

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF

Jim Higgins
P.O. Box 179
Alvaton, KY 42122

and

Sam Collins
1127 Buford Road
Utica, KY 42376

Respondents

Consent Agreement
and
Final Order

Docket No. SDWA-04-2008-1001(6)

RECEIVED
EPA REGION IV
2007 DEC -6 AM 8:30

CONSENT AGREEMENT

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") 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 Jim Higgins and Sam Collins ("Respondents").

ALLEGATIONS

The parties hereby stipulate and find as follows:

1. Respondents are individuals doing business as an unnamed partnership in the Commonwealth of Kentucky.
2. Respondents are "person(s)" as that term is defined in Section 1401(12) of the SDWA, 42 U.S.C. Section 300f(12) and 40 CFR § 144.3.
3. Respondents own and/or operate the following injection well:

<u>EPA ID No.</u>	<u>Well</u>	<u>Status</u>
KYS0590138	Fulkerson W-2	Plugged and abandoned

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

5. Therefore Respondents are subject to the jurisdiction of the SDWA and its implementing regulations.

6. The injection well subject to this action was in existence upon the effective date of the Underground Injection Control ("UIC") program in Kentucky (June 25, 1984), and is, therefore, rule authorized.

7. The following facts and violations are alleged:

a. VIOLATION 1:

(1) 40 CFR § 144.28(g)(2)(iv)(A) requires that an owner or operator of a rule authorized injection well demonstrate the mechanical integrity of the well at least once every (5) years.

(2) Administrative Order on Consent ("AOC") SDWA-04-2005-1257 was issued on January 4, 2006, for failure to demonstrate mechanical integrity for the subject injection well. The AOC required the Respondents to demonstrate mechanical integrity.

(3) On January 28, 2006, and February 8, 2006, Respondents conducted mechanical integrity tests ("MIT") on the subject injection well. On April 19, 2006, EPA notified Respondents of the failure and gave them until June 20, 2006, to remediate and retest the well or to plug and abandon it.

(4) Respondents did not timely remediate and retest or plug and abandon the subject injection well.

(5) Therefore, Respondents are in violation of 40 CFR § 144.28(g)(2)(iv)(A), the AOC, and the SDWA by failing to demonstrate the mechanical integrity of the subject injection well at least once every five (5) years.

b. VIOLATION 2:

(1) 40 CFR § 144.28(g)(2)(ii)(B) requires an owner or operator of a rule authorized enhanced recovery well to monitor monthly for injection pressure, flow rate, and cumulative volume.

(2) 40 CFR § 144.28(h)(2)(i) requires that the owner or operator submit an annual report summarizing the results of the above monitoring to EPA.

(3) Respondents have not submitted annual monitoring reports to EPA since acquiring the subject injection well in 2004.

- (4) Therefore, Respondents are in violation of 40 CFR § 144.28(g)(2)(ii)(B) and 40 CFR § 144.28(h)(2)(i) for failure to monitor and to submit to EPA, the annual monitoring reports summarizing the required monitoring information.

c. VIOLATION 3:

- (1) 40 CFR § 144.28(d), requires an owner or operator or transferor of a rule authorized well to demonstrate and maintain financial responsibility to adequately close, plug, and abandon (“P&A”) the injection well using an EPA-approved P&A plan.
- (2) AOC was issued on January 4, 2006, for failure to submit financial responsibility to adequately P&A the subject injection well. The AOC required that the Respondents submit financial responsibility by April 4, 2006.
- (3) Respondents did not submit financial responsibility for the subject injection well.
- (4) Therefore, Respondents are in violation of 40 CFR § 144.28(d) for failure to demonstrate adequate financial responsibility to close, plug, and abandon the subject injection well in accordance with an EPA-approved plan.

8. On March 29, 2007, EPA notified Respondents by certified mail of their violations of the SDWA and its implementing regulations.

9. On May 14, 2007, May 17, 2007, and May 23, 2007, EPA conducted Show Cause meetings with the Respondents to discuss the violations.

10. On May 29, 2007, Respondents plugged the subject injection well.

STIPULATIONS AND FINDINGS

11. Respondents admit the jurisdictional allegations set forth above and neither admits nor denies the facts and findings of violation as alleged herein. Respondents waive any right to a hearing and waive any right to appeal a final order in this matter, and consents to the issuance of a final order without further adjudication.

12. Complainant and Respondents 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, the parties hereby agree and consent to entry of the following order:

13. Respondents shall pay a civil penalty of five thousand dollars (\$5000) in accordance with the terms set forth below.

14. Within thirty (30) days of receipt of a fully-executed copy of this CA/FO, Respondents shall submit a cashier's or certified check, according to the instructions in Paragraph 17 below.

15. Pursuant to Section 1423(c)(7) of the Act, 42 U.S.C. § 300h-2(c)(7), failure by Respondents to pay the penalty assessed by this CA/FO in full by its due date, may subject Respondents 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.

16. 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 percent (6%) per annum penalty on any principal amount not paid within ninety (90) days of the due date.

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

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

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

19. Respondents agree to pay stipulated civil penalties for violation of the conditions set forth in Paragraphs 13 through 18 above as follows:

- a. For failure to comply with each condition described in Paragraphs 13 through 18 above, Respondents shall pay a stipulated civil penalty according to the following schedule:
 - (1) \$300 for any portion of the first seven calendar days any failure continues; and
 - (2) \$200 per day for each day following the first seven calendar days that the failure continues.

20. 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, Georgia 30303-8960. Respondents 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.

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

For Respondents: Jim Higgins
 P.O. Box 179
 Alvaton, KY 42122
 270-991-7407

 Sam Collins
 1127 Buford Road
 Utica, KY 42376
 270-316-4541

For EPA: Zylpha Pryor
 Associate Regional Counsel
 U.S. EPA
 61 Forsyth Street, S.W.
 Atlanta, GA 30303
 404-562-9535

GENERAL PROVISIONS

22. The provisions of this CA/FO shall be binding upon Respondents, 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.

23. 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 Respondents of any obligation imposed by any permit issued thereunder, or of Respondents' 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 with the exception that EPA will not bring a future civil action against Respondents for the specific claims alleged in this matter.

24. 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 Respondents's liability for federal civil penalties for the violations and facts stipulated herein.

25. For the purposes of state and federal income taxation, Respondents 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.

26. If any event beyond the control of Respondents, its/their successors or assigns, occurs which causes or may cause a delay in the achievement of any requirement of this CA/FO, Respondents 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 Respondents 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 Respondents and the length of the delay attributable to such circumstances shall rest with Respondents. 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 Respondents 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 Respondents of its determination that certain circumstances are considered to be beyond Respondents' control and the extension of time, if any, for completion of the affected requirements. Respondents 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.

28. 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.

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

30. 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.

31. This CA/FO shall become effective upon the date of signature by the Regional Judicial Officer.

32. The undersigned representative of Respondents certifies that he is fully authorized to enter into the terms and conditions of this Consent Agreement and to execute and legally bind the Party he represents to this Agreement.

Docket No. SDWA-04-2008-1001(b)

RESPONDENT

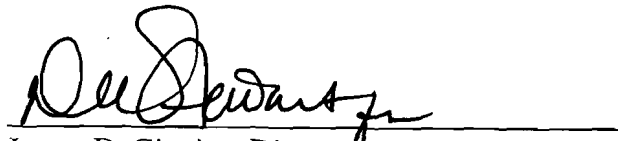
Date: 10.20.07



Jim Higgins

COMPLAINANT

Date: 11/13/07



James D. Giattina, Director
Water Management Division

RESPONDENT

Date: 10-25-07

Sam Collins
Sam Collins

COMPLAINANT

Date: 11/13/07

James D. Giattina
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. Respondents are ordered to comply immediately with the terms of the Consent Agreement, which are fully incorporated into this Final Order.

U.S. ENVIRONMENTAL PROTECTION AGENCYDate: 12/5/07

Susan B. Schub
Susan Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

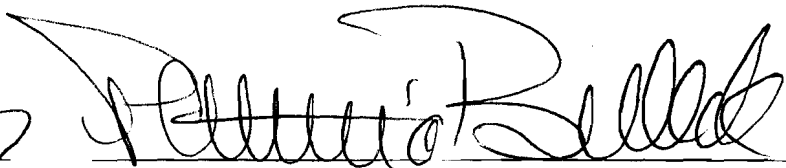
I HEREBY CERTIFY that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, in the Matter of: Jim Higgins and Sam Collins; Docket Number SDWA-04-2008-1001(b), on the parties listed below in the manner indicated:

Amanda Driskell, Enforcement Officer (Via EPA internal Mail)

Zylpha Pryor, OWLS Attorney (Via EPA internal Mail)

Jim Higgins (Via Certified Mail - Return Receipt Requested)
P.O. Box 179
Alvaton, KY 42122

Sam Collins (Via Certified Mail – Return Receipt Requested)
1127 Buford Road
Utica, KY 42376

Date: 12-6-07 

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