



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

SEP 08 2015

CERTIFIED MAIL 7013 2630 0000 0292 3286  
RETURN RECEIPT REQUESTED

Greg W. Hartsough  
Har-Ken Agent OK, LLC  
3110 Fairview Drive  
Owensboro, Kentucky 42303

Re: Consent Agreement and Final Order (CA/FO)  
Docket No. SDWA-04-2015-1002(b)

Dear Mr. Hartsough:

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 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

IN THE MATTER OF

Har-Ken Agent OK, LLC  
3110 Fairview Drive  
Owensboro, Kentucky 42303

Respondent

Consent Agreement and Final Order

Docket No. SDWA-04-2015-1002(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 Safe Drinking Water Act (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).
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 limited liability company organized under the laws of Kentucky and doing business in the Commonwealth of Kentucky, with a business address of 3110 Fairview Drive, Owensboro, Kentucky 42303.

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

<u>EPA ID No.</u>	<u>UIC Permit No.</u>	<u>Well</u>	<u>Status</u>	<u>County</u>
KYS1010023	KYI0055	Woodrow Cooper #2	Active	Henderson
KYS1010571	KYI0849	W. W. Brackett #3	Active	Henderson
KYS2330169	KYI0836	Tapp #1	Inactive	Webster
KYS2330176	KYI0928	Cuttingham Newton #W1	Active	Webster

6. Each of the Subject Wells is a “facility” as that term is defined in 40 C.F.R. § 144.3.
7. On December 26, 1985, the EPA issued to Century Oil Company the UIC Permit No. KYI0055. On November 22, 2004, the UIC Permit No. KYI0055 was modified to reflect the transfer to Respondent.
8. On August 9, 2007, the EPA issued to Respondent the UIC Permit No. KYI0849.
9. On November 17, 2006, the EPA issued to Respondent the UIC Permit No. KYI0836.
10. On December 21, 2010, the EPA issued to Respondent the UIC Permit No. KYI0928.
11. The Subject Wells are permitted in accordance with 40 C.F.R. § 144.31 and are subject to the requirements of the SDWA and the UIC regulations.
12. The SDWA 42 U.S.C. § 300f, et seq., and 40 C.F.R. § 144.51(a) require the permittee of a permitted UIC well to comply with all conditions of their permit.
13. Part II, Section G, Paragraph 3, of the UIC Permits Nos. KYI0055, KYI0849 and KYI0836 require that a demonstration of mechanical integrity in accordance with 40 C.F.R. § 146.8 be made no later than 5 years from the last approved demonstration.
14. Mechanical Integrity Tests (MITs) to demonstrate the mechanical integrity of the following permitted Subject Wells were performed late, as shown below.

<u>EPA ID No.</u>	<u>UIC Permit No.</u>	<u>Well</u>	<u>Status</u>	<u>MIT Due</u>	<u>MIT Done</u>
KYS1010023	KYI0055	Woodrow Cooper #2	Active	8/01/11	5/12/15
KYS1010571	KYI0849	W. W. Brackett #3	Active	7/03/12	5/12/15
KYS2330169	KYI0836	Tapp #1	Inactive	4/16/12	5/12/15

15. Therefore, Respondent is in violation of the SDWA, 42 U.S.C. § 300f, et seq., 40 C.F.R. §§ 146.8 and 144.51(a), and the UIC Permits Nos. KYI0055, KYI0849 and KYI0836 for failure to timely demonstrate the mechanical integrity of the permitted Subject Wells, as shown above.

16. Part I, Section C, Paragraph 3, of the UIC Permits Nos. KYI0055, KYI0849, KYI0836 and KYI0928 require 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 Permits Nos. KYI0055, KYI0849, KYI0836 and KYI0928 require the permittee to submit the results of injection fluid analyses to the EPA annually in accordance with 40 C.F.R. § 146.23(c).

17. Based on the EPA's records, annual injection fluid analysis results for the following active permitted Subject Wells were not timely submitted, as shown below.

<u>EPA ID No.</u>	<u>UIC Permit No.</u>	<u>Well</u>	<u>Last</u>
KYI0055	KYS1010023	Woodrow Cooper #2	January 10, 2004
KYI0849	KYS1010571	W. W. Brackett #3	None Previous
KYI0836	KYS2330169	Tapp #1	None Previous
KYI0928	KYS2330176	Cuttingham Newton #W1	None Previous

18. 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 Permits Nos. KYI0055, KYI0849, KYI0836 and KYI0928, for failure to timely submit annual fluid analysis results to the EPA, as shown above.

### III. STIPULATIONS AND FINDINGS

19. On May 21, 2015, Respondent participated in a show cause hearing with representatives of the EPA to discuss these alleged violations of the SDWA and the implementing regulations.

20. Respondent admits the jurisdictional allegations and facts and findings of violations 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 assessment of the civil penalty set forth herein and to the issuance of this Consent Agreement and Final Order (CA/FO) without further adjudication.

21. 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 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 CA/FO will simultaneously commence and conclude this matter.

### IV. PENALTY

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

22. Respondent shall pay a civil penalty of **\$9,000 (nine thousand dollars)** in accordance with the terms set forth below.

23. 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 **\$9,000 (nine 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.

24. 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 UIC Section  
Grants and Drinking Water Protection Branch  
U. S. EPA - Region 4  
61 Forsyth Street SW  
Atlanta, GA 30303-8960

25. 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.

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

For Respondent: Greg W. Hartsough  
Har-Ken Agent OK, LLC  
3110 Fairview Drive  
Owensboro, Kentucky 42303  
270-684-3399

For the EPA: Wilda Cobb, Associate Regional Counsel  
U.S. EPA - Region 4  
61 Forsyth Street SW  
Atlanta, GA 30303-8960  
404-562-9530

**V. GENERAL PROVISIONS**

27. 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.

28. 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.

29. 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.

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

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

32. 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 7/20/2015

  
Greg W. Hartsough  
Har-Ken Agent OK, LLC

**COMPLAINANT**

Date 9/3/15

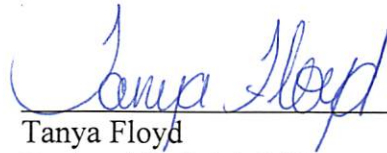
  
\_\_\_\_\_  
James D. Giattina, Director  
Water Protection Division

**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 4, 2015



\_\_\_\_\_  
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 Har-Ken Agent OK, LLC; Docket No. SDWA-04-2015-1002(b), on the parties listed below in the manner indicated:

**Carol Chen**

Via EPA Internal Mail

**Wilda Cobb**

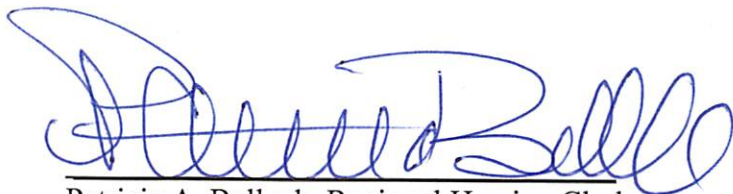
Via EPA Internal Mail

**Greg W. Hartsough  
Har-Ken Agent OK, LLC  
3110 Fairview Drive  
Owensboro, Kentucky 42303**

Via Certified Mail/ Return Receipt Requested

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

9-8-15



Patricia A. Bullock, Regional Hearing Clerk  
United States EPA - Region 4  
Atlanta Federal Center  
61 Forsyth Street SW  
Atlanta, GA 30303-8960  
(404) 562-9511