



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

JUL 19 2012

CERTIFIED MAIL 7010 1060 0002 1703 0925
RETURN RECEIPT REQUESTED

John Vogler
P. O. Box 319
Greenville, Kentucky 42345

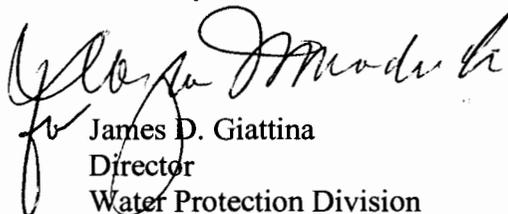
Re: Consent Agreement and Final Order (CA/FO)
Docket No. SDWA-04-2012-1003(b)

Dear Mr. Vogler:

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 Mr. W. Scott Hoskins, Underground Injection Control Enforcement, at (404) 562-9299.

Sincerely,


for James D. Giattina
Director
Water Protection Division

Enclosure

cc: Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF

John Vogler
P.O. Box 319
Greenville, Kentucky 42345

Respondent

Consent Agreement and Final Order

Docket No. SDWA-04-2012-1003(b)

RECEIVED
EPA REGION IV
2012 JUL 19 AM 7:22
HEARING CLERK

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 John Vogler (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 Illinois and doing business in the Commonwealth of Kentucky, with a business address of P.O. Box 319, Greenville, Kentucky 42345.
5. Respondent is a "person" as that term is defined in Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12) and 40 C.F.R. § 144.3.
6. Respondent owns and/or operates the following Class II underground injection well (Subject Well).

<u>Permit No.</u>	<u>EPA ID No.</u>	<u>Well</u>	<u>County</u>	<u>Status</u>
KYA0659	KYS1770185	Richard Bivins #5	Muhlenberg	Active

7. The Subject Well is a "facility" as that term is defined in 40 C.F.R. § 144.3, and is subject to the requirements of the SDWA and the UIC regulations.

8. The Subject Well is permitted in accordance with 40 C.F.R. § 144.31.
9. The SDWA, 42 U.S.C. § 300f, et seq., and 40 C.F.R. § 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. 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.
11. The mechanical integrity demonstration for the following Subject Well was performed late, as shown below.

<u>Permit No.</u>	<u>EPA ID No.</u>	<u>Well</u>	<u>MIT Due</u>	<u>MIT Done</u>
KYA0659	KYS1770185	Richard Bivins #5	3/16/08	5/5/2010

12. Therefore, 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.

13. Part I, Section C, Paragraph 1(b) (i), of the UIC permit, requires that a maximum injection pressure, measured at the wellhead, shall not exceed 425 pounds per square inch (psig) for the Subject Well. Field inspections show that the Subject Well was actively injecting at 1200 psig during one inspection and 1290 psig through the tubing at the wellhead during a second inspection. The inspections were performed on September 14, 2006 and June 15, 2011 on the Subject Well as shown below:

<u>Permit No.</u>	<u>EPA ID No.</u>	<u>Well</u>	<u>Tubing Pressure on September 14, 2006</u>	<u>Tubing Pressure on June 15, 2011</u>
KYA0659	KYS1770185	Richard Bivins #5	1200 psig	1290 psig

14. Therefore, Respondent is in violation of 40 C.F.R. §144.51(a), its permit and the SDWA for exceeding the maximum allowable injection pressure for the Subject Well.

15. On December 1, 2011, Respondent participated in a show cause hearing with EPA representatives to discuss its violation of the SDWA and the implementing regulations.

STIPULATIONS AND FINDINGS

16. 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.

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 AND INJUNCTIVE RELIEF

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 **\$6,053.34 (six thousand fifty three and 34/100 dollars)**. Based on Respondent’s alleged inability to pay the full penalty, EPA agreed to allow the Respondent to pay the full penalty amount in quarterly payments in accordance with the terms set forth below.

19. Respondent shall submit a cashiers or certified check for each penalty payment.

Payment 1	\$1008.89	Received within 90 days of effective date of this Order.
Payment 2	\$1008.89	Received within 180 days of effective date of this Order
Payment 3	\$1008.89	Received within 270 days of effective date of this Order.
Payment 4	\$1008.89	Received within 360 days of effective date of this Order.
Payment 5	\$1008.89	Received within 450 days of effective date of this Order.
Payment 6	\$1008.89	Received within 540 days of effective date of this Order.

<u>Payment</u>	<u>Payment Amount</u>	<u>Principal</u>	<u>Interest</u>	<u>Balance</u>
1	\$1,008.89	\$993.72	\$15.17	\$5,006.28
2	\$1,008.89	\$996.24	\$12.65	\$4,010.04
3	\$1,008.89	\$998.64	\$10.25	\$3,011.40
4	\$1,008.89	\$1,001.19	\$7.70	\$2,010.21
5	\$1,008.89	\$1,003.86	\$5.03	\$1,006.35
6	\$1,008.89	\$1,006.35	\$2.54	\$0.00
Total:	\$6,053.34	\$6,000.00	\$53.34	

20. 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.

21. 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

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 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 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 shall assess an administrative fee of \$15 for each subsequent 30 day period. 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.

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

- a. Respondent is ordered to provide advance notification and successfully demonstrate the mechanical integrity or close, plug, and abandon the following well within 90 days of receipt of this Order. Mechanical integrity testing or plugging and abandonment must be witnessed by an authorized EPA inspector.

<u>Permit No.</u>	<u>EPA ID No.</u>	<u>Well</u>
KYA0659	KYS1770185	Richard Bivins #5

24. Respondent agrees to pay stipulated civil penalties for violation of the conditions set forth in Paragraph 23 above as follows:

25. For failure to comply with the condition described in paragraph 24 above, Respondent shall pay a stipulated civil penalty according to the following schedule.

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

26. Stipulated penalties shall become due and payable no later than 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
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

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.

33. 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.

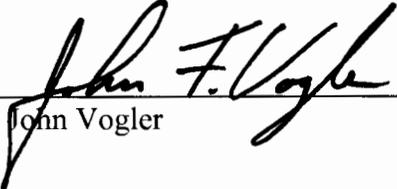
34. The parties acknowledge and agree that final approval by EPA of this CA/FO is subject to 40 C.F.R. § 22.45(c)(4) which sets forth requirements under which a person not a party to this proceeding may petition to set aside a consent agreement and final order on the basis that material evidence was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

35. 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.

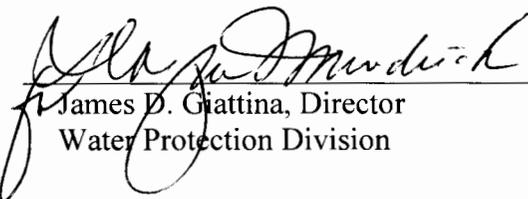
36. This CA/FO shall become effective upon the date that it is filed with the Regional Hearing Clerk.

37. 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: 4/18/12 
John Vogler

COMPLAINANT

Date: 6/25/12 
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: July 2, 2012

Susan B. Schub
Susan Schub
Regional Judicial Officer

