



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

FEB 25 2020

REPLY TO THE ATTENTION OF
ECW-15J

VIA E-MAIL

Mr. James N. Eichstadt
Arbor Operating, LLC
333 W. Grandview Parkway, Suite 401
Traverse City, Michigan 49684
Email: jimmy@arbor-resources.com

Dear Mr. Eichstadt:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO), which resolves the issues identified in docket number SDWA-05-2020-0002. As indicated by the filing stamp on the first page of the CAFO, the CAFO was filed with the Regional Hearing Clerk on February 25, 2020. This CAFO will be effective 30 days from the filing date.

Pursuant to paragraph 69 of the CAFO, Arbor Operating, LLC must pay the civil penalty identified in paragraph 68 within 30 days of the effective date. The check with which you pay the civil penalty must display the case name: In the Matter of Arbor Operating, LLC and the docket number SDWA-05-2020-0002.

Please direct any questions regarding this matter to Timothy Elkins of my staff at (312) 886-0263 or elkins.timothy@epa.gov, or your Counsel can contact, Nicole Wood-Chi, Associate Regional Counsel, at (312) 886-0664 or at wood.nicole@epa.gov.

Sincerely,

A handwritten signature in cursive script, appearing to read "Patrick F. Kuefler".

Patrick F. Kuefler
Chief
Water Enforcement and Compliance Assistance Branch

Enclosure

cc: Ann Coyle, Regional Judicial Officer
Regional Hearing Clerk
Nicole Wood-Chi, Associate Regional Counsel
Timothy Elkins, EPA

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In The Matter Of:)	Docket No. SDWA-05-2020-0002
)	
Arbor Operating, LLC)	Proceeding under Section 1423(c) of the
Traverse City, Michigan)	Safe Drinking Water Act,
)	42 U.S.C. § 300h-2(c)
Respondent.)	
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Consent Agreement and Final Order

I. STATUTORY AUTHORITY

1. This is an administrative action commenced and concluded under Section 1423(c)(2) of the Safe Drinking Water Act (“SDWA”), 42 U.S.C. §300h-2(c)(2), and Sections 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 Title 40 of the Code of Federal Regulations (C.F.R.) Part 22.
2. The authority to take action under Section 1423(c) of SDWA, 42 U.S.C. § 300h-2(c), is delegated to the Administrator of the U.S. Environmental Protection Agency (EPA). The Administrator of EPA delegated the authority to issue this consent agreement and final order (“CAFO”) to the Regional Administrator of EPA Region 5, who delegated the authority to the Director of the Enforcement & Compliance Assurance Division (Complainant).
3. Pursuant to section 1422 of SDWA, 42 U.S.C. § 300h-1, and EPA’s regulations at 40 C.F.R. § 147.1151, EPA has primary enforcement responsibility for the UIC program in the State of Michigan to ensure that owners or operators of injection wells within Michigan comply with the requirements of SDWA.
4. Complainant is initiating this administrative action under Section 1423(a)(2) of

SDWA, 42 U.S.C. § 300h-2(a)(2), which authorizes EPA to issue an order assessing a civil penalty against any person found to be in violation of any requirement of an applicable Underground Injection Control (UIC) program and requiring the person to comply.

II. JURISDICTION AND WAIVERS

5. 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 CAFO. *See* 40 C.F.R. § 22.13(b).

6. 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. This CAFO constitutes a civil settlement and satisfaction of all alleged violations described herein.

7. For purposes of this administrative proceeding only, Arbor Operating, LLC (Respondent) admits the jurisdictional allegations in this CAFO and neither admits nor denies the remaining allegations in this CAFO.

8. Respondent consents to the terms of this CAFO, including the assessment of the civil penalty and the compliance requirements specified below.

9. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO including, but not limited to, its right to request a hearing under 40 C.F.R. § 22.15(c) and Section 1423(c)(3) of SDWA, 42 U.S.C. § 300h-2(c)(3); its right to seek federal judicial review of the CAFO pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06; any right to contest the allegations in this CAFO; and its right to appeal this CAFO under Section 1423(c)(6) of SDWA, 42 U.S.C. § 300h-2(c)(6). Respondent also consents to the issuance of this CAFO without further adjudication.

III. ALLEGATIONS

10. Respondent is a limited liability company registered to do business in Michigan with an office located at 333 W. Grandview Parkway, Suite 401, Traverse City, Michigan 49684.

11. Respondent is a "person" as that term is defined at Section 1401(12) of SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 144.3.

12. Pursuant to SDWA, 42 U.S.C. § 300f *et seq*, and EPA's implementing regulations at 40 C.F.R. Parts 124, 144, 146 and 147, EPA authorized Respondent to operate Class II injection wells in Manistee, Presque Isle, Grand Traverse, and Otsego counties, Michigan pursuant to the following permits (the Permits): (1) Smolarz #D2-32, MI-137-2D-0307; (2) Flesher #D1-28, MI-137-2D-0321; (3) TEL #B2-25 SWD, MI-101-2D-C030; (4) Sorgett #1-26 SWD, MI-141-2D-0003; and (5) Schmuckal 2-3 SWD, MI-055-2D-0043.

13. At all times relevant to this CAFO, Part I (E)(1) of the Permits required Respondent to comply with all conditions of the Permit (except to the extent and for the duration such non-compliance is authorized by an emergency permit pursuant to 40 C.F.R. § 144.34).

14. Under 40 C.F.R. § 144.51(a) each day of non-compliance constitutes a violation of SDWA and is grounds for enforcement action, permit termination, revocation and reissuing or modification.

15. At all times relevant to this CAFO, Respondent owned and operated the Smolarz #D2-32, Flesher #D1-28, Sorgett #1-26, Schmuckal 2-3, and TEL #B2-25 SWD wells and was thus subject to conditions in the Permits and the UIC program requirements set forth at 40 C.F.R. Parts 124, 144, 146, and 147.

16. At no time relevant to this CAFO did the Respondent apply for and obtain an emergency permit for any of the wells listed in paragraph 12 above pursuant 40 C.F.R. § 144.34.

Count I – Failure to Accurately Record Injection Pressure

17. The factual allegations set forth in paragraphs 10 through 16 above are incorporated by reference into Count I as if set forth in full.

18. At all times relevant to this CAFO, Part II (B)(2)(d) and Part III (A) of the Permits required Respondent to monitor and record injection pressure at least weekly using calibrated gauges.

19. Part II (B)(3)(a) of the Permits required Respondent to include weekly measurements of injection pressure in the monthly reports submitted to EPA.

20. 40 C.F.R. § 144.51(j) requires samples and measurements taken for the purpose of monitoring be representative of the monitored activity.

21. The Appendix “OPERATING, MONITORING AND REPORTING REQUIREMENTS” to each of the Permits sets forth the injection pressure limit in pounds per square inch gauge (PSIG).

22. From January 2016 through March 2018, for Permit number MI-101-2D-C030, Respondent recorded “VAC” on monthly monitoring reports submitted to EPA.

23. From January 2016 through May 2017, October and November 2017, and January through March 2018, for Permit number MI-137-2D-0307, Respondent recorded “VAC” on monthly monitoring reports submitted to EPA and in its weekly monitoring logs.

24. From January 2016 through January 2018, for Permit number MI-137-2D-0321 and MI-055-2D-0043, Respondent recorded “VAC” on monthly monitoring reports submitted to EPA.

25. Respondents failure to record and report weekly injection pressure measurements for the wells in accordance with the Permits monitoring requirements is a violation of the Permits, the UIC regulations 144.51, and SDWA.

Count II – Failure to Accurately Record Annulus Pressure

26. The factual allegations set forth in paragraphs 10 through 16 above are incorporated by reference into Count II as if set forth in full.

27. At all times relevant to this CAFO, Part II (B)(2)(d) and Part III (A) of the Permits required Respondent to record annulus pressure at least weekly. Part II (B)(3)(a) of the Permits requires Respondent to include weekly measurements of annulus pressure in monthly reports submitted to EPA.

28. In accordance with Part II (B)(2)(d) of the Permits, all gauges used in monitoring are to be calibrated.

29. From January 2016 through February 2018, Respondent failed to take weekly measurements of annulus pressure with calibrated gauges in accordance with Part II (B)(2)(d) and Part III (A) of Permits.

30. Respondents failure to accurately record annulus pressure measurements is a violation of the Permits, the UIC regulations 144.51(a), and SDWA.

Count III - Failure to Accurately Report Annulus Pressure

31. The factual allegations set forth in paragraphs 10 through 16 above are incorporated by reference into Count III as if set forth in full.

32. At all times relevant to this CAFO, Part II (B)(3)(a) and Part II (B)(2)(d) of the Permits required Respondent to monitor annulus pressure with calibrated gauges and report weekly measurements to EPA on a monthly basis.

33. From January 2016 through February 2018, Respondent entered “0” for weekly annulus pressure on all monthly monitoring reports submitted to EPA for the Permits.

34. From January 2016 through February 2018, Respondent failed to take weekly measurements of annulus pressure with calibrated gauges in accordance with Part II (B)(2)(d) and Part III (A) of Permits.

35. Respondents failure to accurately report weekly annulus pressure measurements is a violation of the Permits, the UIC regulations 144.51(a), and SDWA.

Count IV - Failure to Retain Records of Monitoring, Calibration, and Maintenance

36. The factual allegations set forth in paragraphs 10 through 16 above are incorporated by reference into Count IV as if set forth in full.

37. Part I (E)(8)(a) of the Permits requires the Respondent to retain records of all monitoring information, including all calibration and maintenance records and copies of all records required by the Permits, for at least three years from the date of the sample, measurement, or report.

38. Amongst other information, Part I (E)(8)(c) of the Permits requires that records of monitoring information shall include (i) the date, exact place, and time of sample or measurements, and (ii) the individual(s) who performed the sampling or measurements.

39. From January 2015 through October 2018, Respondent failed to maintain calibration records for each of the wells it operated under the Permits.

40. From January 2016 through March 2018, Respondent failed to maintain all records of injection pressure and annulus pressure monitoring for Permit number MI-101-2D-C030.

41. Respondent's failure to retain records of all monitoring information, including all calibration and maintenance records, and copies of all records required by the Permits is a violation of the Permits, the UIC regulation at 40 C.F.R. § 144.51(a) and (j), and SDWA.

Count V - Failure to Comply with Fluid Analysis and Reporting Requirements

42. The factual allegations set forth in paragraphs 10 through 16 above are incorporated by reference into Count V as if set forth in full.

43. Part II (B)(2)(c) and Part III (A) of the TEL #B2-25 SWD Permit requires Respondent to sample and analyze the injected fluid on a quarterly basis for the parameters listed in Part III (A) of the Permit.

44. Part III (A) of the TEL #B2-25 SWD Permit requires Respondent to sample injected fluid at a point that is representative of the injected fluids.

45. Part II (B)(3)(b)(iii) requires Respondent to submit monitoring results obtained each quarter and include measurements of the injected fluid characteristics as required in Part III (A) of the TEL #B2-25 SWD Permit. Per Part II (B)(3)(b), quarterly reports shall be postmarked no later than the 20th day after the first month of the following quarter.

46. On December 27, 2016, Respondent sampled brine from the Weller 11-25 well for an analysis of fluids injected into the Tel #B2-25 SWD. Respondent signed and submitted the results to EPA on January 12, 2017.

47. Respondent did not submit quarterly brine analyses to EPA for the first, second, or third quarters of 2016 as required Part II (B)(3)(b)(iii) of the TEL #B2-25 SWD Permit.

48. Respondent did not submit quarterly brine analyses results to EPA for the first, second, third, or fourth quarters of 2017 as required Part II (B)(3)(b)(iii) of the TEL #B2-25 SWD Permit.

49. On March 19, 2018, Respondent sampled brine from the wellhead of the Tel #B2-25 SWD for an analysis of fluids injected into the well. Respondent signed and submitted the results to EPA on April 9, 2018.

50. On December 27, 2018, Respondent sampled brine from the wellhead of the Tel #B2-25 SWD for an analysis of fluids injected into the well. Respondent signed and submitted the results to EPA on January 22, 2019.

51. Respondent did not submit quarterly brine analyses results to EPA for the second, or third quarters of 2018 as required Part II (B)(3)(b)(iii) of the TEL #B2-25 SWD Permit.

52. Respondent did not submit quarterly brine analyses results to EPA for the first quarter of 2019 as required Part II (B)(3)(b)(iii) of the TEL #B2-25 SWD Permit.

53. Respondent's failure to submit a complete and accurate quarterly brine analyses reports for the TEL #B2-25 SWD well constitutes a violation of Part II (B)(3)(b)(iii) and Part III (A) of the Permit, the UIC regulations 144.51(a), and SDWA.

Count VI - Failure to Comply with Brine Manifest Reporting Requirements

54. The factual allegations set forth in paragraphs 10 through 16 above are incorporated by reference into Count VI as if set forth in full.

55. Part II (B)(3)(b)(ii) of the TEL #B2-25 SWD Permit requires Respondent to submit brine manifest and any comparable non-brine records quarterly to EPA, and must be either a copy of the State Report for commercial haulers or the Respondent's records of deliveries by various haulers, which shall include 1) name, address, and phone number of the waste generator (producer), and 2) the total monthly volume received from each source with source identification number as shown in Part III (D) of the Permit. Per Part II (B)(3)(b), quarterly

reports shall be postmarked no later than the 20th day after the first month of the following quarter.

56. Part II (B)(3)(b)(ii) requires the Respondent's quarterly brine manifest or Respondent's records submitted to EPA to be accompanied by 1) a certification by the Respondent that the waste contains no hazardous waste and that no non-oil and gas production waste was mixed with the brine; and 2) a report by the well operator sent to both EPA and the waste generator of any discrepancies in the composition, injected volumes or place of origin as contained in the brine manifest records.

57. Respondent did not submit quarterly brine manifests or records to EPA in 2016 as required by Part II (B)(3)(b)(ii) of the TEL #B2-25 SWD Permit.

58. Respondent submitted brine manifests or records of fluid injected into TEL #B2-25 SWD well to EPA, on a monthly basis, beginning the month of October 2017.

59. Respondent's brine manifests or records of fluid injected into TEL #B2-25 SWD well, submitted to EPA on a monthly basis, for the months of October 2017 through December 2018, did not include the address and phone number of the waste generators, as required by Part II (B)(3)(b)(ii) of the TEL #B2-25 SWD Permit.

60. Respondent's brine manifests or records of fluid injected into TEL #B2-25 SWD well, submitted to EPA on a monthly basis, for the month of October 2017 through December 2018, were not accompanied by certification that the waste contains no hazardous waste and that no non-oil and gas production waste was mixed with the brine or a report of any discrepancies as contained in the brine manifest records, as required by Part II (B)(3)(b)(ii) of the TEL #B2-25 SWD Permit.

61. Respondent's failure to submit or include all required information on brine manifests or the Respondent's records as required by Part II (B)(3)(b)(ii) of the TEL #B2-25 SWD Permit, is a violation of the Permit, the UIC regulations 144.51(a), and SDWA.

Count VII - Failure to Comply with Annual Reporting Requirements

62. The factual allegations set forth in paragraphs 10 through 16 above are incorporated by reference into Count VII as if set forth in full.

63. Part II (B)(3)(c) of the TEL #B2-25 SWD Permit requires the Respondent to submit an annual report to EPA. All wells which contribute brine from the approved sources listed in Part III (D) of the permit shall be listed in the annual report by well name and State permit number, along with the field and formation names of the approved source. Annual reports shall be submitted at the end of each calendar year and shall be postmarked no later than the 20th day after the first month of the following year.

64. Respondent did not submit annual reports for 2016, 2017, or 2018 as required by Part II (B)(3)(c) of the TEL #B2-25 SWD Permit.

65. Respondent's failure to submit complete and accurate annual reports for the TEL #B2-25 SWD well for 2016, 2017, and 2018 constitutes a violation of Part II (B)(3)(c) of the Permit, the UIC regulations 144.51(a), and SDWA.

IV. CIVIL PENALTY

66. Under Section 1423(c)(2) of SDWA, 42 U.S.C. § 300h-2(c)(2), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$7,500 for each day of violation, up to a maximum administrative penalty of \$187,500 for SDWA violations occurring after December 6, 2013 through November 2, 2015, and \$11,463 for each day of violation, up to a maximum administrative penalty of \$286,586 for SDWA violations occurring after November 2, 2015.

67. Section 1423(c)(4)(B) of SDWA, 42 U.S.C. 300h-2(c)(4)(B), requires the Administrator to take into account the seriousness of the violation, the economic benefit (if any) resulting from the violation, any history of such violations, any good faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require, when assessing a civil penalty for violations of SDWA.

68. Based upon the facts alleged in this CAFO, the factors listed in Section 1423(c)(4)(B) of 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 \$42,000.00.

69. Within 30 days of the effective date of this CAFO, Respondent must pay the civil penalty by sending cashier's or certified checks by express mail, payable to "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

The checks must note Respondent's name and the docket number of this CAFO.

70. At the time of payment, Respondent must also send a copy of a notice of payment and a transmittal letter, stating Respondent's name and complete address, and the docket number of this CAFO, to EPA at the following addresses:

Eva Marie Rowe (WU-16J)
Underground Injection Control Branch
Water Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Nicole Wood-Chi (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

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

72. 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 from the date payment was due at a rate established by the Secretary of the Treasury; the United States' enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings; a \$15 handling charge each month that any portion of the penalty is more than 30 days past due; and 6% per year penalty on any principal amount 90 days past due.

V. COMPLIANCE REQUIREMENTS

73. As provided by Section 1423(c)(2) of SDWA, 42 U.S.C. § 300h-2(c)(2), Respondent shall, from the effective date of this CAFO:

- (i) Sample, analyze, record and retain all monitoring information in accordance with the Permits and 40 C.F.R. § 144.51(j), including the date, exact place, and time of sample or measurements, the individual(s) who performed the sampling or measurements, the methods used, the results, and all calibration records from the date of the sample, measurement or report;
- (ii) Include documentation of gauge calibration certification and/or gauge replacement with the Respondent's annual report required by the Permit to be submitted to EPA, and postmarked no later than the 10th day of the first month, for three years beyond the effective date of this CAFO;

- (iii) Within 14 days of the effective date of this CAFO, use calibrated gauges for all monitoring required by the Permits and/or replace them with new gauges on an annual basis;
- (iv) Within 30 days of the effective date of this CAFO, establish and implement a record keeping system capable of properly preserving and retaining records required by the Permits;
- (v) Within 30 days of the effective date of this CAFO, submit to EPA copies of all records of monitoring information with its monthly reports, for 24 months from the effective date of this CAFO. Reports and records of all monitoring information shall be postmarked no later than the 10th day of the month following the reporting period;
- (vi) Within 90 days of the effective date of this CAFO, Respondent will submit to EPA and implement a standard operating procedure (“SOP”) for use in providing adequate direction to all staff or contractors in monitoring, recording, and reporting practices required by the Permits. The SOP must address procedures for measuring injection pressure, annulus pressure, flow rate and cumulative volume with calibrated gauges and flow meters or totalizers. The SOP must also address how all monitoring information will be maintained in accordance with the Permits and 40 C.F.R. § 144.51(j), including all calibration and maintenance records and copies of all records from the date of the sample, measurement or report.

74. In accordance with Part I (E)(11) of the Permit, all reports, notifications, documentation, and submissions required by this CAFO shall 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.”

75. 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 this CAFO, as

provided in 40 C.F.R. § 2.302(a)(2). The manner of asserting such claims is specified in 40 C.F.R. § 2.203(b). The name and address of any permit applicant or permittee and information which deals with the existence, absence, or level or contaminants in drinking water is not entitled to confidential treatment. 40 C.F.R. § 144.5. Information subject to a business confidentiality claim is available to the public only to the extent, and by means of the procedures, set forth in 40 C.F.R. Part 2, Subpart B. If Respondent does not assert a claim of business confidentiality when it submits the information, EPA may make the information available to the public without further notice.

76. 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 CAFO may subject Respondent to criminal prosecution under Section 1423(b) of SDWA, 42 U.S.C. § 300h-2(b), as well as 18 U.S.C. §§ 1001 and 1341.

77. Submissions required by this CAFO shall be deemed submitted on the date they are sent electronically or on the date postmarked if sent by U.S. mail.

78. Upon EPA approval, submissions by Respondent are incorporated and enforceable as part of this CAFO. In case of inconsistency between any submission by Respondent and this CAFO and its subsequent modifications, this CAFO and its subsequent modifications shall control.

79. EPA may use any information submitted in accordance with this CAFO in support of an administrative, civil, or criminal action against Respondent.

80. The information required to be submitted pursuant to this CAFO is not subject to the approval requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 et seq.

VI. GENERAL PROVISIONS

81. Pursuant to 40 C.F.R. § 22.5, the parties consent to service of this CAFO by email at the following email addresses: wood.nicole@epa.gov (for Complainant) and jimmy@arbor-resources.com (for Respondent).

82. Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations alleged in this CAFO. Complainant may not seek additional federal civil penalties for the violations alleged in this CAFO. Violation of this CAFO shall be deemed a violation of SDWA for purposes of Section 1423(b) of SDWA, 42 U.S.C. § 300h-2(b).

83. 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. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

84. If Respondent fails to comply with the requirements set forth in Paragraph 73, EPA may request the United States Department of Justice bring an action to seek penalties for violating this CAFO.

85. This CAFO does not in any case 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.

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

87. Respondent certifies that it is complying with Section 1423 of SDWA, 42 U.S.C. § 300h-2, and its Permit.

88. This CAFO constitutes a “previous violation” as that term is used in EPA’s UIC Program Judicial and Administrative Order Settlement Penalty Policy and to determine Respondent’s “history of such violations” under Section 1423(c)(4)(B) of SDWA, 42 U.S.C. § 300h-2(c)(4)(B).

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

90. 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.

91. Each party agrees to bear its own costs and attorneys’ fees in this action.

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

93. The parties acknowledge and agree that final approval by EPA of this CAFO is subject to 40 C.F.R. § 22.45(c)(4) which sets forth requirements under which a person not a party to his proceeding may petition to set aside a consent agreement and final order on the basis that material evidence was not considered.

94. In accordance with the section 1423 of the SDWA(c)(3)(d) and 40 C.F.R. §§ 22.18(b)(3), 22.31(b), and 22.45, this CAFO shall become effective 30 days after the date that the final order contained in this CAFO, having been approved and issued by the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

**Consent Agreement and Final Order
In the Matter of: Arbor Operating, LLC
Docket No. SDWA-05-2020-0002**

Arbor Operating, Respondent

10/22/2024
Date

JAMES N. EICHSTAET
JAMES N. EICHSTAET

Arbor Operating, LLC

United States Environmental Protection Agency, Complainant

1-2-2020
Date

Sara Brenema
for Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: Arbor Operating, LLC
Docket No. SDWA-05-2020-0002



Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective 30 days after 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.

By: Ann L. Coyle Date: 2/25/2020
Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the matter of: Arbor Operating, LLC
Docket Number: SDWA-05-2020-0002

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number SDWA-05-2020-0002, which was filed on February 25, 2020, in the following manner to the following E-mail addressees:

Copy by E-mail to
Attorney for Complainant:

Nicole Wood-Chi
wood.nicole@epa.gov

Copy by E-mail to
Respondent:

James N. Eichstadt
jimmy@arbor-resources.com

Copy by E-mail to
Attorney for Respondent:

Gina A. Bozzer
gabozzer@krlawtc.com

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: February 25, 2020


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