



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

NOV 10 2016

REPLY TO THE ATTENTION ~~WJC~~ 16J

CERTIFIED MAIL 7015 0640 0002 0679 6786
RETURN RECEIPT REQUESTED

Jack A. Van Kley
Van Kley & Walker, LLC
132 Northwoods Blvd.
Suite C-1
Columbus, Ohio 43235

Re: **Cargill, Incorporated, St. Clair, Michigan, Consent Agreement and Final Order**

Dear Mr. Van Kley:

Enclosed please find the fully executed Consent Agreement and Final Order for this matter. The Final Order requires Cargill, Incorporated to pay the negotiated \$70,000 penalty within 30 days. Specific information about how to complete the transaction is included in the Final Order.

Please contact Ms. Puja Lakhani of our Office of Regional Counsel at (312) 353-3190 if you have any questions regarding the enclosed document. Thank you.

Sincerely,

A handwritten signature in black ink that reads "Ray Urchel".

Ray Urchel, Enforcement Officer
Underground Injection Control Branch

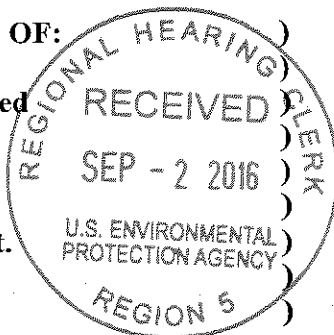
Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

Cargill, Incorporated
St. Clair, Michigan

Respondent.



Docket No. SDWA-05-2016-0002

Proceeding Seeking a
Compliance Order and
Assessment of a Civil
Penalty Under Section
1423(c) of the Safe
Drinking Water Act,
42 U.S.C. §300h-2(c)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 1423(c) of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300h-2(c), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is, by lawful delegation, the Director of the Water Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is the salt extraction business unit of Cargill, Incorporated, a Delaware corporation doing business in the State of Michigan.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to the assessment of the civil penalty specified in this

brines associated with the production of petroleum and natural gas (Class II), wells for the extraction of minerals (Class III), shallow wells for the disposal of hazardous waste (Class IV), and any well not included in the above descriptions (Class V).

14. The UIC program for the State of Michigan is set forth at 40 C.F.R. Part 147, Subpart X.

15. Pursuant to 40 C.F.R. § 147.1151, at all times relevant to this Complaint, U.S. EPA had primacy over Class III wells, as defined by 40 C.F.R. § 146.5, in the State of Michigan.

16. Pursuant to 40 C.F.R. § 147.1151, the UIC program for the State of Michigan for Class III wells, as defined by 40 C.F.R. § 146.5, consists of the UIC program requirements set forth at, *inter alia*, 40 C.F.R. Parts 124, 144, 146, 147 (Subpart X) and 148, and was effective on June 25, 1984.

17. The UIC program set forth at 40 C.F.R. § 147.1151, constitutes the “applicable underground injection control program” as defined by Section 1422(d) of SDWA, 42 U.S.C. § 300h-1(d), for the State of Michigan.

18. Section 1423(a) of SDWA, 42 U.S.C. § 300h-2(a), provides, *inter alia*, that the Administrator may issue an order under Section 1423(c), of SDWA, 42 U.S.C. § 300h-2(c), to any person found to be in violation of any regulation or requirement of an applicable UIC program in a State that does not have primacy.

19. Section 1423(c)(1) of SDWA, 42 U.S.C. 300h-2(c)(1), provides that U.S. EPA may issue to any person in violation of any regulation or requirement other than those relating to (A) the underground injection of brine or other fluids brought to the surface in connection with oil or natural gas production or (B) underground injection for

16, 1997.

22. At all times relevant to this CAFO, Respondent was the owner and operator of wells M3, M4, M5, M6, M7, M8, M9, M10, M11, M12 and M14 under the Permit. All of the wells are in St. Clair County, Michigan.

23. Wells M3, M4, M5, M6, M7, M8, M9, M10, M11, M12 and M14 are bored, drilled or driven shafts, or dug holes, whose depths are greater than the largest surface dimension.

24. Wells M3, M4, M5, M6, M7, M8, M9, M10, M11, M12 and M14 are "wells" as defined at 40 C.F.R. § 144.3.

25. At times relevant to this Complaint, Respondent has performed, or has been authorized to perform, the subsurface emplacement of brine and fresh water into wells M3, M4, M5, M6, M7, M8, M9, M10, M11, M12 and M14.

25. Brine and fresh water are materials or substances which flow or move in a semisolid, liquid, sludge, gas, or any other form or state.

26. Brine and fresh water are "fluids" as defined at 40 C.F.R. § 144.3.

27. The subsurface emplacement of brine and fresh water through wells M3, M4, M5, M6, M7, M8, M9, M10, M11, M12 and M14 is a "well injection" as defined at 40 C.F.R. § 144.3.

28. Respondent's "well injection" is an "underground injection" as defined by 40 C.F.R. § 144.3.

29. Wells M3, M4, M5, M6, M7, M8, M9, M10, M11, M12 and M14 are Class III wells as defined by 40 C.F.R. §§ 144.6 and 146.5.

COUNT I

(E)(10)(e)(i) and (ii).

36. The Respondent failed to timely notify the Director of the overdue mechanical integrity tests for the wells listed in Paragraph 29, which constitutes a violation of Part I (E)(10)(f) of the Permit.

COUNT III

Failure to Submit Test Results Within Sixty (60) Days

37. Complainant incorporates paragraphs 1 through 36 of this CAFO as if set forth in this paragraph.

38. The "Reporting Requirements section," Part II (B)(3)(b) of the Permit (*see* Page 16 of the Permit), requires the permittee to submit to the Director reports and test results, including mechanical integrity tests, within 60 days of completion of the activity.

39. Respondent failed to submit fifteen mechanical integrity tests within the 60-day submission period, thus violating the reporting requirement described in Paragraph 38.

40. Respondent's violations of the Permit in Counts I, II and III, referenced above, subject Respondent to the issuance of an administrative order pursuant to Section 1423(c)(1) of SDWA, 42 U.S.C. § 300h-2(c)(1).

Civil Penalty

41. Section 1423(c)(4)(B) of SDWA, 42 U.S.C. § 300h-2(c)(4)(B), provides that, in assessing a civil penalty under Section 1423(c), U.S. EPA must take into account (i) the seriousness of the violation, (ii) the economic benefit (if any) resulting from the violation, (iii) any history of such violations, (iv) any good faith efforts to comply with the applicable requirements, (v) the economic impact of the penalty on the violator, and

Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

45. This civil penalty is not deductible for federal tax purposes.

46. If Respondent does not timely pay the civil penalty, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

47. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

48. This Agreement, upon incorporation into a Final Order and full satisfaction by the parties, shall be a complete and full resolution of the Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

49. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law not alleged in this CAFO.

50. This CAFO does not affect Respondent's responsibility to comply with SDWA and other applicable federal, state, and local laws.

Cargill Incorporated, Respondent

8-24-16

Date

Kaye DeLange

Kaye DeLange, V.P. of Operations
Cargill, Incorporated

United States Environmental Protection Agency, Complainant

8/31/2014

Date

Tinka G. Hyde ACTING FOR

Tinka G. Hyde, Director
Water Division

**In the Matter
of: Cargill,
Incorporated
Docket No. SDWA-05-2016-0002**



Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

November 9, 2016

Date



Robert A. Kaplan
Acting Regional Administrator
United States Environmental Protection Agency Region 5

In the matter of: Cargill Incorporated
Docket Number: SDWA-05-2016-0002

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing *Consent Agreement and Final Order*, which was filed on *November 10, 2016*, in the following manner to the addressees:

Copy by Certified Mail
Return-receipt:

Jack A. Van Kley
Van Kley & Walker, LLC
132 Northwoods Boulevard, Suite C-1
Columbus, Ohio 43235


Copy by E-mail to
Attorney for Complainant:

Puja Lakhani
lakhani.puja@epa.gov

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated:

November 10, 2016


LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER 7015 0640 0002 0679 6786