cobb, Associate Regional Counsel
U.S. EPA - Region 4
61 Forsyth Street SW
Atlanta, GA 30303-8960
404-562-9530

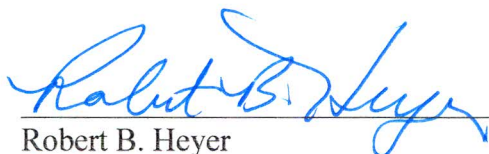
GENERAL PROVISIONS

23. 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.
24. 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 there under. 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 there under, 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 Respondents liability for federal civil penalties for the violations and facts stipulated herein.
25. 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.
26. The parties acknowledge and agree that final approval by the 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.
27. Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the Respondent may have with respect to any issue of fact or law set forth in this CA/FO, including, but not limited to, any right of judicial review of this CA/FO under the Administrative Procedure Act 5 U.S.C. §§ 701-706.
28. Each party shall bear its own costs and attorneys fees in connection with this action.
29. This CA/FO shall become effective upon the date that it is filed with the Regional Hearing Clerk.

30. 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 4/18/13



Robert B. Heyer
Mullpo Carbons, LLC

COMPLAINANT

Date 6/10/13



James D. Giattina, Director
Water Protection Division

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: June 11, 2013

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 Mullpo Carbons, LLC; Docket No. SDWA-04-2013-1004(b), on the parties listed below in the manner indicated:

Carol Chen

Via EPA Internal Mail

Wilda Cobb

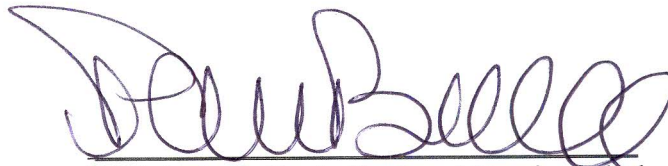
Via EPA Internal Mail

**Robert B. Heyer
Mullpo Carbons, LLC
630 Jacks Creek Road
Richmond, Kentucky 40475-9401**

Via Certified Mail/ Return Receipt Requested

Date:

6-11-13



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