



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

OCT 24 2013

CERTIFIED MAIL 7010 1060 0002 1704 9675
RETURN RECEIPT REQUESTED

Mr. Douglas A. Wagner
9990 Monroe Drive, Suite 212
Dallas, Texas 75220-1421

Re: Consent Agreement and Final Order (CA/FO)
Docket No. SDWA-04-2013-1005(b)

Dear Mr. Wagner:

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 "James D. 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 OCT 24 PM 3:51
HEARING CLERK

IN THE MATTER OF

Douglas A. Wagner
9990 Monroe Drive, Suite 212
Dallas, Texas 75220-1421

Respondent

Consent Agreement and Final Order

Docket No. SDWA-04-2013-1005(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 Douglas A. Wagner (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 his 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 Kentucky and doing business in the Commonwealth of Kentucky, with a business address of 9990 Monroe Drive, Suite 212, Dallas, Texas 75220-1421.
5. Respondent is the owner and/or operator of the following Class II underground injection well that is subject to this Order.

<u>EPA ID No.</u>	<u>Well</u>	<u>Status</u>	<u>County</u>	<u>Latitude/Longitude</u>
KYS0650124	Wagner Farm	Active	Estill	37.73112/-83.76787

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

7. On September 27, 2012, the EPA-authorized UIC field inspector discovered the Subject Well, which was concealed beneath a bucket, actively injecting produced fluids through a flow line into the well casing.

8. A review of the EPA's UIC Program's records revealed that no permit had been issued for construction of the Subject Well, nor is the Subject Well rule-authorized.

9. 40 C.F.R. § 144.11 prohibits any underground injection or construction of an underground injection well that is not authorized by rule or by an issued permit. Any violation of a UIC regulation also constitutes a violation of the SDWA, as provided in Part C of the SDWA, 42 U.S.C. § 300h, et seq.

10. Therefore, Respondent is in violation of Part C of the SDWA, 42 U.S.C. § 300h, et seq. and 40 C.F.R. § 144.11 for unauthorized construction of an underground injection well and unauthorized underground injection.

11. On March 14, 2013, Respondent participated in a show cause hearing with representatives of the EPA to discuss these violations of the SDWA and the implementing regulations.

STIPULATIONS AND FINDINGS

12. 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.

13. 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:

14. Respondent shall pay a civil penalty of **\$5,000 (five thousand dollars)** in accordance with the terms set forth below.

15. Within 60 days of receipt of a fully-executed copy of this CA/FO, Respondent shall submit a cashier's or certified check in the amount of **\$5,000 (five thousand 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.

16. 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

17. 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.

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

For Respondent: Douglas A. Wagner
9990 Monroe Drive, Suite 212
Dallas, Texas 75220-1421
214-358-0081

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

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

- a. Within 360 days of receipt of this Order, Respondent is ordered to submit an administratively complete permit application or properly close, plug and abandon the

Subject Well according to an EPA-approved plan. Plugging and abandonment must be witnessed by an authorized EPA inspector.

<u>EPA ID No.</u>	<u>Well</u>	<u>Latitude/Longitude</u>
KYS0650124	Wagner Farm	37.73112/-83.76787

20. Respondent agrees to pay stipulated civil penalties for violation of the condition set forth in Paragraph 19 above, as follows. For failure to comply with the condition described in Paragraph 19 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.

21. Stipulated penalties shall become due and payable no later than 30 days after receipt of demand from the 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

22. A copy of the check shall be sent to:

Ground Water & UIC Section,
Safe Drinking Water Branch,
U.S. EPA - Region 4,
61 Forsyth Street, S.W.,
Atlanta, GA 30303-8960

Respondent shall state the docket number of this Order on the face of any such check. The stipulated civil penalties set forth above shall be in addition to any other remedies or sanctions which are or may be available to the EPA.

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. § 300h, 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 Respondent's liability for federal civil penalties for the violations and facts stipulated herein.

25. 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 the EPA orally within 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 the EPA within 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.

26. 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. The 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 the EPA with written notice as provided herein or for failure to provide adequate proof for the cause of the delay.

27. 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.

28. 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.

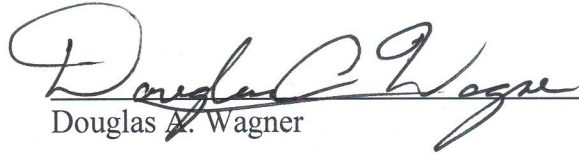
29. Each party shall bear its own costs and attorneys fees in connection with this action.

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

31. 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 7/18/13


Douglas A. Wagner

COMPLAINANT

Date 10/22/13


James D. Giattina, Director
Water Protection Division

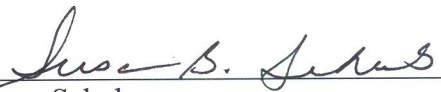


FINAL ORDER

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 OCT - 24 2013



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 Douglas A. Wagner; Docket No. SDWA-04-2013-1005(b), on the parties listed below in the manner indicated:

Carol Chen

Via EPA Internal Mail

Wilda Cobb

Via EPA Internal Mail

Douglas A. Wagner
9990 Monroe Drive, Suite 212
Dallas, Texas 75220-1421

Via Certified Mail/ Return Receipt Requested

Date

October 24, 2013



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