



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

FEB 11 2009

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Richard Straeter
Manager
Energy Enterprises, LLC
P.O. Box 51
Mt. Vernon, Illinois 62864

Re: Consent Agreement and Final Order
Docket No. SDWA-04-2009-1000(b)

Dear Mr. Straeter:

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 payments and stipulated penalties.

Thank you for your cooperation in settling this matter. Should you have any questions or concerns please contact Mr. Randy Vaughn at (404) 562-9793.

Sincerely,

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

James D. Giattina
Director
Water Protection Division

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF

Energy Enterprises, LLC
P.O. Box 51
Mt. Vernon, Illinois 62864

Respondent

Consent Agreement
and
Final Order

Docket No. SDWA-04-2009-1000(b)

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ENVIRONMENTAL

CONSENT AGREEMENT

I. Statutory Authority

1. This is a civil penalty proceeding pursuant to Section 1423(c) of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300h-2(c), 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 (Consolidated Rules of Practice or Part 22), published at 64 Fed. Reg. 40176 (July 23, 1999) and codified at 40 Code of Federal Regulations (CFR) Part 22.
2. The authority to take action under Section 1423(c) of the SDWA, 42 U.S.C. § 300h-2(c), is vested in the Administrator of the U.S. Environmental Protection Agency (EPA). The Administrator has delegated the authority to take this action to the Regional Administrator for Region 4, who in turn has delegated the authority to the Water Management Division Director of EPA, Region 4 (Complainant).
3. Injection well owners and operators are required to comply with the underground injection control (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).

II. Allegations

4. Energy Enterprises, LLC ("Respondent") is a limited liability corporation with headquarters in Mt. Vernon, Ill., and doing business in the Commonwealth of Kentucky.
5. 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.

6. Respondent owns and/or operates an “injection well” as that term is defined at 40 CFR § 144.3, which is identified as follows:

<u>EPA ID No.</u>	<u>Well</u>	<u>Status</u>	<u>Permit #</u>
KYS1010392	JH Bowers # 1	Shut-In	KYI0017

The JH Bowers #1 (hereinafter, subject well) is located in Henderson County, Kentucky, and constitutes a “facility” as that term is defined at 40 CFR § 144.3.

7. Respondent’s well is subject to regulation under the SDWA, its implementing regulations, and underground injection control (UIC) permit KYI0017.
8. The SDWA and 40 CFR § 144.51(a) requires that the permittee comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the SDWA.
9. Part II, Section G.3. of Permit KYI0017 requires that the mechanical integrity of the subject well be demonstrated at least once every five (5) years.
10. Respondent failed to demonstrate the mechanical integrity of the subject well for a period in excess of five (5) years.
11. Therefore Respondent violated the SDWA, 40 CFR § 144.51 and its UIC permit by failing to timely demonstrate the mechanical integrity of the subject well.
12. Part I, Section D.2 of Permit KYI0017 requires the submission of annual reports for the subject well.
13. Respondent failed to submit annual reports for 2003, 2004, 2005, 2006, and 2007.
14. Therefore, Respondent violated the SDWA, 40 CFR § 144.51, and its UIC permit by failing to submit annual monitoring reports for 2003, 2004, 2005, 2006, and 2007.
15. On June 10, 2008, EPA sent Respondent a Notice of Violation for failure to demonstrate the mechanical integrity of the subject well and failure to submit annual monitoring reports.
16. In July 2008, EPA conducted a Show Cause meeting with Respondent to discuss the alleged violations. Respondent agreed to conduct the mechanical integrity test for the subject well, and submit the missing monitoring reports. The missing monitoring reports have been received. Respondent agreed to demonstrate the mechanical integrity of the subject well as soon as possible.

III. 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 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.
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.

IV. Penalty and Injunctive Relief

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

19. Respondent shall pay a civil penalty of **\$1500 (One Thousand Five Hundred Dollars)** in accordance with the terms set forth below.
20. Respondent shall pay the penalty amount in five (5) installments, according to the following instructions. The first installment of \$300 (three hundred dollars) shall be paid within thirty (30) days of Respondent's receipt of a fully executed copy of this CA/FO. The second installment in the amount of \$300 (three hundred dollars) shall be paid within sixty (60) days of Respondent's receipt of a fully-executed copy of this CA/FO. The third installment in the amount of \$300 (three hundred dollars) shall be paid within ninety (90) days of Respondent's receipt of a fully-executed copy of this CA/FO. The fourth installment in the amount of \$300 (three hundred dollars) shall be paid within one hundred twenty (120) days of Respondent's receipt of a fully-executed copy of this CA/FO. The fifth and final installment in the amount of \$300 (three hundred dollars) shall be paid within one hundred fifty (150) days of Respondent's receipt of a fully-executed copy of this CA/FO.
21. 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 this case on the check.

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

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

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

23. 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.
24. 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.
25. In addition to payment of the penalty described above, within sixty (60) days of receipt of a fully-executed copy of this CA/FO, Respondent shall either (1) plug and abandon the subject well, in accordance with an EPA- approved plugging and abandonment plan; or (2) demonstrate the mechanical integrity of the subject well. Also, within sixty (60) days of receipt of a fully-executed copy of this CA/FO, Respondent shall establish financial responsibility for the plugging of the subject well in its own name.
26. Respondent agrees to pay stipulated civil penalties for violation of the conditions set forth in Paragraphs 19 and 25 as follows:
- a) \$300 for any portion of the first seven (7) calendar days any failure continues; and

b) \$200 per day for each day after the first week that the failure continues.

27. 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, 61Forsyth 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.

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

For Respondent:

Mr. Richard Straeter, *President Manager*
Energy Enterprises, LLC
P.O. Box 51
Mt. Vernon, Illinois 62864
618-316-2030

For EPA:

Ms. Zylpha Pryor, Attorney
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303
404-562-9535

V. General Provisions

29. 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.

30. 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.

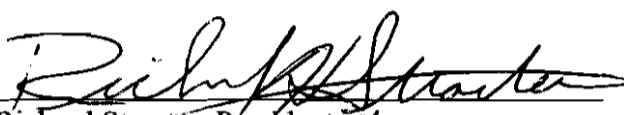
other local, state or federal law. Nothing contained herein shall be construed to prevent or limit EPA's rights to obtain penalties or injunctive relief under Section 1423 of the SDWA or other federal statutes and regulations with the exception that EPA will not bring a future civil action against Respondent for the specific claims alleged in this matter.

31. 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 federal civil penalties for the violations and facts stipulated herein.
32. 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.
33. 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 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.
34. 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 for the cause of the delay.

- 35. 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.
- 36. Each party shall bear its own costs and attorney's fees in connection with this action.
- 37. This CA/FO shall become effective upon the date of signature by the Regional Judicial Officer.
- 38. 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: 11/5/08


 Richard Straeter, ~~President~~ *Manager*
 Energy Enterprises, LLC

COMPLAINANT

Date: 1/30/2009


 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: 2/10/09

Susan B. Schub
Susan Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

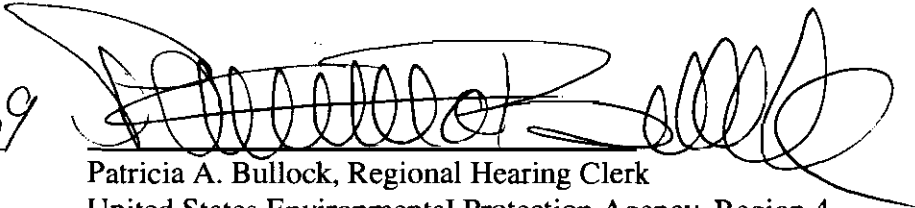
I HEREBY CERTIFY that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, in the Matter of: Energy Enterprises, LLC; Docket Number SDWA-04-2009-1000(b), on the parties listed below in the manner indicated:

Randy Vaughn, UIC Enforcement Officer (Via EPA internal Mail)
EPA, Region 4

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

Mr. Richard Straeter, Manager (Via Certified Mail - Return Receipt Requested)
Energy Enterprises, LLC
P.O. Box 51
Mt. Vernon, Illinois, 62864

Date: 2-11-09



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