



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

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

DEC 04 2012

CERTIFIED MAIL 7010 1060 0002 1705 1883  
RETURN RECEIPT REQUESTED

G. Christopher Van Bever, Esq.  
101 Prosperous Place, Suite 125  
Lexington, Kentucky 40509

Re: Consent Agreement and Final Order (CA/FO)  
Docket No. SDWA-04-2012-1007(b)

Dear Mr. Van Bever:

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

Sincerely,

A handwritten signature in black ink that reads "James D. Giattina, Jr.".

James D. Giattina  
Director  
Water Protection Division

Enclosure

cc: Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF

Charles N. Reel, President  
American Natural Gas, Inc.  
56854 Pleasant Ridge Road  
Alledonia, Ohio 43902

Respondent

Consent Agreement and Final Order

Docket No. SDWA-04-2012-1007(b)

HEARINGS  
CLERK

2012 DEC -4 AM 7:07

RECEIVED  
EPA REGION IV

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 Section 1423 of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300h-2, the EPA, as Complainant, hereby enters into the following Consent Agreement and Final Order (CA/FO) with American Natural Gas, Inc. (Respondent).
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).

ALLEGATIONS

4. Respondent is a limited liability company organized under the laws of Delaware, doing business in the Commonwealth of Kentucky, with a business address of 56854 Pleasant Ridge Road, Alledonia, Ohio 42902.
5. Respondent is the owner and/or operator of the Class II underground injection wells that are subject to this Order, located in Lee and Elliott Counties. Respondent acquired these wells on August 1, 2011.
6. Each of the subject wells (Subject Wells) is a "facility" as that term is defined in 40 C.F.R. § 144.3.
7. The following Subject Wells are permitted in accordance with 40 CFR § 144.31 and are subject to the requirements of the SDWA and the UIC regulations.

8. 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 the permit.

9. Part II, Section G, Paragraph 3, of the UIC permits, 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.

10. The mechanical integrity demonstration for the active permitted Subject Well is overdue, as shown below.

<u>EPA Permit No.</u>	<u>EPA ID No.</u>	<u>Well</u>	<u>Previous MIT</u>	<u>MIT Due</u>	<u>MIT Done</u>
KYI0488	KYS0630007	Albert Gillum #G-1A	10/19/05	10/19/10	(Not Yet)

11. Therefore, the Respondent is in violation of 40 C.F.R. § 146.8, the UIC permit and the SDWA for failure to timely demonstrate the mechanical integrity of the active permitted well shown above.

12. Part II, Section F, Paragraph 3, of the UIC permits, requires the permittee after a cessation of injection for 2 years to demonstrate the mechanical integrity or to close, plug and abandon the well.

13. Based on the EPA's field inspections, the following permitted Subject Well is inactive and has not been plugged, closed and abandoned. The inactive permitted Subject Well is overdue for the mechanical integrity demonstration as shown below.

<u>EPA Permit No.</u>	<u>EPA ID No.</u>	<u>Well</u>	<u>Status</u>	<u>Last MIT</u>	<u>MIT Done</u>
KYI0425	KYS0630006	Mountaineer Land Co. #1	Inactive	07/26/91	(Not Yet)

14. Therefore, the Respondent is in violation of 40 C.F.R. § 144.51(a), the UIC permit and the SDWA for failure to comply with the permit condition to timely demonstrate the mechanical integrity or to close, plug and abandon the inactive permitted Subject Well as shown above.

15. The active Subject Wells listed in Exhibit I are rule-authorized. These 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) and are subject to the requirements of the SDWA and the UIC regulations.

16. 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.

17. 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.

18. The mechanical integrity demonstrations for the active rule-authorized Subject Wells are overdue as shown in Exhibit I.

19. Therefore, the Respondent is 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 active rule-authorized Subject Wells in Exhibit I.

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

21. Based on the EPA's field inspections, the following rule-authorized Subject Wells are inactive and have not been plugged, closed and abandoned. The inactive rule-authorized Subject Wells are overdue for the mechanical integrity demonstrations as shown below.

<u>EPA ID No.</u>	<u>Well</u>	<u>Status</u>	<u>Last MIT</u>	<u>MIT Done</u>
KYS1290047	North Pendergrass #3-W	Inactive	08/09/05	(Not Yet)
KYS1290075	Pyramid Pendergrass #23	Inactive	10/19/01	(Not Yet)

22. Therefore, Respondent is in violation of 40 C.F.R. § 144.28(g)(2)(iv) and the SDWA, for failure to close, plug and abandon or to timely demonstrate the mechanical integrity of the inactive rule-authorized Subject Wells as shown above.

23. Respondent is the owner and/or operator of the following unauthorized Class II underground injection wells.

<u>EPA ID No.</u>	<u>St. Permit No.</u>	<u>EPA Permit App. No.</u>	<u>Well</u>	<u>Status</u>
KYS1292048	63128	KYI0158	D. B. Pendergrass #119W	Active
KYS1290078	63129	KYI0157	Rena Butcher #33W	Active

24. The effective date of the UIC program in Kentucky, as implemented by the EPA, was June 25, 1984.

25. Applications to the Commonwealth of Kentucky, Department of Mines and Minerals, Oil and Gas Division for permits to commence drilling these two wells were submitted on June 27, 1984, two days after inception of the UIC Program, as implemented by the EPA.

26. Drilling commenced on the D. B. Pendergrass #119 on July 12, 1984 and was completed on July 24, 1984. Drilling commenced on the Rena Butcher #33-W on July 31, 1984 and was completed on August 13, 1984.

27. Permit applications were submitted to the EPA on March 26, 1985, to construct these as injection wells.

28. By letter dated April 30, 1986, the EPA stated the permit applications had been deemed incomplete.

29. By letter dated July 1, 1986, the EPA stated that since the permit applications had been deemed incomplete, the permits would be placed into inactive status.

30. During inspections on January 9, 2012, the EPA inspector observed produced fluids being injected into both of the Subject Wells.

31. 40 C.F.R. § 144.11 prohibits any underground injection or construction of an underground injection well that is not authorized by rule or by an issued permit.

32. No authorization was ever given by the EPA for the underground injection of fluids into the Subject Wells, nor permits issued to allow configuration of the Subject Wells as injection wells.

33. Therefore, Respondent is in violation of the Part C of the SDWA, 42 U.S.C. § 300j et seq. and 40 C.F.R. § 144.11 for unauthorized underground injection.

34. On March 29, 2012, Respondent participated in a show cause hearing with representatives of the EPA to discuss his violations of the SDWA and the implementing regulations.

### STIPULATIONS AND FINDINGS

35. 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.

36. 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.

### PENALTY AND INJUNCTIVE RELIEF

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

37. Respondent shall pay a civil penalty of **\$59,335 (fifty-nine thousand three hundred thirty-five dollars)** in accordance with the terms set forth below.

38. Within 60 days of receipt of a fully-executed copy of this CA/FO, Respondent shall submit a cashiers or certified check in the amount of **\$59,335 (fifty-nine thousand three hundred thirty-five 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.

39. 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

40. 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 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 shall assess an administrative fee of \$15 for each subsequent 30 day period. 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.

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

- a. Respondent is ordered to successfully demonstrate the mechanical integrity or close, plug, and abandon the wells listed below, within 360 days of receipt of this Order. Mechanical integrity testing or plugging and abandonment must be witnessed by an authorized EPA inspector.

<u>Permit No.</u>	<u>EPA ID No.</u>	<u>Well</u>
KYI0488	KYS0630007	Albert Gillum #G-1A
KYI0425	KYS0630006	Mountaineer Land Co. #1
	KYS1290047	North Pendergrass #3-W
	KYS1290075	Pyramid Pendergrass #23

- b. Respondent is ordered to successfully demonstrate the mechanical integrity or close, plug, and abandon the wells listed in Exhibit I, within 360 days of receipt of this Order. Mechanical integrity testing or plugging and abandonment must be witnessed by an authorized EPA inspector.
  
- c. Within 90 days of receipt of this Order, Respondent is ordered to submit an administratively complete permit application or to properly close, plug and abandon the following wells. Plugging and abandonment must be witnessed by an authorized EPA inspector.

<u>EPA ID No.</u>	<u>St. Permit No.</u>	<u>EPA Permit App. No.</u>	<u>Well</u>
KYS1292048	63128	KYI0158	D. B. Pendergrass #119W
KYS1290078	63129	KYI0157	Rena Butcher #33W

- d. Respondent is ordered to provide financial responsibility demonstration for the wells listed in Exhibit II within 180 days of receipt of this Order, unless Respondent submits documentation within 180 days to demonstrate that such wells have been properly plugged and abandoned or that such wells have been converted to producer after a successful mechanical integrity demonstration. (Mechanical integrity testing or plugging and abandonment must be witnessed by an authorized EPA inspector.)
- e. Within 90 days of receipt of this Order, Respondent shall provide monitoring reports for the period from September 2011 through December 2011.

42. Respondent agrees to pay stipulated civil penalties for violation of the condition set forth in Paragraph 41 above as follows. For failure to comply with the condition described in Paragraph 41 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.

43. 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

44. 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.

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

For Respondent: Charles N. Reel, President  
 American Natural Gas, Inc.  
 56854 Pleasant Ridge Road  
 Alledonia, Ohio 43902  
 P: (740) 926-1351  
 F: (740) 926-9112

With copies of any documents provided to:

G. Christopher Van Bever, Esq.  
101 Prosperous Place, Suite 125  
Lexington, Kentucky 40509  
P: (859) 543-9220  
F: (859) 543-1720

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**

46. 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.
47. 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.
48. 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.
49. 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.

50. 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.

51. 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.

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

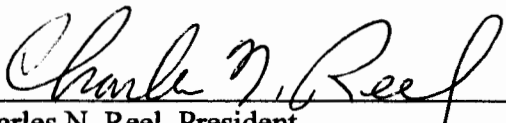
53. This CA/FO shall become effective upon the date that it is filed with the Regional Hearing Clerk.

54. 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.

Docket No. SDWA-04-2012-1007(b)

**RESPONDENT**

Date 7-31-12

  
\_\_\_\_\_  
Charles N. Reel, President  
American Natural Gas, Inc.

**COMPLAINANT**

Date ORIGINAL Signature for ERA on separate PAGE -  
James D. Giattina, Director  
Water Protection Division

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.

50. 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.

51. 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.

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

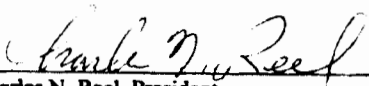
53. This CA/FO shall become effective upon the date that it is filed with the Regional Hearing Clerk.

54. 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.

Docket No. SDWA-04-2012-1007(b)

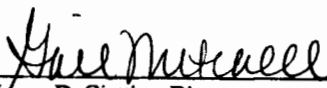
**RESPONDENT**

Date 7-31-12

  
\_\_\_\_\_  
Charles N. Reel, President  
American Natural Gas, Inc.

**COMPLAINANT**

Date 10-12-12

  
\_\_\_\_\_  
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: Nov. 27, 2012

Susan 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 American Natural Gas, Inc.;  
Docket No. SDWA-04-2012-1007(b), on the parties listed below in the manner indicated:

**Carol Chen**

Via EPA Internal Mail

**Wilda Cobb**

Via EPA Internal Mail

**Charles N. Reel, President  
American Natural Gas, Inc.  
56854 Pleasant Ridge Road  
Alledonia, Ohio 43902**

Via Certified Mail/ Return Receipt Requested

**G. Christopher Van Bever, Esq.  
101 Prosperous Place, Suite 125  
Lexington, Kentucky 40509**

Via Certified Mail/ Return Receipt Requested

Date: 12-4-12



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