



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

FEB 04 2010

CERTIFIED MAIL 7009 0960 0000 6488 5059  
RETURN RECEIPT REQUESTED

Mr. Rudy F. Vogt, III  
Cumberland Valley Resources, LLC  
2647 Cherokee Parkway  
Louisville, Kentucky 40204

Re: Consent Agreement and Final Order (CA/FO)  
Docket No. SDWA-04-2010-1005(b)

Dear Mr. Vogt:

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 signed by the Regional Judicial Officer and you are hereby ordered to comply immediately with the terms of the subject Order. Please make note of the provisions under "PENALTY AND INJUNCTIVE RELIEF" with respect to compliance actions and stipulated penalties.

Thank you for your cooperation in settling this matter. Should you have any questions or concerns please contact Mr. Randy Vaughn, Underground Injection Control Enforcement, at (404) 562-9793.

Sincerely,

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

James D. Giattina  
Director

Water Protection Division

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

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HEARING CLERK

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RECEIVED  
EPA REGION 4

IN THE MATTER OF

Cumberland Valley Resources, LLC  
2647 Cherokee Parkway  
Louisville, Kentucky 40204

Respondent

Consent Agreement  
and  
Final Order

Docket No. SDWA-04-2010-1005(b)

**CONSENT AGREEMENT**

**I. 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 Cumberland Valley Resources, LLC (Respondent).

2. Section 1450 of the SDWA authorizes the Administrator to prescribe such regulations as are necessary or appropriate to carry out his functions under the SDWA. These regulations are found at 40 CFR 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 CFR § 147.901(a).

**II. Allegations**

The parties hereby stipulate and find as follows:

4. Respondent is a limited liability corporation organized under the laws of the Commonwealth of Kentucky.

5. Respondent is a "person" as that term is defined in § 1401(12) of the SDWA, 42 U.S.C. § 300f(12) and 40 CFR § 144.3.

6. Respondent owns and/or operates the following enhanced recovery injection well (subject well):

<u>EPA ID No.</u>	<u>Lease &amp; Well No.</u>	<u>Status</u>
KYS1530081	Frazier Heirs #14	Active

7. The subject well, located in Magoffin County, Kentucky, constitutes a "facility" as that term is defined in 40 CFR § 144.3.

8. The injection well subject to this action was in existence on June 25, 1984, the effective date of the Underground Injection Control (UIC) program in Kentucky as implemented by EPA, and is, therefore, authorized by rule, as that term is defined in 40 CFR § 144.21(a).

9. 40 CFR § 144.28(g)(2)(A) requires that an owner/operator of an active, enhanced recovery injection well, authorized by rule, demonstrate mechanical integrity at least once every five years.

10. The records file for the Frazier Heirs #14 well shows that the last demonstration of mechanical integrity for the well was conducted on June 11, 2003.

11. Therefore, Respondent is in violation of 40 CFR § 144.28(g)(2)(A) for failing to timely demonstrate the mechanical integrity of the Frazier Heirs #14 injection well.

12. On September 3, 2009, EPA issued a Notice of Violation and Notice of Opportunity to Show Cause for the Frazier Heirs #14 injection well, alleging Respondent to be in violation of the SDWA and its implementing regulations.

### **III. Stipulations and Findings**

13. Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the facts and findings of violations as alleged. 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.

14. Complainant and Respondent have conferred for the purpose of settlement, pursuant to 40 CFR § 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 CFR § 22.13(b), this CA/FO will simultaneously commence and conclude this matter.

#### **IV. Penalty and Injunctive Relief**

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

15. Respondent shall pay a civil penalty of **Three Thousand Six Hundred Dollars (\$3600)** within thirty (30) days of Respondent's receipt of a fully executed copy of this Order.

16. Respondent shall make payment to EPA by sending a certified or cashier's check 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

17. Respondent shall note the title and docket number of the case on the penalty payment certified or cashier's check. Respondent shall submit copies of the check to the following persons:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303-8960

Mr. Fred McManus, Chief  
Ground Water & Safe Drinking Water Act Enforcement Section  
U.S. Environmental Protection Agency  
Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303-8960

18. 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.

19. Pursuant to 40 CFR 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 thirty (30) day period. EPA will also assess, on a monthly basis, a six per cent (6%) per annum penalty on any principal amount not paid within ninety (90) days of the due date.

20. In addition to payment of the penalty described above, Respondent shall, within thirty (30) days of receipt of a fully-executed copy of this Order, demonstrate internal and external mechanical integrity for the Frazier Heirs #14 injection well as set forth in the applicable UIC regulations, or plug and abandon the subject well, in accordance with an EPA-approved plugging and abandonment plan.

21. Respondent agrees to pay stipulated civil penalties for violation of the conditions set forth in Paragraph 20 above as follows:

For failure to comply with each condition described in Paragraph 20 above, Respondent shall pay a stipulated civil penalty according to the following schedule:

- a. Three hundred dollars (\$300) for any portion of the first week (7 days) any failure continues; and
- b. Two hundred dollars (\$200) per day for each day after the first week (7 days) that the failure continues.

22. Stipulated penalties shall become due and payable no later than thirty (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

23. 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 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 EPA.

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

For Respondent: Mr. Rudy Vogt  
Cumberland Valley Resources, LLC  
2647 Cherokee Parkway  
Louisville, Kentucky 40204

For EPA: Zylpha Pryor, Attorney  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303  
404-562-9535

#### **V. General Provisions**

25. 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.

26. 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. Nothing contained herein shall be construed to prevent or limit EPA's rights to obtain penalties or injunctive relief under Section 1423 of the SDWA or other federal statutes and regulations. 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 violations of law. Full payment of the penalty agreed to in this CA/FO resolves only Respondent's liability for federal civil penalties for the violations and facts stipulated herein.

27. For the purposes of state and federal income taxation, Respondent shall not be entitled 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.

28. If any event beyond the control of Respondent, its/their 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 four (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 ten (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.

29. 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 of the cause of the delay.

30. The parties acknowledge and agree that final approval by EPA of this CA/FO is subject to 40 CFR § 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.

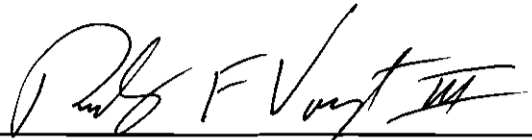
31. Each party shall bear its own costs and attorneys fees in connection with this action.

32. This CA/FO shall become effective upon the date that it is signed by the Regional Judicial Officer.

33. 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

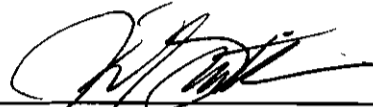
Date: 11/20/2009



\_\_\_\_\_  
Rudy F. Vogt, III  
Cumberland Valley Resources, LLC

COMPLAINANT

Date: 2/1/10



\_\_\_\_\_  
James D. Giattina, Director  
Water Protection Division  
EPA, Region 4



**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: Feb. 4, 2010

Susan B. Schub  
**Susan B. Schub**  
**Regional Judicial Officer**

**CERTIFICATE OF SERVICE**

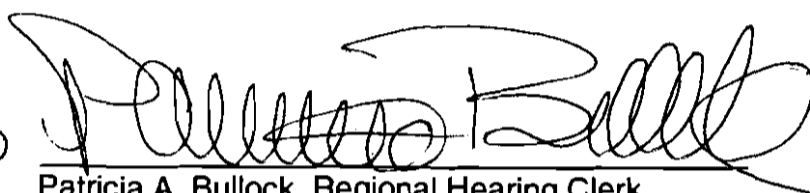
I HEREBY CERTIFY that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, in the Matter of Cumberland Valley Resources, LLC, Docket No. SDWA-04-2010-1005(b), on the parties listed below in the manner indicated:

Randy Vaughn, UIC Enforcement Officer (Via EPA internal Mail)  
EPA, Region 4

Ms. Zylpha Pryor, Associate Regional Counsel (Via EPA internal Mail)  
EPA, Region 4

Mr. Rudy F. Vogt, III (Via Certified Mail - Return Receipt Requested)  
Cumberland Valley Resources, LLC  
2647 Cherokee Parkway  
Louisville, Kentucky 40204

Date: 2-4-10



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