



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

SEP 17 2007

CERTIFIED MAIL 7007 0710 0004 9555 3229
RETURN RECEIPT REQUESTED

Wilhelm Lilliehook
Kelcas Well Services, LTD
729 Maple Heights Avenue
Owensboro, Kentucky 42303

SUBJ: Consent Agreement and Final Order
Docket No. SDWA-04-2007-1022(b)

Dear Mr. Lilliehook:

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 is effective immediately. Please make note of the provisions under "PENALTY AND INJUNCTIVE RELIEF" with respect to payments and stipulated penalties.

Thank you for your cooperation in settling this matter. Should you have any questions or concerns please contact Amanda Driskell at (404) 562-9735.

Sincerely,


James D. Giattina
Director
Water Management Division

Enclosure

cc: Kentucky Environmental and Public Protection
Cabinet Division of Enforcement

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF

Kelcas Well Services, Ltd.
729 Maple Heights Avenue
Owensboro, KY 42304
Respondent

Consent Agreement
and
Final Order

Docket No. SDWA-04-2007-1022(b)

RECEIVED
EPA REGION IV
HEARING CLERK

2007 SEP 17 PM 4:39

CONSENT AGREEMENT

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") 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 Kelcas Well Services, Ltd. ("Respondent").

ALLEGATIONS

The parties hereby stipulate and find as follows:

1. Respondent is a limited company organized under the laws of Delaware with a principal place of business in Owensboro, Kentucky. The date of organization is August 28, 1990, and Wilhelm Lilliehook is listed as its President.

2. 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.

3. Respondent owns and/or operates the following injection well:

<u>EPA ID No.</u>	<u>Well</u>	<u>Status</u>
KYS1010173	Sellars #7	Plugged and Abandoned

4. This well constitutes a "facility" as that term is defined in 40 CFR § 144.3.

5. Therefore Respondent is subject to the jurisdiction of the SDWA and its implementing regulations.

6. The injection well subject to this action was in existence upon the effective date of the Underground Injection Control (“UIC”) program in Kentucky (June 25, 1984), and is, therefore, rule authorized.

7. The following facts and violations are alleged:

a. VIOLATION 1:

- (1) 40 CFR § 144.28(c)(2)(iv) requires that, after a cessation of operation of two (2) years, the owner or operator of a rule-authorized well shall plug and abandon the well in accordance with an EPA-approved plugging and abandonment plan unless owner/operator provides notice to the Regional Administrator and describes actions or procedures, satisfactory to the Regional Administrator, that the owner or operator will take to ensure that the well will not endanger underground sources of drinking water (“USDW”) during the period of temporary abandonment. These actions and procedures shall include compliance with the technical requirements applicable to active injection wells unless waived by the Regional Administrator.
- (2) On November 22, 2006, EPA sent to the Respondent an Information Request pursuant to Section 1445 of the SDWA, 42 U.S.C. § 300j-4. During review of the response to that request, EPA discovered that the subject injection well had been temporarily abandoned.
- (3) Respondent’s injection well has not been operated for a period exceeding two (2) years and the last demonstration of mechanical integrity was December 2, 2003.
- (4) On February 21, 2007, a mechanical integrity test (“MIT”) was conducted on the subject injection well. The MIT failed. On April 24, 2007, EPA sent a letter to Respondent in notification of the failure. The Respondent was given thirty (30) days from receipt of the letter to plug and abandon or remediate and retest the well.
- (5) Respondent is in violation of 40 CFR § 144.28(c)(2)(iv) for failing to timely plug and abandon the well in accordance with an EPA-approved plugging and abandonment plan or demonstrate the mechanical integrity of the well after a cessation of operation for two (2) years.

8. On April 6, 2007, and April 20, 2007, EPA conducted Show Cause meetings with the Respondent to discuss the violation.

9. On May 15, 2007, Respondent plugged and abandoned the subject injection well in accordance with an EPA-approved plan.

STIPULATIONS AND FINDINGS

10. 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.

11. 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 violation[s] 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, the parties hereby agree and consent to entry of the following order:

12. Respondent shall pay a civil penalty of two thousand and five hundred dollars (\$2500) in accordance with the terms set forth below.

13. Respondent shall pay the penalty amount in two (2) installments, according to the instructions in Paragraph 16 below. The first installment of two thousand dollars (\$2000) shall be paid within 390 days of Respondent's receipt of a fully-executed copy of this CA/FO. The second installment in the amount of five hundred dollars (\$500) shall be paid within 480 days of Respondent's receipt of a fully-executed copy of this CA/FO.

14. Pursuant to Section 1423(c)(7) of the Act, 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.

15. Pursuant to 40 CFR 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 will assess a late-payment handling charge of \$15, with an additional delinquent notice charge of \$15 for each subsequent thirty (30) day period. EPA will also assess on a monthly basis a six per cent (6%) per annum penalty on any principal amount not paid within ninety (90) days of the due date.

16. Respondent shall make payments to EPA by sending a certified or cashier's check payable to the "Treasurer, United States of America" at the following address:

U.S. Environmental Protection Agency
Cincinnati Accounting Operations
Mellon Lockbox 371099M
Pittsburgh, PA 15251-7099

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

17. Respondent shall submit copies of the check to the following persons:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 4
61 Forsyth Street SW
Atlanta, GA 30303-8960

Ms. Mary E. Halback
Central Enforcement Section
U.S. Environmental Protection Agency
Region 4
61 Forsyth Street SW
Atlanta, GA 30303-8960

18. Respondent agrees to pay stipulated civil penalties for violation of the conditions set forth in Paragraphs 12 through 17 above as follows:

a. For failure to comply with each condition described in Paragraphs 12 through 17 above, Respondent shall pay a stipulated civil penalty according to the following schedule:

- (1) \$300 for any portion of the first seven calendar days any failure continues; and
- (2) \$200 per day for each day following the first seven calendar days that the failure continues.

19. Stipulated penalties shall become due and payable no later than thirty (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
Cincinnati Accounting Operations
Mellon Lockbox 371099M
Pittsburgh, PA 15251-7099

A copy of the check shall be sent to the Central Enforcement Section, Water Programs Enforcement Branch, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303-8960. Respondent shall state the docket number of this CA/FO 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.

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

For Respondent:	Wilhelm Lilliehook Kelcas Well Services, Ltd. 729 Maple Heights Avenue Owensboro, KY 42303 270-683-1322
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For EPA:	Zylpha Pryor Associate Regional Counsel U.S. EPA 61 Forsyth Street, S.W. Atlanta, GA 30303 404-562-9535
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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. Nothing contained herein shall be construed to prevent or limit EPA's rights to

obtain penalties or injunctive relief under Section 1423 of the SDWA or other federal statutes and regulations with the exception that EPA will not bring a future civil action against Respondent for the specific claims alleged in this matter.

23. 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 violations of law. Full payment of the penalty agreed to in this CA/FO resolves only Respondent's liability for federal civil penalties for the violations and facts stipulated herein.

24. For the purposes of state and federal income taxation, Respondent shall not be entitled 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.

25. If any event beyond the control of Respondent, its/their 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 four (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 ten (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. 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 of the cause of the delay.

27. The parties acknowledge and agree that final approval by EPA of this CA/FO is subject to 40 CFR 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.

28. Each party shall bear its own costs and attorney's fees in connection with this action.

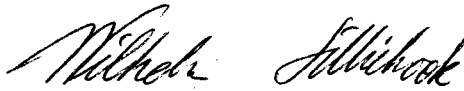
29. If the parties mutually agree to modify the CA/FO, any such modification shall be in writing and signed by the parties, with the written approval of the Regional Judicial Officer.

30. This CA/FO shall become effective upon the date of signature by the Regional Judicial Officer.

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

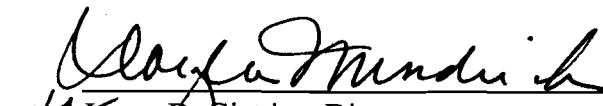
Date: 8/2/07



Wilhelm Lilliehook, President
Kelcas Well Services, Ltd.

COMPLAINANT

Date: 9/17/07

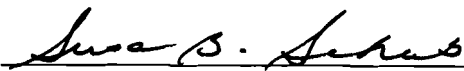


James D. Giattina, Director
Water Management Division

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 AGENCYDate: 9/17/07



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: Kelcas Well Services, Ltd.; Docket Number SDWA-04-2007-1022(b), on the parties listed below in the manner indicated:

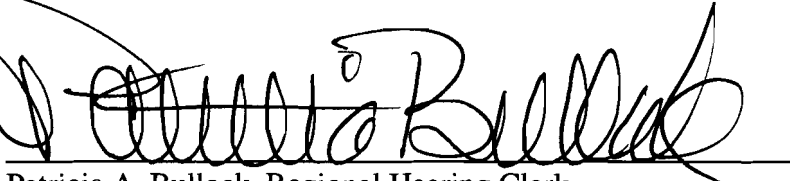
Amanda Driskell, Enforcement Officer (Via EPA internal Mail)

Zylpha Pryor, OWLS Attorney (Via EPA internal Mail)

Wilhelm Lilliehook (Via Certified Mail - Return Receipt Requested)
Kelcas Well Services, Ltd.
729 Maple Heights Avenue
Owensboro, KY 42306

Date:

9-17-07



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960
(404) 562-9511

244

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETED BY THE ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Amanda Driskell (Name) 09/10/07 (Date)

in the WPEB (Office) at (404) 562-9735 (Telephone Number)

Non-SF Judicial Order/Consent Decree USAO COLLECTS

Administrative Order/Consent Agreement FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree DOJ COLLECTS

Oversight Billing - Cost Package required: Sent with bill

Other Receivable

Not sent with bill

This is an original debt

Oversight Billing - Cost Package not required

This is a modification

PAYEE: Kelcas Well Services, Ltd (Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 2500 (If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: SDWA-04-2007-1022(b)

The Site Specific Superfund Account Number:

The Designated Regional/Headquarters Program Office: WPEB

TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number is: Date

If you have any questions, please call: Peggy Whitney of the Financial Management Section at: (404) 562-8238.

DISTRIBUTION:

A. JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the FINAL JUDICIAL ORDER should be mailed to:

- 1. Debt Tracking Officer Environmental Enforcement Section Department of Justice RM 1647 P.O. Box 7611, Benjamin Franklin Station Washington, D.C. 20044
2. Originating Office (EAD)
3. Designated Program Office

B. ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- 1. Originating Office
2. Regional Hearing Clerk
3. Designated Program Office
4. Regional Counsel (EAD)

**EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM
PROGRAM SPECIFIC INFORMATION
PROGRAM: _____**

Case Docket Control Number: SDWA-04-2007-1022(b)

Total Amount Due: \$2500

 Full payment due 30 days after issuance date of _____

 X **Installment payments to be paid:**

Amount Due:

Date Due:

\$ 2000

390 days of Receipt of CA/FO

\$ 500

480 days of Receipt of CA/FO

\$ _____

\$ _____
