



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAR 19 1999

REGISTERED MAIL
RETURNED RECEIPT REQUESTED

REF: 4WM-GWDW

Dr. Donald F. Oltz, Ph.D.
State Geologist & Oil & Gas Supervisor
Geological Survey of Alabama
State Oil & Gas Board
420 Hackberry Lane
P.O. Box 0
Tuscaloosa, Alabama 35486-9780

SUBJ: Notice of Alleged Noncompliance of Alabama's
Underground Injection Control (UIC) Program

Dear Dr. Oltz:

The United States Court of Appeals for the Eleventh Circuit issued a February 18, 1999 writ of mandamus to the United States Environmental Protection Agency (EPA) to enforce its August 7, 1997 decision in LEAF v. EPA, 118 F. 3d 1467 (11th Cir. 1997). In LEAF, the Court held that: hydraulic fracturing of coalbeds to produce methane constitutes "underground injection" under Part C of the Safe Drinking Water Act, *id.* at 1478; all underground injection is required to be regulated (by permit or rule), *id.* at 1474; and hydraulic fracturing associated with coalbed methane production is not currently regulated under Alabama's UIC program, *id.* at 1471. In response to this decision and the writ of mandamus, EPA must review Alabama's UIC program, pursuant to 40 CFR 145.34(b). The timing of EPA's review and decision-making process must adhere to the time frame contained in the writ of mandamus. The dates and events are set forth in the mandamus order enclosed along with the LEAF decision for your convenience.

In principle, EPA is committed to authorization of state environmental protection programs, including the Underground Injection Control (UIC) Program. Authorization of state programs promotes our mutual interests in the administration of environmental programs that are responsive to the concerns and issues of the citizens of each state. EPA also seeks to provide state programs sufficient flexibility to encourage innovation and administrative efficiency in addressing unique state issues.

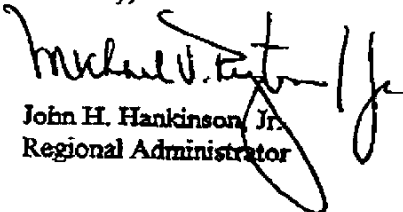
At the same time, to assure basic levels of environmental protection to all citizens, state agencies must meet minimum standards when assuming responsibility for the implementation of federal environmental programs. In this instance, the Eleventh Circuit has found that hydraulic

fracturing associated with coalbed methane production must be regulated under Alabama's UIC program. EPA is aware that the Court's decision runs contrary to our historic interpretation of the Safe Drinking Water Act, which is that hydraulic fracturing does not constitute "underground injection." However, in light of the LEAF decision, we now must require that Alabama regulate hydraulic fracturing of coalbed methane wells as underground injection in order to have an EPA approvable program.

Section 145.33(a) provides that EPA may withdraw program approval when "... a State program no longer complies with the requirements [of Part 145] ... and the State fails to take corrective action." Such circumstances include failure to exercise control over activities required to be regulated, which, in the instant situation, includes hydraulic fracturing of methane coalbeds in Alabama. Pursuant to the writ of mandamus and 40 CFR 145.34(b)(1), EPA hereby notifies Alabama that it is required to regulate (by permit or rule) hydraulic fracturing of coalbeds to produce methane as underground injection. EPA affords the State this opportunity to respond to issues raised in the LEAF case, noting that any response should address this specific area of noncompliance. Also, pursuant to the writ of mandamus and 40 CFR 145.34(b)(2), within thirty (30) days of the date of this notice (i.e., by April 16, 1999), the State must demonstrate that it is enforcing its authorized UIC program in accordance with the requirements of the Safe Drinking Water Act, as reflected in the decision of the LEAF Court and 40 CFR Part 145. That is, the State must show that it is regulating hydraulic fracturing associated with coalbed methane production as underground injection by permit or rule. If the State has not made this demonstration within the specified time frame, EPA shall inform the State Director of the deficiencies and schedule a public hearing pursuant to 40 CFR 145.34(b)(2). Please provide me with a response to this letter by April 16, 1999.

EPA commits to work with Alabama to achieve the goal of bringing its UIC program into compliance. We look forward to cooperating with you to resolve this issue.

Sincerely,


John H. Hankinson, Jr.
Regional Administrator

Enclosure

cc: Mr. James W. Warr
Director, ADEM

Mr. David A. Ludder, Esq.
LEAF

Ms. Cynthia Dougherty, EPA HQs

Alabama LEAF Mandamus Schedule

- 03/19/99 EPA shall determine if there is "cause to believe" Alabama UIC program not in compliance with SDWA and mail notification of areas of alleged noncompliance to state and LEAF. EPA shall grant appropriate part of LEAF's petition. [The actual deadline is 3/20/99, but, because that date falls on a Saturday, we should mail our notice on Friday, 3/19].
- 05/18/99 If Alabama has not demonstrated compliance of its UIC program with SDWA by 4/18/99, EPA shall mail notice of noncompliance determination to state and LEAF and forward request for expedited publication of notice of public hearing to discuss state UIC program withdrawal to Federal Register. Notice to appear also in state newspapers and to be mailed to persons on state and EPA mailing lists. Possible date for sending proposed rule to withdraw Alabama UIC program to the Federal Register. EPA shall grant appropriate part of LEAF's petition. [This date assumes EPA mails initial notification to LEAF on 3/19].
- 08/01/99 Deadline for EPA to convene public hearing to discuss withdrawal of state UIC program. [Although this date falls on a Sunday, it will move back by the number of days it takes for FR Office to receive and publish our 5/18 hearing notice].
- 08/31/99 EPA mail notice of state UIC program deficiencies and necessary remedial action to state and LEAF. [Will move back same number of days as hearing date]. Possible date for sending proposed rule to withdraw Alabama UIC program to the Federal Register. EPA shall grant appropriate part of LEAF's petition.
- 11/29/99 EPA shall withdraw Alabama UIC program if not in compliance with SDWA. [Will move back same number of days as hearing date].
- 12/04/99 EPA shall sign and transmit to Federal Register final rule withdrawing state program if not in compliance with SDWA. [Although this date falls on a Saturday, it will move back same number of days as hearing date]. EPA shall grant appropriate part of LEAF's petition.
- 03/03/00 EPA shall promulgate final rule prescribing UIC program for Alabama. [Will move back same number of days as hearing date].