

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

2009 APR -3 AM 11:20  
HEARINGS CLERK  
EPA REGION 4

IN THE MATTER OF

Alton Townsend  
326 Ashley Lease Road  
Stanton, KY 40380-9450  
Respondent

Consent Agreement  
and  
Final Order

Docket No. SDWA-04-2009-1001(b)

**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" or "Complainant") 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 Alton Townsend ("Respondent").

2. Section 1450 of the SDWA authorizes the Administrator to prescribe such regulations as are necessary or appropriate to carry out his functions under the SDWA. These regulations are found at 40 CFR 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 EPA. See 40 CFR § 147.901(a).

**ALLEGATIONS**

The parties hereby stipulate and find as follows:

4. Alton Townsend ("Respondent") is an individual, and as such, 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.

5. Respondent owns and/or operates the following Class II injection well ("subject well"):

<u>EPA ID No.</u>	<u>Lease</u>	<u>Well No.</u>	<u>Status</u>
KYS1970449	Floyd Helton	Unknown	Active

6. This well, located in Powell County, Kentucky, constitutes a “facility” as that term is defined in 40 CFR § 144.3.

7. Respondent’s injection well was in existence on June 25, 1984, the effective date of the UIC program in Kentucky as implemented by EPA, and is, therefore, authorized by rule, as that term is defined in 40 CFR § 144.21(a).

8. On May 1, 2007, EPA conducted an inspection of the Floyd Helton injection well in Powell County, Kentucky. The subject well was found to be actively injecting.

9. A subsequent review of the EPA data base and files revealed no evidence of a mechanical integrity demonstration, no injection fluid analysis, and no monitoring reports for the Floyd Helton injection well.

10. 40 CFR §144.28(f)(2) requires that the owner or operator of a Class II injection well authorized by rule shall establish and maintain mechanical integrity as defined in 40 CFR §146.8 until the well is properly plugged.

11. Respondent has not established the mechanical integrity of the subject well.

12. Therefore, Respondent is in violation of 40 CFR §144.28(f)(2) for failure to establish the mechanical integrity of the subject well.

13. 40 CFR §144.28(g)(2)(i) requires that the owner or operator of a Class II well shall monitor the nature of the injected fluids with sufficient frequency to yield data representative of their characteristics. 40 CFR § 144.28(h)(2)(i) requires further that the owner or operator shall submit an annual report to EPA summarizing the results of all monitoring. Such summary shall include monthly records of injected fluids, and any major changes in characteristics or sources of injected fluids.

14. Respondent has never submitted to EPA any monitoring information, nor any information related to the nature of the injected fluids.

15. Respondent is in violation of 40 CFR §144.28(h)(2)(i) for failing to submit to EPA any monitoring results or any information related to the nature of the injected fluids.

16. On May 22, 2008, EPA issued to Respondent an Administrative Order to Cease Injection, Docket No. SDWA-04-2008-1251.

**STIPULATIONS AND FINDINGS**

17. Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the facts and findings of violations as alleged. 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.

18. 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 Stipulations and Findings, the parties hereby agree and consent to entry of the following Order:

19. Respondent shall pay a civil penalty of one thousand dollars (\$1,000) in accordance with the terms set forth below:

- a. Respondent shall pay one hundred dollars (\$100) per month for ten (10) consecutive months.
- b. The first payment shall be paid within thirty (30) days of Respondent's receipt of a fully-executed copy of this Order with subsequent payments due every thirty (30) days thereafter until paid in full.

20. 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.

21. Pursuant to 40 CFR Part 13 and 31 U.S.C. § 3717, et seq., if EPA does not receive payment of each installment 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 fifteen dollars (\$15), with an additional delinquent notice charge of fifteen (\$15) for each subsequent thirty (30) day period.

22. 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

23. Respondent shall note the title and docket number of the case on the penalty payment certified or cashier's check. 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

Fred McManus, Chief  
Ground Water & SDWA Enforcement Section  
U.S. Environmental Protection Agency  
Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303-8960

24. Respondent shall not resume injection into the subject well.

25. Respondent shall, within thirty (30) days of receipt of a fully-executed copy of this Order, submit to EPA, a plugging and abandonment plan for the subject well.

26. Within sixty (60) days of receipt of EPA's approval of the plugging and abandonment plan, Respondent shall plug and abandon the subject well in accordance with the plan. The plugging and abandonment must be witnessed by EPA.

27. Respondent agrees to pay stipulated civil penalties for violation of any of the preceding conditions and requirements set forth in Paragraphs 24 through 26 above as follows:

- a. Three hundred dollars (\$300) for any portion of the first week (7 days) any failure continues; and
- b. Two hundred dollars (\$200) per day for each day after the first week (7 days) that the failure continues.

28. 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

29. A copy of the check shall be sent to the Ground Water & SDWA Enforcement Section, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, GA 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.

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

For Respondent:

Alton Townsend  
326 Ashley Lease Road  
Stanton, Kentucky 40380-9450  
606-663-7611

For Complainant:

Zylpha Pryor, Assoc. Regional Counsel  
U.S. EPA – Region 4 / OEA  
61 Forsyth Street, SW  
Atlanta, Georgia 30303  
404-562-9535

#### **GENERAL PROVISIONS**

31. 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.

32. 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. 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 violations of law. Full payment of the penalty agreed to in this CA/FO resolves only Respondent's liability for federal civil penalties for the violations and facts stipulated herein.

33. 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.

34. 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.

35. 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.

36. The parties acknowledge and agree that final approval by EPA of this CA/FO is subject to 40 CFR § 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.

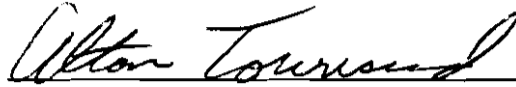
37. Each party shall bear its own costs and attorneys fees in connection with this action.

38. This CA/FO shall become effective upon the date that it is signed by the Regional Judicial Officer.

39. 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: 2/23/09

  
\_\_\_\_\_  
Alton Townsend

COMPLAINANT

Date: 3/5/09

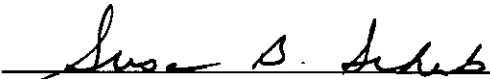
  
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James D. Giattina, Director  
Water Protection Division  
EPA, Region 4

**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: 4/6/09

  
Susan Schub  
Regional Judicial Officer



CERTIFICATE OF SERVICE

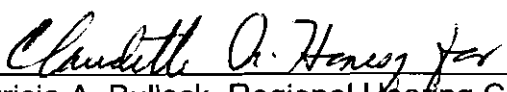
I HEREBY CERTIFY that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, in the Matter of Alton Townsend, Docket No. SDWA-04-2009-1009(b), on the parties listed below in the manner indicated:

Scott Hoskins, Enforcement Officer  
GW&SDWA Enforcement Section (Via EPA internal Mail)  
EPA, Region 4

Zylpha Pryor, Associate Regional Counsel (Via EPA internal Mail)  
EPA, Region 4

Alton Townsend (Via Certified Mail - Return Receipt Requested)  
326 Ashley Lease Road  
Stanton, KY 40380-9450

Date: APR 08 2009

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