



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

WU-16J

NOV 14 2008

**CERTIFIED MAIL NO. 7001 0320 0005 8933 2676**  
**RETURN RECEIPT REQUESTED**

Mr. Frank Adams, Jr.  
Adams Trucking & Excavating, Inc.  
9019 North 72<sup>nd</sup> Avenue  
Post Office Box 863  
Pentwater, Michigan 49449

**Re: Issuance of Proposed Final Administrative Consent Order  
Adams Trucking & Excavating, Inc.  
Docket No. SDWA-05-2006-0004**

Dear Mr. Adams:

Enclosed, please find a fully executed Final Administrative Consent Order (Consent Order) issued to you for violations of the Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300f et seq., and the Underground Injection Control (UIC) regulations promulgated under Section 1421 and 1422 of the SDWA, 42 U.S.C. § 300h and 300h-1.

Pursuant to Paragraph 46 of the Consent Order, the Order becomes effective 30 days after the date it is signed by the Director of the Water Division (or any person acting in her place). Payment of \$7,008.75 penalty is due in two installments, with a first payment of \$3,500.00 due within 30 days after the effective date of the Consent Order and a second payment of \$3,508.75 **(which includes statutory interest on the delayed payment of the balance amount)**, due within 120 days after the effective of this Consent Order. Please place the following billing document reference number on the penalty check: 2750768W001. The penalty check should be mailed to the address set forth at Paragraph 46 of the Consent Order. Please send a copy of the check and its accompanying transmittal letter to John Tielsch, Assistant Regional Counsel, USEPA, 77 W. Jackson Blvd., (C-14J) Chicago, Illinois 60604-3590.

Failure to comply with the Consent Order can result in additional enforcement actions against Adams Trucking & Excavating, Inc., to achieve compliance. Moreover, compliance with the Consent Order does not relieve the well owner or operator from further enforcement actions pursuant to Section 1423(c) of the SDWA, 42 U.S. C. § 300h-2(c).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

IN THE MATTER OF:	)	
	)	
Adams Trucking & Excavating, Inc.	)	SDWA-05-2006-0004
d/b/a A.T. & E. Systems, Incorporated	)	
Pentwater, Michigan	)	
Respondent.	)	
_____	)	

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CONSENT AGREEMENT AND FINAL ORDER

I. GENERAL ALLEGATIONS AND STATUTORY AUTHORITY

1. This is an administrative action for the assessment of a civil penalty commenced and concluded under Section 1423(c) of the Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300h-2(c), and Sections 22.1(a)(2), 22.13(b), and 22.18(b) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22 (2004). In particular, this proceeding was conducted in accordance with the procedures set forth in the Consolidated Rules at 40 C.F.R. Part 22, Subpart I, which apply to actions, such as this one, that are not governed by Section 554 of the Administrative Procedure Act ("APA"), 5 U.S.C. § 554.

2. The Director, Water Division, Region 5, United States Environmental Protection Agency ("U.S. EPA"), is, by lawful delegation, the Complainant.

3. The Respondent is Adams Trucking & Excavating, Inc. (hereinafter "Respondent"), which is, and has been continuously

since at least 1980, a corporation organized under the laws of the State of Michigan.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO). 40 C.F.R. § 22.13(b) (2004).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

## **II. JURISDICTION AND WAIVER OF RIGHT TO HEARING**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

### III. STATUTORY AND REGULATORY BACKGROUND

9. Section 1421 of SDWA, 42 U.S.C. § 300h, requires that U.S. EPA promulgate regulations, which shall include inspection, monitoring, recordkeeping and reporting requirements, for State underground injection control ("UIC") programs that prevent the endangerment to drinking water sources by underground injection.

10. Section 1422(b) of SDWA, 42 U.S.C. § 300h-1(b), provides that States, upon receipt of U.S. EPA's approval of a proposed UIC program, may implement a Federally-enforceable UIC program in that State and obtain primary enforcement responsibility of that program (a concept called "primacy").

11. Section 1422(c) of SDWA, 42 U.S.C. § 300h-1(c), further provides that, in states that have not obtained primacy, U.S. EPA is to promulgate, implement and enforce an applicable UIC program in that State.

12. Pursuant to Sections 1421 and 1422 of SDWA, 42 U.S.C. §§ 300h and 300h-1, respectively, U.S. EPA has promulgated UIC regulations at 40 C.F.R. Parts 144 through 147.

13. The UIC program for the State of Michigan is set forth at 40 C.F.R. Part 147, Subpart X.

14. Pursuant to 40 C.F.R. § 147.1151, the UIC program for the State of Michigan for Class II wells, as defined by 40 C.F.R. §§ 144.6, 146.5, consists of the UIC program requirements set forth at, *inter alia*, 40 C.F.R. Parts 124, 144, 146, 147 (Subpart X) and 148, and was effective on June 25, 1984.

15. Pursuant to 40 C.F.R. § 147.1151, at all times relevant to this Complaint, U.S. EPA had primacy over Class II wells, as defined by 40 C.F.R. §§ 144.6, 146.5, in the State of Michigan.

16. The UIC program set forth at 40 C.F.R. § 147.1151, constitutes the "applicable underground injection control program" as defined by Section 1422(d) of SDWA, 42 U.S.C. § 300h-1(d), for the State of Michigan.

#### **IV. FACTUAL ALLEGATIONS**

17. The Lauber #1-6 salt water disposal (SWD) well is a "well," as defined at 40 C.F.R. § 144.3, located in Oceana County, Michigan.

18. The Lauber #1-6 SWD well is a Class II well, as defined by 40 C.F.R. §§ 144.6 and 146.5.

19. The Lauber #1-6 SWD well is subject to the federally promulgated UIC requirements set forth at 40 C.F.R. Part 147, Subpart X.

20. The requirements at 40 C.F.R. § 144.28 apply to the owner or operator of a Class I, II or III well authorized by rule under 40 C.F.R. part 144 subpart C.

21. The Respondent is authorized to operate the well, pursuant to the provisions of 40 C.F.R. § 144.21.

22. Pursuant to 40 C.F.R. § 144.21 an existing Class II injection well is authorized by rule if the owner or operator injects into the existing well within one year after the date at

which a UIC program authorized under the SDWA becomes effective for the first time or inventories the well pursuant to the requirements of 40 C.F.R. § 144.26.

23. The Michigan State permit number for the well is 33493.

24. The well is authorized by rule because inventory was submitted pursuant to the requirements of 40 C.F.R. § 144.26.

25. At times relevant to this Complaint, Respondent has performed, or has been authorized to perform, underground injection of fluids into the Lauber #1-6 SWD well.

26. Brine is a "fluid" as defined at 40 C.F.R. § 144.3.

27. The subsurface emplacement of brine through the Lauber #1-6 SWD well is a "well injection" as defined at 40 C.F.R. § 144.3.

28. Respondent's "well injection" is an "underground injection" as defined by 40 C.F.R. § 144.3.

29. Section 1423(a) of SDWA, 42 U.S.C. § 300h-2(a), provides, *inter alia*, that U.S. EPA may issue an order under Section 1423(c) of SDWA, 42 U.S.C. § 300h-2(c), to any person found to be in violation of any regulation or requirement of an applicable UIC program in a State that does not have primacy.

30. Section 1423(c)(2) of SDWA, 42 U.S.C. § 300h-2(c)(2), provides that U.S. EPA may issue to any person in violation of any regulation or requirement relating to the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production, an

administrative order assessing a civil penalty of not more than \$5,000 for each day of violation for any past or current violation, up to a maximum administrative penalty of \$125,000, or requiring compliance with such regulation or requirement, or both. Pursuant to the Civil Penalties Inflation Adjustment Act, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996 ("DCIA"), these statutory maximums were increased to \$5,500 for each day of violation for any past or current violation, up to a maximum administrative penalty of \$137,500, for violations that occurred from January 31, 1997 to March 15, 2004; and increased to \$6,500 for each day of violation for any past or current violation, up to a maximum administrative penalty of \$157,500, for violations that occurred after March 15, 2004. (See 40 C.F.R. Part 19, as amended by 69 Fed. Reg. 7121 (Feb. 13, 2004)).

### Count I

#### Failure to demonstrate mechanical integrity for Lauber #1-6

31. 40 C.F.R. § 144.28(g)(2)(iv)(A), requires the owner or operator of a Class II SWD well to demonstrate the mechanical integrity of a well in accordance with the requirements of 40 C.F.R. § 146.8 at least every five years from the effective date of the last approved demonstration.

32. The last approved demonstration for the well was on June 27, 2000.

33. The next mechanical integrity test for the well was due

no later than June 27, 2005.

34. The Respondent successfully demonstrated mechanical integrity for the well on June 26, 2006.

35. Respondent's failure to comply with the requirement to demonstrate mechanical integrity of the well on or before June 27, 2005, constitutes a violation of 40 C.F.R. § 146.8, and 40 C.F.R. § 144.28(g)(2)(iv)(A).

36. Respondent's violation of §§ 146.8 and 144.28(g)(2)(iv)(A) subjects Respondent to the issuance of an administrative order pursuant to Section 1423(c)(2) of SDWA, 42 U.S.C. § 300h-2(c)(2).

#### Count II

#### Failure to timely submit annual monitoring reports for the Lauber

#### #1-6

37. 40 C.F.R. § 144.28(h)(2)(i) requires owners and operators of rule authorized Class II wells to submit an annual report to the U.S. EPA, summarizing the results of all monitoring required by Paragraph (g)(2) of Section 144.28. This includes recording one observation of injection pressure, flow rate and cumulative volume of the injection fluid on a monthly basis for salt water disposal wells.

38. Annual monitoring reports are due by January 10<sup>th</sup> of the following calendar year.

39. Respondent failed to submit annual monitoring



reports covering calendar years 2001, 2002, 2003, 2004 and 2005 for the well to the U.S. EPA, Region 5.

40. On June 12, 2006, the Respondent submitted annual monitoring reports as described in Paragraph 37 to the U.S. EPA covering calendar years 2001, 2002, 2003, 2004 and 2005.

41. The Respondent's failure to timely submit annual monitoring reports as described in Paragraph 42 constitute violations of § 144.28(h)(2)(i) and subjects Respondent to the issuance of an administrative order pursuant to Section 1423(c)(2) of SDWA, 42 U.S.C. § 300h-2(c)(2).

#### **IV. CONSENT AGREEMENT**

Based upon the foregoing allegations and stipulations, and having taken into account the requirements of Section 1423(c)(4) of SDWA, 42 U.S.C. § 300h-2(c)(4), Complainant and Respondent agree as follows:

42. Respondent waives any and all rights under any provision of law to a hearing on the allegations in the Complaint or to appeal or otherwise challenge the terms and conditions of this CAFO.

43. Respondent certifies that, to the best of its knowledge after reasonable inquiry, it is in compliance with the Permit and the other UIC requirements applicable to the Denning #3-20 SWD well.

44. In settlement of the violations alleged in the Complaint, Respondent shall pay a civil penalty in the amount of

\$7,008.75, such civil penalty to be considered assessed upon the effective date of this CAFO.

45. Respondent shall pay the \$7,008.75 civil penalty for the violations alleged in the Complaint by mailing a certified or cashier's check, made payable to "Treasurer, United States of America," to the following address:

U.S. EPA, Region 5  
P.O. Box 70753  
Chicago, Illinois 60673

Payment of the civil penalty is due in two installments, with a first payment of \$3500.00 due within 30 days after the effective date of this CAFO (see Section v below) and a second payment of \$3,508.75 (**which includes statutory interest on the delayed payment of the balance due**), due within 90 days after the effective date of this CAFO.

46. Simultaneous with Respondent's payment of the civil penalty in accordance with Paragraph 46 above, Respondent shall separately send notice of each such payment, including a copy of the checks, to the following parties:

Regional Hearing Clerk  
U.S. EPA, Region 5 (E-19J)  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

John Tielsch  
Associate Regional Counsel  
U.S. EPA, Region 5 (C-14J)  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

Eva-Marie Rowe  
Underground Injection Control Branch  
Water Division  
U.S. EPA, Region 5 (WU-16J)  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

47. A failure to pay any civil penalty assessed herein after the effective date of this order may result in a civil action brought pursuant to Section 1423(c)(7) of SDWA, 42 U.S.C. § 300h-2(c)(7), for the recovery of such overdue amounts, costs, late payment penalties, interest and attorneys' fees as are authorized therein.

48. This CAFO constitutes full settlement of civil penalties for all allegations asserted in this CAFO against Respondent.

49. Respondent consents to the terms of this CAFO, including, but not limited to, the assessment of the \$7,008.75 civil penalty.

50. This CAFO shall be binding upon Respondent, its successors and assigns.

51. Nothing in this CAFO relieves Respondent of its duty to comply with all Federal, State and local laws, regulations and permits. This paragraph includes, but is not limited to, the laws, regulations and/or permits that are the subject of this proceeding.

52. Complainant and Respondent each agree to bear all of their own costs and attorneys fees incurred with respect to this adjudication.

53. The undersigned representative of Respondent certifies that he is duly authorized to bind Respondent to the terms of this CAFO.

54. After executing this CAFO, Respondent consents to the filing of this fully executed CAFO with the Regional Hearing Clerk without further notice to Respondent. Complainant agrees to deliver to Respondent expeditiously a copy of the fully executed and file-stamped CAFO after filing it with the Regional Hearing Clerk.

55. Issuance of this CAFO does not constitute a waiver by U.S. EPA of its remedies, either judicial or administrative, under any law, except that U.S. EPA waives any right to seek additional civil penalties (*i.e.*, civil penalties other than those assessed herein) for the violations alleged in the Complaint.

56. This CAFO constitutes the entire settlement agreement between Complainant and Respondent.

#### **V. EFFECTIVE DATE**

57. For purposes of Section 1423(c)(3)(D), 42 U.S.C. § 300h-2(c)(3)(D), this CAFO shall be considered issued upon filing with the Regional Hearing Clerk.

58. Pursuant to Section 1423(c)(3)(D), 42 U.S.C. § 300h-2(c)(3)(D), this CAFO will become effective 30 days after issuance, which is 30 days after the filing of this CAFO with the Regional Hearing Clerk.

Adams Trucking & Excavating, Inc.  
d/b/a A.T. & E. Systems, Incorporated  
RESPONDENT

Frank Adams 9/6/06 Dated:  
Frank Adams, Jr.  
Adams Trucking & Excavating, Inc.

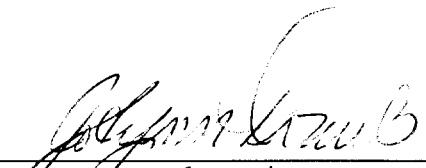
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
COMPLAINANT

Jo Lynn Traub Dated: 9/21/06  
Jo Lynn Traub, Director  
Water Division  
U.S. EPA, Region 5 (W-15J)  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590  
**SDWA-05-2006-0004**

**Consent Agreement and Final Order**  
**In the Matter of Adams Trucking & Excavating, Inc.**  
**Docket No. SDWA-05-2006-0004**

**FINAL ORDER**

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The settling Respondent, Reservoir Research Corporation, is hereby **ORDERED** to comply with all terms of the Consent Agreement, which shall be effective 30 days after the filing of the Consent Agreement and Final Order with the Regional Hearing Clerk.

  
\_\_\_\_\_  
Jo Lynn Traub, Director  
Water Division  
U.S. EPA, Region 5 (W-15J)  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

Dated: 11/13/06

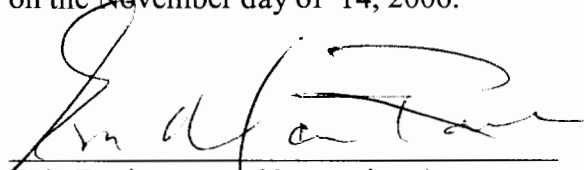
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CERTIFICATE OF SERVICE

I, Eva-Marie Rowe, certify that I hand delivered the original and one copy of the Consent Agreement and Final Order, docket number SDWA-05-2006-0004, to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed an original by first-class, postage prepaid, certified mail, return receipt requested, to Adams Trucking & Excavating, Inc. by placing it in the custody of the United States Postal Service addressed as follows:

Frank Adams Jr.  
Adams Trucking & Excavating, Inc.  
d/b/a/ A. T. & E. Systems, Incorporated  
9019 North 72<sup>nd</sup> Avenue  
Pentwater, Michigan 49449

on the November day of 14, 2006.



U.S. Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard (WU-16J)  
Chicago, Illinois 60604

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0005 8933 2676

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