



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

SEP 27 2016

CERTIFIED MAIL 7010 1060 0002 1704 8555  
RETURN RECEIPT REQUESTED

Mr. William S. Powell, Manager  
Powell Oil and Gas, LLC  
P. O. Box 126  
Sebree, Kentucky 42455

Re: Consent Agreement and Final Order (CA/FO) Docket No. SDWA-04-2016-1007(b)  
Powell Oil and Gas, LLC

Dear Mr. Powell:

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 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

USEPA, REGION 4  
OFFICE OF REGIONAL  
COUNSEL

2016 SEP 27 AM 9:55

HEARING CLERK

IN THE MATTER OF

Powell Oil and Gas, LLC  
P. O. Box 126  
Sebree, Kentucky 42455

Consent Agreement and Final Order

Docket No. SDWA-04-2016-1007(b)

Respondent

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 limited liability company organized under the laws of Kentucky and doing business in the Commonwealth of Kentucky, with a principle business address of P. O. Box 126, Sebree, Kentucky 42455.

5. 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>EPA ID No.</u>	<u>Well</u>	<u>Status</u>	<u>County</u>
KYS2330092	Callis #9	Active	Webster
KYS2330094	W. W. Poole #3	Active	Webster
KYS2330102	A. B. Sellars #6	Active	Webster
KYS2330103	Clarence Melton #2	Active	Webster

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

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

8. 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.

9. The regulation at 40 C.F.R. § 144.28(g)(2)(iv), requires the owner or operator of an active rule-authorized injection well to demonstrate the mechanical integrity of the well at least once every 5 years.

10. The information contained in the EPA’s records, indicates Respondent in violation of 40 C.F.R. § 144.28(g)(2)(iv) and the SDWA, for failure to timely demonstrate the mechanical integrity of the rule-authorized wells, as shown below.

<u>EPA ID No.</u>	<u>Well</u>	<u>Status</u>	<u>Last MIT</u>	<u>MIT Due</u>	<u>MIT Done</u>
KYS2330092	Callis #9	Active	7/22/10	7/22/15	6/22/16
KYS2330094	W. W. Poole #3	Active	7/22/10	7/22/15	6/22/16
KYS2330102	A. B. Sellars #6	Active	7/22/10	7/22/15	6/22/16
KYS2330103	Clarence Melton #2	Active	7/22/10	7/22/15	6/22/16

11. Therefore, Respondent is in violation of the SDWA, 42 U.S.C. § 300f, et seq., 40 C.F.R. §§ 144.28(g)(2)(iv), 146.8 and 144.28(a) for failure to timely demonstrate the mechanical integrity of the rule-authorized Subject Wells, as shown above.

12. On June 30, 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**

13. 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.

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

15. 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.

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

#### IV. PENALTY

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

17. Respondent shall pay a civil penalty of **\$2,250.00 (two thousand two hundred fifty dollars)** in accordance with the terms set forth below.

18. Within 30 days of the Effective Date of this CA/FO, Respondent shall submit a cashiers or certified check in the amount **\$2,250.00 (two thousand two hundred fifty 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.

19. 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

20. Pursuant to Section 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. 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.

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

For Respondent: Mr. William S. Powell, Manager  
Powell Oil and Gas, LLC  
P. O. Box 126  
Sebree, Kentucky 42455

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

22. 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

23. 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.

24. 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 Respondent's liability for federal civil penalties for the violations and facts stipulated herein.

25. 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.

26. 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.

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

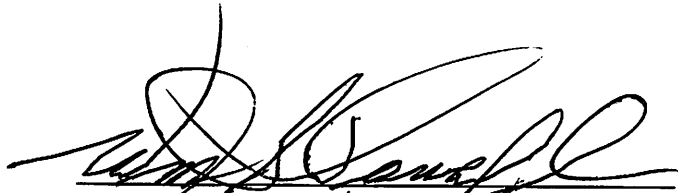
28. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and to execute and legally bind the Party he or she represents to this Agreement.

**VI. EFFECTIVE DATE**

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

**RESPONDENT**

Date 8/4/16

  
William S. Powell, Manager  
Powell Oil and Gas, LLC

**COMPLAINANT**

Date 9/15/16



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 26, 2016

  
\_\_\_\_\_  
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 Powell Oil and Gas, LLC; Docket No. SDWA-04-2016-1007(b), on the parties listed below in the manner indicated:

**Carol Chen**

Via EPA Internal Mail

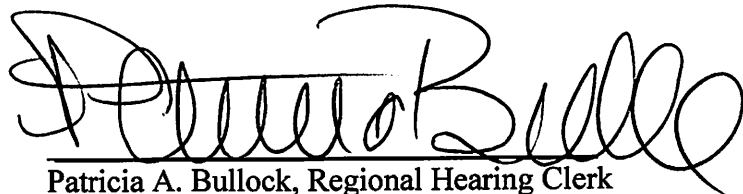
**Wilda Cobb**

Via EPA Internal Mail

**Mr. William S. Powell, Manager  
Powell Oil and Gas, LLC  
P. O. Box 126  
Sebree, Kentucky 42455**

Via Certified Mail/ Return Receipt Requested

Date: 9-27-16



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