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-04-2016-1004(b) Date: August 1, 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-04-2016-1004(b), that assesses an administrative penalty of $3,155.00 to Countrymark Energy Resources (Respondent), with a business address of 7116 Eagle Crest Blouvard, Suite C, Evansville, Indiana 47715, 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 and monitoring reports as shown below. The following underground injection wells, located in Henderson and Hopkins Counties, Kentucky, are subject to the CA/FO.

Permit No.	EPA ID No.	Well Name	Well No	Status	County
KYA0715	KYS1010558	Church Heirs	5	AC	Henderson
KYA0997	KYS1070186	Roland Gooch	5-W	AC	Hopkins
KYI0801	KYS1010562	George Whittington	3-A	AC	Henderson
KYI1029	KYS1010598	Gillies	9	AC	Henderson

Any person wishing to comment on any aspect of the proposed CA/FO, Docket No. SDWA-04-2016-1004(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 **Countrymark Energy Resources, LLC** **7116 Eagle Crest Blouvard, Suite C** **Evansville, Indiana 47715** **Respondent**	**Consent Agreement and Final Order** **Docket No. SDWA-04-2016-1004(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 7116 Eagle Crest Blouvard, Suite C, Evansville, Indiana 47715.

5. Respondent is the owner and/or operator of the Class II UIC wells that are subject to this Order (Subject Wells), listed below.

Permit No.	EPA ID No.	Well Name	Well No	Status	County
KYA0715	KYS1010558	Church Heirs	5	AC	Henderson
KYA0997	KYS1070186	Roland Gooch	5-W	AC	Hopkins

KYI0801	KYS1010562	George Whittington	3-A	AC	Henderson
KYI1029	KYS1010598	Gillies	9	AC	Henderson

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

7. On August 6, 1998, the EPA issued UIC Permit No. KYA0715 to the Respondent, in accordance with 40 C.F.R. § 144.31.

8. On August 16, 2013, the EPA issued UIC Permit No. KYA0997 to the Respondent, in accordance with 40 C.F.R. § 144.31.

9. On April 26, 2004, the EPA issued UIC Permit No. KYI0801 to the Respondent, in accordance with 40 C.F.R. § 144.31.

10. On December 1, 2014, the EPA issued UIC Permit No. KYI1029 to the Respondent, in accordance with 40 C.F.R. § 144.31.

11. 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.

12. Part I, Section D, Paragraph 3, of the UIC Permit Nos. KYA0715, KYA0997, KYI0801, and KYI1029 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. KYA0715, KYA0997, KYI0801, and KYI1029 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).

13. 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.

14. Respondent failed to submit timely and/or complete annual injection fluid analysis results for the Subject Wells as shown below.

EPA ID No.	UIC Permit No.	Well Name	Missing Fluid Analysis Reports
KYS1010558	KYA0715	Church Heirs	2013 and 2014
KYS1010562	KYI0801	George Whittington	2013 and 2014

15. 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. KYA0715, KYA0997, KYI0801, and KYI1029 for failure to timely submit to the EPA annual fluid analysis results, as shown above.

16. Part I, Section D, Paragraph 2, of the UIC Permit Nos. KYA0715, KYA0997, KYI0801, and KYI1029 and 40 C.F.R § 146.23(b)(2), require the permittee to weekly monitor the injection and annulus pressures at the wellhead, to weekly monitor the flow rate and to monthly monitor the cumulative volume of the injected fluid. Part I, Section D, Paragraph 2, of the UIC Permit Nos.

KYA0715, KYA0997, KYI0801, and KYI1029, contains the requirement to submit the results of all monitoring to the EPA annually in accordance with 40 C.F.R § 146.23(c) by the end of January of the subsequent year.

17. Respondent failed to timely submit monitoring results for the Subject Wells, as shown below.

EPA ID No.	UIC Permit No.	Well Name	Missing Monitoring Report
KYS1010558	KYA0715	Church Heirs	2013
KYS1010562	KYI0801	George Whittington	2014

18. 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. KYA0715, KYA0997, KYI0801, and KYI1029 for failure to timely submit annual monitoring reports to the EPA for the active permitted Subject Wells, as shown above.

19. On April 22, 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

20. 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.

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

22. 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.

23. The Respondent waives any right to a hearing and waives any right to appeal a final order in this matter.

IV. PENALTYAND INJUNCTIVE RELIEF

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

24. Respondent shall pay a civil penalty of **$3,155 (three thousand, one hundred fifty-five dollars)** in accordance with the terms set forth below.

25. Within 30 days of the Effective Date of this CA/FO, Respondent shall submit a cashiers or certified check in the amount of **$3,155 (three thousand, one hundred fifty-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 cashier's check.

26. 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

27. Pursuant to Section 1423(2)(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.

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

For Respondent:

Michael Gibbons
Countrymark Energy Resources, LLC
7116 Eagle Crest Blouvard, Suite C

Evansville, Indiana 47715
(812) 759-6967

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

29. 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:

EPA ID No.	UIC Permit No.	Well Name
KYS1010558	KYA0715	Church Heirs
KYS1010562	KYI0801	George Whittington

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

EPA ID No.	UIC Permit No.	Well Name
KYS1010558	KYA0715	Church Heirs
KYS1010562	KYI0801	George Whittington

30. 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

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

36. 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.

37. 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.

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

39. 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

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

RESPONDENT

Date 7-28-16

Michael Gibbons, Vice-President of Production
Countrymark Energy Resources, 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 Countrymark Energy Resources, LLC, Docket No. SDWA-04-2016-1004(b) on the parties listed below in the manner indicated:

Tony Shelton	Via EPA Internal Mail
Wilda Cobb	Via EPA Internal Mail
Michael Gibbons Countrymark Energy Resources, LLC 7116 Eagle Crest Blouvard, Suite C Evansville, Indiana 47715	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