



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

MAR 29 2011

CERTIFIED MAIL 7007 2680 0000 9621 2659
RETURN RECEIPT REQUESTED

Louis Robertson, Jr.
Robertson Farms
757 Leachman School House Road
Calhoun, Kentucky 42327

Re: Consent Agreement and Final Order (CA/FO)
Docket No. SDWA-04-2011-1011(b)

Dear Mr. Robertson:

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

IN THE MATTER OF

Louis H. Robertson, Jr.
757 Leachman School House Road
Calhoun, Kentucky 42327

Respondent

Consent Agreement and Final Order

Docket No. SDWA-04-2011-1011(b)

RECEIVED
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EPA REGION 4

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 ("CA/FO") with Louis H. Robertson, Jr. (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 an individual doing business in the Commonwealth of Kentucky, with a business address of 757 Leachman School House Road, Calhoun, Kentucky 42327
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 rule-authorized Class II underground injection wells (subject well/s). These wells were in existence on June 25, 1984, the effective date of the UIC program in Kentucky.

| <u>EPA ID No.</u> | <u>Well</u> | <u>Status</u> | <u>County</u> |
|-------------------|----------------------|---------------|---------------|
| KYS1490014 | Louis Robertson #1 | Active | McLean |
| KYS1490013 | Louis Robertson #2-W | Active | McLean |

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 SDWA, 42 U.S.C. §300f, et seq., and 40 CFR §144.28(a) require the owner or operator of a rule-authorized underground injection well to comply with all applicable requirements. Any noncompliance constitutes a violation of the SDWA and is grounds for an enforcement action.

9. Requirements found at 40 CFR §144.28(g)(2)(iv), state that a demonstration of mechanical integrity, pursuant to §146.8, shall occur at least once every five years for active wells, and that the owner or operator shall notify EPA at least thirty (30) days prior to such demonstration. EPA's records do not reflect that advance notification was provided by the Respondent, and the mechanical integrity demonstration requirements for the following active subject wells were performed late, as shown below.

| <u>EPA ID No.</u> | <u>Well</u> | <u>MIT Due</u> | <u>MIT Done</u> |
|-------------------|----------------------|----------------|-----------------|
| KYS1490014 | Louis Robertson #1 | 5/21/06 | 11/9/10 |
| KYS1490013 | Louis Robertson #2-W | 3/13/07 | 11/9/10 |

10. Therefore, Respondent violated 40 CFR §144.28(g)(2)(iv)(A) and the SDWA by failing to provide advance notification and failing to timely demonstrate the mechanical integrity of the active subject wells.

11. On December 9, 2010, Respondent participated in a show cause hearing with EPA representatives to discuss his violations, the SDWA, and the implementing regulations.

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

STIPULATIONS AND FINDINGS

13. 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.

14. 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 CAFO 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:

15. Respondent shall pay a civil penalty of **\$1,500 (One Thousand Five Hundred Dollars)** in accordance with the terms set forth below.

16. Within sixty (60) days of receipt of a fully-executed copy of this CAFO, Respondent shall submit a cashiers or certified check in the amount of **\$1,500 (One Thousand Five Hundred 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

17. Respondent shall note the title and docket number of the case on the penalty payment certified or cashiers check.

18. 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

19. 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 CAFO 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.

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

For Respondent: Louis H. Robertson, Jr.
757 Leachman School House Road
Calhoun, Kentucky 42327
270-499-0458

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

GENERAL PROVISIONS

21. 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.

22. 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.

23. 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.

24. 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.

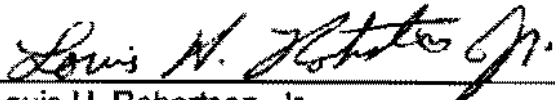
25. Each party shall bear its own costs and attorneys fees in connection with this action.

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

27. 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: 1-25-11



Louis H. Robertson, Jr.

COMPLAINANT

Date: 3/21/11



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: March 24, 2011

Susan B. Schub
Susan Schub
Regional Judicial Officer

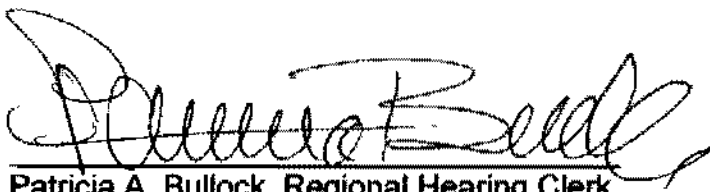
CERTIFICATE OF SERVICE

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 Louis H. Robertson, Jr.; Docket No. SDWA-04-2011-1011(b), on the parties listed below in the manner indicated:

Carol Chen Via EPA Internal Mail

Wilda Cobb Via EPA Internal Mail

Louis H. Robertson, Jr. Via Certified Mail/ Return Receipt
757 Leachman School House Road Requested
Calhoun, Kentucky 42327

Date: 3-29-11 
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