

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter Of:)	Docket No. SDWA-05-2022-0011
)	
LANXESS Corporation)	Proceeding under Section 1423(c) of the
Shelton, Connecticut)	Safe Drinking Water Act,
)	42 U.S.C. § 300h-2(c)
Respondent.)	
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Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 1423(c)(1) of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300h-2(c)(1), and Sections 22.1(a)(9), 22.13(b), 22.18(b)(2) and (3), and 22.45 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. Complainant is the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is LANXESS Corporation, a corporation doing business in Michigan.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, an 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 CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its rights to notice of EPA's proposal to issue this CAFO, to request a hearing as provided at 40 C.F.R. § 22.15(c) and Section 1423(c)(3) of the SDWA, 42 U.S.C. § 300h-2(c)(3), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 1421 of SDWA, 42 U.S.C. § 300h, requires that the Administrator of EPA promulgate regulations, which shall include permitting requirements as well as inspection, monitoring, recordkeeping, and reporting requirements, for state underground injection control (UIC) programs to prevent underground injection which endangers drinking water sources.

10. Section 1421(d)(1) of the SDWA, 42 U.S.C. § 300h(d)(1), defines "underground injection" as the subsurface emplacement of fluids by well injection and excludes the underground injection of natural gas for purposes of storage and the underground injection of fluids or propping agents (other than diesel fuels) pursuant to hydraulic fracturing operations related to oil, gas, or geothermal production activities.

11. Section 1421(d)(2) of the SDWA, 42 U.S.C. § 300h(d)(2), provides that underground injection endangers drinking water sources if such injection may result in the presence in underground water which supplies or can reasonably be expected to supply any public water system of any contaminant, and if the presence of such contaminant may result in such system not complying with any national primary drinking water regulation or may otherwise adversely affect the health of persons.

12. Pursuant to Section 1422(b) of the SDWA, 42 U.S.C. § 300h-1(b), designated states shall apply to obtain primary enforcement responsibility of their UIC programs (a concept called “primacy”).

13. Section 1422(c) of the SDWA, 42 U.S.C. § 300h-1(c), provides that the Administrator for EPA shall by regulation prescribe UIC programs applicable to those states that have not obtained primacy for their UIC programs or do not have primacy for all types of wells.

14. Pursuant to Sections 1421 and 1422 of the SDWA, 42 U.S.C. §§ 300h and 300h-1, respectively, EPA has promulgated UIC regulations at 40 C.F.R. Parts 124 and 144 through 148.

15. The SDWA and its regulations prohibit all underground injections unless authorized by a permit or a rule. 42 U.S.C. § 300h(b)(1)(A); 40 C.F.R. § 144.11.

16. EPA administers and has primary enforcement responsibility of the UIC Class I program in the State of Michigan. The UIC program for the State of Michigan is set forth at 40 C.F.R. Part 147, Subpart X, and consists of the UIC program requirements of 40 C.F.R. § 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart.

17. Pursuant to 40 C.F.R. § 144.1(g), the UIC programs regulate underground injection by six classes of wells and all owners or operators of these injection wells must be authorized either by permit or rule. Class I wells can be used by (1) generators of hazardous waste or owners or operators of hazardous waste management facilities to inject hazardous waste beneath the lowermost formation containing, within one-quarter mile of the well bore, an underground source of drinking water, (2) other industrial and municipal disposal wells which inject fluids beneath the lowermost formation containing, within one quarter mile of the well bore, an underground source of drinking water, or (3) radioactive waste disposal wells which

inject fluids below the lowermost formation containing an underground source of drinking water within one quarter mile of the well bore.

18. In accordance with 40 C.F.R. § 144.51(a) any UIC permittee must comply with all conditions of its permit which include the requirements set forth in 40 C.F.R. §§ 144.11-144.19. Any permit noncompliance constitutes a violation of the SDWA, except that the permittee need not comply with the provisions of its permit to the extent and for the duration such noncompliance is authorized in an emergency permit under 40 C.F.R. § 144.34.

19. Section 1423(a)(2) of the SDWA, 42 U.S.C. § 300h-2(a)(2), authorizes EPA to assess a civil penalty to any person found to be in violation of any requirement of an applicable UIC program in a state that does not have primacy and/or order compliance with such requirement or regulation pursuant to Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1).

20. Under Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$25,076 for each day of violation, up to a maximum administrative penalty of \$313,448 for SDWA violations occurring after November 2, 2015.

Factual Allegations and Alleged Violations

21. Respondent is a corporation, and as such, Respondent is a “person” as that term is defined at Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 144.3.

22. EPA issued two permits to Great Lakes Chemical Corporation (MI-091-1I-0001 and MI-091-1I-0002) (the Permits) to Respondent to operate underground injection wells, located in Lenawee County, Michigan, commonly known as Well No. 1 and Well No. 2, respectively.

23. On or about October 1, 2020, Great Lakes Chemical Corporation merged with and into LANXESS Solutions US Inc. (the GLCC Merger). Through this merger, LANXESS Solutions US Inc. acquired all the estate, property, rights, privileges and franchises of Great Lakes Chemical Corporation, and assumed all of its liabilities and obligations, including the Permits.

24. On or about October 1, 2020, LANXESS Solutions US Inc. merged with and into LANXESS Corporation (the LANXESS Merger, and collectively with the GLCC Merger, the Mergers). Through this merger, LANXESS Corporation acquired all the estate, property, rights, privileges, and franchises of LANXESS Solutions Inc., and assumed all of its liabilities and obligations, including the Permits.

25. The Permits authorize the underground injection of non-hazardous fluid into Well No. 1 and Well No. 2, subject to the terms and conditions set forth in the Permits.

26. Non-hazardous fluid is a “fluid” because it is a material or substance that flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state. 40 C.F.R. § 144.3

27. The subsurface emplacement of the injectate through Well No. 1 and Well No. 2 is a “well injection.” 40 C.F.R. § 144.3.

28. Respondent’s facility located at 1406 East Michigan Street, Adrian, Michigan 49221 is a facility or activity as defined by 40 C.F.R. § 144.3 because it is an UIC “injection well,” or another facility or activity that is subject to regulation under the UIC program.

29. At all times relevant to this CAFO, Respondent owned an injection well in the State of Michigan and was thus subject to the UIC program requirements set forth at 40 C.F.R. Parts 124, 144, 146, 147 (Subpart X), and 148.

30. At all times relevant to this CAFO, Respondent did not apply for and obtain an emergency permit pursuant 40 C.F.R. § 144.34.

31. On August 25, 2021, pursuant to Section 1445(b) of the SDWA, 42 U.S.C. § 300j-4(b) and 40 C.F.R. § 144.51(i), as reflected in Part I (E)(8) of the Permits, EPA inspected Respondent's facility located at 1406 East Michigan Street, Adrian, Michigan 49221.

32. On October 6, 2021, EPA issued the final inspection report to Respondent.

33. On February 2, 2022, EPA issued a Notice of Violation (NOV) to Respondent alleging certain potential violations of the SDWA regulations and the SDWA.

34. On February 15, 2022, February 16, 2022, February 24, 2022, and March 3, 2022, EPA received Respondent's written responses to the NOV.

35. On March 4, 2022, EPA and Respondent discussed the potential violations.

36. Under 40 C.F.R. § 144.51(a) and Part I (E)(1) of the Permits, Respondent is required to comply with all conditions of the Permit and any noncompliance constitutes a violation of the SDWA.

COUNT 1: Failure to Conduct Mechanical Integrity Testing

37. Part I (F)(3) of the Permits considers a well to be in "temporary abandoned status" if the permittee ceases injection into the well for more than 24 consecutive months.

38. Part I (F)(4)(b) of the Permits states that, during any periods of temporary abandonment or disuse, the well shall be tested to ensure that it maintains mechanical integrity. Internal mechanical integrity (Part I (G)(2)(a)) shall be tested annually and external mechanical integrity (Part I (G)(2)(b)) shall be tested every two years. The permittee shall continue to comply with the conditions of this permit, including all monitoring and reporting requirements according to the frequencies outlined in the permit.

39. During the August 25, 2021 EPA inspection, Respondent's representative present stated that both Well No. 1 and Well No. 2 had not be operated and injection had not occurred since approximately 2016.

40. During the August 25, 2021 EPA inspection, EPA conducted a review of records and identified that the last Part 2 External Mechanical Integrity Test for Well No. 1 was conducted in October of 2018 and the last Part 2 External Mechanical Integrity Test for Well No. 2 was conducted in August of 2019.

41. In Respondent's submissions in response to the February 2, 2022 NOV, Respondent clarified that the last Part 2 External Mechanical Integrity Tests for both Well No. 1 and Well No. 2 were done in October of 2018.

42. Respondent's failure to conduct Part 2 External Mechanical Integrity Tests for both Well No. 1 and Well No. 2 two years after the last Part 2 External Mechanical Integrity Tests constitutes a violation of Part I (F)(4)(b) of the Permits and the UIC regulations at 40 C.F.R. § 144.51(a).

43. Each day Respondent failed to conduct Part 2 External Mechanical Integrity Tests constitutes a violation of Part I (F)(4)(b), the UIC regulations, and Section 1423 of the SDWA, 42 U.S.C § 300h-2.

COUNT 2: Failure to Properly Transfer Ownership

44. The UIC regulation at 40 C.F.R. § 144.38(a) provides that a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued (under 40 C.F.R. § 144.39(b)(2)), or a minor modification made (under 40 C.F.R. § 144.41(d)), to identify the new permittee and incorporate such other requirements as may be necessary under SDWA.

45. The UIC regulation at 40 C.F.R. § 144.38(b)(1-3) provides, as an alternative to transfers under 40 C.F.R. § 144.38(a), that any UIC permit for a well not injecting hazardous waste or injecting carbon dioxide for geologic sequestration may be automatically transferred to a new permittee if (1) the current permittee notifies the Director at least 30 days in advance of the proposed transfer date; (2) the notice includes a written agreement between the existing and new permittees containing a specific date for transfer or permit responsibility, coverage, and liability between them, and the notice demonstrates that the financial responsibility requirements will be met by the new permittee; and (3) the Director does not notify the existing permittee and the proposed new permittee of his or her intent to modify or revoke and reissue the permit. A modification under this paragraph may also be a minor modification under 40 C.F.R. § 144.41. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in 40 C.F.R. § 144.38(b)(2).

46. Following the Mergers discussed in Paragraphs 23 and 24, above, Respondent did not transfer the permit to the new owner or operator in accordance with 40 C.F.R. § 144.38(a).

47. Respondent did not notify EPA in the manner describe in 40 C.F.R. § 144.38(b)(1-3) for an automatic transfer to have a occurred in accordance with 40 C.F.R. § 144.38(b).

48. Each day Respondent fails to transfer ownership constitutes a violation of the UIC regulations at 40 C.F.R. §§ 144.38(a) and 144.38(b), and Section 1423 of the SDWA; 42 U.S.C. § 300h-2.

Civil Penalty

49. Based upon the facts alleged in this CAFO, the factors listed in Section 1423(c)(4)(B) of the SDWA, 42 U.S.C. 300h-2(c)(4)(B), EPA's UIC Program Judicial and

Administrative Order Settlement Penalty Policy (September 1993) (EPA's UIC Penalty Policy), and Respondent's good faith and cooperation in resolving this matter, EPA has determined that an appropriate civil penalty to settle this action is \$5,315.35.

50. Within 30 days after the effective date of this CAFO, Respondent must pay a \$5,315.35 civil penalty by ACH electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22-checking

In the comment area of the electronic funds transfer, state Respondent's name and the docket number of this CAFO.

51. When Respondent pays the penalty or any portion thereof, Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA electronically. Electronic submissions must be sent to the following addresses:

girouard.taylor@epa.gov, R5WECA@epa.gov and grueterich.sophie@epa.gov. If electronic submittal is not possible, the submissions must be made by certified mail (return receipt requested) and mailed to the following addresses:

Taylor Girouard (ECW-15J)
Water Enforcement and Compliance Assurance Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Sophie Grueterich (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard

Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

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

53. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, Respondent must pay the following on any amount overdue under this CAFO: interest accrued on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings; a handling charge fee each month that any portion of the penalty is more than 30 days past due; and up to 6% per year penalty on any principal amount 90 days past due.

54. If Respondent does not pay timely the civil penalty, EPA may request the United States Department of Justice 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 under Section 1423(c)(7) of the SDWA, 42 U.S.C. § 300h-2(c)(7). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

55. This CAFO resolves Respondent's liability for federal civil penalties for only the violations alleged in this CAFO.

56. This CAFO constitutes a "previous violation" as that term is used in EPA's UIC Penalty Policy and to determine Respondent's "history of such violations" under Section 1423(c)(4)(B) of the SDWA, 42 U.S.C. § 300h-2(c)(4)(B).

57. Each party agrees to bear its own costs and attorneys' fees in this action.

58. Except as provided in Paragraph 55, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal law administered by EPA.

Compliance Requirements

59. As provided by Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), Respondent shall, within 180 days of the effective date of this CAFO, complete EPA form 7520-7, Application to Transfer Permit, and EPA form 7520-14, Plugging and Abandonment Plan for the Permits to reflect Respondent as the permittee and owner/operator. Respondent must notify EPA when this application has been completed.

60. To the extent possible, Respondent must electronically submit all reports, notifications, documentation, submissions, and other correspondence required to be submitted by Paragraph 59 to the addresses listed in Paragraph 51. If electronic submittal is not possible, the submissions must be made by certified mail (return receipt requested) to the enforcement officer whose name and address that is identified in Paragraph 51, above.

61. Respondent must provide all electronic documents submitted pursuant to Paragraph 59 in unsecured, accessible, searchable, format as a Portable Document Format (PDF) or electronic spreadsheet. Respondent must create a document index that clearly identifies any single electronic document that has been separated into multiple electronic files (because of size limitation or otherwise) and each component file that comprises the full document.

62. Reports, notifications, documentation, and submissions must be signed by a duly authorized representative of Respondent and shall include the following statement consistent with 40 C.F.R. § 144.32(d):

I certify under 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.

63. Respondent may not withhold information based on a claim that it is confidential.

However, pursuant to 40 C.F.R. Part 2, Subpart B, Respondent may assert a claim of business confidentiality regarding any portion of the information submitted in response to Paragraph 59, as provided in 40 C.F.R. § 2.203 by placing on (or attaching to) the information, at the time it is submitted to EPA, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as trade secret, proprietary, or company confidential. Allegedly confidential portions of otherwise non-confidential documents should be clearly identified by the business, and may be submitted separately to facilitate identification and handling by EPA. If the business desires confidential treatment only until a certain date or until the occurrence of a certain event, the notice should so state. The failure to furnish a confidentiality claim with your response may result in the information being made available to the public without further notice to you. EPA's confidential business information (CBI) regulations are at 40 C.F.R. Part 2, Subpart B).

64. Respondent should segregate any personnel, medical, and similar files from their responses and include that information on a separate sheet(s) marked as "Personal Privacy Information." Disclosure of such information to the general public may constitute an invasion of privacy.

65. If Respondent finds at any time after submitting information that any portion of that information is false or incorrect, the signatory must notify EPA immediately. Knowingly submitting false information to EPA in response to this Order may subject Respondent to

criminal prosecution under Section 1423(b) of the SDWA, 42 U.S.C. § 300h-2(b), as well as 18 U.S.C. §§ 1001 and 1341.

66. Submissions required by Paragraph 59 shall be deemed submitted on the date they are sent electronically or on the date postmarked if sent by U.S. mail.

67. The information required to be submitted pursuant to Paragraph 59 is not subject to the approval requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 et seq because it seeks the collection of information by an agency from specific individuals or entities as part of an administrative action.

68. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2), performance of Paragraph 59 and the amount paid pursuant to Paragraph 50 are restitution, remediation, or required to come into compliance with the law.

69. EPA may use any information submitted in accordance with Paragraph 59 in support of an administrative, civil, or criminal action against Respondent.

70. EPA may terminate this Order at any time by written notice to Respondent.

71. Absent the notice described in Paragraph 70, Respondent may request in writing that EPA terminate this CAFO. With this request for termination, Respondent must submit to the EPA enforcement officer a written final report and certification of completion describing all actions taken to comply with all requirements of the compliance program in Paragraph 59. Respondent must include the certification language required under Paragraph 62. In response to the request for termination and written final report, EPA may require additional information, actions, or evidence from Respondent to show completion of the compliance requirements; EPA may pursue appropriate administrative or judicial action to require compliance with this Order;

or EPA may accept the request for termination. This Order shall terminate on the date that EPA notifies Respondent in writing that EPA agrees with Respondent's request for termination.

General Provisions

72. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: gruetrich.sophie@epa.gov (for Complainant), and JMcQuaid@babstcalland.com (for Respondent). Respondent understands that the CAFO will become publicly available upon proposal for public comment and upon filing.

73. Violation of this CAFO shall be deemed a violation of the SDWA for purposes of Section 1423(b) of the SDWA, 42 U.S.C. § 300h-2(b).

74. 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 violation of law.

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

76. The terms of this CAFO bind Respondent and its successors and assigns.

77. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to the terms of this CAFO.

78. This CAFO constitutes the entire agreement between the parties.

79. Pursuant to 40 C.F.R. § 22.18(b)(3), this Consent Agreement does not dispose of this proceeding without execution of the Final Order. The Final Order will not be issued until after completion of the requirements of Section 1423(c)(3) of the SDWA, 42 U.S.C. § 300h-2(c), and 40 C.F.R. § 22.45(b), which require, among other things, public notice and a reasonable opportunity to comment on any proposed penalty order. Further, under 40 C.F.R. § 22.45, this Consent Agreement may be withdrawn before execution of the Final Order.

80. Absent the filing of an appeal for judicial review in accordance with Section 1423(c)(6) of the SDWA, 42 U.S.C. § 300h-2(c)(6), or 40 C.F.R. § 22.45(c)(4)(viii), this CAFO shall become effective 30 days after the date of issuance, which is the date that the Final Order contained in this CAFO is signed by the Regional Judicial Officer or Regional Administrator.

**Consent Agreement and Final Order
In the Matter of: LANXESS Corporation
Docket Number. SDWA-05-2022-0011**

LANXESS Corporation, Respondent

July 18, 2022
Date

Marc Rand
Marc Rand
Head of PTSE Americas

United States Environmental Protection Agency, Complainant

MICHAEL HARRIS Digitally signed by MICHAEL HARRIS
Date: 2022.08.02 11:50:47 -05'00'

Michael D. Harris *(Signature and date)*
Director
Enforcement and Compliance Assurance Division
Region 5, U.S. Environmental Protection Agency

**Consent Agreement and Final Order
In the Matter of: LANXESS Corporation
Docket No. SDWA-05-2022-0011**

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective 30 days after issuance, unless an appeal for judicial review is filed in accordance with Section 1423(c)(6) of the SDWA, 42 U.S.C. § 300h-2(c)(6), or 40 C.F.R. § 22.45(c)(4)(viii). When final and effective, this Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18, 22.31, and 22.45. IT IS SO ORDERED.

By:

Ann Coyle *(Signature and date)*
Regional Judicial Officer
Region 5
U.S. Environmental Protection Agency