



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

AUG 04 2011

CERTIFIED MAIL 7007 2680 0000 9621 3519
RETURN RECEIPT REQUESTED

Darry R. Cain
2114 Old Cabin Road
Owensboro, Kentucky 42301

Subject: Consent Agreement and Final Order (CA/FO)
Docket No. SDWA-04-2011-1012(b)

Dear Mr. Cain:

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 Ms. Carol Chen, Underground Injection Control Enforcement, at (404) 562-9415.

Sincerely,

A handwritten signature in black ink, appearing to read "James D. Giattina".

James D. Giattina
Director
Water Protection Division

Enclosure

cc: Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

2011 AUG -4 PM 2:27
HEARING CLERK
EPA REGION 4
OFFICE

IN THE MATTER OF

Darry R. Cain
2114 Old Cabin Road
Owensboro, Kentucky 42301

Respondent

Consent Agreement and Final Order

Docket No. SDWA-04-2011-1012(b)

STATUTORY AUTHORITY

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 Darry R. Cain. (Respondent).
2. Section 1450 of the SDWA 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 EPA. See 40 C.F.R. § 147.901(a).

ALLEGATIONS

4. Respondent is an individual doing business in the Commonwealth of Kentucky, with a business address of 2114 Old Cabin Road, Owensboro, Kentucky 42301.
5. Respondent is a "person" as that term is defined in Section 1401(12) of the SDWA, 42 U.S.C. §300f(12), and 40 C.F.R. §144.3.

6. Respondent is the owner and/or operator of the following Class II underground injection wells (subject wells) which are facilities as that term is defined in 40 C.F.R. §144.3:

<u>EPA ID No.</u>	<u>Well</u>	<u>County</u>	<u>Status</u>
KYS1010333	Higginson #2	Henderson	Inactive
KYS1010336	Russell Ball #1	Henderson	Inactive
KYS1010340	J. Posey #1	Henderson	Active
KYS1010341	Powell Posey #5	Henderson	Active
KYS2250171	Hancock #1	Union	Inactive
KYS2250174	Pinkston #1W	Union	Inactive

7. These wells were in existence on June 25, 1984, the effective date of the UIC program in Kentucky, as implemented by EPA. The subject wells are authorized by rule, as that term is defined in 40 C.F.R. §144.21(a).

8. Any violation of a UIC regulation also constitutes a violation of the SDWA, as provided in Section 1423 of the SDWA.

9. The SDWA, 42 U.S.C. §300f, et seq., and 40 C.F.R. §144.28(a) require the owner or operator of a rule-authorized injection well to comply with all applicable requirements. Noncompliance constitutes a violation of the SDWA and is grounds for an enforcement action.

10. The regulation at 40 C.F.R. §144.28(d) states that the owner or operator of a rule-authorized injection well is required to demonstrate and maintain financial responsibility and resources to close, plug and abandon the well in an EPA-approved manner.

11. Respondent has not provided the financial assurance for the subject wells.

12. Therefore Respondent is in violation of the SDWA and 40 C.F.R. §144.28(d) for failing to demonstrate and maintain financial responsibility and resources for the subject wells.

13. Requirements found at 40 C.F.R. §144.28(g)(2)(iv), state that a demonstration of mechanical integrity, pursuant to §146.8, shall occur at least once every 5 years for active wells and that the owner or operator shall notify EPA at least 30 days prior to such demonstration.

14. According to EPA's records, advance notification was not provided by the Respondent and the mechanical integrity demonstration requirements for the following active subject wells were overdue as shown.

<u>EPA ID No.</u>	<u>Well</u>	<u>MIT Due</u>	<u>MIT Done</u>
KYS1010340	J. Posey #1	8/17/10	3/29/11
KYS1010341	Powell Posey #5	8/17/10	2/23/11

15. Therefore Respondent violated 40 C.F.R. §144.28(g)(2)(iv)(A) and the SDWA by failing to provide advance notification and failing to timely demonstrate the mechanical integrity of the active subject wells.

16. 40 C.F.R. §144.28(c)(2)(iv) requires that after a cessation of injection for two years, the owner or operator of a rule-authorized underground injection well shall demonstrate the mechanical integrity or close, plug and abandon the well.

17. According to EPA's records and field inspections, the following inactive subject wells were not plugged and are overdue for mechanical integrity demonstration requirements as shown.

<u>EPA ID No.</u>	<u>Well</u>	<u>Previous MIT</u>	<u>Subsequent MIT</u>
KYS1010333	Higginson #2	8/17/05	Not done yet
KYS2250171	Hancock #1	11/03/05	2/23/11
KYS2250174	Pinkston #1W	8/17/05	2/23/11
KYS1010336	Russell Ball #1	11/29/07	3/29/11

18. Therefore Respondent is in violation of 40 C.F.R. §144.28(c)(2)(iv) and the SDWA for failing to demonstrate the mechanical integrity or properly close, plug and abandon the subject inactive wells.

19. The regulation at 40 C.F.R. §144.28(g)(2)(ii)(B) states that the owner or operator of a rule-authorized injection well is required to monitor the injection pressure, flow rate, and cumulative volume of the injected fluid on a monthly basis for enhanced recovery operations. 40 C.F.R. §144.28(h)(2)(i) contains the requirement to submit all monitoring results from paragraph (g)(2) to EPA annually.

20. The records indicate that Respondent is overdue on the submittal of monitoring results for the subject wells as shown.

<u>EPA ID No.</u>	<u>Well</u>	<u>Last Monitoring Report</u>
KYS1010333	Higginson #2	Data through March 2004
KYS1010336	Russell Ball #1	Data through April 2004
KYS1010340	J. Posey #1	Data through May 1993
KYS1010341	Powell Posey #5	Data through March 2002
KYS2250171	Hancock #1	Data through March 2004
KYS2250174	Pinkston #1W	Data through March 2004

21. Therefore Respondent violated 40 C.F.R. §144.28(h)(2)(i) and the SDWA by failing to timely submit monitoring results of the subject wells.

22. On February 10, 2011, Respondent participated in a show cause hearing with EPA representatives to discuss his violations, the SDWA, and the implementing regulations.

23. Respondent and Complainant have negotiated a settlement of the foregoing violations and Respondent has agreed to pay a penalty.

STIPULATIONS AND FINDINGS

24. Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the facts and findings of violation 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 issuance of a final order 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 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 C.F.R. § 22.13(b), this CAFO will simultaneously commence and conclude this matter.

PENALTY AND INJUNCTIVE RELIEF

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

26. Respondent shall pay a civil penalty of **\$5,800 (Five Thousand Eight Hundred Dollars)** in accordance with the terms set forth below.

27. Within 60 days of receipt of a fully-executed copy of this CAFO, Respondent shall submit a cashiers or certified check in the amount of **\$5,800 (Five Thousand Eight Hundred 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 cashiers 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 SDWA Enforcement Section
U. S. EPA - Region 4
61 Forsyth Street SW
Atlanta, GA 30303-8960

29. Pursuant to § 1423(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.

30. Pursuant to 40 C.F.R. 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 an administrative fee of \$15 for each subsequent 30 day period. EPA will assess, on a monthly basis, a 6% per annum penalty on any principal amount not paid within 90 days of the due date.

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

- a. Within 90 days of receipt of this Order, Respondent is ordered to successfully demonstrate the mechanical integrity or properly close, plug, and abandon the following well. Mechanical integrity testing or plugging and abandonment must be witnessed by an authorized EPA inspector.

<u>EPA ID No.</u>	<u>Well</u>
KYS1010333	Higginson #2

- b. Within 90 days of receipt of this Order, Respondent is ordered to provide monitoring reports for all of the subject wells based on the past 3 years of available monitoring data.
- c. Within 90 days of receipt of this Order, Respondent is ordered to provide the financial assurance for the subject wells.

32. Respondent agrees to pay stipulated civil penalties for violation of the condition set forth in Paragraph 31 above as follows:

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

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

34. Stipulated penalties shall become due and payable no later than 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 Ground Water & Safe Drinking Water Act Enforcement Section, Safe Drinking Water 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 Order 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.

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

For Respondent:

Darry R. Cain
2114 Old Cabin Road
Owensboro, Kentucky 42301
270-929-6095

For EPA:

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

GENERAL PROVISIONS

37. 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.

38. 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. 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.

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. 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 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 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.

41. 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 for the cause of the delay.

42. The parties acknowledge and agree that final approval by 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.

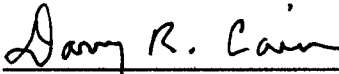
43. Each party shall bear its own costs and attorneys fees in connection with this action.

44. This CAFO shall become effective upon the date that it is filed with the Regional Hearing Clerk.

45. 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: 5-23-11



Darry R. Cain

COMPLAINANT

Date: 7/25/11



James D. Giattina, Director
Water Protection Division