



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

JAN 08 2013

CERTIFIED MAIL 7007 2680 0000 9621 4219
RETURN RECEIPT REQUESTED

William Bruce Duncan
Duncan Oil Company
P. O. Box 218
300 South Washington Street
Salem, Illinois 62881

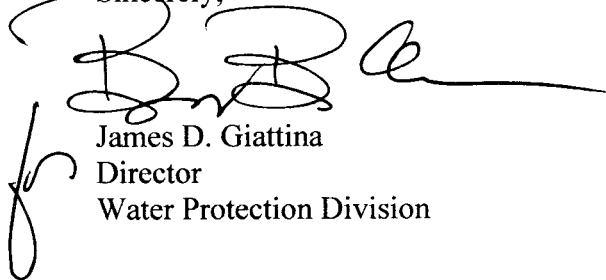
Re: Consent Agreement and Final Order (CA/FO)
Docket No. SDWA-04-2013-1000(b)

Dear Mr. Duncan:

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 Carol Chen, Underground Injection Control Enforcement, at (404) 562-9415.

Sincerely,



James D. Giattina
Director
Water Protection Division

Enclosure

cc: Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF

Duncan Oil Company
P. O. Box 218
300 South Washington Street
Salem, Illinois 62881

Respondent

Consent Agreement and Final Order
Docket No. SDWA-04-2013-1008(b)

RECEIVED
EPA REGION IV
2013 JAN -8 PM 4: 26
HEARING CLERK

STATUTORY AUTHORITY

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 or Complainant) under Section 1423 of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300h-2, the EPA, as Complainant, hereby enters into the following Consent Agreement and Final Order (CA/FO) with Duncan Oil Company (Respondent).

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).

ALLEGATIONS

4. Respondent is a corporation organized under the laws of Illinois, doing business in the Commonwealth of Kentucky, with a business address of P. O. Box 218, 300 South Washington Street, Salem, Illinois 62881.

5. Respondent is the owner and/or operator of the following Class II underground injection wells that are subject to this Order.

<u>Permit No.</u>	<u>EPA ID No.</u>	<u>Well</u>	<u>Status</u>	<u>County</u>
KYA0552	KYS1010045	C. Breckinridge #5	Active	Henderson
KYA0552	KYS1010492	C. Breckinridge #12	Active	Henderson
KYA0552	KYS1010495	C. Breckinridge #19	Active	Henderson

KYA0552	KYS1010496	C. Breckinridge #17	Active	Henderson
KYA0552	KYS1010491	C. Breckinridge #9	Active	Henderson
KYA0552	KYS1010493	C. Breckinridge #29	Active	Henderson
KYA0552	KYS1010494	C. Breckinridge #25	Inactive	Henderson

6. Each of the subject wells (Subject Wells) is a “facility” as that term is defined in 40 C.F.R. § 144.3.

7. 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.

8. 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 the permit.

9. Part II, Section G, Paragraph 1, of the UIC permits, states that all injection wells must have and maintain mechanical integrity as defined by 40 C.F.R. § 146.8.

10. A mechanical integrity test performed on the following active permitted Subject Well failed on May 31, 2012, and the mechanical integrity has not yet been demonstrated, as shown below.

<u>Permit No.</u>	<u>EPA ID No.</u>	<u>Well</u>	<u>Status</u>	<u>MIT Failure</u>	<u>MIT Done</u>
KYA0552	KYS1010493	C. Breckinridge #29	Active	5/31/12	Not yet

11. Therefore, the Respondent is in violation of 40 C.F.R. § 146.8, the UIC permits and the SDWA for failing to have and maintain the mechanical integrity of the active permitted Subject Well shown above.

12. Part II, Section G, Paragraph 3, of the UIC permits, requires 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.

13. The mechanical integrity demonstrations for the following active permitted Subject Wells are overdue or were performed late, as shown below.

<u>Permit No.</u>	<u>EPA ID No.</u>	<u>Well</u>	<u>Status</u>	<u>Previous MIT</u>	<u>MIT Due</u>	<u>MIT Done</u>
KYA0552	KYS1010045	C. Breckinridge #5	Active	4/17/06	4/17/11	5/31/12
KYA0552	KYS1010492	C. Breckinridge #12	Active	4/17/06	4/17/11	5/31/12
KYA0552	KYS1010495	C. Breckinridge #19	Active	4/17/06	4/17/11	Not Yet
KYA0552	KYS1010496	C. Breckinridge #17	Active	4/17/06	4/17/11	5/31/12

14. Therefore, the Respondent is in violation of 40 C.F.R. § 146.8, the UIC permits and the SDWA for failing to timely demonstrate the mechanical integrity of the active permitted Subject Wells shown above.

15. Part II, Section G, Paragraph 4, of the UIC permits, states that upon evidence of a mechanical failure as defined by 40 C.F.R. § 146.8, the injection operation shall be halted immediately and shall not be resumed until the EPA gives approval.

16. During a February 15, 2012 field inspection of the active Subject Well shown below, the EPA-authorized inspector found indications of mechanical failure. The annulus of the well was showing pressure above atmospheric and the valve was leaking oil.

<u>Permit No.</u>	<u>EPA ID No.</u>	<u>Well</u>	<u>Status</u>	<u>MIT Failure</u>	<u>MIT Done</u>
KYA0552	KYS1010491	C. Breckinridge #9	Active	2/15/12	5/31/12

17. By letter dated April 12, 2012, the EPA notified the Respondent of the mechanical failure of the above Subject Well and ordered the Respondent to cease injection immediately to prevent the movement of fluids into a USDW.

18. By letter dated April 25, 2012, the Respondent stated that this well would be repaired by pulling the tubing and packer and replacing the packer along with any faulty joints. Respondent further stated that a mechanical integrity test would be scheduled following the repairs.

19. During a field inspection by the EPA-authorized inspector on April 30, 2012, it was found that the C. Breckinridge #9 was still active. The valve was in the open position, the injection line was vibrating due to the injection pressure and the line felt cold to the touch, indicating the active flow of fluid.

20. During an additional follow-up inspection by the EPA-authorized inspector on May 2, 2012, it was confirmed that injection was still ongoing into the well and that the signs of mechanical failure were still present. The annulus was showing pressure above atmospheric and oil was leaking into the annulus.

21. Following repairs, the mechanical integrity of the C. Breckinridge #9 was demonstrated on May 31, 2012.

22. Therefore, the Respondent is in violation of 40 C.F.R. § 146.8, the UIC permits and the SDWA for continuing to inject into the C. Breckinridge #9 Subject Well, despite the presence of a mechanical failure and even after having been notified to immediately cease injection.

23. Part II, Section F, Paragraph 3, of the UIC permits, requires the permittee after a cessation of injection for 2 years to demonstrate the mechanical integrity or to close, plug and abandon the well.

24. Based on the EPA's records and field inspections, the following permitted Subject Well is inactive and has not been plugged, closed and abandoned. The inactive permitted Subject Well was overdue for the mechanical integrity demonstration as shown below.

<u>Permit No.</u>	<u>EPA ID No.</u>	<u>Well</u>	<u>Status</u>	<u>Previous MIT</u>	<u>MIT Due</u>	<u>MIT Done</u>
KYA0552	KYS1010494	C. Breckinridge #25	Inactive	4/27/06	4/27/08	5/31/12

25. Therefore, the Respondent is in violation of 40 C.F.R. § 146.8, the UIC permit and the SDWA for failing to demonstrate the mechanical integrity or to close, plug and abandon the inactive permitted Subject Well as shown above.

26. On June 14, 2012 and August 30, 2012, Respondent participated in show cause hearings with representatives of the EPA to discuss these violations of the SDWA and the implementing regulations.

STIPULATIONS AND FINDINGS

27. Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the 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 issuance of a final order without further adjudication.

28. 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.

PENALTY AND INJUNCTIVE RELIEF

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

29. Respondent shall pay a civil penalty of **\$28,391 (twenty-eight thousand three hundred ninety-one dollars)** in accordance with the terms set forth below.

30. Within 60 days of receipt of a fully-executed copy of this CA/FO, Respondent shall submit a cashiers or certified check in the amount of **\$28,391 (twenty-eight thousand three hundred ninety-one 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 cashiers check.

31 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
U. S. EPA - Region 4
61 Forsyth Street SW
Atlanta, GA 30303-8960

and 31 C.S.C. § 3117 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 shall assess an administrative fee of \$15 for each subsequent 30 day period. 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.

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

- a. Respondent is ordered to successfully demonstrate the mechanical integrity or close, plug, and abandon the Subject Wells listed below, within 90 days of receipt of this Order. Mechanical integrity testing or plugging and abandonment must be witnessed by an authorized EPA inspector.

<u>Permit No.</u>	<u>EPA ID No.</u>	<u>Well</u>
KYA0552	KYS1010495	C. Breckinridge #19
KYA0552	KYS1010493	C. Breckinridge #29

34. Respondent agrees to pay stipulated civil penalties for violation of the conditions set forth in Paragraph 33 above as follows. For failure to comply with the conditions described in Paragraph 33 above, Respondent shall pay a stipulated civil penalty according to the following schedule:

- a. \$300 for any portion of the first 7 calendar days Respondent is in violation of this Agreement; and
- b. \$200 per day for each day after the first 7 calendar days Respondent is in violation of this Agreement.

35. Stipulated penalties shall become due and payable no later than 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

36. A copy of the check shall be sent to the Ground Water & Safe Drinking Water Act Enforcement Section, Safe Drinking Water Branch, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, GA 30303-8960. Respondent shall state the docket number of this Order 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.

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

For Respondent: William Bruce Duncan
Duncan Oil Company
P. O. Box 218
300 South Washington Street
Salem, Illinois 62881
618-548-3256

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

GENERAL PROVISIONS

38. 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.

39. 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. 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.

40. 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 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 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.

41. 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

42. 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.

43. 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.

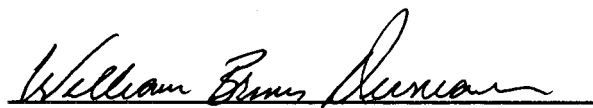
44. Each party shall bear its own costs and attorneys fees in connection with this action.

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

46. 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.

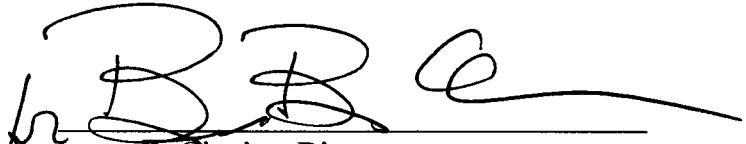
RESPONDENT

Date 11-6-12


William Bruce Duncan
Duncan Oil Company

COMPLAINANT

Date 1/3/13


James D. Giattina, Director
Water Protection Division