



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

APR 17 2013

CERTIFIED MAIL 7010 1060 0002 1703 0956
RETURN RECEIPT REQUESTED

Anthony D. Howard
6524 Boston Lafoon Road
Philpot, Kentucky 42366

Re: Consent Agreement and Final Order (CA/FO)
Docket No. SDWA-04-2013-1002(b)

Dear Mr. Howard:

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,

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

James D. Giattina
Director
Water Protection Division

Enclosure

cc: Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

RECEIVED
EPA REGION IV

2013 APR 17 PM 3:01

HEARING CLERK

IN THE MATTER OF

Anthony D. Howard
6524 Boston Lafoon Road
Philpot, Kentucky 42366

Consent Agreement and Final Order

Docket No. SDWA-04-2013-1002(b)

Respondent

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 Anthony Howard (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 limited liability company organized under the laws of Kentucky and doing business in the Commonwealth of Kentucky, with a business address of 6524 Boston Lafoon Road, Philpot, Kentucky 42366.
5. Respondent is the owner and/or operator of the Class II underground injection wells that are subject to this Order (Subject Wells). Each of the Subject Wells is a "facility" as that term is defined in 40 C.F.R. § 144.3.
6. The following Subject Wells were in existence on June 25, 1984, the effective date of the UIC program in Kentucky as implemented by the EPA, are authorized by rule as that term is defined in 40 C.F.R. § 144.21(a) and are subject to the requirements of the SDWA and the UIC regulations.

<u>EPA ID No.</u>	<u>Well</u>	<u>Status</u>	<u>County</u>
KYS1830063	Wedding-Slack #W-1	Active	Ohio
KYS1830064	Wedding-Slack #W-5	Active	Ohio
KYS1830065	Wedding-Slack #W-10	Active	Ohio

7. The SDWA, 42 U.S.C. § 300f, *et seq.* and 40 C.F.R. § 144.28(a) require the owner or operator of a rule-authorized injection well to comply with all applicable statutory and regulatory requirements.

8. The regulation at 40 C.F.R. § 144.28(g)(2)(iv), requires the owner or operator of an active rule-authorized injection well to demonstrate the mechanical integrity of the well at least once every 5 years.

9. The mechanical integrity demonstrations for the active rule-authorized Subject Wells are overdue or were performed late, as shown below.

<u>EPA ID No.</u>	<u>Well</u>	<u>Status</u>	<u>Last MIT</u>	<u>MIT Due</u>	<u>MIT Done</u>
KYS1830063	Wedding-Slack #W-1	Active	1/04/07	1/04/12	12/13/12
KYS1830064	Wedding-Slack #W-5	Active	9/29/07	9/26/12	12/20/12
KYS1830065	Wedding-Slack #W-10	Active	9/26/07	9/26/12	Not Yet

10. Therefore, the Respondent is in violation of 40 C.F.R. § 144.28(g)(2)(iv) and the SDWA for failure to timely demonstrate the mechanical integrity of the active rule-authorized Subject Wells, as shown above.

11. The following 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.

<u>Permit No.</u>	<u>EPA ID No.</u>	<u>Well</u>	<u>Status</u>	<u>County</u>
KYI0802	KYS1830549	Baughn-Griffith Heirs #1	Active	Ohio
KYI0814	KYS1830550	Minnie Wedding #1	Active	Ohio

12. 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.

13. Part I, Section C, Paragraph 3, of the UIC permits, requires the permittee to conduct injection fluid analyses at least once every 12 months and whenever changes are made to the injection fluid. Part I, Section D, Paragraph 2, requires the results of these injection fluid analyses to be submitted annually to the EPA, beginning within 12 months of the permit effective date.

14. Based on the EPA's records, injection fluid analysis results for the active permitted Subject Wells are overdue, as shown below.

<u>Permit No.</u>	<u>EPA ID No.</u>	<u>Well</u>	<u>Dates of Previous, Last Fluid Analyses</u>
KYI0802	KYS1830549	Baughn-Griffith Heirs #1	1/11/2005, 12/06/12
KYI0814	KYS1830550	Minnie Wedding #1	1/11/2005, 12/06/12

15. Therefore, the Respondent is in violation of 40 C.F.R. § 144.51(a), the UIC permits and the SDWA for failure to submit results of injection fluid analyses for the active permitted Subject Wells, as shown above.

16. On December 18, 2012, Respondent participated in a show cause hearing with representatives of the EPA to discuss these violations of the SDWA and the implementing regulations.

STIPULATIONS AND FINDINGS

17. Respondent admits the jurisdictional allegations and 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 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:

19. Respondent shall pay a civil penalty of **\$8,500 (eight thousand five hundred dollars)** in accordance with the terms set forth below.

20. 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 **\$8,500 (eight thousand five hundred 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.

21. 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

22. 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.

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

For Respondent: Anthony D. Howard
6524 Boston Lafoon Road
Philpot, Kentucky 42366
270-993-2176

For the EPA: Michele Wetherington, Assistant Regional Counsel
U.S. EPA - Region 4
61 Forsyth Street SW
Atlanta, GA 30303-8960
404-562-9613

24. 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 well listed below, within 90 days of receipt of this Order. Mechanical integrity testing or plugging and abandonment must be witnessed by the authorized EPA inspector.

<u>EPA ID No.</u>	<u>Well</u>
KYS1830065	Wedding-Slack #W-10

25. Respondent agrees to pay stipulated civil penalties for violation of the condition set forth in Paragraph 24 above, as follows. For failure to comply with the condition described in Paragraph 24 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.

27. A copy of the check shall be sent to:

Ground Water & UIC Section,
Safe Drinking Water Branch,
U.S. EPA - 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 the EPA.

GENERAL PROVISIONS

28. 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.

29. 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 Respondent's liability for federal civil penalties for the violations and facts stipulated herein.

30. 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 the 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 the 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.

31. 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. The 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 the EPA with written notice as provided herein or for failure to provide adequate proof for the cause of the delay.

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. 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.

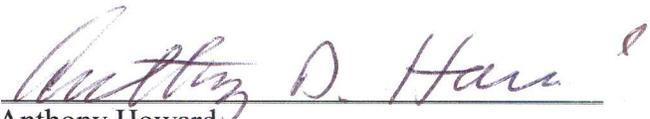
34. Each party shall bear its own costs and attorneys fees in connection with this action.

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

36. 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 1-30-13


Anthony Howard

COMPLAINANT

Date 4/11/13


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 April 16, 2013

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 Anthony Howard;
Docket No. SDWA-04-2013-1002(b), on the parties listed below in the manner indicated:

Carol Chen

Via EPA Internal Mail

Michele Wetherington

Via EPA Internal Mail

Anthony Howard
6524 Boston Lafoon Road
Philpot, Kentucky 42366

Via Certified Mail/ Return Receipt Requested

Date

May 17, 2013

for Claudette A. Hancey
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