

PUBLIC NOTICE

U.S. Environmental Protection Agency
Region 4
Water Protection Division
Safe Drinking Water Branch
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

Public Notice No.: SDWA-04-2016-1014(b)

Date: July 27, 2016

Notice of Proposed Issuance of Consent Agreement and Final Order

The U.S. Environmental Protection Agency (EPA), Region 4, proposes to issue a Consent Agreement and Final Order (CA/FO), Docket No. SDWA-04-2016-1014(b), that assesses an administrative penalty of \$7,500.00 to Bretagne, LLC (Respondent), with a business address of 1065 Key 1036, Leeco, Kentucky 41301, under the authority of Section 1423 of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300h-2. The EPA alleges that the Respondent violated regulatory and statutory requirements and the SDWA, by failing to comply with requirements for fluid analysis reports as shown below. The following underground injection wells, located in Lee, Wolfe Estill, and Powell Counties, Kentucky, are subject to the CA/FO.

<u>Permit No.</u>	<u>EPA ID No.</u>	<u>Well Name</u>	<u>Well No</u>	<u>Status</u>	<u>County</u>
KYA0084	KYS1290804	Flahaven North	R-45P	AC	Lee
KYA0084	KYS1290806	Flahaven North	R-241P	AC	Lee
KYA0084	KYS1290807	Flahaven North	R-243P	AC	Lee
KYA0084	KYS1290813	Flahaven North	R-239P	SI	Lee
KYA0084	KYS1290889	Flahaven North	W-13	SI	Lee
KYA0098	KYS1290815	Kendall Robinson	9-P	AC	Lee
KYI0285	KYS1292075	Neely K. Elam	2P	AC	Lee
KYA0003	KYS1290870	Decoursey Gabbard	10W-2164	AC	Lee
KYA0003	KYS1290880	Doll Abner	18W	AC	Lee
KYA0003	KYS1290882	Doll Abner	16W	AC	Lee
KYA0003	KYS1291808	Doll Abner	10W	AC	Lee
KYA0003	KYS1292139	Decoursey Gabbard	7 W-2186	SI	Lee
KYA0011	KYS1291835	Frank Gabbard	4 P	AC	Lee
KYA0011	KYS1291841	J. W. Kincaid	1 W	AC	Lee
KYA0011	KYS1291856	Gladys Oliver	4 P	SI	Lee
KYA0011	KYS1291858	Larry Oliver	1 W	TA	Lee
KYA0011	KYS1291869	Joe Whisman	3 P	SI	Lee
KYA0011	KYS1291872	Gary Oliver	2 W	TA	Lee
KYA0058	KYS1292009	James Little Farm 2	3P	SI	Lee
KYA0058	KYS1292010	James Little Farm 2	6P	SI	Lee
KYA0058	KYS1292012	James Little Farm 2	8P	SI	Lee
KYA0058	KYS1292025	S. L. Spencer Heirs	3P	SI	Lee
KYA0058	KYS1292027	S. L. Spencer Heirs	5P	AC	Lee
KYA0058	KYS1292028	S. L. Spencer Heirs	6P	AC	Lee
KYA0058	KYS1292030	S. L. Spencer Heirs	8P	AC	Lee
KYA0058	KYS1292033	S. L. Spencer Heirs	11P	AC	Lee
KYA0076	KYS1291890	N. W. Spencer	1W	AC	Lee
KYA0076	KYS1291891	N. W. Spencer	2W	AC	Lee

KYA0076	KYS1291897	North Beattyville	8P	SI	Lee
KYA0076	KYS1291899	North Beattyville	14P	TA	Lee
KYA0076	KYS1291900	North Beattyville	19P	SI	Lee
KYI0048	KYS2370104	A. J. Adams	14 W	AC	Wolfe
KYI0049	KYS0650091	P.M.G. Tract 1	55 W	TA	Estill
KYI0050	KYS1970344	P.M.G. Tract 3	50 W	TA	Powell
KYI0051	KYS1970345	P.M.G. Tract 3	1 AXW	TA	Powell
KYI0052	KYS1291166	E. L. Rogers	24 W	AC	Lee
KYI0053	KYS1291176	Garrett Townsend	10 W	AC	Lee
KYI0112	KYS2370136	Charles Kincaid	9P	TA	Wolfe
KYI0115	KYS2370145	Charles Kincaid	20 P	AC	Wolfe
KYI0121	KYS1292122	Tom Shackelford	13P	AC	Lee
KYI0122	KYS1292121	Tom Shackelford	22P	AC	Lee
KYI0171	KYS1292134	Hobbs Tract 4	1 W	AC	Lee
KYI0181	KYS2370143	Caywood & Johnson	16 P	SI	Wolfe

Any person wishing to comment on any aspect of the proposed CA/FO, Docket No. SDWA-04-2016-1014(b), must submit such comments in writing to the Regional Hearing Clerk at U.S. EPA, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia, 30303. Comments must be submitted within 30 days of the date of this notice. Please include the Public Notice Number and the Docket Number with any submitted comments.

The commenter must also provide his or her name and complete mailing address. All comments received during the public notice period will be made part of the public record for the CA/FO and will be available for public review. After consideration of all timely written comments, the requirements and policies in the SDWA and appropriate regulations, the EPA will make a final determination regarding the issuance of a CA/FO.

Interested parties may find out more information about this enforcement action by contacting Tony Shelton at shelton.anthony@epa.gov.

Any person who comments will receive a copy of the proposed CA/FO. Within 30 days of receipt of the CA/FO, a commenter may petition the Regional Administrator to set aside the proposed CA/FO on the basis that material evidence was not considered. Copies of the petition shall be served to the parties. Unless a petition is filed, a CA/FO becomes effective 10 days after the close of the comment period.

The public record including the draft CA/FO and comments received is available for review and copying at 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960, between the hours of 8:15 a.m. and 4:30 p.m., Monday through Friday. Copies will be provided at a cost of 20 cents per page.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF

**Bretagne, LLC
1065 Key 1036
Leeco, Kentucky 41301**

Respondent

Consent Agreement and Final Order

Docket No. SDWA-04-2016-1014(b)

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 doing business in the Commonwealth of Kentucky, with a business address of 1065 Key 1036, Leeco, Kentucky 41301.
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>
KYA0084	KYS1290804	Flahaven North	R-45P	AC	Lee
KYA0084	KYS1290806	Flahaven North	R-241P	AC	Lee

KYA0084	KYS1290807	Flahaven North	R-243P	AC	Lee
KYA0084	KYS1290813	Flahaven North	R-239P	SI	Lee
KYA0084	KYS1290889	Flahaven North	W-13	SI	Lee
KYA0098	KYS1290815	Kendall Robinson	9-P	AC	Lee
KYI0285	KYS1292075	Neely K. Elam	2P	AC	Lee
KYA0003	KYS1290870	Decoursey Gabbard	10W-2164	AC	Lee
KYA0003	KYS1290880	Doll Abner	18W	AC	Lee
KYA0003	KYS1290882	Doll Abner	16W	AC	Lee
KYA0003	KYS1291808	Doll Abner	10W	AC	Lee
KYA0003	KYS1292139	Decoursey Gabbard	7 W-2186	SI	Lee
KYA0011	KYS1291835	Frank Gabbard	4 P	AC	Lee
KYA0011	KYS1291841	J. W. Kincaid	1 W	AC	Lee
KYA0011	KYS1291856	Gladys Oliver	4 P	SI	Lee
KYA0011	KYS1291858	Larry Oliver	1 W	TA	Lee
KYA0011	KYS1291869	Joe Whisman	3 P	SI	Lee
KYA0011	KYS1291872	Gary Oliver	2 W	TA	Lee
KYA0058	KYS1292009	James Little Farm 2	3P	SI	Lee
KYA0058	KYS1292010	James Little Farm 2	6P	SI	Lee
KYA0058	KYS1292012	James Little Farm 2	8P	SI	Lee
KYA0058	KYS1292025	S. L. Spencer Heirs	3P	SI	Lee
KYA0058	KYS1292027	S. L. Spencer Heirs	5P	AC	Lee
KYA0058	KYS1292028	S. L. Spencer Heirs	6P	AC	Lee
KYA0058	KYS1292030	S. L. Spencer Heirs	8P	AC	Lee
KYA0058	KYS1292033	S. L. Spencer Heirs	11P	AC	Lee
KYA0076	KYS1291890	N. W. Spencer	1W	AC	Lee
KYA0076	KYS1291891	N. W. Spencer	2W	AC	Lee
KYA0076	KYS1291897	North Beattyville	8P	SI	Lee
KYA0076	KYS1291899	North Beattyville	14P	TA	Lee
KYA0076	KYS1291900	North Beattyville	19P	SI	Lee
KYI0048	KYS2370104	A. J. Adams	14 W	AC	Wolfe
KYI0049	KYS0650091	P.M.G. Tract 1	55 W	TA	Estill
KYI0050	KYS1970344	P.M.G. Tract 3	50 W	TA	Powell
KYI0051	KYS1970345	P.M.G. Tract 3	1 AXW	TA	Powell
KYI0052	KYS1291166	E. L. Rogers	24 W	AC	Lee
KYI0053	KYS1291176	Garrett Townsend	10 W	AC	Lee
KYI0112	KYS2370136	Charles Kincaid	9P	TA	Wolfe
KYI0115	KYS2370145	Charles Kincaid	20 P	AC	Wolfe
KYI0121	KYS1292122	Tom Shackelford	13P	AC	Lee
KYI0122	KYS1292121	Tom Shackelford	22P	AC	Lee
KYI0171	KYS1292134	Hobbs Tract 4	1 W	AC	Lee
KYI0181	KYS2370143	Caywood & Johnson	16 P	SI	Wolfe

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

7. On October 30, 1986, the EPA issued UIC Permit No. KYI0171 to the Respondent, in accordance with 40 C.F.R. § 144.31.

8. On July 18, 1985, the EPA issued UIC Permit No. KYI0052 to the Respondent, in accordance with 40 C.F.R. § 144.31.
9. On May 27, 1986, the EPA issued UIC Permit No. KYA0011 to the Respondent, in accordance with 40 C.F.R. § 144.31.
10. On March 31, 1986, the EPA issued UIC Permit No. KYI0121 to the Respondent, in accordance with 40 C.F.R. § 144.31.
11. On July 19, 1985, the EPA issued UIC Permit No. KYI0049 to the Respondent, in accordance with 40 C.F.R. § 144.31.
12. On January 28, 1986, the EPA issued UIC Permit No. KYI0084 to the Respondent, in accordance with 40 C.F.R. § 144.31.
13. On March 03, 1989, the EPA issued UIC Permit No. KYI0285 to the Respondent, in accordance with 40 C.F.R. § 144.31.
14. On January 28, 1986, the EPA issued UIC Permit No. KYA0098 to the Respondent, in accordance with 40 C.F.R. § 144.31.
15. On July 12, 1985, the EPA issued UIC Permit No. KYA0003 to the Respondent, in accordance with 40 C.F.R. § 144.31.
16. On June 18, 1985, the EPA issued UIC Permit No. KYA0058 to the Respondent, in accordance with 40 C.F.R. § 144.31.
17. On August 02, 1985, the EPA issued UIC Permit No. KYA0076 to the Respondent, in accordance with 40 C.F.R. § 144.31.
18. On July 18, 1985, the EPA issued UIC Permit No. KYI0048 to the Respondent, in accordance with 40 C.F.R. § 144.31.
19. On July 18, 1985, the EPA issued UIC Permit No. KYI0050 to the Respondent, in accordance with 40 C.F.R. § 144.31.
20. On July 19, 1985, the EPA issued UIC Permit No. KYI0051 to the Respondent, in accordance with 40 C.F.R. § 144.31.
21. On July 19, 1985, the EPA issued UIC Permit No. KYI0053 to the Respondent, in accordance with 40 C.F.R. § 144.31.
22. On March 27, 1986, the EPA issued UIC Permit No. KYI0112 to the Respondent, in accordance with 40 C.F.R. § 144.31.

23. On March 27, 1986, the EPA issued UIC Permit No. KYI0115 to the Respondent, in accordance with 40 C.F.R. § 144.31.
24. On March 27, 1986, the EPA issued UIC Permit No. KYI0122 to the Respondent, in accordance with 40 C.F.R. § 144.31.
25. On October 30, 1986, the EPA issued UIC Permit No. KYI0171 to the Respondent, in accordance with 40 C.F.R. § 144.31.
26. On December 04, 1986, the EPA issued UIC Permit No. KYI0181 to the Respondent, in accordance with 40 C.F.R. § 144.31.
27. 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.
28. Part I, Section C, Paragraph 3, of the UIC Permit Nos. KYI0171, KYI0052, KYA0011, KYI0121, KYI0049, .KYI0084, KYI0285, KYA0098, KYA0003, KYA0058, KYA0076, KYI0048, KYI0050, KYI0051, KYI0053, KYI0112, KYI0115, KYI0122, KYI0171, and KYI0181 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. KYI0171, KYI0052, KYA0011, KYI0121, KYI0049, .KYI0084, KYI0285, KYA0098, KYA0003, KYA0058, KYA0076, KYI0048, KYI0050, KYI0051, KYI0053, KYI0112, KYI0115, KYI0122, KYI0171, and KYI0181 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).
29. 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.
30. Respondent failed to timely submit annual injection fluid analysis results for the Subject Wells as shown below.

<u>UIC Permit No.</u>	<u>EPA ID No.</u>	<u>Well Name</u>	<u>Missing Fluid Analysis Reports</u>
KYA0084	KYS1290804	Flahaven North	2011, 2012, 2013, and 2014
KYA0084	KYS1290806	Flahaven North	2011, 2012, 2013, and 2014
KYA0084	KYS1290807	Flahaven North	2011, 2012, 2013, and 2014
KYA0084	KYS1290813	Flahaven North	2011, 2012, 2013, and 2014
KYA0084	KYS1290889	Flahaven North	2011, 2012, 2013, and 2014
KYA0098	KYS1290815	Kendall Robinson	2011, 2012, 2013, and 2014
KYI0285	KYS1292075	Neely K. Elam	2011, 2012, 2013, and 2014
KYA0003	KYS1290870	Decoursey Gabbard	2011, 2012, 2013, and 2014
KYA0003	KYS1290880	Doll Abner	2011, 2012, 2013, and 2014
KYA0003	KYS1290882	Doll Abner	2011, 2012, 2013, and 2014
KYA0003	KYS1291808	Doll Abner	2011, 2012, 2013, and 2014
KYA0003	KYS1292139	Decoursey Gabbard	2011, 2012, 2013, and 2014
KYA0011	KYS1291835	Frank Gabbard	2011, 2012, 2013, and 2014

KYA0011	KYS1291841	J. W. Kincaid	2011, 2012, 2013, and 2014
KYA0011	KYS1291856	Gladys Oliver	2011, 2012, 2013, and 2014
KYA0011	KYS1291858	Larry Oliver	2011, 2012, 2013, and 2014
KYA0011	KYS1291869	Joe Whisman	2011, 2012, 2013, and 2014
KYA0011	KYS1291872	Gary Oliver	2011, 2012, 2013, and 2014
KYA0058	KYS1292009	James Little Farm 2	2011, 2012, 2013, and 2014
KYA0058	KYS1292010	James Little Farm 2	2011, 2012, 2013, and 2014
KYA0058	KYS1292012	James Little Farm 2	2011, 2012, 2013, and 2014
KYA0058	KYS1292025	S. L. Spencer Heirs	2011, 2012, 2013, and 2014
KYA0058	KYS1292027	S. L. Spencer Heirs	2011, 2012, 2013, and 2014
KYA0058	KYS1292028	S. L. Spencer Heirs	2011, 2012, 2013, and 2014
KYA0058	KYS1292030	S. L. Spencer Heirs	2011, 2012, 2013, and 2014
KYA0058	KYS1292033	S. L. Spencer Heirs	2011, 2012, 2013, and 2014
KYA0076	KYS1291890	N. W. Spencer	2011, 2012, 2013, and 2014
KYA0076	KYS1291891	N. W. Spencer	2011, 2012, 2013, and 2014
KYA0076	KYS1291897	North Beattyville	2011, 2012, 2013, and 2014
KYA0076	KYS1291899	North Beattyville	2011, 2012, 2013, and 2014
KYA0076	KYS1291900	North Beattyville	2011, 2012, 2013, and 2014
KYI0048	KYS2370104	A. J. Adams	2011, 2012, 2013, and 2014
KYI0049	KYS0650091	P.M.G. Tract 1	2011, 2012, 2013, and 2014
KYI0050	KYS1970344	P.M.G. Tract 3	2011, 2012, 2013, and 2014
KYI0051	KYS1970345	P.M.G. Tract 3	2011, 2012, 2013, and 2014
KYI0052	KYS1291166	E. L. Rogers	2011, 2012, 2013, and 2014
KYI0053	KYS1291176	Garrett Townsend	2011, 2012, 2013, and 2014
KYI0112	KYS2370136	Charles Kincaid	2011, 2012, 2013, and 2014
KYI0115	KYS2370145	Charles Kincaid	2011, 2012, 2013, and 2014
KYI0121	KYS1292122	Tom Shackelford	2011, 2012, 2013, and 2014
KYI0122	KYS1292121	Tom Shackelford	2011, 2012, 2013, and 2014
KYI0171	KYS1292134	Hobbs Tract 4	2011, 2012, 2013, and 2014
KYI0181	KYS2370143	Caywood & Johnson	2011, 2012, 2013, and 2014

31. 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. KYI0171, KYI0052, KYA0011, KYI0121, KYI0049, KYI0084, KYI0285, KYA0098, KYA0003, KYA0058, KYA0076, KYI0048, KYI0050, KYI0051, KYI0053, KYI0112, KYI0115, KYI0122, KYI0171, and KYI0181 for failure to timely submit to the EPA annual fluid analysis results, as shown above.

32. On April 28, 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

33. 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.

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

35. 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.

36. 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:

37. Respondent shall pay a civil penalty of **\$7,500 (seven thousand, five hundred dollars)** in accordance with the terms set forth below.

38. Within 30 days of the Effective Date of this CA/FO, Respondent shall submit a cashier's or certified check in the amount of **\$7,500 (seven 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.

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

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

KYA0003	KYS1292139	Decoursey Gabbard
KYA0011	KYS1291835	Frank Gabbard
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KYA0011	KYS1291869	Joe Whisman
KYA0011	KYS1291872	Gary Oliver
KYA0058	KYS1292009	James Little Farm 2
KYA0058	KYS1292010	James Little Farm 2
KYA0058	KYS1292012	James Little Farm 2
KYA0058	KYS1292025	S. L. Spence Heir
KYA0058	KYS1292027	S. L. Spencer Heirs
KYA0058	KYS1292028	S. L. Spencer Heirs
KYA0058	KYS1292030	S. L. Spencer Heirs
KYA0058	KYS1292033	S. L. Spencer Heirs
KYA0076	KYS1291890	N. W. Spencer
KYA0076	KYS1291891	N. W. Spencer
KYA0076	KYS1291897	North Beattyville
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KYI0122	KYS1292121	Tom Shackelford
KYI0171	KYS1292134	Hobbs Tract 4
KYI0181	KYS2370143	Caywood & Johnson

43. 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

44. 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.

45. 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.

46. 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.

47. 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.

48. 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.

49. 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.

50. 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.

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

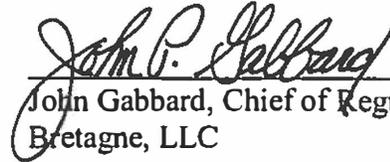
52. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and to execute and legally bind the Party he or she represents to this Agreement.

VI. Effective Date

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

RESPONDENT

Date 7/11/16



John Gabbard, Chief of Regulatory Affairs
Bretagne, LLC

COMPLAINANT

Date _____

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: _____

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 Bretagne, LLC; Docket No. SDWA-04-2016-1014(b) on the parties listed below in the manner indicated:

Tony Shelton

Via EPA Internal Mail

Wilda Cobb

Via EPA Internal Mail

John Gabbard
Bretagne, LLC
1065 Key 1036
Leeco, Kentucky 41301

Via Certified Mail/ Return Receipt Requested

Date: _____

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