

PUBLIC NOTICE

U.S. Environmental Protection Agency  
Region 4  
Water Protection Division  
Safe Drinking Water Branch  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960

Public Notice No.: SDWA-04-2016-1010(b)

Date: August 5, 2016

Notice of Proposed Issuance of  
Consent Agreement and Final Order

The U.S. Environmental Protection Agency (EPA), Region 4, proposes to issue a Consent Agreement and Final Order (CA/FO), Docket No. SDWA-04-2016-1010(b), that assesses an administrative penalty of \$5,400.00 to Trey Exploration, Inc. (Respondent), with a business address of 2699 Highway 261, P. O. Box 906, Newburgh, Indiana 47629, under the authority of Section 1423 of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300h-2. The EPA alleges that the Respondent violated regulatory and statutory requirements and the SDWA, by exceeding maximum injection pressure limitations and failing to comply with mechanical integrity demonstrations in a timely matter. The following underground injection wells, located in Henderson and Hopkins Counties, Kentucky, are subject to the CA/FO.

<u>UIC Permit No.</u>	<u>EPA ID No.</u>	<u>Well</u>	<u>Status</u>	<u>County</u>
KYI0901	KYS1010579	Overfield Heirs #2	Active	Henderson
KYI0903	KYS1010581	J. L. Beasley #1	Active	Henderson
KYI0096	KYS1070110	John Adams #5	Active	Hopkins
KYI0457	KYS1010517	J. L. Beasley #2	Active	Henderson
N/A	KYS1070096	William S. Blue #4	Active	Hopkins

Any person wishing to comment on any aspect of the proposed CAFO, Docket No. SDWA-04-2016-1010(b), must submit such comments in writing to the Regional Hearing Clerk at U.S. EPA, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia, 30303. Comments must be submitted within 30 days of the date of this notice. Please include the Public Notice Number and the Docket Number with any submitted comments.

The commenter must also provide his or her name and complete mailing address. All comments received during the public notice period will be made part of the public record for the CA/FO and will be available for public review. After consideration of all timely written comments, the requirements and policies in the SDWA and appropriate regulations, the EPA will make a final determination regarding the issuance of a CA/FO.

Interested parties may find out more information about this enforcement action by contacting Carol Chen at [chen.carol@epa.gov](mailto:chen.carol@epa.gov).

Any person who comments will receive a copy of the proposed CA/FO. Within 30 days of receipt of the CA/FO, a commenter may petition the Regional Administrator to set aside the proposed CA/FO on the basis that material evidence was not considered. Copies of the petition shall be served to the parties. Unless a petition is filed, a CA/FO becomes effective 10 days after the close of the comment period.

The public record including the draft CA/FO and comments received is available for review and copying at 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960, between the hours of 8:15 a.m. and 4:30 p.m.,

Monday through Friday. Copies will be provided at a cost of 20 cents per page.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

**IN THE MATTER OF**

**Trey Exploration, Inc.  
2699 Highway 261  
P. O. Box 906  
Newburgh, Indiana 47629**

**Respondent**

**Consent Agreement and Final Order**

**Docket No. SDWA-04-2016-1010(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 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) pursuant to Region 4 Delegation 9-34.
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 a corporation organized under the laws of Indiana and doing business in the Commonwealth of Kentucky, with a principal business address of 2699 Highway 261, P. O. Box 906, Newburgh, Indiana 47629.

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 UIC wells that are subject to this Order (Subject Wells), listed below.

<u>UIC Permit No.</u>	<u>EPA ID No.</u>	<u>Well</u>	<u>Status</u>	<u>County</u>
KYI0901	KYS1010579	Overfield Heirs #2	Active	Henderson
KYI0903	KYS1010581	J. L. Beasley #1	Active	Henderson
KYI0096	KYS1070110	John Adams #5	Active	Hopkins
KYI0457	KYS1010517	J. L. Beasley #2	Active	Henderson

7. Each of the Subject Wells is a “facility” as that term is defined in 40 C.F.R. § 144.3.

8. On April 15, 2009, the EPA issued to Respondent the UIC Permit No. KYI0901, with an effective date of May 15, 2009.

9. On August 4, 2009, the EPA issued to Respondent the UIC Permit No. KYI0903, with an effective date of August 18, 2009.

10. On April 28, 2010, the EPA modified the UIC Permit No. KYI0096 to reflect the transfer from Hydrocarbon Investments, Inc. to Respondent, with an effective date of April 28, 2010.

11. On June 23, 2009, the EPA modified the UIC Permit No. KYI0457, to reflect the transfer from Lincoln Energy Corporation to Respondent, with an effective of July 23, 2009.

12. The Subject Wells are permitted in accordance with 40 C.F.R. § 144.31 and are subject to the requirements of the SDWA 42 U.S.C. § 300f, et seq. and the UIC regulations.

13. 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.

14. Part II, Section G, Paragraph 3, of the UIC Permit Nos. KYI0901, KYI0903, KYI0096, and KYI0457, 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. Respondent failed to timely demonstrate the mechanical integrity tests for the Subject Wells, as shown below.

<u>UIC Permit No.</u>	<u>EPA ID No.</u>	<u>Well</u>	<u>Status</u>	<u>Last MIT</u>	<u>MIT Due</u>	<u>MIT Done</u>
KYI0901	KYS1010579	Overfield Heirs #2	Active	9/30/09	9/30/14	12/10/15
KYI0903	KYS1010581	J. L. Beasley #1	Active	9/30/09	9/30/14	12/10/15
KYI0096	KYS1070110	John Adams #5	Active	9/30/09	9/30/14	12/11/15
KYI0457	KYS1010517	J. L. Beasley #2	Active	9/30/09	9/30/14	12/10/15

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 Nos. KYI0901, KYI0903, KYI0096, and KYI0457, for failure to timely demonstrate the mechanical integrity of the active permitted Subject Wells, as shown above.

17. Part I, Section B, Paragraph 1(b), of the UIC Permit Nos. KYI0903 and KYI0457, states that the maximum allowable injection pressure measured at the wellhead shall not exceed the maximum pounds per square inch (psig) and that injecting at a pressure which initiates or propagates fractures into the confining zone or causes the movement of injection or formation fluids into an underground source of drinking water is prohibited.

18. UIC Permit Nos. KYI0903 and KYI0457 established a maximum well head injection pressure limit of 750 psig by the UIC Permit No. KYI0903 and 740 psig by the UIC Permit No. KYI0457, for the Subject Wells, the J. L. Beasley #1 and the J. L. Beasley #2.

19. The EPA-authorized field inspector observed the following gauge readings on the injection tubing for the Subject Wells, as shown below.

<u>UIC Permit No.</u>	<u>EPA ID No.</u>	<u>Well</u>	<u>Injection Pressure Limits</u>	<u>Overpressure Dates</u>
KYI0903	KYS1010581	J. L. Beasley #1	750 psig	1200 psig/8-15-12
KYI0903	KYS1010581	J. L. Beasley #1	750 psig	1050 psig/12-05-12
KYI0457	KYS1010517	J. L. Beasley #2	740 psig	800 psig/10-10-12
KYI0457	KYS1010517	J. L. Beasley #2	740 psig	1075 psig/12-05-12

20. Therefore, Respondent is in violation of the SDWA, 42 U.S.C. § 300f, *et seq.*, 40 C.F.R. § 144.51(a), and the UIC Permits, by the Respondent exceeding the maximum injection pressure limitations as established by the UIC Permit Nos. KYI0903 and KYI0457, for the Subject Wells, as shown above.

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

<u>EPA ID No.</u>	<u>Well</u>	<u>Status</u>	<u>County</u>
KYS1070096	William S. Blue #4	Active	Hopkins

22. The Subject Well is a “facility” as that term is defined in 40 C.F.R. § 144.3.

23. The Subject Well was in existence on June 25, 1984, the effective date of the UIC program in Kentucky as implemented by the EPA and is authorized by rule as that term is defined in 40 C.F.R. § 144.21(a).

24. 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 statutory and regulatory requirements.

25. The regulation at 40 C.F.R. § 144.28(f)(6)(ii) states that the maximum allowable injection pressure measured at the wellhead shall not exceed the maximum pounds per square inch (psig) and that injecting at a pressure which initiates or propagates fractures into the confining zone or causes the movement of injection or formation fluids into an underground source of drinking water is prohibited.

26. The inventory information sheet, contained in Respondent's file, was received by the UIC program on June 21, 1985, and indicates that 400 psig is the established maximum well head injection pressure upon the well head's tubing.

27. The EPA-authorized field inspector observed the following gauge readings, which were displayed upon the well head injection tubing of the Subject Well, as shown below.

<u>EPA ID No.</u>	<u>Well</u>	<u>Injection Pressure Limit</u>	<u>Overpressure Dates</u>
KYS1070096	William S. Blue #4	400 psig	1320 psig/5-21-15
KYS1070096	William S. Blue #4	400 psig	990 psig/2-04-14
KYS1070096	William S. Blue #4	400 psig	1150 psig/11-27-12

28. Therefore, Respondent is in violation of the SDWA, 42 U.S.C. § 300f, et seq., and 40 C.F.R. § 144.28(f)(6)(ii) for exceeding the maximum injection pressure limitation of 400 psig, as established by the inventory information sheet, contained in Respondent's file.

29. On June 28, 2016, Respondent participated in a show cause hearing with representatives of the EPA to discuss these alleged violations of the SDWA and the implementing regulations.

### III. STIPULATIONS AND FINDINGS

30. 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 Consent Agreement and Final Order (CA/FO) will simultaneously commence and conclude this matter.

31. For purposes of this CAFO Respondent admits the jurisdictional allegations and facts and findings of violations as alleged herein.

32. The Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CA/FO and consents to any specified compliance or corrective action set forth in this CA/FO.

33. Respondent waives any right to a hearing and waives any right to appeal a final order in this matter.

### IV. PENALTY AND INJUNCTIVE RELIEF

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

34. Respondent shall pay a civil penalty of **\$5,400.00 (five thousand four hundred dollars)** in accordance with the terms set forth below.

35. Within 30 days of the Effective Date of this CA/FO, Respondent shall submit a cashiers or certified check in the amount **\$5,400.00 (five thousand four 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 cashier's check.

36. 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

Brian J. Smith, 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

37. 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.

38. In accordance with 40 C.F.R. § 22.5, the individuals below are authorized to receive service related to this proceeding:

For Respondent: Howard Nevins, President  
Trey Exploration, Inc.  
2699 Highway 261  
P. O. Box 906  
Newburgh, Indiana 47629

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

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

- a. Within 60 days of the Effective Date of the Final Order, Respondent is ordered to request an increase to the maximum injection pressure limit for the rule-authorized Subject Well, by submitting an acceptable step rate test or a mini-frac/acid job, without sand. Step rate tests may also include an EPA representative to witness such a test. The Director of the Water Protection Division must concur with the results before injection may commence. The submission of requests and proper documentation for the Subject Well shall be sent to the following:

Jason B. Meadows, Permit Writer  
Ground Water and UIC Section,  
Grants and Drinking Water Protection Branch,  
U.S. EPA - Region 4,  
61 Forsyth Street, SW  
Atlanta, GA 30303-8960

Brian J. Smith, 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

- b. Within 60 days of the Effective Date of the Final Order, Respondent is ordered to request an increase to the maximum injection pressure limit for the permitted Subject Wells. The permittee shall prepare a report, including procedures and results of the step rate test and will need to contact Region 4 to perform such a test. The permittee can also request a major modification (which would require public notice) if he wishes to submit the results of a mini-frac/acid job without sand. The report must be submitted in accordance with Part I, Section A, Item 4, except that the Director of the Water Protection Division must concur with the results before injection may commence. The report shall be signed in accordance with Part II, Section E, Item 11 of this permit per guidelines from the following person, shown below, whom can supply specific guidelines for what the Region 4 considers adequate in performing a step rate and may require an EPA representative to witness such a test. The submission of requests and proper documentation for the Subject Well shall be sent to the following:

Jason B. Meadows, Permit Writer  
Ground Water and UIC Section,  
Grants and Drinking Water Protection Branch,  
U.S. EPA - Region 4,  
61 Forsyth Street, SW  
Atlanta, GA 30303-8960

Brian J. Smith, 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

40. Pursuant to Section 1423(b)(1) of the SDWA 42 U.S.C. § 300h-2(b)(1) any person who violates an order requiring compliance under subsection (c) of 1423 of the SDWA shall be subject to a civil penalty of not more than \$37,500 for each day of such violation.

## V. GENERAL PROVISIONS

41. 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.

42. 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.

43. 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.

44. 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.

45. 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.

46. 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.

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

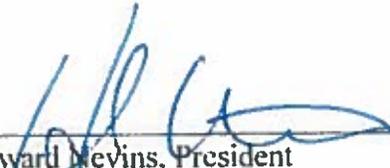
48. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and to execute and legally bind the Party he or she represents to this Agreement.

**VI. EFFECTIVE DATE**

49. The effective date of this CA/FO shall be the date that it is filed with the Regional Hearing Clerk.

**RESPONDENT**

Date 8-3-16

  
Howard Nevins, President  
Trey Exploration, Inc.

**COMPLAINANT**

Date \_\_\_\_\_

\_\_\_\_\_  
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: \_\_\_\_\_

\_\_\_\_\_  
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 Trey Exploration, Inc.; Docket No. SDWA-04-2016-1010(b), on the parties listed below in the manner indicated:

**Carol Chen**

Via EPA Internal Mail

**Wilda Cobb**

Via EPA Internal Mail

**Howard Nevins, President  
Trey Exploration, Inc.  
2699 Highway 261  
P. O. Box 906  
Newburgh, Indiana 47629**

Via Certified Mail/ Return Receipt Requested

Date: \_\_\_\_\_

\_\_\_\_\_  
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