



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

SEP 20 2016

CERTIFIED MAIL 7011 3500 0003 2064 0673  
RETURN RECEIPT REQUESTED

Mr. Dean Lurker, President  
Del Energy, Inc.  
P.O. Box 620  
Peapack, New Jersey 07977

Re: Consent Agreement and Final Order (CA/FO) Docket No. SDWA-04-2016-1019(b)  
Del Energy, Inc.

Dear Mr. Lurker:

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 Mr. Tony Shelton, Underground Injection Control Enforcement Officer at (404) 562-9636.

Sincerely,

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

James D. Giattina  
Director  
Water Protection Division

Enclosure

cc: Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF

Del Energy, Inc.  
P.O. Box 620  
Peapack, New Jersey 07977

Respondent

Consent Agreement and Final Order

Docket No. SDWA-04-2016-1019

HEARING CLERK

2016 SEP 20 PM 5:43

USEPA REGION 4  
OFFICE OF REGIONAL  
COUNSEL

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 doing business in the Commonwealth of Kentucky, with a business address of P.O. Box 620, Peapack, New Jersey 07977
5. Respondent is the owner and/or operator of the Class II UIC wells that are subject to this Order (Subject Wells), listed below.

<u>Permit No.</u>	<u>EPA ID No.</u>	<u>Well Name</u>	<u>Well No</u>	<u>Status</u>	<u>County</u>
KYI0717	KYS0590389	Donovan Heirs	9	AC	Daviess
KYI0858	KYS0590422	Donovan Heirs	11	AC	Daviess

6. Each of the Subject Wells is a “facility” as that term is defined in 40 C.F.R. § 144.3.
7. On July 9, 1998, the EPA issued UIC Permit No. KYI0717 to the Respondent, in accordance with 40 C.F.R. § 144.31.
8. On October 2, 2007, the EPA issued UIC Permit No. KYI0858 to the Respondent, in accordance with 40 C.F.R. § 144.31.
9. 40 C.F.R. § 144.51(a) requires the permittee of a permitted UIC well to comply with all conditions of the permit and provides that any permit noncompliance constitutes a violation of the SDWA.
10. Part I, Section C, Paragraph 3, of the UIC Permit Nos. KYI0717 and KYI0858 requires the permittee to conduct an injection fluid analysis in accordance with 40 C.F.R. § 146.23(b)(1) at least once every 12 months and whenever changes are made to the injection fluid. Part I, Section D, Paragraph 2, of the UIC Permit Nos. KYI0717 and KYI0858 requires the permittee to submit the results of injection fluid analyses to the EPA annually in accordance with 40 C.F.R. § 146.23(c).
11. During the month of February 2016, the EPA Region 4 UIC Program staff performed a file review of its UIC Program records for the Subject Well.
12. Respondent failed to timely submit annual injection fluid analysis results for the Subject Wells as shown below.

<u>EPA ID No.</u>	<u>UIC Permit No.</u>	<u>Well Name</u>	<u>Missing Fluid Analysis Reports</u>
KYS0590389	KYI0717	Donovan Heirs	2011, 2012, 2013, 2014 and 2015
KYS0590422	KYI0858	Donovan Heirs	2011, 2012, 2013, 2014 and 2015

13. Therefore, Respondent is in violation of the SDWA, 42 U.S.C. § 300f, *et seq.*, 40 C.F.R. §§ 146.23(b)(1), 146.23(c) and 144.51(a), and the UIC Permit Nos. KYI0717 and KYI0858 for failure to timely submit to the EPA annual fluid analysis results, as shown above.
14. On May 12, 2016, Respondent participated in a show cause meeting with representatives of the EPA to discuss these alleged violations of the SDWA and the implementing regulations.

### **III. STIPULATIONS AND FINDINGS**

15. Complainant and the 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.
16. For purposes of this CA/FO Respondent admits the jurisdictional allegations and facts and findings of violations as alleged herein.

17. 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.

18. The 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:

19. Respondent shall pay a civil penalty of **\$3,500 (three thousand, five hundred dollars)** in accordance with the terms set forth below.

20. Within 30 days of the Effective Date of this CA/FO, Respondent shall submit a cashier's or certified check in the amount of **\$3,500 (three thousand, five 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.

21. 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 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

22. 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.

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

For Respondent: Dean Lurker  
Del Energy, Inc.  
P.O. Box 620  
Peapack, New Jersey 07977  
(908) 304-5554

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

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

Within 90 days of the Effective Date of the CA/FO, Respondent is ordered to provide current fluid analysis reports to the EPA, for the following Subject Wells:

<u>EPA ID No.</u>	<u>UIC Permit No.</u>	<u>Well Name</u>
KYS0590389	KYI0717	Donovan Heirs
KYS0590422	KYI0858	Donovan Heirs

25. 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

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. Each party shall bear its own costs and attorney fees in connection with this action.

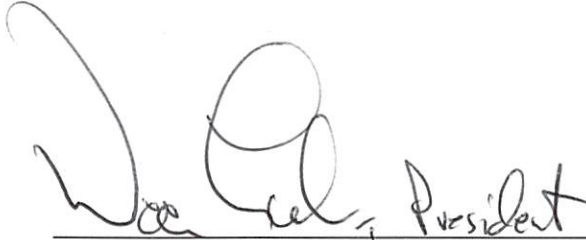
34. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and to execute and legally bind the Party he or she represents to this Agreement.

**VI. Effective Date**


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

**RESPONDENT**

Date July 20, 2016

  
\_\_\_\_\_  
Dean Lurker, President  
Del Energy, Inc.

**COMPLAINANT**

Date 9/14/2016 

  
\_\_\_\_\_  
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 20, 2016

Tanya Floyd  
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 Del Energy, Inc.; Docket No. SDWA-04-2016-1019(b) on the parties listed below in the manner indicated:

Tony Shelton

Via EPA Internal Mail

Wilda Cobb

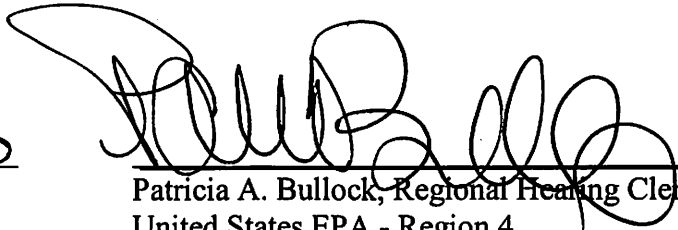
Via EPA Internal Mail

Dean Lurker  
Del Energy, Inc.  
P.O. Box 620  
Peapack, New Jersey 07977

Via Certified Mail/ Return Receipt Requested

Date:

9-20-16



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