



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

JUL 05 2011

CERTIFIED MAIL 7007 2680 0000 9621 3076  
RETURN RECEIPT REQUESTED

Mr. Dan Miller  
Herman Loeb, LLC  
600 Country Club Road  
Lawrenceville, Illinois 62439

Subject: Consent Agreement and Final Order (CA/FO)  
Docket No. SDWA-04-2011-1006(b)

Dear Mr. Miller:

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", with a long horizontal stroke extending to the right.

James D. Giattina  
Director  
Water Protection Division

Enclosure

cc: Regional Hearing Clerk

RECEIVED  
EPA REGION IV

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF

Herman Loeb, LLC  
600 Country Club Road  
Lawrenceville, Illinois 62439

Respondent

Consent Agreement and Final Order

Docket No. SDWA-04-2011-1006(b)

RECEIVED  
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2011 JUN 05 11:13 AM  
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 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 Herman Loeb, LLC. (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 a limited liability company organized under the laws of Illinois, with a business address of 600 Country Club Road, Lawrenceville, Illinois 62439, and doing business in the Commonwealth of Kentucky.
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 Class II underground injection wells (subject wells) which are permitted in accordance with 40 CFR § 144.31.

<u>EPA ID No.</u>	<u>Permit No.</u>	<u>Well</u>	<u>Status</u>	<u>County</u>
KYS2250213	KYI0509	Taylor #1	Active	Union
KYS2250209	KYI0510	Taylor #2	Active	Union
KYS2250210	KYI0511	Taylor #8	Active	Union
KYS2250207	KYI0513	Binford #8	Active	Union
KYS2250216	KYI0514	Hagan #3	Active	Union

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 §144.51(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.

9. Part II, Section G, Paragraph 3, of the UIC permits, requires the permittee to demonstrate mechanical integrity at least once every 5 years and to notify EPA at least 30 days prior to such demonstration. Within 90 days after the date of the mechanical integrity demonstration, the permittee is required to provide EPA with the results.

10. The mechanical integrity demonstrations for the following subject active wells were performed late, or are overdue, as shown below.

<u>Permit No.</u>	<u>EPA ID No.</u>	<u>Well</u>	<u>MIT Due</u>	<u>MIT Done</u>
KYI0513	KYS2250207	Binford #8	12/06/05	10/20/10
KYI0511	KYS2250210	Taylor #8	4/29/09	10/20/10
KYI0514	KYS2250216	Hagan #3	4/29/09	Not yet

11. Therefore, Respondent violated 40 CFR §144.51 (a), its permits, and the SDWA by failing to provide advance notification and failing to timely demonstrate the mechanical integrity of the active subject wells and submit results.

12. Part II, Section F, Paragraph 3, of the UIC permits, requires that after a cessation of injection for two years, the permittee shall demonstrate the mechanical integrity or close, plug and abandon the well.

13. The following inactive subject well was not plugged and is overdue for mechanical integrity demonstration requirements as shown.

<u>Permit No.</u>	<u>EPA ID No.</u>	<u>Well</u>	<u>MIT Due</u>	<u>MIT Done</u>
KYI0510	KYS2250209	Taylor #2	9/21/08	Not yet

14. Therefore, Respondent violated 40 CFR §144.51 (a), its permit and the SDWA by failing to timely demonstrate the mechanical integrity of the subject inactive well or to close, plug and abandon the well.

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

16. Respondent was overdue on the submittal of monitoring results for the subject wells as shown below.

<u>Permit No.</u>	<u>EPA ID No.</u>	<u>Well</u>	<u>Monitoring Reports</u>	<u>Submitted</u>
KYI0513	KYS2250207	Binford #8	Years 2008, 2009	11/10/10
KYI0510	KYS2250209	Taylor #2	Years 2008, 2009	11/10/10
KYI0511	KYS2250210	Taylor #8	Years 2008, 2009	11/10/10
KYI0509	KYS2250213	Taylor #1	Years 2008, 2009	11/10/10
KYI0514	KYS2250216	Hagan #3	Years 2008, 2009	11/10/10

17. Therefore, Respondent violated 40 CFR §144.51 (a), its permits, and the SDWA by failing to timely submit monitoring results of the subject wells.

18. Part I, Section C, Paragraph 3, of the permits, requires the permittee to conduct injection fluid analysis at least once every 12 months and whenever changes are made to the injection fluid. Part I, Section D, Paragraph 2, of the permits, contains the requirement to submit the results of these injection fluid analyses by January 28 of the following year.

19. Respondent was overdue on the submittal of fluid analyses for the subject wells as shown below.

<u>Permit No.</u>	<u>EPA ID No.</u>	<u>Well</u>	<u>Previous Fluid Analysis</u>	<u>Last Fl. Anal.</u>
KYI0513	KYS2250207	Binford #8	5/31/08	11/10/10
KYI0510	KYS2250209	Taylor #2	5/31/08	11/10/10
KYI0511	KYS2250210	Taylor #8	5/31/08	11/10/10
KYI0509	KYS2250213	Taylor #1	5/31/08	11/10/10
KYI0514	KYS2250216	Hagan #3	5/31/08	11/10/10

20. Therefore, Respondent violated 40 CFR §144.51 (a), its permits, and the SDWA by failing to timely submit fluid analyses for the subject wells.

21. On November 2, 2010, Respondent participated in a show cause hearing with EPA representatives to discuss its violation, the SDWA, and the implementing regulations.

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

## STIPULATIONS AND FINDINGS

23. 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.

24. 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 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:

25. Respondent shall pay a civil penalty of **\$4,200 (Four Thousand Two Hundred Dollars)** in accordance with the terms set forth below.

26. 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 **\$4,200 (Four Thousand Two 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

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

27. 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

28. 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.

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

- a. Respondent is ordered to successfully demonstrate the mechanical integrity or close, plug, and abandon the following wells 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>
KYI0510	KYS2250209	Taylor #2
KYI0514	KYS2250216	Hagan #3

30. Respondent agrees to pay stipulated civil penalties for violation of the condition set forth in Paragraph 29 above as follows:

31. For failure to comply with the condition described in Paragraph 29 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.

32. 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

33. A copy of the check shall be sent to the Ground Water & Safe Drinking Water Act Enforcement Section, Safe Drinking Water Branch, U.S. Environmental Protection Agency, 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 EPA.

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

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

For Respondent: Dan Miller  
Herman Loeb, LLC  
600 Country Club Road  
Lawrenceville, Illinois 62439  
618-516-1276

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**

36. 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.

37. 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 Respondents liability for federal civil penalties for the violations and facts stipulated herein.

38. 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.

39. 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 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 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.

40. 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.

41. 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.

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


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

44. 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: 4-6-2011

  
\_\_\_\_\_  
Dan Miller  
Herman Loeb, LLC

**COMPLAINANT**

Date: 6/30/11

  
\_\_\_\_\_  
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: July 5, 2011

Susan Schub  
Susan Schub  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

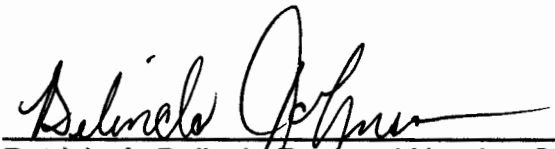
I HEREBY CERTIFY that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, in the Matter of Herman Loeb, LLC.; Docket No. SDWA-04-2011-1006(b), on the parties listed below in the manner indicated:

**Carol Chen** Via EPA Internal Mail

**Wilda Cobb** Via EPA Internal Mail

**Dan Miller** Via Certified Mail/ Return Receipt  
**Herman Loeb, LLC** Requested  
**600 Country Club Road**  
**Lawrenceville, Illinois 62439**

Date: 7/5/11

  
for 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

PUBLIC NOTICE

U.S. Environmental Protection Agency  
Region 4  
Water Protection Division  
Safe Drinking Water Branch  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960  
(404) 562-9372

Public Notice No.: SDWA-04-2011-1006(b)

Date: May 9, 2011

Notice of Proposed Issuance of  
Consent Agreement and Final Order

The U.S. Environmental Protection Agency (EPA) Region 4, intends to issue a Consent Agreement and Final Order (CA/FO) under the authority of Section 1423(c)(2) of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300h to Herman Loeb, LLC, with a business address of 600 Country Club Road, Lawrenceville, Illinois 62439, Docket No. SDWA-04-2011-1006(b), for violating the SDWA and Underground Injection Control (UIC) regulations. The CA/FO addresses violations of mechanical integrity testing requirements, monitoring reports, and fluid analyses, for its Class II injection wells in Union County, Kentucky, listed below. EPA is proposing to assess an administrative penalty in the amount of \$4,200.00. Herman Loeb, LLC, has waived the right to contest allegations set forth in the CA/FO.

<u>EPA ID No.</u>	<u>Permit No.</u>	<u>Well</u>	<u>County</u>
KYI0509	KYS2250213	Taylor #1	Union
KYI0510	KYS2250209	Taylor #2	Union
KYI0511	KYS2250210	Taylor #8	Union
KYI0513	KYS2250207	Binford #8	Union
KYI0514	KYS2250216	Hagan #3	Union

The proposed CA/FO is open to comment from the public. Persons wishing to comment upon any aspect of the proposed CA/FO are invited to submit written comments within 30 days of this notice. Comments may be submitted via e-mail on the EPA Region 4 Website by following the links at: [http://www.epa.gov/region4/water/wpeb/npdes\\_states.html#email](http://www.epa.gov/region4/water/wpeb/npdes_states.html#email). Comments may also be mailed to the U.S. Environmental Protection Agency, Region 4, Safe Drinking Water Branch, 61 Forsyth Street, S.W., Atlanta, Georgia 30303-8960, ATTENTION: Carol Chen. The Public Notice Number should be included in the first page of comments. The commenter must provide his or her name and complete mailing address. All comments received during the public notice period will be made part of the administrative record of the CA/FO and will be available for public review. After consideration of all timely written comments, the requirements and policies in the SDWA and appropriate regulations, EPA will make a final determination regarding the issuance of a CA/FO.

Any person who commented will receive a copy of the proposed CA/FO. Within 30 days of receipt of the CA/FO, a commenter may petition the Regional Administrator to set aside the proposed CA/FO on the basis that material evidence was not considered. Copies of the petition shall be served to the parties. Unless a petition is filed, a CA/FO becomes effective 10 days after the close of comment period.

The administrative record, including the draft CA/FO and comments received, is available for review and copying at 61 Forsyth Street, S.W., Atlanta, Georgia 30303-8960, between the hours of 8:15 a.m. and 4:30 p.m., Monday through Friday. Copies will be provided at a cost of 20 cents per page.