



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

SEP 08 2015

CERTIFIED MAIL 7013 2630 0000 0292 3323
RETURN RECEIPT REQUESTED

Tony Estes
913 North Main Street
Edmonton, Kentucky 42129

Re: Consent Agreement and Final Order (CA/FO)
Docket No. SDWA-04-2015-1006(b)

Dear Mr. Estes:

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 Mr. Tony Shelton, Underground Injection Control Enforcement at (404) 562-9636.

Sincerely,

A handwritten signature in blue 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

IN THE MATTER OF

Tony Estes
913 North Main Street
Edmonton, Kentucky 42129

Respondent

Consent Agreement and Final Order

Docket No. SDWA-04-2015-1006(b)

I. STATUTORY AUTHORITY

1. This is a civil proceeding pursuant to Section 1423 of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300h-2 and 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* specifically Subpart I, published at 64 Fed. Reg. 40138 (July 23, 1999), codified at 40 Code of Federal Regulations (C.F.R.) Part 22 (Part 22). The authority to take action under Section 1423 of the Safe Drinking Water Act (SDWA), is delegated to the Administrator of the U.S. Environmental Protection Agency (EPA). The Administrator has delegated this authority to the Regional Administrator, Region 4, who in turn has delegated this authority to the Director of the Water Protection Division, of the EPA Region 4 (Complainant).

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).

II. ALLEGATIONS

4. Respondent is an individual doing business in the Commonwealth of Kentucky, with a business address of 913 North Main Street, Edmonton, Kentucky 42129.

5. Respondent is the owner and/or operator of the Class II UIC well that is subject to this Order (Subject Well), listed below.

| <u>EPA ID No.</u> | <u>UIC Permit No.</u> | <u>Well Name</u> | <u>County</u> | <u>Status</u> |
|-------------------|-----------------------|------------------|---------------|---------------|
| KYS1690005 | KYI0375 | Harvey Estes #4 | Metcalfe | Active |

6. The Subject Well is a “facility” as that term is defined in 40 C.F.R. § 144.3.
7. On March 7, 1990, the EPA issued to George H. Miller the UIC Permit No. KYI0375.
8. On January 1, 2013, Respondent assumed ownership and operational control of the Subject Well and began actively injecting produced fluids.
9. The Subject Well is permitted in accordance with 40 C.F.R. § 144.31 and is subject to the requirements of the SDWA and the UIC regulations.
10. 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 their permit.
11. Part II, Section E, Paragraph 2, of the UIC Permit No. KYI0375, and the regulation found at 40 CFR §144.51(k)(3), state that this permit is not transferable to any person without notice to the Director. 40 C.F.R. §144.38(b), allows that any UIC permit for a well not injecting hazardous waste or injecting carbon dioxide for geologic sequestration may be automatically transferred. 40 C.F.R. §144.38(b)(2) requires the new permittee to demonstrate the financial responsibility and resources to close, plug, and abandon the Subject Well in an EPA-approved manner.
12. Respondent, as the new permittee, has not demonstrated financial responsibility and resources to close, plug, and abandon the Subject Well in an EPA-approved manner.
13. Therefore, Respondent is in violation of the SDWA, 42 U.S.C. § 300f, et seq., and 40 C.F.R. § 144.38(b)(2) for failing to demonstrate financial responsibility and resources to close, plug, and abandon the Subject Well.
14. Part II, Section G, Paragraph 3, of the UIC Permit No. KYI0375 requires that a demonstration of mechanical integrity in accordance with 40 C.F.R. § 146.8 be made no later than 5 years from the last approved demonstration.
15. A Mechanical Integrity Test (MIT) to demonstrate the mechanical integrity of the following active permitted Subject Well is overdue, as shown below.

| <u>EPA ID No.</u> | <u>UIC Permit No.</u> | <u>Well Name</u> | <u>Status</u> | <u>MIT Due</u> | <u>MIT Done</u> |
|-------------------|-----------------------|------------------|---------------|----------------|-----------------|
| KYS1690005 | KYI0375 | Harvey Estes #4 | Active | 06/26/07 | Not yet |

16. Therefore, Respondent is in violation of the SDWA, 42 U.S.C. § 300f, et seq., 40 C.F.R. § 146.8, and the UIC Permit No. KYI0375 for failure to timely demonstrate the mechanical integrity of the active permitted Subject Well, as shown above.
17. Part I, Section C, Paragraph 3, of the UIC Permit No. KYI0375, requires the permittee to conduct an injection fluid analysis in accordance with 40 C.F.R. § 146.23(b)(1) at least once every 12 months and whenever changes are made to the injection fluid. Part I, Section D, Paragraph 2, of the UIC Permit No. KYI0375 requires the permittee to submit the results of injection fluid analyses to the EPA annually in accordance with 40 C.F.R. § 146.23(c).

18. Based on the EPA's records, injection fluid analysis results for the following active permitted Subject Well were not submitted, as shown below.

| <u>EPA ID No.</u> | <u>UIC Permit No.</u> | <u>Well Name</u> | <u>Last Fluid Analysis Report</u> |
|-------------------|-----------------------|------------------|-----------------------------------|
| KYS1690005 | KYI0375 | Harvey Estes #4 | 4/16/1991 |

19. Therefore, Respondent is in violation of the SDWA, 42 U.S.C. § 300f, et seq., 40 C.F.R. §§146.23(b)(1), 146.23(c) and 144.51(a), and the UIC Permit No. KYI0375 for failure to submit annual fluid analysis results, as shown above.

20. Part I, Section C, Paragraph 2, of the UIC Permit No. KYI0375 and §146.23(b)(2), requires the permittee to monthly monitor the injection and annulus pressures at the wellhead, and to monthly monitor the flow rate and the cumulative volume of the injected fluid. Part I, Section D, Paragraph 2, of the UIC Permit No. KYI0375, contains the requirement to submit the results of all monitoring to the EPA annually in accordance with § 146.23(c) by January 28 of the subsequent year.

21. Monitoring results for the following Subject Well were not timely submitted, as shown below.

| <u>EPA ID No.</u> | <u>UIC Permit No.</u> | <u>Well Name</u> | <u>Last Monitoring Report</u> |
|-------------------|-----------------------|------------------|-------------------------------|
| KYS1690005 | KYI0375 | Harvey Estes #4 | Year 1996 |

22. Therefore, Respondent is in violation of the SDWA, 42 U.S.C. § 300f, et seq., 40 C.F.R. §§146.23(b)(2), 146.23(c) and 144.51(a), and the UIC Permit No. KYI0375 for failure to timely submit annual monitoring reports to the EPA for the active permitted Subject Well, as shown above.

III. STIPULATIONS AND FINDINGS

23. On June 11, 2015, Respondent participated in a show cause hearing with representatives of the EPA to discuss these alleged violations of the SDWA and the implementing regulations.

24. 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 assessment of the civil penalty set forth herein and to the issuance of this Consent Agreement and Final Order (CA/FO) without further adjudication.

25. 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.

IV. PENALTY AND INJUNCTIVE RELIEF

Based upon the foregoing findings, the parties hereby agree and consent to entry of the following:

26. Respondent shall pay a civil penalty of **\$5,000 (five thousand dollars)** in accordance with the terms set forth below.

27. Within 60 days of receipt of a fully-executed copy of this CA/FO, Respondent shall submit a cashier's check or certified check in the amount of **\$5,000 (five thousand 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 cashier's check.

28. 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
Grants and Drinking Water Protection Branch
U. S. EPA - Region 4
61 Forsyth Street SW
Atlanta, GA 30303-8960

29. 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.

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

For Respondent: Tony Estes
913 North Main Street
Edmonton, Kentucky 42129
270-423-3123

For the EPA: Wilda Cobb, Associate Regional Counsel
U.S. EPA - Region 4
61 Forsyth Street SW
Atlanta, GA 30303-8960
404-562-9530

31. In addition to payment of the penalty described above, Respondent shall perform the following injunctive relief:

- a. Within 30 days of receipt of this CA/FO, Respondent is ordered to provide to the EPA the transfer application, EPA Form No. 7520-7, showing the permit transfer of the Subject Well, listed below.

| <u>EPA ID No.</u> | <u>UIC Permit No.</u> | <u>Well Name</u> |
|-------------------|-----------------------|------------------|
| KYS1690005 | KYI0375 | Harvey Estes #4 |

- b. Within 30 days of receipt of this CA/FO, Respondent is ordered to provide the EPA with the financial responsibility demonstration for the Subject Well, unless Respondent submits documentation to demonstrate that the Subject Well has been properly closed, plugged and abandoned in a manner prescribed by the EPA. Plugging and abandonment must be witnessed by an EPA-authorized inspector.
- c. Within 30 days of receipt of this CA/FO, Respondent is ordered to provide current fluid analysis results to the EPA for the following Subject Well.
- d. Within 30 days of receipt of this CA/FO, Respondent shall provide to the EPA monitoring reports for the period from Year 2013 through Year 2014, for the Subject Well.

32. For failure to comply with the conditions described in Paragraph 31 above, Respondent shall pay a stipulated civil penalty according to the following schedule:

- a. \$300 a day for the first 7 calendar days Respondent is in violation of Paragraph 31 of this Agreement; and
- b. \$200 per day for each day after the first 7 calendar days Respondent is in violation of Paragraph 31 of this Agreement.

33. Stipulated penalties shall become due and payable no later than 30 days after receipt of demand from the 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

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

Fred McManus, Chief
Ground Water and UIC Section,
Grants and Drinking Water Protection Branch,
U.S. EPA - 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 the EPA.

V. GENERAL PROVISIONS

35. 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.

36. 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 Respondents liability for federal civil penalties for the violations and facts stipulated herein.

37. 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.

38. 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.

39. 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.

40. 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.

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

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

43. 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 7-15-15



Tony Estes, Owner

COMPLAINANT

Date 9/3/15



James D. Giattina, Director
Water Protection Division

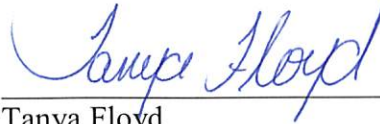
FINAL ORDER

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:

September 4, 2015



Tanya Floyd
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 Tony Estes; Docket No. SDWA-04-2015-1006(b), on the parties listed below in the manner indicated:

Tony Shelton

Via EPA Internal Mail

Wilda Cobb

Via EPA Internal Mail

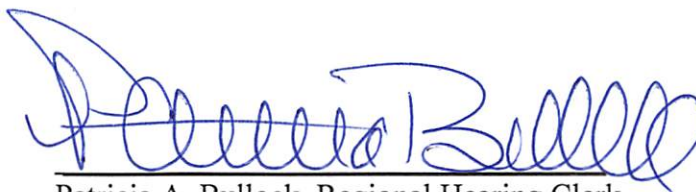
Tony Estes

Via Certified Mail/ Return Receipt Requested

913 North Main Street
Edmonton, Kentucky 42129

Date: _____

9-8-15



Patricia A. Bullock, Regional Hearing Clerk
United States EPA - Region 4
Atlanta Federal Center
61 Forsyth Street SW
Atlanta, GA 30303-8960
(404) 562-9511