



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

SEP 20 2016

CERTIFIED MAIL 7011 3500 0003 2064 0666
RETURN RECEIPT REQUESTED

Mr. John Lahman, Power of Attorney
for John A. Clendening and
Cleo D. Clendening Revocable Family Trust
509 Ozark Trail
Madison, Wisconsin 53705

Re: Consent Agreement and Final Order (CA/FO) Docket No. SDWA-04-2016-1022(b)
John Clendening

Dear Mr. Lahman:

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 Mr. Tony Shelton, Underground Injection Control Enforcement Officer at (404) 562-9636.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Giattina".

James D. Giattina
Director
Water Protection Division

Enclosure

cc: Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

HEARING CLERK

2016 SEP 20 PM 4: 10

USEPA, REGION 4
OFFICE OF REGIONAL
COUNSEL

IN THE MATTER OF

John Clendening,
1031 Saint Johns Drive
Maryville, Tennessee 37801

Respondent

Consent Agreement and Final Order

Docket No. SDWA-04-2016-1022(b)

I. STATUTORY AUTHORITY

1. This is a civil proceeding pursuant to Section 1423 of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300h-2, and 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* specifically Subpart I, published at 64 Fed. Reg. 40138 (July 23, 1999), codified at 40 Code of Federal Regulations (C.F.R.) Part 22 (Part 22). The authority to take action under Section 1423 of the SDWA, is delegated to the Administrator of the U.S. Environmental Protection Agency (EPA). The Administrator has delegated this authority to the Regional Administrator, Region 4, who in turn has delegated this authority to the Director of the Water Protection Division, of the EPA Region 4 (Complainant) pursuant to Region 4 Delegation 9-34.

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).

II. ALLEGATIONS

4. Respondent is a sole proprietorship company doing business in the Commonwealth of Kentucky, with a business address of 1031 Saint Johns Drive, Maryville, Tennessee 37801.

5. Respondent is the owner and/or operator of the Class II UIC well that is subject to this Order (Subject Well), listed below.

<u>Permit No.</u>	<u>EPA ID No.</u>	<u>Well Name</u>	<u>Well No</u>	<u>Status</u>	<u>County</u>
KY10626	KYS0990008	Clyde Lopsdon	2	AC	Hart

6. The Subject Wells is a "facility" as that term is defined in 40 C.F.R. § 144.3.

7. On July 7, 2010, the EPA issued UIC Permit No. KYI0626 to the Respondent, in accordance with 40 C.F.R. § 144.31.

8. 40 C.F.R. § 144.51(a) requires the permittee of a permitted UIC well to comply with all conditions of the permit and provides that any permit noncompliance constitutes a violation of the SDWA.

9. Part I, Section C, Paragraph 3, of the UIC Permit No. KYI0626 requires the permittee to conduct an injection fluid analysis in accordance with 40 C.F.R. § 146.23(b)(1) at least once every 12 months and whenever changes are made to the injection fluid. Part I, Section D, Paragraph 2, of the UIC Permit No. KYI0626 requires the permittee to submit the results of injection fluid analyses to the EPA annually in accordance with 40 C.F.R. § 146.23(c).

10. During the month of February 2016, the EPA Region 4 UIC Program staff performed a file review of its UIC Program records for the Subject Well.

11. Respondent failed to timely submit annual injection fluid analysis results for the Subject Well as shown below.

<u>EPA ID No.</u>	<u>UIC Permit No.</u>	<u>Well Name</u>	<u>Missing Fluid Analysis Reports</u>
KYS0990008	KY10626	Clyde Lopsdon	2012

12. Therefore, Respondent is in violation of the SDWA, 42 U.S.C. § 300f, et seq., 40 C.F.R. §§146.23(b)(1), 146.23(c) and 144.51(a), and the UIC Permit No. KYI0626 for failure to timely submit to the EPA annual fluid analysis results, as shown above.

13. Part I, Section C, Paragraph 2, of the UIC Permit No. KYI0626 and 40 C.F.R §146.23(b)(2), require the permittee to weekly monitor the injection and annulus pressures at the wellhead, to weekly monitor the flow rate and to monthly monitor the cumulative volume of the injected fluid. Part I, Section D, Paragraph 2, of the UIC Permit No KYI0626, contains the requirement to submit the results of all monitoring to the EPA annually in accordance with 40 C.F.R § 146.23(c) by the end of January of the subsequent year.

14. Respondent failed to timely submit monitoring results for the Subject Well, as shown below.

<u>EPA ID No.</u>	<u>UIC Permit No.</u>	<u>Well Name</u>	<u>Missing Monitoring Report</u>
KYS0990008	KY10626	Clyde Lopsdon	2012

15. Therefore, Respondent is in violation of the SDWA, 42 U.S.C. § 300f, et seq., 40 C.F.R. §§146.23(b)(1), 146.23(c) and 144.51(a), and the UIC Permit No. KYI0626 for failure to timely submit annual monitoring reports to the EPA for the active permitted Subject Well, as shown above.

16. On May 19, 2016, Respondent participated in a show cause meeting with representatives of the EPA to discuss these alleged violations of the SDWA and the implementing regulations.

III. STIPULATIONS AND FINDINGS

17. Complainant and the 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 Consent Agreement and Final Order (CA/FO) will simultaneously commence and conclude this matter.

18. For purposes of this CA/FO Respondent admits the jurisdictional allegations and facts and findings of violations as alleged herein.

19. The Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CA/FO and consents to any specified compliance or corrective action set forth in this CA/FO.

20. The Respondent waives any right to a hearing and waives any right to appeal a final order in this matter.

IV. PENALTY AND INJUNCTIVE RELIEF

Based upon the foregoing findings, the parties hereby agree and consent to entry of the following:

21. Respondent shall pay a civil penalty of **\$2,352 (two thousand, three hundred fifty-two dollars)** in accordance with the terms set forth below.

22. Within 30 days of the Effective Date of this CA/FO, Respondent shall submit a cashier's or certified check in the amount **\$2,352 (two thousand, three hundred fifty-two 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.

23. 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

EPA ID No.
KYS0990008

UIC Permit No.
KY10626

Well Name
Clyde Lopsdon

27. Pursuant to Section 1423(b)(1) of the SDWA 42 U.S.C. § 300h-2(b)(1) any person who violates an order requiring compliance under subsection (c) of 1423 of the SDWA shall be subject to a civil penalty of not more than \$37,500 for each day of such violation.

V. GENERAL PROVISIONS

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

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


36. 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.

VI. Effective Date

37. The effective date of this CA/FO shall be the date that it is filed with the Regional Hearing Clerk.

RESPONDENT

Date 8/1 July 2016



John Lahman, Power of Attorney for John A. Clendening and Cleo D. Clendening Revocable Family Trust
John Clendening

COMPLAINANT

Date 9/14/2016



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: September 20, 2016

Tanya Floyd
Tanya Floyd
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 John Clendening;
Docket No. SDWA-04-2016-1022(b) on the parties listed below in the manner indicated:

Tony Shelton

Via EPA Internal Mail

Wilda Cobb

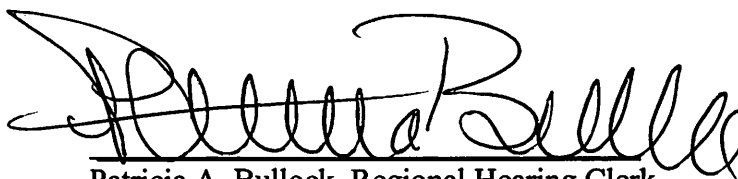
Via EPA Internal Mail

John Lahman
509 Ozark Trail
Madison, Wisconsin 53705

Via Certified Mail/ Return Receipt Requested

Date: _____

9-20-16



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