



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

AUG 29 2008

CERTIFIED MAIL 7008 1140 0003 1135 2909
RETURN RECEIPT REQUESTED

Mr. Avery E. Smith
Magnum Oil, LLC
2007 Lexington Avenue
Owensboro, Kentucky 42301

RE: Consent Agreement and Final Order (CA/FO)
Docket No. SDWA-04-2008-1020(b)

Dear Mr. Smith:

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 compliance actions and stipulated penalties.

Thank you for your cooperation in settling this matter. Should you have any questions or concerns, please contact Ms. Mary Halback at (404) 562-9778.

Sincerely,

A handwritten signature in black ink, appearing to read "James D. Giattina".

James D. Giattina
Director
Water Management Division

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF

Magnum Oil, LLC
2007 Lexington Avenue
Owensboro, Kentucky 42301

Respondent

Consent Agreement
and
Final Order

Docket No. SDWA-04-2008-1020(b)

2008 AUG 29 PM 12:49
HEARING OFFICE
EPA REGION 4

CONSENT AGREEMENT

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") 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 Magnum Oil, LLC ("Respondent").

ALLEGATIONS

The parties hereby stipulate and find as follows:

2. Magnum Oil, LLC ("Respondent") is a limited liability corporation organized under the laws of Kentucky with a principal place of business at 2007 Lexington Avenue, Owensboro, Kentucky. Avery E. Smith is the General Manager.

3. 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.

4. Respondent owns and/or operates the following injection well which is located in Daviess County:

<u>EPA ID No.</u>	<u>Well</u>	<u>Status</u>	<u>Permit #</u>
KYS0590386	Carraway-Cambron #W-1	Active	KYI0688

5. This well (hereinafter, Subject Well) constitutes a "facility" as that term is defined in 40 CFR §144.3.

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

7. Respondent's well is authorized under Underground Injection Control (UIC) Permit Number KYI0688 (the Permit), in accordance with 40 CFR Part 144, Subpart D. The Permit was issued on December 11, 1996.

8. The SDWA and 40 CFR § 144.51 (a) require that Respondent comply with all conditions of the Permit.

9. Part II, Section G (3) of Respondent's Permit requires that a mechanical integrity test (MIT) be conducted every five (5) years on an active well.

10. Records in the Permit file show that the last demonstration of mechanical integrity for the Subject Well was on May 8, 2002.

11. Therefore, Respondent violated the SDWA, 40 CFR §144.51(a), and its UIC Permit by failing to timely test the Subject Well for mechanical integrity.

12. On May 1, 2008, EPA sent Respondent a Notice of Violation for failure to demonstrate the mechanical integrity of the Subject Well.

13. On May 20, 2008, a telephone conference was held between EPA and Respondent to discuss the violation.

STIPULATIONS AND FINDINGS

14. 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.

15. 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, the parties hereby agree and consent to entry of the following order:

16. Respondent shall pay a civil penalty of **\$2,886 (Two Thousand Eight Hundred and Eighty-Six Dollars)** in accordance with the terms set forth below.

17. Respondent shall pay the penalty amount within thirty (30) days of Respondent's receipt of a fully-executed copy of this CA/FO, according to the instructions in Paragraph 20 below.

18. 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.

19. 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.

20. 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
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.

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

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

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

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

Within ninety (90) days of receipt of a fully-executed copy of this CA/FO, Respondent shall have demonstrated to EPA's satisfaction the mechanical integrity of the subject injection well or plugged and abandoned the well in accordance with an EPA-approved plugging plan.

23. For failure to comply with the conditions described in Paragraph 22, Respondent shall pay a stipulated civil penalty according to the following schedule:

- (a) \$300 for any portion of the first week any failure continues; and
- (b) \$200 per day for each day after the first week that the failure continues.

24. 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
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

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.

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

For Respondent: Avery E. Smith
Magnun Oil, LLC
2007 Lexington Avenue
Owensboro, KY 42301
270-684-4002

For EPA: Zylpha Pryor
Associate Regional Counsel
U.S. EPA
61 Forsyth Street, S.W.
Atlanta, GA 30303
404-562-9535

GENERAL PROVISIONS

26. 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.

27. 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.

28. Payment of the penalty and performance of the injunctive relief 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 and performance of the injunctive relief agreed to in this CA/FO resolves only Respondent's liability for the violations and facts stipulated herein.

29. 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.

30. 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.

31. 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.

32. 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.

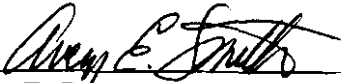
33. Each party shall bear its own costs and attorney's fees in connection with this action.

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

35. 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: 6/30/08



Avery E. Smith
Magnum Oil, LLC

COMPLAINANT

Date: 8/21/08



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 AGENCY

Date: August 27, 2008

Susan B. Schub
Susan Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

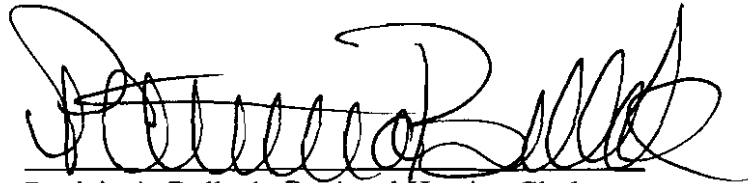
I HEREBY CERTIFY that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, in the Matter of: Magnum Oil, LLC; Docket Number SDWA-04- 2008-1020(b), on the parties listed below in the manner indicated:

Mary E. Halback, Enforcement Officer (Via EPA internal Mail)

Zylpha Pryor, Attorney (Via EPA internal Mail)

Avery E. Smith (Via Certified Mail - Return Receipt Requested)
2007 Lexington Avenue
Owensboro, Kentucky 42301

Date: 8-29-08



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