



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2010 NOV -5 A 11: 10  
REGIONAL HEARING  
CLERK

Certilman Balin Adler & Hyman, LLP  
Attn: Barry Cohen, Esq.  
1393 Veteran's Highway - Suite 301S  
Hauppauge, New York 11788

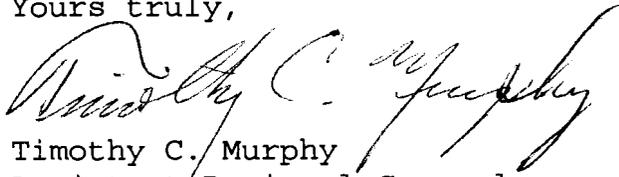
November 4, 2010

Subject: In the matter of Rothwell Funeral Home, Inc.  
Docket No. SDWA 02-2010-3890-8901

Dear Mr. Cohen:

Enclosed herewith is the Consent Agreement/Final Order (CAFO) for the subject case. Please contact me at (212) 637-3236 if you have any questions with respect to this document. Thank you.

Yours truly,

  
Timothy C. Murphy  
Assistant Regional Counsel

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
Region 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
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REGIONAL HEARING  
CLERK

IN THE MATTER OF:

Rothwell Funeral Home, Inc.  
30 Little Plains Road  
Southampton, NY 11968

Respondent.

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

CONSENT AGREEMENT  
AND  
FINAL ORDER

DOCKET NO. SDWA-02-2010-8901

CONSENT AGREEMENT AND ORDER

I. Preliminary Statements

This is a civil administrative proceeding instituted pursuant to Section 1423(c) of the Safe Drinking Water Act (the "Act"), 42 U.S.C. §300h-2(c).

The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance (DECA), Region 2, United States Environmental Protection Agency ("EPA"), issued a "Notice of Violation, Proposed Administrative Order and Opportunity to Request a Hearing thereon" (hereinafter "Complaint") to Rothwell Funeral Home, Inc. ("Respondent"), on December 9, 2009.

The Complaint charged Respondent with violating Part C of the Act, 42 U.S.C. §300h et seq. and implementing regulations, 40 C.F.R. Part 144, at its facility at O'Connell Funeral Home, 30 Little Plains Road, Southampton, NY 11968.

## **II. Findings of Facts and Conclusions of Law**

1. Respondent is the owner and operator of a funeral home ("the facility") located at 30 Little Plains Road, Southampton, NY 11968 where Respondent operates a Class V injection well, as defined by 40 C.F.R. §§144.3, 144.6(e), 146.3 and 146.5(e). Therefore, the Respondent is subject to the requirements of Part C of the Act, 42 U.S.C. §300h and implementing regulations, 40 C.F.R. Parts 124, 144, 146, 147 Subpart HH and 148.
2. Respondent is a "person" within the meaning of Section 1401(12) of the Act, 42 U.S.C. §300(f)(12) and 40 C.F.R. §144.3.
3. Section 1422 of the Act, 42 U.S.C. §300h-1, requires EPA to administer the Underground Injection Control ("UIC") Program in states that do not have approved state programs. New York is a "state" within the meaning of Section 1401(13) of the Act, 42 U.S.C. §300(f)(13) and 40 C.F.R. §144.3. New York has not acquired primacy over the UIC program. Therefore, the UIC program for the State of New York is administered by the EPA and pursuant to 40 C.F.R. §144.1651, the effective date of the program is June 25, 1984.
4. 40 C.F.R. §144.11 prohibits any underground injection, except as authorized by rule or permit under the UIC program.
5. All Class V wells are authorized by rule pursuant to 40 C.F.R. §144.24, which authorizes injection into a Class V well pending further requirements under future regulations, provided the owner or operator submits, upon notice by the EPA, inventory information in a timely manner and also submits any additional information requested by the EPA in a timely manner.
6. If a permit application is submitted pursuant to 40 C.F.R. §144.25 or §144.84, authorization by rule to inject terminates upon issuance of the permit to inject or upon denial of the permit

application. Pursuant to 40 C.F.R. §144.88(a), owners/operators of existing large capacity cesspools were required to notify EPA of their intent to close their large capacity cesspools no later than March 6, 2005, and to close any large capacity cesspool by no later than April 5, 2005.

7. 40 C.F.R. §144.12(a) prohibits movement of fluid containing any contaminant into underground sources of drinking water (USDW), if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 C.F.R. Part 142 or may otherwise adversely affect the health of persons.

8. Existing Class V injection wells are regulated throughout 40 C.F.R. Part 144. 40 C.F.R. Part 144 Subpart G contains additional regulations specific to Class V vehicle service waste disposal wells that are located in a ground water protection area. Some Class V vehicle service waste disposal wells may be banned pursuant to the regulations found in Subpart G. States or EPA may waive the ban and allow owners and operators to obtain a permit. 40 C.F.R. §144.85(b) and §144.8(b)(1).

9. On December 9, 2009, EPA issued a Complaint alleging violations by the Respondent of federal UIC requirements.

10. Subsequent to issuance of the Complaint, Respondent retained a consultant to prepare and implement a well remediation plan.

11. The EPA approved the Respondent's well remediation plan. The remediation was completed.

12. The parties feel it is in the public interest to resolve EPA's Complaint and issues concerning the Respondent's delayed compliance with 40 C.F.R. §144.11 and §144.12 without further litigation and towards this end have agreed to the following settlement.

**Consent Agreement**

Based upon the foregoing, and pursuant to Section 1423(c) of the Act, 42 U.S.C. §300h-2(c), and the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits” (40 C.F.R. §22.18), it is hereby agreed by and between the parties and Respondent voluntarily agrees as follows:

**Jurisdiction**

1. For the purpose of this proceeding, Respondent a) admits the jurisdictional allegations of the Complaint as applied to the facility; and b) neither admits nor denies the specific factual allegations contained in the Complaint and Findings of Fact contained herein.

**Penalty**

2. Respondent consents to the assessment of a civil penalty of \$12,000 (twelve thousand dollars).

**Payment Terms**

3. Respondent shall pay, by cashier or certified check, a civil penalty in the amount of twelve thousand dollars (\$12,000), payable to the “Treasurer of the United States of America”. The payment of this penalty will be in accordance with the following schedule:

January 15, 2011	\$1,000
April 15, 2011	\$1,000
July 15, 2011	\$1,000
October 15, 2011	\$1,000
January 15, 2012	\$1,000

April 15, 2012	\$1,000
July 15, 2012	\$1,000
October 15, 2012	\$1,000
January 15, 2013	\$1,000
April 15, 2013	\$1,000
July 15, 2013	\$1,000
October 15, 2013	\$1,000

Each check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. The check shall be mailed to:

U.S. Environmental Protection Agency  
 PO Box 979077  
 St Louis, MO 63197-9000

4. The Respondent shall also send copies of the payment to the each of the following:

Timothy C. Murphy, Esq.  
 Office of Regional Counsel

U.S. Environmental Protection Agency, Region 2  
 290 Broadway - 16<sup>th</sup> Floor  
 New York, New York 10007

**and**

Karen Maples  
 Regional Hearing Clerk  
 U.S. Environmental Protection Agency  
 Region 2  
 290 Broadway – 16<sup>th</sup> Floor  
 New York, New York 10007

5. Failure by the Respondent to pay the penalty assessed by the Final Order in full by each due date may subject Respondent to a civil action to collect the total amount of the assessed penalty, plus interest, attorney's fees, costs and an additional quarterly nonpayment penalty pursuant to Section 311(b)(6)(H) of the Act, 33 U.S.C. §1321(b)(6)(H). In any such collection action, the validity, amount and appropriateness of the penalty agreed to herein shall not be subject to review.

#### **General Provisions**

6. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full and final settlement of the civil liabilities that might have attached as a result of the allegations contained in the Complaint. The Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to its issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

7. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

8. Respondent knowingly and explicitly waives its right to request or to seek any Hearing on, or Judicial Review of the Complaint or on any of the allegations therein asserted, on this Consent Agreement or the Findings of Fact and Conclusions of law herein, or on the accompanying Final Order.

9. Respondent waives any right it may have pursuant to 40 C.F.R. §22.8 to be present during discussions with, or to be served with and to reply to, any memorandum or communication addressed to the Regional Administrator or Deputy Regional Administrator where the purpose of such discussion, memorandum or communication is to discuss a proposed settlement of this

matter or to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.

10. Issuance of the Consent Agreement and Final Order does not constitute a waiver by EPA of its right to enforce the substantive legal requirements underlying this penalty assessment, either administratively or judicially pursuant to Section 1423 of the Act, 42 U.S.C. §3000h et seq.. Issuance or compliance with this Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable requirements of the Safe Drinking Water Act, of regulations promulgated thereunder and of any legal order or permit issued thereunder.

11. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into or ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.

12. The provisions of this Consent Agreement and Final Order shall be binding upon the Respondents, its officers, directors, agents, servants, authorized representatives and successors or assigns.

13. Each party hereto agrees to bear its own costs and fees in this matter.

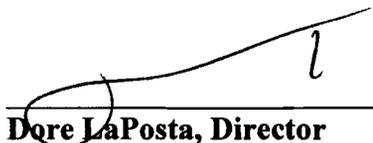
14. Respondent consents to service upon Respondent by a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

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

  
\_\_\_\_\_  
**Mr. Ken Rothwell**  
**Rothwell Funeral Home, Inc.**

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Date: OCTOBER 25, 2010



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**Dore LaPosta, Director**  
**Division of Environmental**  
**Compliance and Assistance**

**FINAL ORDER**

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of the filing with the Regional Hearing Clerk, U.S. EPA Region 2, New York, NY.

Date: 10/27/10

Helen Ferrara  
**Helen Ferrara**  
**Regional Hearing Officer**

ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

IN THE MATTER OF:

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**30 Little Plains Road**  
**Southampton, NY 11968**

Proceeding under Section 1423(c) of  
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§300h-2(c)

CONSENT AGREEMENT  
AND  
FINAL ORDER

DOCKET NO.  
**SDWA-02-2010-8901**

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket-number, in the following manner to the respective addresses below:

Original and One Copy By Hand:

U.S. Environmental Protection Agency - Region 2  
290 Broadway, 16<sup>th</sup> Floor, Office of Regional Hearing Clerk  
New York, N.Y. 10007-1866

Copy by Certified Mail, Return Receipt Requested:

Barry Cohen, Esq.  
Certilman Balin Adler & Hyman, LLP  
1393 Veterans Memorial Highway  
Suite 301 S  
Hauppauge, New York 11788

Date: Nov. 4, 2010

Ana Madera  
(Print Name)

Ana Madera  
(Signature)