



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

JUL 31 2012

CERTIFIED MAIL 7010 1060 0002 1703 0895
RETURN RECEIPT REQUESTED

Robert Price
5783 Rest Home Road
Claremont, North Carolina 28610


Re: Consent Agreement and Final Order (CA/FO)
Docket No. SDWA-04-2012-1005(b)

Dear Mr. Price:

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 W. Scott Hoskins, Underground Injection Control Enforcement, at (404) 562-9299.

Sincerely,


James D. Giattina
Director
Water Protection Division

Enclosure

cc: Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

RECEIVED
EPA REGION IV
2012 JUL 31 AM 7:05
HEARING CLERK

IN THE MATTER OF

Robert Price
5783 Rest Home Road
Claremont, North Carolina 28610

Consent Agreement and Final Order

Respondent

Docket No. SDWA-04-2012-1005(b)

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 Robert Price (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 an individual doing business in the Commonwealth of Kentucky, with a business address of 5783 Rest Home Drive, Claremont, North Carolina, 28610.
5. Respondent is a "person" as that term is defined in Section 1401(12) of the SDWA, 42 U.S.C. § 300f (12), and 40 CFR § 144.3.
6. Respondent owns and/or operates the following Class II underground injection well (Subject Well) which is permitted in accordance with 40 CFR § 144.31.

<u>Permit No.</u>	<u>EPA ID No.</u>	<u>Well Name</u>	<u>Status</u>	<u>County</u>
KYI0282	KYS1690003	Jimmy Rowe #5	Active	Metcalfe

7. This well constitutes a "facility" as that term is defined in 40 CFR § 144.3.
8. The Subject Well is permitted in accordance with 40 C.F.R. § 144.31 and is subject to the

requirements of the SDWA and the UIC regulations.

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.

10. Part II, Section G, Paragraph 3, of the UIC permit, 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.

11. The mechanical integrity demonstration for the following active Subject Well is overdue, as shown below.

<u>Permit No.</u>	<u>EPA ID No.</u>	<u>Well Name</u>	<u>Last MIT</u>	<u>MIT Due</u>
KYI0282	KYS1690003	Jimmy Rowe #5	7/5/05	7/5/10

12. Therefore, Respondent violated 40 CFR § 146.8, the UIC permit and the SDWA by failing to timely demonstrate the mechanical integrity of the active Subject Well.

13. Part II, Section H, Paragraph I, of the UIC permit, requires the permittee, including the transferor of a permitted well to demonstrate and maintain financial responsibility and resources to properly close, plug and abandon the well.

14. Respondent has failed to provide financial assurance for the Subject Well.

15. Therefore, Respondent is in violation of 40 C.F.R. § 144.51(a), the UIC permit and the SDWA for failure to demonstrate and maintain financial responsibility and resources to properly close, plug and abandon the Subject Well.

16. Part I, Section D, Paragraph 3, of the permit requires the permittee to conduct injection fluid analysis at least once every 12 months and whenever changes are made to the injection fluid. Analyses shall be made beginning within 12 months from the effective date of the permit. Part I, Section D, Paragraph 2, of the permit, contains the requirement to annually submit the results of these injection fluid analyses. Part I, Section D, Paragraph 2, of the permit, contains the requirement to submit the results of all monitoring by January 28 of the following year.

17. The records indicate that Respondent failed to submit fluid analyses for the active Subject Well as shown below.

<u>Permit No.</u>	<u>EPA ID No.</u>	<u>Well Name</u>	<u>Status</u>	<u>Date of Last Fluid Analyses</u>
KYI0282	KYS1690003	Jimmy Rowe #5	Active	8/10/99

18. Therefore, Respondent violated 40 CFR § 144.51 (a), its permit and the SDWA by failing to timely submit fluid analyses for the active Subject Well.

19. On February 15, 2012 Respondent participated in a show cause hearing with representatives of the EPA to discuss his violations of the SDWA and the implementing regulations.

STIPULATIONS AND FINDINGS

20. 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.

21. 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:

22. Respondent shall pay a civil penalty of **\$1,027 (one thousand and 27 dollars)** in accordance with the terms set forth below.

23. Within 60 days of receipt of a fully-executed copy of this CA/FO, Respondent shall submit a cashier's check or certified check in the amount of **\$1,027 (one thousand and 27 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 cashier's check.

24. 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

25. Pursuant to Section 1423(2)(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. Additionally, pursuant to 40 C.F.R. Part 13 and 31 U.S.C. § 3717 et seq., if the 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, the EPA shall assess an administrative fee of \$15 for each subsequent 30 day period. The 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.

26. Respondent shall perform the following injunctive relief for the Subject Well:

- a. Within 90 days of receipt of this Order, Respondent must demonstrate financial responsibility and resources for the Subject Well and submit a transfer application and the written agreement between the Respondent and the previous owner/operator.
- b. Respondent is ordered to demonstrate the mechanical integrity or close, plug and abandon the Subject Well within 30 days of receipt of this Order. Mechanical integrity testing or plugging and abandonment must be witnessed by an authorized EPA inspector.
- c. Respondent shall provide a current fluid analysis report for the Subject Well within 30 days of receipt of this Order.

27. Respondent agrees to pay stipulated civil penalties for violation of the conditions set forth in Paragraph 26 above as follows:

28. For failure to comply with the conditions described in Paragraph 26 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.

29. 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 cashiers 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

30. 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.

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

For Respondent: Robert Price
5783 Rest Home Road
Claremont, North Carolina 28610
828-638-5648

For EPA: Wilda Cobb, Attorney Advisor
U.S. EPA - Region 4
61 Forsyth Street SW
Atlanta, GA 30303-8960
404-562-9530

GENERAL PROVISIONS

32. 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.

33. 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. 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.

34. 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.

35. 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.

36. 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 verbal or written notice as provided herein or for failure to provide adequate proof of the cause of the delay.

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

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

39. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent CA/FO and to execute and legally bind the Party he or she represents to this CA/FO.

RESPONDENT

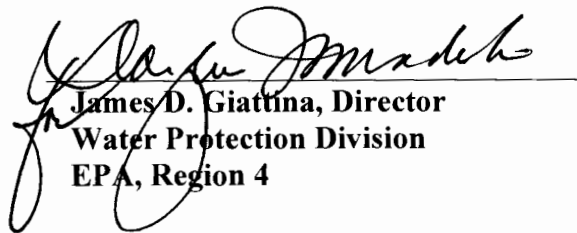
Date: 4-20-12



Robert Price

COMPLAINANT

Date: 7/24/12



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: July 26, 2012

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 Robert Price; Docket No. SDWA-04-2012-1005(b), on the parties listed below in the manner indicated:

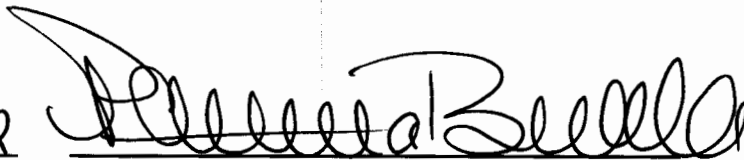
W. Scott Hoskins Via EPA Internal Mail

Wilda Cobb Via EPA Internal Mail

Robert Price Via Certified Mail/Return Receipt
5783 Rest Home Drive Requested
Claremont, North Carolina 28610

Date:

7/31/12



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

PUBLIC NOTICE

U.S. Environmental Protection Agency
Region 4
Water Protection Division
Safe Drinking Water Branch
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960
(404) 562-9372

Public Notice No.: SDWA-04-2012-1005(b)

Date: May 25, 2012

Notice of Proposed Issuance of
Consent Agreement and Final Order

The U.S. Environmental Protection Agency (EPA), Region 4, intends to issue a Consent Agreement and Final Order (CA/FO), Docket No. SDWA-04-2012-1005(b), that assesses an administrative penalty of \$6,053.34 to Robert Price (Respondent), 5783 Rest Home Drive, Claremont, North Carolina, 28610, under the authority of Section 1423 of the Safe Drinking Water Act, 42 U.S.C. § 300h-2.

The EPA alleges that the Respondent violated 40 C.F.R. § 146.8, its permit, and the SDWA, by failing to timely demonstrate the mechanical integrity of the underground injection well shown below.

<u>Permit No.</u>	<u>EPA ID No.</u>	<u>Well</u>	<u>County</u>
KYI0282	KYS1690003	Jimmy Rowe #5	Metcalf

The EPA alleges that the Respondent violated 40 C.F.R. § 144.51(a), its Permit and the SDWA for failing to timely submit fluid analysis for the well.

<u>Permit No.</u>	<u>EPA ID No.</u>	<u>Well</u>	<u>County</u>
KYI0282	KYS1690003	Jimmy Rowe #5	Metcalf

Any person wishing to comment on any aspect of the proposed CA/FO, Docket No. SDWA-04-2012-1005(b), must submit such comments in writing to the Regional Hearing Clerk at U.S. EPA, Atlanta Federal Center, 61 Forsyth Street S.W., Atlanta, GA 30303. Comments may also be submitted via email to bullock.patricia@epa.gov. Comments must be submitted within 30 days of this notice. Please include the Public Notice Number and the Docket No. with any submitted comments.

The commenter must also provide his or her name and complete mailing address. All comments received during the public notice period will be made part of the public record for the CA/FO and will be available for public review. After consideration of all timely written comments, the requirements and policies in the SDWA and appropriate regulations, the EPA will make a final determination regarding the issuance of a CA/FO.

Interested parties may find out more information about this enforcement action by visiting the EPA Region 4 Website at: http://www.epa.gov/region4/water/wpeb/npdes_states.html or by contacting W. Scott Hoskins at hoskins.scott@epa.gov.

Any person who comments will receive a copy of the proposed CA/FO. Within 30 days of receipt of the CA/FO, a commenter may petition the Regional Administrator to set aside the proposed CA/FO on the basis that material evidence was not considered. Copies of the petition shall be served to the parties. Unless a petition is filed, a CA/FO becomes effective 10 days after the close of the comment period.

The public record, including the draft CA/FO and comments received, is available for review and copying at 61 Forsyth Street, S.W., Atlanta, Georgia 30303-8960, between the hours of 8:15 a.m. and 4:30 p.m., Monday through Friday. Copies will be provided at a cost of 20 cents per page.