



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

AUG 03 2010

CERTIFIED MAIL 7009 0960 0000 2366 3889
RETURN RECEIPT REQUESTED

Johnnie Y. Spaulding, Vice President
Ohio Kentucky Oil Corporation
110 East Lowry Lane
Lexington, Kentucky 40503-2403

SUBJECT: Consent Agreement and Final Order (CA/FO)
Docket No. SDWA-04-2010-1011(b)

Dear Mr. Spaulding:

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

Sincerely,

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

James D. Giattina
Director
Water Protection Division

Enclosure

cc: Regional Hearing Clerk

Internet Address (URL) • <http://www.epa.gov>

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF

Ohio Kentucky Oil Corporation
110 East Lowry Lane
Lexington, Kentucky 40503-2403

Respondent

Consent Agreement and Final Order

Docket No. SDWA-04-2010-1011(b)

2010 AUG -9 AM 11:55
RECEIVED
EPA REGION 4 OFFICE
LEXINGTON, KY

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 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 Ohio Kentucky Oil Corporation (Respondent).
2. Section 1450 of the SDWA 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 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

4. Respondent is a corporation doing business in the Commonwealth of Kentucky, with a business address of 110 East Lowry Lane, Lexington, Kentucky 40503-2403.
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 the following Class II injection wells (subject wells):

<u>Permit No.</u>	<u>EPA ID No.</u>	<u>Well</u>	<u>County</u>
KYI0724	KYS2250238	Gary Stenger #7	Union County, Kentucky
KYI0719	KYS0010035	Robert Moss #2B	Adair County, Kentucky
KYI0704	KYS0010018	Owen Kemp #3	Adair County, Kentucky
KYI0789	KYS0530013	Ferguson Brothers #34	Clinton County, Kentucky

7. Each of these wells constitutes a "facility" as that term is defined in 40 CFR §144.3, and is subject to the requirements of the SDWA and the UIC regulations.

8. The subject wells are permitted in accordance with 40 CFR § 144.31.

9. The SDWA, 42 U.S.C. §300f, et seq., and 40 CFR §144.51(a) require the permittee to comply with all conditions of the permit. Noncompliance constitutes a violation of the SDWA and is grounds for an enforcement action. EPA, in accordance with Part II, Section G, Paragraph 3, requires the permittee to demonstrate mechanical integrity at least once every five years.

10. These wells were overdue for mechanical integrity as follows.

<u>Permit No.</u>	<u>EPA ID No.</u>	<u>Well</u>	<u>Due Date</u>	<u>Date Completed</u>
KYI0724	KYS2250238	Gary Stenger #7	10/06/09	4/07/10
KYI0719	KYS0010035	Robert Moss #2B	12/23/08	3/11/10
KYI0704	KYS0010018	Owen Kemp #3	12/23/08	3/11/10
KYI0789	KYS0530013	Ferguson Brothers #34	4/14/08	3/11/10

11. Therefore, Respondent violated 40 CFR §144.51 (a), its permit, and the SDWA by failing to timely demonstrate the mechanical integrity of the subject wells.

12. On April 27, 2010, Respondent appeared at the EPA Office in Atlanta, Georgia, and participated in a show cause hearing with EPA representatives to discuss its permit violations, the SDWA, and the implementing regulations.

13. Respondent and Complainant have negotiated a settlement of the foregoing violations and Respondent has agreed to pay a penalty.

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

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

16. Respondent shall pay a civil penalty of **\$800.00 (Eight Hundred Dollars)** in accordance with the terms set forth below.

17. Within thirty (30) days of receipt of a fully-executed copy of this CA/FO, Respondent shall submit a cashiers or certified check in the total amount of the penalty set forth in the preceding paragraph, 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.

18. 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 SDWA Enforcement Section
U. S. EPA - Region 4
61 Forsyth Street SW
Atlanta, GA 30303-8960

19. Pursuant to Section 1423(c)(7) of the SDWA, 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.

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.

25. 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.

26. 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.

27. 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.

28. 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.

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

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

31. 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: 6-3-2010



Johnnie Y. Spaulding, Vice President
Ohio Kentucky Oil Corporation

COMPLAINANT

Date: 7/21/2010



James D. Giattina, Director
Water Protection 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: July 29, 2010

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 Ohio Kentucky Oil Corporation; Docket No. SDWA-04-2010-1011(b), on the parties listed below in the manner indicated:

Carol Chen

Via EPA Internal Mail

Wilda Cobb

Via EPA Internal Mail

Johnnie Y. Spaulding

Via Certified Mail/ Return Receipt

Ohio Kentucky Oil Corporation

Requested

110 East Lowry Lane

Lexington, Kentucky 40503-2403

Date:

August 3, 2010

Claudette P. Hance

for Patricia A. Bullock, Regional Hearing Clerk

United States EPA - Region 4

Atlanta Federal Center

61 Forsyth Street, S.W.

Atlanta, GA 30303-8960

(404) 562-9511