

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6

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In the Matter of

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Docket No. SDWA-06-2010-104
CONSENT AGREEMENT
AND
FINAL ORDER

LBG Operating Company
Ponca City, Oklahoma,
Respondent

Proceedings under Section
1423(c) of the Safe Drinking
Water Act, 42 U.S.C. § 300h-2(c)

REGIONAL HEARING CLERK
EPA REGION VI

2011 MAR -1 AM 10:00
REGIONAL HEARING CLERK
EPA REGION VI

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I. STATUTORY AUTHORITY

This Consent Agreement and final Order (“CAFO”) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) pursuant to Section 1423, 42 U.S.C. § 300h-2, of the Safe Drinking Water Act (“Act”). This CAFO is issued in accordance with 40 C.F.R. § 22.18, as set forth in the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits,” 40 C.F.R. §§ 22.1 through 22.52.

II. CONSENT AGREEMENT

1. EPA and LBG Operating Company (“Respondent”) (collectively, “Parties”) agree that settlement of this matter without litigation will save time and resources, that it is in the public interest, and that the entry of this CAFO is the most appropriate means of resolving this matter. Compliance with all terms of this CAFO resolves only those violations alleged by EPA in the administrative complaint issued on June 15, 2010.

2. Respondent admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in the complaint or this CAFO. This CAFO states a claim upon which relief may be granted.

3. Respondent expressly waives any right to a hearing regarding penalty assessment or any other issue of law or fact relevant to this proceeding. Respondent further waives all defenses which have been or could have been raised to the claims set out in the previously issued complaint and waives the right to judicial review of this administrative penalty assessment.

4. Before the taking of any testimony and without adjudication of any issue of law or fact, the Parties agree to the terms of this CAFO and to its issuance. Respondent consents to the assessment and payment of a civil penalty in the amount and by the method stated below.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

5. At all times relevant to the violations alleged in the complaint and herein (“relevant time period”), Respondent was a company authorized to do business in the State of Oklahoma, and, as such, is a “person” within the meaning of Section 1401(12) of the Act, 42 U.S.C. § 300f(12).

6. During the relevant time period, Respondent owned or operated an “injection well” which is a “Class II well” which is a “new Class II well” as those terms are defined at 40 C.F.R. § 147.2902. Respondent’s injection well is identified as well number 8 (“Well No. 8”) and by EPA inventory number OS5181. Well No. 8 is located in the Northeast Quarter of Section 28, Township 25 North, Range 6 East, Naval Reserve Field, Osage County, Oklahoma.

7. Regulations at 40 C.F.R. § 147.2916 require the owner or operator of a new Class II injection well to comply with the requirements of 40 C.F.R. §§ 147.2903, 147.2907, and 147.2918 through 147.2928.

8. Well No. 8 is authorized by a permit issued in accordance with 40 C.F.R. § 147.2916.

9. Because Respondent owned or operated an injection well on the Osage Mineral Reserve, Respondent is subject to underground injection control program requirements set forth at 40 C.F.R. Part 147, Subpart GGG.

10. On June 15, 2010, EPA issued an administrative complaint against Respondent pursuant to Section 1423(c) of the Act, 42 U.S.C. § 300h-2(c), setting forth findings of fact and conclusions of law, hereby incorporated by reference, and proposing to assess a civil penalty against Respondent. The complaint provided notice of Respondent's opportunity to request a hearing on the proposed administrative penalty assessment.

11. The complaint alleges that Respondent injected unauthorized wastes into Well No. 8.

IV. PENALTY ORDER

12. Based on the foregoing stipulations, EPA Region 6, having taken into account the factors used for assessment of civil penalties found in Section 1423(c) of the Act, 42 U.S.C. § 300h-2(c), hereby orders, and Respondent agrees, that Respondent shall pay to the United States a civil penalty in the amount of five thousand dollars (\$5,000.00) plus interest to settle the violations alleged in the complaint.

13. Payments shall be made in accordance with the schedule in the table below with the first payment being made on February 1, 2011.

Payment	Date Due	Payment Amount	Principal	Interest	Cumulative Principal	Cumulative Interest	Principal Balance
1	February 1, 2011	\$418.93	\$414.76	\$4.17	\$414.76	\$4.17	\$4,585.24
2	March 1, 2011	418.93	415.11	3.82	829.87	7.99	4,170.13
3	April 1, 2011	418.93	415.45	3.48	1,245.32	11.47	3,754.68
4	May 1, 2011	418.93	415.80	3.13	1,661.12	14.60	3,338.88
5	June 1, 2011	418.93	416.15	2.78	2,077.27	17.38	2,922.73
6	July 1, 2011	418.93	416.49	2.44	2,493.76	19.82	2,506.24
7	August 1, 2011	418.93	416.84	2.09	2,910.60	21.91	2,089.40
8	September 1, 2011	418.93	417.19	1.74	3,327.79	23.65	1,672.21
9	October 1, 2011	418.93	417.54	1.39	3,745.33	25.04	1,254.67
10	November 1, 2011	418.93	417.88	1.05	4,163.21	26.09	836.79
11	December 1, 2011	418.93	418.23	0.70	4,581.44	26.79	418.56
12	January 1, 2012	*418.91	*418.56	0.35	5,000.00	27.14	0.00

*The final payment has been adjusted to account for payments having been rounded to the nearest cent.

14. Each payment shall be made by one of the following methods:

a. By mailing a bank check, cashier's check, or certified check payable to "Treasurer, United States," to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

b. By wire transfer to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

c. By overnight mail (Express, FedEx, DHL, etc.) to:

U.S. Bank
1005 Convention Plaza
SL-MO-C2GL
St. Louis, MO 63101
Phone: 314-418-4087

- d. By credit card payments to <https://www.pay.gov/paygov/>

(Insert sfo1.1 in the search field)

“In the Matter of LBG Operating Company, Docket No. SDWA-06-2010-1104” should be clearly marked on each check or other payment method. Your adherence to these procedures will ensure proper credit is given when payment is received.

15. Respondent shall send simultaneous notices of each payment, including a copy of each check or instrument of payment, to each of the following:

- a. Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

- b. Chief, Water Legal Branch (6RC-EW)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

16. If the United States does not receive payment within the thirty (30) days from the due date specified above, interest will accrue on the amount due from the due date at the current annual rate prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletin, per annum, through the date of payment. Late payments and final payments shall include all accrued interest or penalties.

17. If all or part of a payment is overdue, EPA will impose a late-payment handling charge of fifteen dollars (\$15.00), with an additional delinquent notice charge of fifteen dollars (\$15.00) for each subsequent thirty (30) day period. EPA will also apply a six percent (6%) per annum penalty on any principal amount not paid within ninety (90) days of the due date. Penalties under other federal statutes for failure to make timely payment may also apply.

18. Failure by Respondent to pay the penalty assessed according to the terms of this CAFO in full, by its due date, may subject Respondent to a civil action to collect the assessed penalty and any accrued interest or penalties.

19. In the event a collection action is necessary, Respondent shall pay, in addition to any applicable penalty, fees and interest described herein, all reasonable costs and expenses, including legal expenses and court costs, incurred by the United States for enforcement and collection proceedings for non-payment of the amounts agreed hereunder. In any such collection action, the validity, amount, and appropriateness of the penalty, and the terms of this CAFO, shall not be subject to review.

V. GENERAL PROVISIONS

20. To execute this Agreement, Respondent shall execute and forward a copy of this CAFO, with original signature, to:

Mr. Tucker Henson
Office of Regional Counsel (6RC-EW)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

21. Issuance of this CAFO does not relieve Respondent from responsibility to comply with all requirements of the Act and the requirements of any permits issued thereunder, nor does it constitute a waiver by EPA of its right to enforce compliance with the requirements of any applicable permits or other requirements of the Act by actions under the authority of the Act, except as to any requirement to pay any penalty or perform any corrective action not described herein for the violation alleged in the Complaint.

22. The provisions of this CAFO shall be binding upon Respondent, its officers, directors, managers, agents, representatives, employees, successors and assignees.

23. Each undersigned representative of the Parties to this agreement certifies that he or she is fully authorized by the party represented to enter into the terms of this agreement and legally bind that party to it.

In recognition and acceptance of the foregoing:



For LBG Operating Company

1/24/2011

Date



John Blevins
Director
Compliance Assurance and
Enforcement Division

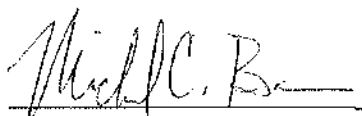
2/15/2011

Date

FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This CAFO shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO shall resolve only those causes of action alleged in the Complaint. Nothing in this CAFO shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers', agents', servants', employees', successors', or assigns') obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations subject to this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the CAFO. This CAFO shall become effective upon the issuance date specified below pursuant to Section 1423(c) of the Safe Drinking Water Act.

Issuance Date: February 24, 2011


Regional Judicial Officer
EPA, Region 6

CERTIFICATE OF SERVICE

I hereby certify that on the 1 day of March, 2011, the original of the foregoing CAFO was hand-delivered to the Regional Hearing Clerk (6RC-D), EPA Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and that true and correct copies were placed in the United States mail, first class, postage prepaid, addressed to each of the following:

Copy by certified mail
return receipt requested:

Mr. George W. Pease, III
LBG Operating Company
P.O. Box 987
Ponca City, OK 74602

Copy:

Bureau of Indian Affairs, Osage Agency
P.O. Box 1539
Pawhuska, OK 74056

Osage Nation Environmental and
Natural Resources Department
P.O. Box 1495
Pawhuska, OK 74056

Copy hand-delivered:

Tucker Henson, Esq.
Office of Regional Counsel
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Date:

March 1, 2011

Jackie Allen