

PUBLIC NOTICE

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

Public Notice No.: SDWA-04-2016-1000(b)

Date: November 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-04-2016-1000(b), that assesses an administrative penalty of \$6,500.00 to Nolin Rural Electric Cooperative Corporation (Respondent), with a business address of 197 Radio Street, Fort Knox, Kentucky 40121, 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 is in violation of regulatory and statutory requirements and the SDWA for unauthorized construction of an underground injection well and unauthorized underground injection. The following underground injection well, located in Meade County, Kentucky, is 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>
KYI1055	KYS1630008	Jillers	2 SWD	AC	Meade

Any person wishing to comment on any aspect of the proposed CA/FO, Docket No. SDWA-04-2016-1000(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, or by email to bullock.patricia@epa.gov. 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

**Nolin Rural Electric Cooperative
Corporation
197 Radio Street
Fort Knox, KY 40121**

Respondent

Consent Agreement and Final Order

Docket No. SDWA-04-2016-1000(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. Nolin Rural Electric Corporation (Respondent) is a corporation doing business in the Commonwealth of Kentucky, with a business address of 197 Radio Street, Fort Knox, KY 40121.
5. The Respondent is a contractor for Fort Knox and owns, operates, and maintains the Fort Knox Army installation's electrical distribution system.
6. Respondent is the owner and/or operator of the Class II UIC well that is subject to this Order (Subject Well), listed below.

Well
Jillers #2 SWD

Status
Active

County
Meade

7. The Subject Well is a "facility" as that term is defined in 40 C.F.R. § 144.3.
8. On July 16, 2015, the Respondent self-reported to the EPA that it was operating an underground injection well at coordinate 37° 58' 56.6" N 86° 0' 10"W on the Fort Knox facility in Kentucky.
9. Subsequently, representatives from the EPA Region 4 UIC program reviewed its records and discovered that the Respondent had not submitted an application for the above referenced Subject Well nor was the Subject Well authorized by rule as that term is defined in 40 C.F.R. § 144.21(a).
10. Pursuant to 40 C.F.R. § 144.21(a) rule authorization was available to Class II injection wells that were in existence prior to, June 25, 1984, the date the UIC program became effective.
11. Information provided by the Respondent, to the EPA, indicates that Respondent constructed the Subject Well in 2009, therefore the well is not rule authorized.
12. The information submitted by Respondent also shows Respondent has been injecting into the Subject Well since January 15, 2010, without the required UIC permit.
13. On August 6, 2015, EPA authorized-inspectors conducted an inspection of the Subject Well at Fort Knox and noted that produced fluids were being actively injected into the Subject Well.
14. 40 C.F.R. § 144.11 prohibits any underground injection or construction of an underground injection well that is not authorized by rule nor by a permit. Any violation of a UIC regulation also constitutes a violation of the SDWA, as provided in Part C of the SDWA, 42 U.S.C. § 300h, et seq.
15. Respondent failed to timely submit an application for a permit for the Subject Well as shown below.

Well
Jillers #2 SWD

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16. Therefore, Respondent is in violation of Part C of the SDWA, 42 U.S.C. § 300h, et seq. and 40 C.F.R. § 144.11 for unauthorized construction of an underground injection well and unauthorized underground injection.
17. On March 31, 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

18. 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.

19. For purposes of this CAFO Respondent admits the jurisdictional allegations and facts and findings of violations as alleged herein.

20. 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.

21. 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:

22. Respondent shall pay a civil penalty of **\$6,500 (six thousand five hundred dollars)** in accordance with the terms set forth below.

23. Within 30 days of the effective date of this CA/FO, Respondent shall submit a cashier's or certified check in the amount of **\$6,500 (six 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.

24. 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

25. 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.

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

For Respondent:

Michael L. Miller
Nolin Rural Electric Cooperative Corporation
197 Radio Street
Fort Knox, KY 40121
270-766-7206

For the EPA:

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

27. 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 Final Order, Respondent shall provide a complete permit application pursuant to 40 C.F.R. § 144.31 to the EPA Region 4 for the Subject Well.

Well
Jillers #2 SWD

Status
Active

County
Meade

28. 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

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

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

37. 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

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

RESPONDENT

Date 8-4-2016


Michael L. Miller, President and CEO
Nolin Rural Electric Cooperative Corporation

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 Nolin Rural Electric Cooperative Corporation, Docket No. SDWA-04-2016-1000(b), on the parties listed below in the manner indicated:

Tony Shelton

Via EPA Internal Mail

Wilda Cobb

Via EPA Internal Mail

Michael L. Miller
Nolin Rural Electric Cooperative Corporation
197 Radio Street
Fort Knox, KY 40121

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