

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF

Johnny Young
15922 N. Greenville Rd.
Crofton, KY 42217

Respondent

Consent Agreement
and
Final Order

Docket No. SDWA-04-2007-1011

HEARINGS CLERK

2006 DEC 21 PM 4:35

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EPA REGION IV

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 Marvin Young Enterprises, Inc. ("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. Respondent is a business organized under the laws of Kentucky with a principal place of business at 15922 N. Greenville Rd., Crofton, KY 42217, and Johnny Young is the Owner.

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 C.F.R. § 144.3.

6. Respondent owns and/or operates the following injection well:

<u>EPA ID No.</u>	<u>Permit No.</u>	<u>Well</u>	<u>Status</u>
KYS0470125	KYI0356	Littlepage #9	Active

7. This well constitutes a "facility" as that term is defined in 40 CFR §144.3.

8. Respondent's well is authorized under Underground Injection Control (UIC) Permit # KYI0356, in accordance with 40 CFR §146.21. The permit was issued and became effective on January 17, 1990.

9. The SDWA, 42 U.S.C. §300f, *et seq.*, and 40 CFR §144.51(a) require that the permittee comply with all conditions of the permit. Noncompliance constitutes a violation of the SDWA and is grounds for an enforcement action.

10. Part I, Section D, Paragraph 3, of the subject permit requires the submittal of annual injection fluid analysis reports to EPA.

11. The records file shows that no annual injection fluid analysis reports were submitted to EPA for the Littlepage #9 injection well for the years 2001, 2002, 2003, 2004, and 2005.

12. Therefore, Respondent is in violation of the SDWA and 40 CFR §144.51(a) for failure to comply with Part I, Section D, Paragraph 3 of Respondent's permit.

13. On June 28, 2006, EPA issued a Notice of Violation and Notice of Opportunity to Show Cause ("NOV") for the subject well, alleging Respondent to be in violation of the SDWA and its implementing regulations.

STIPULATIONS AND FINDINGS

14. 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.

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 AND INJUNCTIVE RELIEF

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

16. Respondent shall pay a civil penalty of six thousand and two hundred dollars (\$6200) in accordance with the terms set forth below:

- a. Respondent shall pay the penalty in twelve (12) equal installments of five hundred and sixteen dollars and sixty-seven cents (\$516.67) each over a thirty-six (36) month period.
- b. Respondent shall pay the first installment of \$516.67 within ninety (90) days of Respondent's receipt of a fully executed copy of this Order. Thereafter, the remaining payments shall be submitted every ninety (90) days until paid in full.

17. 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.

18. 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.

19. Respondent shall make payment 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
Cincinnati Accounting Operations
Mellon Lockbox 371099M
Pittsburgh, PA 15251-7099

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

20. 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. Alfreda Freeman, Chief
Central Enforcement Section
U. S. Environmental Protection Agency
Region 4
61 Forsyth Street SW
Atlanta, GA 30303-8960

21. Respondent shall provide to EPA, within ninety (90) days of receipt of a fully-executed copy of this Order, an injection fluid analysis report for the Littlepage #9 injection well for the year 2006.

22. Respondent agrees to pay stipulated civil penalties for violation of the conditions set forth in Paragraphs 16 through 21 above as follows:

For failure to comply with each condition described in Paragraphs 16 through 21 above, Respondent shall pay a stipulated civil penalty according to the following schedule:

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

23. 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
Cincinnati Accounting Operations
Mellon Lockbox 371099M
Pittsburgh, PA 15251-7099

A copy of the check shall be sent to the Central Enforcement Section, Water Programs Enforcement Branch, U. S. Environmental Protection Agency, Region 4, 61 Forsyth

Street SW, 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.

24. In the event Respondent fails to pay any stipulated penalty amount in full within ten (10) days after the same is due, Respondent shall also pay the following:

- a. Interest which 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 as of receipt of a fully-executed copy of this CA/FO;
- b. A late-payment handling charge of \$15, with an additional delinquent notice charge of \$15 for each subsequent thirty (30) day period; and
- c. A six per cent (6%) per annum penalty on any principal amount not paid within ninety (90) days of the due date.

GENERAL PROVISIONS

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

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

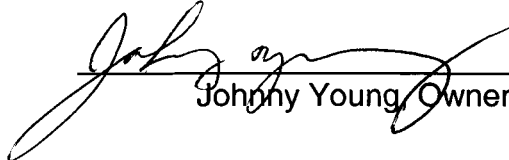
32. If the parties mutually agree to modify the CA/FO, any such modification shall be in writing and signed by the parties, with the written approval of the Regional Judicial Officer.

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

34. 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: 8-28-06



Johnny Young, Owner

COMPLAINANT

Date: 12/13/06



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 AGENCYDate: Dec. 21, 2006

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 Johnny Young, Docket No. SDWA-04-2007-1011(b), on the parties listed below in the manner indicated:

Randy Vaughn, UIC Enforcement Officer
EPA, Region 4

(Via EPA internal Mail)

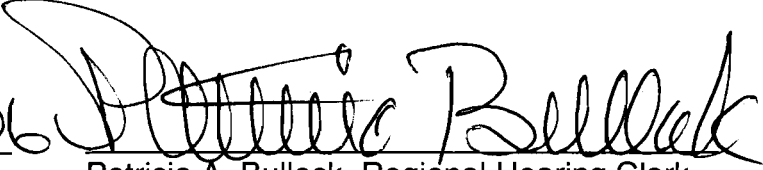
Ms. Zylpha Pryor, Associate Regional Council
EPA, Region 4

(Via EPA internal Mail)

Mr. Johnny Young, Owner
15922 N. Greenville Rd.
Crofton, KY 42217

(Via Certified Mail - Return Receipt Requested)

Date: 12-21-06


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



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

DEC 21 2006

CERTIFIED MAIL 7005 3110 0003 6264 0730
RETURN RECEIPT REQUESTED

Mr. Johnny Young
15922 N. Greenville Rd.
Crofton, KY 42217

SUBJ: Consent Agreement and Final Order
Docket No. SDWA-04-2007-1012(b)

Dear Mr. Young:

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 the "INJUNCTIVE RELIEF" provision with respect to compliance actions and stipulated penalties.

Also, please be advised that the Environmental Protection Agency has revised the Docket Number of the enclosed CA/FO. The new docket number is **SDWA-04-2007-1012(b)**. This revision is being made in order to accurately reflect Fiscal Year 2007 as the fiscal year in which the CA/FO has been issued.

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

Sincerely,

A handwritten signature in black ink that reads "Jim Stewart for".

James D. Giattina, Director
Water Management Division

Enclosure

cc: Susan Green
Kentucky Division of Enforcement

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

PAYMENT DUE DATE: _____

TO BE COMPLETED BY THE ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Mel Rechtman on 1/12/07
(Name) (Date)

in the ROECB at 404/562-8745
(Office) (Phone Number)

- | | |
|--|--|
| <input type="checkbox"/> Non-SF Judicial Order/Consent Decree
USAO COLLECTS | <input checked="" type="checkbox"/> Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT |
| <input type="checkbox"/> SF Judicial Order/Consent Decree
DOJ COLLECTS | <input type="checkbox"/> Oversight Billing - Cost Package required:
Sent with bill |
| <input type="checkbox"/> Other Receivable | <input type="checkbox"/> Not sent with bill |
| <input type="checkbox"/> This is an original debt | <input type="checkbox"/> Oversight Billing - Cost Package not required |
| | <input type="checkbox"/> This is a modification |

PAYEE: Massey Industrial Oil, Inc.

The Total Dollar Amount of the _____
Receivable: 1,250.00 (If installments, attach
schedule of amounts and respective due dates. See other side of this form.)

The Case Docket Number: CWA-04-2006-7006
The Site Specific Superfund Account Number: _____

The Designated Regional/Headquarters Program Office: Waste

To Be Completed By Cincinnati Finance Center

The IFMS Accounts Receivable Control Number is: _____ Date: 00/00/2006

DISTRIBUTION:

A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:

- | | |
|--|---|
| 1. Debt Tracking Officer
Environmental Enforcement Section
Department of Justice RM 1647
P.O. Box 7611, Benjamin Franklin Station
Washington, D.C. 20044 | 2. Originating Office (EAD)
3. Designated Program Office |
|--|---|

B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order Should be to:

- | | |
|--|---|
| 1. Originating Office
2. Regional Hearing Clerk | 3. Designated Program Office
4. Regional Counsel (EAD) |
|--|---|