



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

JUL 07 2008

CERTIFIED MAIL 7005 2570 0001 3666 5007
RETURN RECEIPT REQUESTED

Mr. David Hawkins
Hawkins Oil Company
374 Oak Ridge Road
Clay City, Kentucky 40312

Re: Consent Agreement and Final Order (CA/FO)
Docket No. SDWA-04-2008-1000(b)

Dear Mr. Hawkins:

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. We also acknowledge receipt of full payment in the amount of \$2,000.00.

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, appearing to read "J. Giattina".

James D. Giattina
Director
Water Management Division

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF

David Hawkins
Hawkins Oil Company
374 Oak Ridge Road
Clay City, Kentucky 40312

Respondent

Consent Agreement
and
Final Order

Docket No. SDWA-04-2008-1000(b)

HEARING CLEAN

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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 Hawkins Oil Company ("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.

1. 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

2. The parties hereby stipulate and find as follows:

3. Respondent, David Hawkins, is an individual doing business as Hawkins Oil Company with a principal place of business located at 374 Oak Ridge Road, Clay City, Kentucky 40312.

4. 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 CFR § 144.3.

5. Respondent owns and/or operates the following enhanced recovery injection wells:

<u>EPA ID No.</u>	<u>Lease</u>	<u>Well No.</u>	<u>Status</u>
KYS1970285	South Fork	J9I	Active
KYS1970293	South Fork	K8I	Active

6. Each of these wells, located in Powell County, Kentucky, constitutes a "facility" as that term is defined in 40 CFR § 144.3.

7. Respondent's injection wells were in existence on June 25, 1984, the effective date of the UIC program in Kentucky as implemented by EPA, and are, therefore, rule authorized, as that term is defined in 40 CFR § 144.21(a).

8. On March 14, 2007, EPA inspected Respondent's underground injection wells. Approximately eleven (11) injection wells are located at the Respondent's facility. Two (2) of the injection wells were being injected into at the time of the inspection. Prior to the date of the inspection, EPA had determined the wells to be abandoned.

9. 40 CFR § 144.28(d) requires that the owner/operator of a Class II injection well demonstrate and maintain financial responsibility for the well until it is plugged.

10. Respondent has not demonstrated and maintained financial responsibility for his Class II injection wells.

11. Therefore, Respondent is in violation of the SDWA and 40 CFR § 144.28(d) for failure to demonstrate and maintain financial responsibility.

12. 40 CFR § 144.28(g)(2)(iv)(A) requires that a demonstration of mechanical integrity be conducted at least once every 5 years during the life of the well.

13. The records file for the subject injection wells shows that on the date of the aforementioned inspection, the last demonstration of mechanical integrity for the wells had been conducted on February 15, 1990.

14. Therefore, Respondent is in violation of the SDWA and 40 CFR § 144.28(g)(2)(iv)(A) for failure to demonstrate the mechanical integrity of the subject wells.

15. 40 CFR § 144.28(h)(2)(i) requires that annual injection monitoring reports be submitted to EPA.

16. The records file for the Respondent's injection wells shows that no annual injection monitoring reports have been submitted by the Respondent.

17. Therefore, Respondent is in violation of the SDWA and 40 CFR § 144.28(h)(2)(i) for failure to submit annual injection monitoring reports.

18. 40 CFR § 144.25 states that the owner/operator of any Class II injection well authorized by rule may be required to apply for and obtain an individual or area UIC permit.

19. On April 19, 2007, EPA issued a Notice of Violation and Notice of Opportunity to Show Cause ("NOV") for the subject wells, alleging Respondent to be in violation of the SDWA and its implementing regulations.

STIPULATIONS AND FINDINGS

20. 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.

21. 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:

22. Respondent shall pay a civil penalty of two thousand dollars (\$2000) in accordance with the terms set forth below:

- a. Respondent shall pay three hundred dollars (\$300) per month for six (6) months with a final payment of two hundred dollars \$200 due in the seventh (7th) month.
- b. Respondent shall pay the first installment of three hundred dollars (\$300) within thirty (30) days of Respondent's receipt of a fully executed copy of this Order. Thereafter, the remaining payments shall be submitted every thirty (30) days until paid in full.

23. 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.

24. Pursuant to 40 CFR Parts 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 fifteen dollars (\$15), with an additional delinquent notice charge of fifteen (\$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.

25. 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
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

26. Respondent shall note the title and docket number of the case on the penalty payment certified or cashier's check. Respondent shall submit copies of the check to the following persons:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

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

27. Respondent shall immediately cease injection into any of the injection wells located at Respondent's facility. Respondent shall not resume injection into any of the wells until all wells have been permitted, demonstrated to have internal and external mechanical integrity, remediated, if necessary, or plugged and abandoned, and financial responsibility has been established for all remaining wells.

28. Respondent shall provide to EPA, within thirty (30) days of receipt of a fully-executed copy of this Order, a list of all injection wells located at Respondent's facility. This list shall include the EPA ID number and the well ID number for each well.

29. Respondent shall provide to EPA, within ninety (90) days of receipt of a fully-executed copy of this Order, proof that financial responsibility has been established for all existing injection wells located at Respondent's facility.

30. Respondent shall provide to EPA, within ninety (90) days of receipt of a fully-executed copy of this Order, an application for an area permit for the injection wells located at Respondent's facility. All injection wells must be a tubing and packer configuration. Any existing casing injector wells must be reworked to a tubing and packer configuration.

31. Respondent shall provide to EPA, within twelve (12) months of resuming injection into any injection well, an injection fluid analysis report. One injection fluid analysis report will be sufficient for all injection wells located on Respondent's property. Thereafter, Respondent shall provide to EPA an injection fluid analysis report annually and whenever changes are made to the injection fluid, for as long as any injection well located at Respondent's facility is active.

32. Respondent agrees to pay stipulated civil penalties for violation of the conditions set forth in Paragraphs 22 through 31 above as follows:

33. For failure to comply with each condition described in Paragraphs 22 through 31 above, Respondent shall pay a stipulated civil penalty according to the following schedule:

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

34. 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
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

35. 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, S.W., 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.

GENERAL PROVISIONS

36. 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.

37. 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.

38. 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.

39. 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.

40. 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.

41. 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.

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

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

44. 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: 5-12-08

David Hawkins 5-9-08
David Hawkins, Owner

COMPLAINANT

Date: 6/27/08

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. 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: July 3, 2008

Susan S. 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 Hawkins Oil Company, Docket No. SDWA-04-2008-1000(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 Counsel
EPA, Region 4

(Via EPA internal Mail)

Mr. David Hawkins, Owner
374 Oak Ridge Road
Clay City, KY 40312

(Via Certified Mail - Return Receipt Requested)

Date: 7-7-08


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