



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

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

JUL 05 2012

CERTIFIED MAIL 7010 1060 0002 1705 0480  
RETURN RECEIPT REQUESTED

David J. Peters  
4698 KY 719  
Sandy Hook, Kentucky 41171


Re: Consent Agreement and Final Order (CA/FO)  
Docket No. SDWA-04-2012-1008(b)

Dear Mr. Peters:

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,

  
James D. Giattina  
Director  
Water Protection Division

Enclosure

cc: Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

RECEIVED  
EPA REGION IV  
2012 JUL -5 PM 2:35  
HEARING CLERK

IN THE MATTER OF

David J. Peters  
4698 KY 719  
Sandy Hook, Kentucky 41171

Respondent

Consent Agreement and Final Order

Docket No. SDWA-04-2012-1008(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 David J. Peters (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 an individual doing business in the Commonwealth of Kentucky, with a business address of 4698 KY 719, Sandy Hook, Kentucky 41171.
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 is the owner and/or operator of the following Class II underground injection well (Subject Well). This well is a "facility" as that term is defined in 40 C.F.R. § 144.3:

<u>EPA ID No.</u>	<u>EPA Permit ApplicationNo.</u>	<u>Well</u>	<u>County</u>	<u>Status</u>
KYS0630014	KYI0751	Paul Peters #1	Elliott	Active

7. The Subject Well was not in existence on June 25, 1984, the effective date of the UIC program in Kentucky as implemented by the EPA and is not rule-authorized as that term is defined at 40 C.F.R. § 144.21(a).
8. Respondent submitted a permit application for the Subject Well, which was received by the EPA on May 17, 2001.
9. In a letter dated November 21, 2001, the EPA informed Respondent that the demonstration of financial responsibility was deemed incomplete.
10. Since the financial responsibility demonstration was deemed incomplete and Respondent failed to correct the deficiency, the permit for the Subject Well was never issued.
11. During inspections on February 17, 2011, and March 28, 2011, the EPA inspector observed produced fluids from an oil/water separator being injected into the Subject Well.
12. 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.
13. No authorization had been given for the underground injection of fluids into the Subject Well nor had a permit been issued allowing construction of the Subject Well.
14. Therefore, Respondent is in violation of Part C of the SDWA, 42 U.S.C. § 300j *et seq.*, and 40 C.F.R. § 144.11 for unauthorized construction of an injection well and unauthorized underground injection.
15. Respondent later provided the proper demonstration of financial responsibility and resources to close, plug and abandon the Subject Well, dated November 11, 2011.
16. The permit for the Subject Well was issued with an effective date of December 22, 2011.
17. On September 19, 2011, and April 3, 2012, Respondent participated in show cause hearings with representatives of the EPA to discuss violations of the SDWA and the implementing regulations.

### **STIPULATIONS AND FINDINGS**

18. 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.
19. 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 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 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:

20. Respondent shall pay a civil penalty of **\$3,000 (three thousand dollars)** in accordance with the terms set forth below.

21. 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 **\$3,000 (three 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 cashier's check.

22. 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

23. 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.

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

For Respondent: David J. Peters  
4698 KY 719  
Sandy Hook, Kentucky 41171  
606-738-6613

For EPA: Michele Wetherington, Associate Regional Counsel  
U.S. EPA - Region 4  
61 Forsyth Street SW  
Atlanta, GA 30303-8960  
404-562-9613

### **GENERAL PROVISIONS**

25. 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.

26. 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.

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 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.

**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 David J. Peters; Docket No. SDWA-04-2012-1008(b), on the parties listed below in the manner indicated:

**Carol Chen**

Via EPA Internal Mail

**Michele Wetherington**

Via EPA Internal Mail

**David J. Peters**

**4698 KY 719**

**Sandy Hook, Kentucky 41171**

Via Certified Mail/ Return Receipt

Requested

Date: \_\_\_\_\_

7-5-12



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