

PUBLIC NOTICE
U. S. ENVIRONMENTAL PROTECTION AGENCY, REGION 4
ENFORCEMENT AND COMPLIANCE ASSURANCE DIVISION
WATER ENFORCEMENT BRANCH
ATLANTA FEDERAL CENTER
61 FORSYTH STREET, S.W.
ATLANTA, GEORGIA 30303-8960

DATE: February 25, 2020

PUBLIC NOTICE No. SDWA-04-2019-9976

**Notice of Proposed Issuance of
Administrative Compliance Order on Consent**

The U.S. Environmental Protection Agency (EPA), Region 4 proposes to issue an Administrative Compliance Order on Consent (Order), Docket No. SDWA-04-2019-9976, to River View Coal, LLC (Respondent), with a business address of 1146 Monarch Street, Suite 350, Lexington, Kentucky 40513, under the authority of Section 1423(c) of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300h-2(c) and 40 C.F.R. § 144.1.

The EPA alleges that Respondent violated statutory and regulatory requirements as provided in the SDWA, 42 U.S.C. § 300f, et seq., and found at 40 C.F.R. §§ 144.11, 144.51(a), (b), and (p), 146.23(b)(1), 146.23(b)(2), and 146.23(c)(1), by failing to comply with requirements to provide annual monitoring reports, failing to comply with requirements to provide annual and quarterly fluid analysis reports, or failing to properly plug and abandon an injection well after cessation of injection of two years, and for unauthorized underground injection, located in Union County, Kentucky.

<u>Permit No.</u>	<u>EPA ID No.</u>	<u>Well Name</u>	<u>Well No</u>	<u>Status</u>	<u>County</u>
KYV0051	KYV2250074	Ohio Mine	11/11-1	Plugged & Abandonment	Union
KYV0051	KYV2250076	Ohio Mine	11/11-2	Plugged & Abandonment	Union
KYV0051	KYV2250079	Ohio Mine	11/11-3	Plugged & Abandonment	Union
KYV0051	KYV2250100	Ohio Mine	11/11-4	Plugged & Abandonment	Union

Any person wishing to comment on any aspect of the proposed Order may submit such comments in writing to Anthony Shelton at U.S. EPA, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia, 30303 or via email at shelton.anthony@epa.gov. Comments must be submitted within thirty (30) days of the date of this notice. Please include the Public Notice Number and the Docket Number with any submitted comments.

FOR FURTHER INFORMATION: Persons wishing to comment upon the proposed Order should contact Anthony Shelton at shelton.anthony@epa.gov. Unless otherwise noted, the public record for this action is located at the EPA Regional Office at 61 Forsyth Street, S.W., Atlanta, Georgia, and the file will be open for public inspection between 9:00 a.m. and 4:00 p.m., Monday through Friday.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF

**River View Coal, LLC
1146 Monarch Street, Suite 350
Lexington, Kentucky 40513,**

Respondent.

**Administrative Compliance Order
On Consent**

Docket No. SDWA-04-2019-9976

I. STATUTORY AUTHORITY

1. The following Findings of Fact are made and this Administrative Compliance Order on Consent (“AOC”) is issued pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 1423(c) of the Safe Drinking Water Act (“SDWA”), 42 U.S.C. § 300h-2(c). This authority has been delegated to the Regional Administrator of the EPA, Region 4, and further delegated by the Regional Administrator to the Director of the Enforcement and Compliance Assurance Division of the EPA, Region 4.

2. Section 1423(a)(2) of the SDWA, 42 U.S.C. § 300h-2(a)(2), provides that, whenever the Administrator of the EPA finds that any person is in violation of any requirement of any applicable underground injection control (“UIC”) program, the Administrator may issue an order requiring the person to comply with such requirement.

3. Section 1450 of the SDWA, 42 U.S.C. § 300j-9, authorizes the Administrator to prescribe such regulations as are necessary or appropriate to carry out his 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 UIC program promulgated under Part C of the SDWA, 42 U.S.C. § 300h, et seq.

4. Injection well owners and operators are required to comply with the UIC program requirements. The UIC program for Class V wells in the Commonwealth of Kentucky is administered by the EPA. See 40 C.F.R. § 147.901(a).

II. FINDINGS OF FACT AND DETERMINATIONS OF LAW

The EPA finds, and the parties hereby stipulate, as follows:

5. River View Coal, LLC (“Respondent”) is a limited liability company doing business in the Commonwealth of Kentucky, and with a primary address of 1717 South Boulder Avenue, Tulsa, Oklahoma 74119-4886.

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

7. Respondent is the owner or operator, as defined in 40 C.F.R. § 144.3, of the following Class V coal slurry injection wells that are subject to this AOC (each a “Subject Well” and collectively the “Subject Wells”):

Permit No.	EPA ID No.	Well Name	Well No.	Status	County
KYV0051	KYV2250074	Ohio Mine	#11/11-1	Plugged & Abandoned ¹	Union
KYV0051	KYV2250076	Ohio Mine	#11/11-2	Plugged & Abandoned	Union
KYV0051	KYV2250079	Ohio Mine	#11/11-3	Plugged & Abandoned	Union
KYV0051	KYV2250100	Ohio Mine	#11/11-4	Plugged & Abandoned	Union

8. Each of the Subject Wells is a “facility” as defined in 40 C.F.R. § 144.3.

9. On November 18, 2009, the EPA issued UIC Permit No. KYV0051 (“Permit”) for the Subject Wells to River View Coal, LLC.

10. On May 25, 2011, the EPA modified the Permit to expand the scope and ability of Respondent to add wells within the Area of Review (“AOR”) under Permit coverage. Under Part I, Section E, Paragraph E of the modified Permit, and consistent with 40 C.F.R. § 144.33 (“Area Permits”), Respondent was authorized to construct, operate, and plug and abandon wells within the AOR so long as the Respondent timely reported any construction plans for new wells with the AOR to the EPA.

11. On December 6, 2011, the EPA modified the Permit to reflect the replacement of existing monitoring wells.

¹ As used herein, the terms “plugged” and “abandoned” have the meanings as defined at 40 C.F.R. § 146.3.

12. On November 18, 2014, the Permit expired.
13. Part II, Section E, Paragraph 3(a), of the Permit required Respondent to apply for continuation of expiring permits by obtaining a new permit. 40 C.F.R. § 144.37(a)(1) and Part II, Section E, Paragraph 3(b)(1) of the Permit required Respondent to timely submit a complete application for continuation of the expiring Permit. If Respondent wishes to continue an activity regulated by a permit after the expiration date of the permit, Respondent must apply for and obtain a new permit. See 40 C.F.R. § 144.51(b).
14. On January 7, 2015, following expiration of its Permit, Respondent submitted a Permit renewal application to the EPA. This application was not timely, pursuant to the terms of the Permit and the UIC Regulations.
15. During the month of October 2018, the EPA Region 4 UIC Program staff conducted file reviews of the Subject Wells.
16. During the month of December 2018, the EPA Region 4 UIC Program staff conducted field inspections of the Subject Wells and determined the Subject Wells appeared to have been plugged and abandoned. However, Respondent did not submit documentation to confirm proper plugging and abandonment.
17. On June 6, 2019, Respondent participated in a show cause meeting with the EPA.
18. The SDWA, 42 U.S.C. § 300f, et seq., and 40 C.F.R. § 144.51(a) require the permittee of a permitted UIC well to comply with all conditions of the Permit.
19. Pursuant to 40 C.F.R. § 144.11, any underground injection, except as authorized by a UIC permit, is prohibited. All injection activities are prohibited unless they are authorized by a permit. See 40 C.F.R. § 144.31(a).
20. Notwithstanding permit coverage, any person who owns or operates a Class V well must comply with the federal UIC requirements in 40 C.F.R. Parts 144 through 147. See 40 C.F.R. § 144.82.
21. Respondent's Permit expired on November 18, 2014; however, according to the EPA's file review, Respondent injected into the Subject Wells during the month of December 2014.

22. The EPA finds that Respondent violated the SDWA and 40 C.F.R. §§ 144.11 and 144.31(a) by failing to obtain a new permit and by conducting unauthorized injection activities after the expiration date of the Permit.

23. Prior to abandoning a Class V well, an owner or operator shall close the well in a manner that prevents the movement of fluid containing any contaminant into an underground source of drinking water. 40 C.F.R. § 146.10(c).

24. Part I, Section F of the Permit requires that Respondent plug and abandon wells by placing a continuous column of cement from approximately ten feet above the roof of the slurry area to three feet below existing surface inside the injector casing. After cement hardening, the casing shall be cut and removed three feet below the existing surface.

25. An owner or operator of a Class V well is required to submit to the EPA plugging and abandonment reports for closed wells within sixty (60) days after plugging a well or at the time of next quarterly report (whichever is less). The report must consist of either: a statement that the well was plugged in accordance with the plan previously submitted to the EPA; or, where actual plugging differed from the plan previously submitted, an updated version of the plan specifying the differences. 40 C.F.R. § 144.51(p).

26. Subject Well EPA ID Nos. KYV2250079 and KYV2250100 appeared to have been plugged and abandoned after the Permit expired on November 18, 2014, but the wells lack sufficient documentation to confirm the wells had been plugged and abandoned in a manner that prohibits the movement of fluid into underground sources of drinking water, in violation of 40 C.F.R. § 146.10(c).

27. Therefore, the EPA finds that River View Coal violated the SDWA and 40 C.F.R. §§ 144.11, 144.31(a), and 144.33(c) by failing to report new wells within the AOR and by conducting unauthorized injection activities at these wells after the Permit expired.

28. Respondent admits to the jurisdictional allegations and Finding of Facts alleged above.

III. AGREEMENT ON CONSENT

Based upon the foregoing Findings of Fact and Law and under the authority of Section 1423(a)(2) of the SDWA, 42 U.S.C. § 300h-2(a)(2), THE DIRECTOR HEREBY ORDERS AND THE RESPONDENT HEREBY AGREES AND CONSENTS TO THE PROVISIONS OF THE PARAGRAPHS BELOW:

29. Within ninety (90) days of the Effective Date of this AOC, Respondent is ordered to provide documentation showing the following Subject Wells listed below were plugged and abandoned in a manner which placed continuous column of cement from 100 feet below the existing ground elevation to three feet below existing surface inside the injector casing, and that, after hardening, the casing was cut and removed three feet below existing surface.

<u>UIC Permit No</u>	<u>EPA ID No.</u>	<u>Well Name</u>
KYV0051	KYV2250074	Ohio Mine #11/11-1
KYV0051	KYV2250076	Ohio Mine #11/11-2
KYV0051	KYV2250079	Ohio Mine #11/11-3
KYV0051	KYV2250100	Ohio Mine #11/11-4

30. All reports, notifications, documentation, and submittals required by this AOC shall be signed by a duly authorized representative of the Respondent as specified by 40 C.F.R. §§ 144.32(a) and 144.51(k) and shall include the following statement:

“I certify under the penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

31. All reporting required by this AOC shall be submitted to the following address:

Mr. Anthony Shelton, Enforcement Officer
Surface Water and Groundwater Section
Enforcement and Compliance Assurance Division
U.S. EPA – Region 4
61 Forsyth Street S.W.
Atlanta, Georgia 30303-8960

IV. GENERAL PROVISIONS

32. The Respondent's compliance with this AOC does not necessarily constitute compliance with the provisions of the SDWA, 42 U.S.C. § 300f et seq., its implementing regulations, or with the Permit. The Respondent shall remain solely responsible for compliance with the terms of the SDWA, its implementing regulations, this AOC, and the Permit.

33. Failure to comply with the requirements herein shall constitute a violation of this AOC and the SDWA, and may subject the Respondent to penalties as provided in Section 1423 of the SDWA, 42 U.S.C. § 300h-2.

34. This AOC shall not relieve the Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any other federal, state, or local permit. Compliance with this AOC shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by the EPA.

35. Issuance of this AOC shall not be deemed as prohibiting, altering, or in any way limiting the ability of the EPA to pursue any other enforcement actions available to it under law. Such actions may include, without limitation, any administrative, civil, or criminal action to seek penalties, fines, injunctive, or other appropriate relief, or to initiate an action for imminent and substantial endangerment under the SDWA or any other federal or state statute, regulation, or permit.

36. The EPA reserves all rights and remedies, legal and equitable, available to enforce any violation cited in this AOC and to enforce this AOC.

37. Nothing in this AOC is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent, or other liability resulting from violations that were not alleged in this AOC.

38. This AOC applies to and is binding upon the Respondent and its officers, directors, employees, agents, successors, and assigns.

39. Any change in the legal status of the Respondent, including but not limited to any transfer of assets of real or personal property, shall not alter the Respondent's responsibilities under this AOC.

40. The Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the Respondent may have with respect to any issue of fact or law set forth in this AOC, including, but not limited to any right of judicial review of the AOC under the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Respondent also waives any right to a hearing or to appeal this AOC, including under Section 1423(c)(3)(A) and (D) of the SDWA, 42 U.S.C. § 300h-2(c)(3)(A) and (D), and consents to the issuance of this AOC without further adjudication.

41. Each party shall bear its own costs and attorneys' fees in connection with the action resolved by this AOC.

42. 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 Order.

43. 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 AOC, Respondent shall notify the 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 the EPA within ten (10) days of the date Respondent received knowledge of the event. This 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 AOC as soon as possible, and the timetable by which those measures are proposed to be implemented.

44. 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 AOC, shall not relieve Respondent of any obligation imposed under the terms of this AOC, nor from payment of any penalty set forth in this AOC. 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 verbal or written notice as provided herein or for failure to provide adequate proof of the cause of the delay.

45. Each undersigned representative of the parties to this AOC certifies that he or she is fully authorized to enter into the terms and conditions of this AOC and to execute and legally bind that party to it.


V. EFFECTIVE DATE

46. Pursuant to Section 1423(c)(3)(B) of the SDWA, 42 U.S.C. § 300h-2(c)(3)(B), the EPA is providing public notice and an opportunity to comment on this AOC. This AOC will be issued after a thirty (30) day comment period and execution by an authorized representative of the EPA (the "Effective Date"). It will then become final and effective.

IT IS SO AGREED,

BY RIVER VIEW COAL, LLC:

Date: 1/28/2020



Robert Ray
General Manager of Permits and Environmental
Compliance

BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 4:

Date: _____

Carol L. Kemker
Director
Enforcement and Compliance Assurance Division

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a true and correct copy of the foregoing Administrative Compliance Order on Consent, in the Matter of River View Coal, LLC, Docket No. SDWA-04-2019-9976, on the parties listed below in the manner indicated:

Tony Shelton

Via EPA Internal Mail

Suzanne Armor

Via EPA Internal Mail

c/o Robert Ray
River View Coal, LLC
1146 Monarch Street, Suite 350
Lexington, Kentucky 40513

Via Certified Mail/ Return Receipt Requested

Date: _____

Anthony Shelton, Enforcement Officer
Surface Water and Groundwater Section
Enforcement and Compliance Assurance Division
U.S. EPA – Region 4
61 Forsyth Street S.W.
Atlanta, Georgia 30303-8960
(404) 562-9636