



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

September 16, 2010

Mr. Steven R. Randolph  
Appalachian Resources of Florida, LLC  
2725 Hanson Street  
Fort Myers, Florida 33901

SUBJ: Revised Docket Number  
Appalachian Resources of Florida, LLC  
Docket No. SDWA-04-2010-~~1010~~(b) <sup>P.B.</sup>

2010 SEP 16 PM 12:58  
RECEIVED  
REGIONAL OFFICE

Dear Mr. Randolph:

The purpose of this letter is to advise you that the Environmental Protection Agency has revised the Docket Number on the Consent Agreement and Final Order (CAFO) in the above-referenced case, *Appalachian Resources of Florida, LLC*. This revision is being made in order to address a clerical error which resulted in a change of the assigned docket number.

Please find attached a new cover page of the CAFO which was filed with the Agency on September 14, 2010. The new cover page reflects the new docket number, Docket No. **SDWA-04-2010-1010(b)**. Please add this corrected page to your copy of the CAFO

**Please note the following: The obligations of (Respondent) as set forth in the CAFO filed on September 14, 2010, Docket No. SDWA-04-2010-2010(b), have not been altered in any way. The Company must fulfill its original obligations set forth in the original CAFO, in accordance with the deadlines set forth therein.**

We apologize for any inconvenience that this may have caused. If you have any questions, please call me at (404) 562-9299.

Sincerely,

W. Scott Hoskins  
Geologist  
Ground Water and SDWA Enforcement Section

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

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

SEP 14 2010

**CERTIFIED MAIL 7009 0960 0000 6488 5905**  
**RETURN RECEIPT REQUESTED**

Mr. Steven R. Randolph  
Appalachian Resources of Florida, LLC  
2725 Hanson Street  
Fort Myers, Florida 33901

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

Dear Mr. Randolph:

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 Hearing Clerk 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. W. Scott Hoskins, Geologist, Ground Water and SDWA Enforcement, at (404) 562-9299.

Sincerely,

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

James D. Giattina  
Director  
Water Protection Division

Enclosure

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

IN THE MATTER OF

Appalachian Resources of Florida, LLC  
2725 Hanson Street  
Fort Myers, FL 33901

Respondent

Consent Agreement  
and  
Final Order

Docket No. SDWA-04-2010-1010(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 Appalachian Resources of Florida, LLC (Respondent).

2. Section 1450 of the SDWA 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 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 corporation organized under the laws of the Commonwealth of Kentucky and doing business in the Commonwealth of Kentucky with a principal place of business at 2725 Hanson Street, Fort Myers, FL 33901 and Steven R. Randolph is the managing member.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

IN THE MATTER OF

Appalachian Resources of Florida, LLC  
2725 Hanson Street  
Fort Myers, FL 33901

Respondent

Consent Agreement  
and  
Final Order

Docket No. SDWA-04-2010-~~2010~~(b) P.B

HEARINGS DIVISION

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EPA REGION 4

**CONSENT AGREEMENT**

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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 Appalachian Resources of Florida, LLC (Respondent).

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**II. ALLEGATIONS**

The parties hereby stipulate and find as follows:

4. Respondent is a corporation organized under the laws of the Commonwealth of Kentucky and doing business in the Commonwealth of Kentucky with a principal place of business at 2725 Hanson Street, Fort Myers, FL 33901 and Steven R. Randolph is the managing member.

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

6. Respondent owns and/or operates the following Class II enhanced recovery injection wells (subject wells) as follows:

<u>EPA ID No.</u>	<u>Well &amp; Lease Name</u>	<u>Location (lat./ long.)</u>	<u>County</u>
KYS1970451	Belle Watson 100	37.74831 -83.82343	Powell
KYS1290615	R.J. Mclin-North 1-W	37.69238 -83.68416	Lee
KYS1290617	R.J. Mclin-North 2-W	37.69399 -83.68434	Lee
KYS1290618	R.J. Mclin-North 3-W	37.69256 -83.68225	Lee
KYS1290619	R.J. Mclin-North 4-W	37.69435 -83.68238	Lee
KYS1290620	R.J. Mclin-North 5-W	37.69772 -83.68300	Lee
KYS1290621	R.J. Mclin-North 6-W	37.69932 -83.68321	Lee
KYS1290623	R.J. Mclin-North 7-W	37.68458 -83.68184	Lee
KYS1290624	R.J. Mclin-South W-1	37.68330 -83.68089	Lee
KYS1290625	R.J. Mclin-South A-1	37.68191 -83.67920	Lee
KYS1290626	R.J. Mclin-South 30	37.68338 -83.67989	Lee
KYS1290627	R.J. Mclin-South A-4	37.67918 -83.68038	Lee
KYS1290628	W.E. Kincaid W-3	37.68194 -83.68150	Lee
KYS1290629	W.E. Kincaid W-4	37.68056 -83.68138	Lee
KYS1290630	W.E. Kincaid	37.67895 -83.68225	Lee
KYS1290631	W.E. Kincaid 6-W	37.67800 -83.68198	Lee
KYS1290632	Marion Shoemaker A-2	37.68104 -83.67889	Lee
KYS1290633	Marion Shoemaker 11-W	37.68064 -83.67749	Lee
KYS1290634	Marion Shoemaker A-3	37.67939 -83.67867	Lee
KYS1290679	E. Williams W-1	37.67253 -83.67709	Lee
KYS1290842	Marion Shoemaker 1-W	37.68459 -83.68198	Lee

7. Each of the subject wells is located in Lee County, Kentucky, except for the Belle Watson 100, located in Powell County, Kentucky. Each of the subject wells constitutes a “facility” as that term is defined in 40 CFR § 144.3.

8. The subject wells, except for the Belle Watson 100, were in existence on June 25, 1984, the effective date of the UIC program in Kentucky as implemented by EPA, and are, therefore, authorized by rule, as that term is defined in 40 CFR § 144.21(a).

9. On October 28, 2008, EPA conducted an inspection of the Belle Watson 100 well, EPA ID No. KYS1970451, and found it to be actively injecting.

10. A subsequent review of the EPA data base and files revealed that no information concerning the subject well had been submitted to EPA.

11. 40 CFR §144.11 prohibits any underground injection, except into a well authorized by rule or by permit.

12. The subject well is not authorized by rule or by permit.

13. Therefore Respondent is in violation of 40 CFR § 144.11 for injecting into the subject well which is neither authorized by rule nor by permit.

14. Respondent purchased the Belle Watson lease on July 10, 2006 and the remaining leases listed above on June 11, 2007. At the time of the purchase of the subject wells until the issuance of this proposed CA/FO no inventory information to transfer the wells to Respondent has been submitted to EPA, in violation of 40 CFR § 144.26; no demonstration of mechanical integrity has been submitted to EPA, in violation of 40 CFR § 144.28(f)(2); no monitoring reports or fluid analysis reports have been submitted to EPA, in violation of 40 CFR § 144.28(h)(2); and no demonstration of financial responsibility for plugging and abandonment has been submitted to EPA, in violation of 40 CFR § 144.28(d).

15. During September 2009, EPA personnel performed additional inspections and met with David Ratliff concerning the noncompliance of the wells. In late 2009, EPA conducted a telephonic show cause meeting with field superintendent David Ratliff concerning the purchase and transfer of the subject wells to Respondent. During the show cause meeting, Respondent agreed to enter into a CA/FO with civil penalty to bring the subject wells into compliance with the SDWA and all applicable UIC regulations.

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

16. 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 CA/FO in this matter, and consents to the issuance of a final CA/FO without further adjudication.

17. 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 Allegations, the parties hereby agree and consent to entry of the following CA/FO:

18. Respondent shall pay a civil penalty of One Thousand Thirty-nine Dollars (\$1,039) within thirty (30) days of Respondent's receipt of a fully executed copy of this CA/FO.

19. 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

20. 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

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

21. Pursuant to Section 1423(c)(7) of the Act, 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 CA/FO is effective). In such an action, the validity, amount and appropriateness of the penalty shall not be subject to review.

22. 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.

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

- a. Respondent shall, within sixty (60) days of receipt of a fully-executed copy of this CA/FO, bring the Belle Watson 100 well into compliance by either: (1), plugging and abandoning (P&A) the subject well in accordance with EPA regulations and an EPA-approved P&A plan (the P&A must be witnessed by an EPA representative or an agent of the Commonwealth of Kentucky approved by EPA); or (2) applying for an EPA-approved permit for the well. Respondent may resume injection into the Belle Watson 100 well if Respondent applies for and receives such permit. Any such application must be made within sixty (60) days of Respondent's receipt of a fully-executed copy of this CA/FO. Respondent shall not resume injection into this well until receiving an EPA-approved permit for it.

And:

- b. EPA and Respondent agree that the following subject wells have been covered by infill, landslide, mining, or highway construction activity and the top of the casing is at an unknown depth below ground level or cannot be located.

<u>EPA ID No.</u>	<u>Well &amp; Lease Name</u>	<u>Location (lat./ long.)</u>	<u>County</u>
KYS1290619	R.J. Mclin-North 4-W	37.69435 -83.68238	Lee
KYS1290623	R.J. Mclin-North 7-W	37.68458 -83.68184	Lee
KYS1290624	R.J. Mclin-South W-1	37.68330 -83.68089	Lee
KYS1290628	W.E. Kincaid W-3	37.68194 -83.68150	Lee
KYS1290629	W.E. Kincaid W-4	37.68056 -83.68138	Lee
KYS1290631	W.E. Kincaid 6-W	37.67800-83.68198	Lee
KYS1290842	Marion Shoemaker 1-W	37.68459-83.68198	Lee

If at any time one of the subject wells as referred to in Paragraph 23(b) becomes located, and/or uncovered and accessible to Respondent, and Respondent is the owner/operator of the well, Respondent shall bring the subject well into compliance with the SDWA and applicable UIC regulations by either: (1) demonstrating internal and external mechanical integrity witnessed by an EPA representative or an agent of the Commonwealth of Kentucky approved by EPA; demonstrating financial responsibility for such well; properly transferring the subject well with EPA into Respondent's name; establishing financial responsibility; and submitting monitoring reports and fluid analyses for the subject well; or (2) plugging and abandoning the subject well within sixty (60) days of its becoming accessible to Respondent (the P&A must be witnessed by an EPA representative or an agent of the Commonwealth of Kentucky approved by EPA).

And:

- c. Respondent shall not inject into the remaining subject wells until they are brought into compliance with the SDWA and applicable UIC regulations by either: (1) demonstrating internal and external mechanical integrity witnessed by an EPA



representative or an agent of the Commonwealth of Kentucky approved by EPA; properly transferring the subject wells with EPA into Respondent's name; establishing financial responsibility; and submitting monitoring reports and fluid analyses for the subject wells; or (2) Respondent may bring the subject wells into compliance by plugging and abandoning them in accordance with EPA regulations and an EPA-approved P&A plan (the P&A must be witnessed by an EPA representative or an agent of the Commonwealth of Kentucky approved by EPA). Respondent shall commence bringing the subject wells into compliance at the rate of one well every three (3) months, beginning sixty (60) days of Respondent's receipt of a fully-executed copy of this CA/FO.

24. If, at any time, a well begins or continues to leak, flow, or spill at the ground surface, or if naturally occurring springs, rock outcrops, or water supply wells show any evidence of hydrocarbon or brine contamination, Respondent shall immediately cease injection and notify EPA. Injection shall not be resumed until Respondent demonstrates, to the satisfaction of EPA, that injection will not cause movement of fluids into or between underground sources of drinking water (USDWs).

25. All reporting required by this Order shall be submitted to the following person:

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

26. Respondent agrees to pay stipulated civil penalties for violation of any of the terms set forth in Paragraph 23 and 24 above as follows:

- 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.

27. 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

28. A copy of the check shall be sent to the Ground Water & SDWA Enforcement Section, 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.

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

For Respondent:

Steven R. Randolph  
Appalachian Resources of Florida, LLC  
2725 Hanson Street  
Fort Myers, Florida 33901

For Complainant:

Wilda Cobb, Attorney  
U.S. EPA – Region 4 / OEA  
61 Forsyth Street, SW  
Atlanta, Georgia 30303  
404-562-9530

#### **V. GENERAL PROVISIONS**

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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 CA/FO on the basis that material evidence was not considered.

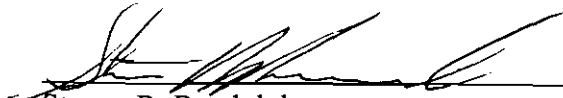
36. Each party shall bear its own costs and attorneys fees in connection with this action.

37. This Order shall become effective upon the date that it is filed with the Regional Hearing Clerk.

38. 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: 7-9-10

  
\_\_\_\_\_  
Steven R. Randolph  
Appalachian Resources of Florida, LLC

COMPLAINANT

Date: 9/8/10

  
\_\_\_\_\_  
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: Sept. 13, 2010

Susan B. 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 on Consent, in the Matter of Appalachian Resources of Florida LLC, Docket No. SDWA-04-2010-1010(b), on the parties listed below in the manner indicated:

Scott Hoskins, Enforcement Officer  
GW&SDWA Enforcement Section (Via EPA internal Mail)  
EPA, Region 4

Wilda Cobb, Attorney (Via EPA internal Mail)  
EPA, Region 4

Steven R. Randolph (Via Certified Mail - Return Receipt Requested)  
Appalachian Resources of Florida, LLC  
2725 Hanson Street  
Fort Myers, Florida 33901

Date: 9-14-10

  
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