

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter Of:)	Docket No. SDWA-05-2023-0001
)	
)	Proceeding under Section 1423(c) of the
)	Safe Drinking Water Act,
Miller Energy Company II, LLC)	42 U.S.C. § 300h-2(c)
Traverse City, Michigan,)	
)	
Respondent.		

Consent Agreement and Final Order

Preliminary Statement

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 22.1(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 Miller Energy Company II, LLC, including its partners, assigns, consolidated, and constituent companies.
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 right 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 inspections, 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 1422(c) of the SDWA, 42 U.S.C. § 300h-1(c), provides that the Administrator for EPA shall prescribe UIC programs applicable to those states that have not obtained primary enforcement responsibility of their UIC programs (a concept called “primacy”) or do not have primacy for all types of wells.

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

13. Prior to August 29, 2022, EPA administered and had primary enforcement responsibility of the Class II UIC program in the State of Michigan pursuant to Section 1422 of SDWA, 42 U.S.C § 300h-1, and EPA’s regulations at 40 C.F.R § 147.1151 to ensure that owners or operators of the injection wells within Michigan comply with the requirements of SDWA effective June 25, 1984. On August 29, 2022, the State of Michigan received responsibility for administering and serving as the primary enforcement authority for the regulation of Class II wells; however, EPA retains primary enforcement authority for Class II wells on tribal lands and wells subject to “ongoing EPA enforcement” from prior to the State of Michigan receiving this responsibility, including the Permits subject to this Order, as outlined in the UIC Program MOU between Michigan and EPA.

14. 40 C.F.R. § 144.1(g) provides that the UIC program 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 II wells inject fluids which are brought to the surface in connection with natural gas storage operations, or conventional oil or natural gas production and may be commingled with waste waters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection; for enhanced recovery of oil or natural gas; and for storage of hydrocarbons which are liquid at standard temperature and pressure. 40 C.F.R. § 144.6(b)(1).

15. 40 C.F.R. § 144.11 further prohibits any underground injection, except into a well authorized by rule or by permit issued under the UIC program.

16. 40 C.F.R. § 144.51(a) provides that any UIC permittee must comply with all conditions of its permit. 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.

17. The regulations at 40 C.F.R. § 144.28 establish the requirements for any owner or operator of a Class II well authorized by rule as provided by 40 C.F.R. §§ 144.21(e) and 144.22(d). 40 C.F.R. § 144.28(a) provides that any noncompliance with these requirements or any requirement set forth in 40 C.F.R. §§ 144.11-144.19 constitutes a violation of the SDWA, except that the owner or operator need not comply with these requirements to the extent and for the duration such noncompliance is authorized by an emergency permit under 40 C.F.R. § 144.34.

18. Section 1423(a)(2) of the SDWA, 42 U.S.C. § 300h-2(a)(2), provides that any person found to be in violation of any requirement of an applicable UIC program in a state that does not have primacy may be assessed a civil penalty and/or be subject to an order requiring compliance pursuant to Section 1423(c)(2) of the SDWA, 42 U.S.C. § 300h-2(c)(2).

19. Under Section 1423(c)(2) of the 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 \$12,537 for each day of violation, up to a maximum administrative penalty of \$313,448 for SDWA violations occurring after November 2, 2015, where penalties are assessed on or after January 1, 2022.

Factual Allegations and Alleged Violations

20. Respondent is a limited liability company doing business in Michigan, 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.

21. At all times relevant to this CAFO, Respondent was authorized to construct and operate the 104 EPA permitted injection wells (the Permits) in Arenac, Bay, Gladwin, Isabella, Lake, Midland, Missaukee, Montcalm, Osceola and Roscommon counties, Michigan identified in Exhibit A of this CAFO.

22. The Permits authorize the underground injection of salt water into the wells, subject to the terms and conditions set forth in the Permits.

23. Saltwater is a “fluid” and the subsurface emplacement of saltwater through the wells is a “well injection.” 40 C.F.R. § 144.3.

24. At all times relevant to this CAFO, Respondent owned and operated injection wells 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.

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

26. On December 10, and December 17, 2014, pursuant to Section 1445(b) of the SDWA, 42 U.S.C. §300j-4(b), Section (E)(7) and Part I(E)(7) of the Permits, EPA employees inspected eight of Respondent’s facilities in Bay, Midland, and Montcalm counties, Michigan. The inspection reports were provided to Respondent on April 29, 2019.

27. On October 18, 2017, pursuant to Section 1445(b) of the SDWA, 42 U.S.C. § 300j-4(b), Section (E)(7) and Part I (E)(7) of the Permits, EPA employees inspected three of Respondent’s facilities in Lake and Osceola counties, Michigan. The inspection reports were provided to Respondent on April 29, 2019.

28. On September 12, 2019, pursuant to Section 1445(b) of the SDWA, 42 U.S.C. § 300j-4(b), Section (E)(7) and Part I (E)(7) of the Permits, EPA employees inspected one of Respondent's facilities in Isabella County, Michigan.

29. On January 29, 2019, based upon the above referenced inspections and review of documents, EPA issued a Noncompliance Notification Letter to Respondent regarding noncompliance identified at 14 of the Respondent's injection well facilities located in Gladwin, Isabela, Osceola, and Roscommon counties, Michigan.

30. On April 8, 2019, EPA received Respondent's response letter to the Agency's January 29, 2019, Noncompliance Notification Letter and a memorandum from Respondent's consultant.

31. On July 7, 2020, EPA issued a request for information (Information Request) to Respondent pursuant to Section 1445(a) of the SDWA, 42 U.S.C. § 300j-4(a), 40 C.F.R. §§ 144.17 and 144.51(h), Section (E)(6) and Part I (E)(6) of the Permits, to gather information related to the historic operations and maintenance of the injection wells authorized under the Permits in Exhibit A.

32. On September 23, 2020, EPA received Respondent's response to its Information Request with the requested information (Respondent's Response).

33. On January 12, 2021, and January 26, 2021, EPA and the Respondent held phone conferences to discuss the response to the Information Request and potential alleged violations.

34. On January 28, 2021, EPA issued a Notice of Potential Violation/Opportunity to Confer (NOPV) to Respondent, alleging certain potential violations of the federal UIC regulations and the SDWA.

35. On February 24, 2021, EPA received Respondent's written response to the NOPV.

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

Count 1 -Failure to Comply with Operating Requirements to Maintain Positive Pressure on the Annulus

37. Section G (1)(iv) of the Permits for the Thompson 6 SWD (EPA No. MI-051-2D-0005), Whittle 1 (EPA No. MI-051-2D-0006), Fred Beutler #2 (EPA No. MI-073-2D-0009), Harold Cummings 1-33 (EPA No. MI-073-2D-0001), John Cummings 1-33 (EPA No. MI-073-2D-0002), Mt Pleasant Unit TR. 52-2 (EPA No. MI-111-2R-A001), Mt Pleasant Unit TR. 53-2 (EPA No. MI-111-2R-A001), Mt Pleasant Unit TR. 54-1 (EPA No. MI-111-2R-A001), Mt Pleasant Unit TR. 122-4 (EPA No. MI-111-2R-A001), Shook 2 (EPA No. MI-133-2D-0003), St Helen Unit 2-1 (EPA No. MI-143-2D-0002), St Helen Unit 15-1 (EPA No. MI-143-2R-0002), St Helen Unit 15-9 (EPA No. MI-143-2R-0005), and St Helen Unit 1-2 (EPA No. MI-143-2R-0007) require a positive pressure to be maintained on the annulus (i.e. "backside") of the wells.

38. Respondent failed to record positive pressure on the annulus as reported on monthly monitoring reports submitted for the wells identified in Paragraph 37 for April 2016 through January 2019.

39. Each week Respondent failed to record positive pressure on the annulus constitutes a violation of Section G (1)(iv) of the Permits, the UIC regulations at 40 C.F.R. 144.51(a), and the SDWA.

Count 2 – Failure to Monitor and Report Monthly Specific Gravity Measurements

40. Section G (2)(c) of the Permits for the Thompson 6 SWD (EPA No. MI-051-2D-0005), Whittle 1 (EPA No. MI-051-2D-0006), Fred Beutler #2 (EPA No. MI-073-2D-0009), Harold Cummings 1-33 (EPA No. MI-073-2D-0001), John Cummings 1-33 (EPA No. MI-073-2D-0002), Mt Pleasant Unit TR. 52 -2 (EPA No. MI-111-2R-A001), Mt Pleasant Unit TR. 53-2 (EPA No. MI-111-2R-A001), Mt Pleasant Unit TR. 54-1 (EPA No. MI-111-2R-A001), Mt Pleasant Unit TR. 122-4 (EPA No. MI-111-2R-A001), Shook 2 (EPA No. MI-133-2D-0003), St Helen Unit 2-1 (EPA No. MI-143-2D-0002), S. Helen Unit 15-1 (EPA No. MI-143-2R-0002), St Helen Unit 15-9 (EPA No. MI-143-2R-0005), and St Helen Unit 1-2 (EPA No. MI-143-2R-0007) require monthly specific gravity measurements to be included in monthly monitoring reports in accordance with the Operating, Monitoring and Reporting Requirements in Attachment E of the Permits referenced above.

41. Respondent failed to properly monitor and submit specific gravity measurements in monthly monitoring reports submitted for the wells identified in Paragraph 40 from April 2016 through January of 2019.

42. Each month Respondent failed to monitor and submit monthly specific gravity measurements constitutes a violation of Section G (2)(d) of the Permits, the UIC regulations at 40 C.F.R. § 144.51(a), and the SDWA.

Count 3 – Failure to Submit Annual Gauge Calibration Certificates

43. Section (E)(21)(c) of the Permits for the Thompson 6 SWD (EPA No. MI-051-2D-0005), Whittle 1 (EPA No. MI-051-2D-0006), Fred Beutler #2 (EPA No. MI-073-2D-0009), Harold Cummings 1-33 (EPA No. MI-073-2D-0001), John Cummings 1-33 (EPA No. MI-073-2D-0002), Mt Pleasant Unit TR. 52 -2 (EPA No. MI-111-2R-A001), Mt Pleasant Unit TR. 53-2 (EPA No. MI-111-2R-A001), Mt Pleasant Unit TR. 54-1 (EPA No. MI-111-2R-A001),

Mt Pleasant Unit TR. 122-4 (EPA No. MI-111-2R-A001), Shook 2 (EPA No. MI-133-2D-0003), St Helen Unit 2-1 (EPA No. MI-143-2D-0002), St. Helen Unit 15-1 (EPA No. MI-143-2R-0002), St. Helen Unit 15-9 (EPA No. MI-143-2R-0005), and St. Helen Unit 1-2 (EPA No. MI-143-2R-0007) require an annual submission of gauge calibration certificates be submitted to EPA.

44. Respondent has not submitted copies of the annual gauge calibration certificates for the wells in Paragraph 43 from 2016 through the date of this CAFO.

45. Each year Respondent failed to submit an annual gauge calibration certificate constitutes a violation of Section (E)(21)(c) of the permits, the UIC regulations at 40 C.F.R. §§ 144.11 and 144.51(a), and the SDWA.

Count 4 – Failure to Record Weekly Measurements of Injection Pressure with Calibrated Gauges

46. Part II (B)(2)(d) and Section G (2)(d) of the Permits require that injection pressure shall be recorded at least weekly through the use of a calibrated gauge.

47. For the EPA permitted Thompson 6 SWD (EPA No. MI-051-2D-0005), Whittle 1 (EPA No. MI-051-2D-0006), Harold Cummings 1-33 (EPA No. MI-073-2D-0001), John Cummings 1-33 (EPA No. MI-073-2D-0002), and Shook 2 (EPA No. MI-133-2D-0003), Respondent failed to record measurements of injection pressure in pounds per square inch gauged (psig) or inches of Mercury (i.e. “Hg), and submitted the word “vacuum” on Respondent’s monthly monitoring reports rather than measurements.

48. Respondent submitted nonnumerical values for injection pressure for the wells identified in Paragraph 47 from April 2016 to June 2017.

49. During conference and through Respondent's response to the July 7, 2020 Information Request, Respondent indicated that measurements of injection pressure have not been recorded through the use of calibrated gauges as required by the Permits from April 2016 through May 2019.

50. Each week Respondent failed to conduct at least weekly measurements using a calibrated gauge constitutes a violation of Part II (B)(2)(d) and Section G(2)(d) of the Permits, the UIC regulations at 40 C.F.R. §§ 144.11 and 144.51(a), and the SDWA.

**Count 5 – Failure to Record Weekly Measurements of Annulus Pressure with
Calibrated Gauges**

51. Part II (B)(2)(d) and Section G (2)(d) of the Permits require that annulus pressure be recorded at least weekly through the use of a calibrated gauge.

52. For its Permits, Respondent failed to record measurements of annulus pressure with calibrated gauges and submitted "0 psig" on Respondent's monthly monitoring reports from April 2016 through March 2021.

53. During conference and through Respondent's response to the July 7, 2020 Information Request, Respondent indicated that actual measurements of the annulus pressure have historically not been recorded through the use of calibrated gauges as required by the Permits.

54. During the January 26, 2021 conference with EPA, Respondent indicated that the monitoring of annulus pressure with calibrated gauges was scheduled to begin April 1, 2021.

55. Each week Respondent failed to conduct and record at least weekly measurements of annulus pressure with calibrated gauges constitutes a violation of Part II (B)(2)(d) and

Section G (2)(d) of the Permits, the UIC regulations at 40 C.F.R. §§ 144.11 and 144.51(a), and the SDWA.

Count 6 – Failure to Record Weekly Measurements of Flow Rate and Cumulative Volume

56. Part II (B)(2)(d) and Section G (2)(d) of the Permits require that flow rate and cumulative volume shall be recorded at least weekly.

57. For some of its Permits, Respondent failed to record weekly measurements of flow rate and cumulative volume taken via a physical meter and alternatively submitted calculated values on Respondent's monthly monitoring reports.

58. Respondent's response to the July 7, 2020 Information Request indicates that an alternate process, which Respondent believed to be reliable was used to determine flow rate instead of using physical meters (e.g. totalizers or flow meters).

59. Respondent did not submit actual measurements of flow rate in monthly reports to EPA for the Permits from February 2016 to April 2021, but rather estimated cumulative volume based upon a set formula that Respondent believed to be reliable.

60. Each week Respondent failed to conduct at least weekly measurements via a physical meter constitutes a violation of Part II (B)(2)(d) and Section G (2)(d) of the Permits, the UIC regulations at 40 C.F.R. §§ 144.11 and 144.51(a), and the SDWA.

Count 7 - Injection of Unauthorized Fluids

61. The Permits restrict injection to oil field brines or those fluids used in the enhancement of oil and gas production as specified in 40 C.F.R. 146.5(b). Further, no fluids other than those from sources noted in the administrative record and approved by EPA shall be injected.

62. Respondent stated in the response to the July 7, 2020 Information Request that produced brine which originated from the Town Hall #1 production well and owned and operated by Yost, Inc., had been injected into Respondent's Merton Emery #1 (EPA No. MI-111-2D-0025).

63. Respondent identified brine from the Town Hall #1 well had been injected into the Merton Emery #1 well from 2015 to 2019.

64. Each day Respondent injected fluids from unapproved sources of brine into the Merton Emery #1 well constitutes a violation of the Permits, the UIC regulations at 40 C.F.R. §§ 144.11 and 144.51(a), and the SDWA.

Count 8 - Failure to Notify EPA of Changes in Injection Fluids

65. Part I (E)(9) Notification Requirements and Planned Changes of the Merton Emery #1 Permit (EPA No. MI-111-2D-0025) requires EPA to be notified at least thirty days prior to any planned physical alterations or additions to the permitted facility, or changes in the injection fluids.

66. Respondent did not notify EPA of the change in injection fluid at the Merton Emery #1 as required, which originated from the Town Hall #1 production well owned and operated by Yost, Inc.

67. Each day Respondent failed to make the required notification constitutes a violation of Part I (E)(9) of the Permit, the UIC regulations at 40 C.F.R. §§ 144.11 and 144.51(a), and the SDWA.

Count 9 - Failure to Submit a New Brine Analysis of the Injection Fluids

68. Part I (E)(9) Notification Requirements and Planned Changes of the Permits require Respondent to submit a new analysis of the injection fluids to EPA and receive approval prior to new fluids being injected into the well.

69. Respondent did not submit a new brine analysis as required and EPA did not authorize the injection of fluid from Yost, Inc.'s Town Hall #1 well into the Merton Emery #1.

70. Each day Respondent failed to submit a new brine analysis constitutes a violation of Part I (E)(9) of the Permit, the UIC regulations at 40 C.F.R. §§ 144.11 and 144.51(a), and the SDWA.

Count 10 - Submission of Inaccurate Reports

71. Part I (E)(11) of the Permits require all reports or other information requested by the Director to be signed and certified in accordance with the federal regulations at 40 C.F.R. § 144.32.

72. Respondent submitted nonnumerical values for injection pressures in EPA monthly reports for the Permits from April 2016 to June 2017.

73. Respondent did not submit actual measurements of the annulus pressures that were taken at least weekly or through the use of calibrated gauges in monthly reports submitted to EPA for the Permits from February 2016 through March 2021.

74. Respondent did not submit actual measurements of flow rate cumulative volume in monthly reports to EPA for the Permits from April 2016 through March 2021.

75. Each month Respondent submitted inaccurate reports constitutes a violation of the Permits conditions, the UIC regulations at 40 C.F.R. §§ 144.11 and 144.51(a), and the SDWA.

Count 11 - Failure to Properly Transfer Ownership of the Permits

76. Part I (E)(9)(c) of the Permits requires notice to be sent to the EPA at least thirty (30) days prior to transfer and the requirements of 40 C.F.R. § 144.38 have been met. EPA may require modification or revocation of the Permits to change the name of the permittee and incorporate such other requirements as may be necessary under the SDWA and 40 C.F.R. §§ 144.38(a) and 144.41(d).

77. On November 13, 2018, EPA notified Respondent of the requirements to transfer the Permits from Summit Petroleum Corporation, to any newly named corporate entity, which at the time was Summit Petroleum Company, LLC. These requirements included completing EPA form 7520-7, Application to Transfer Permit, and EPA form 7520-14, Plugging and Abandonment Plan for the Permits.

78. To date Respondent has not submitted all of these forms for the Permits to EPA.

79. Each month Respondent fails to properly transfer ownership of the Permits constitutes a violation of Part I (E)(9)(c) of the Permits, the UIC regulations at 40 C.F.R. §§ 144.11 and 144.51(a), and the SDWA.

Count 12 - Exceeding Maximum Injection Pressure Limit

80. Part II (B)(1)(a) of the J W Dubey 1 (EPA No. MI-011-2D-0013) Permit authorizes Respondent to operate the injection well subject to the limitations and monitoring requirements as specified in Part III (A) of the Permit.

81. The permitted maximum injection pressure limit defined in the permit for the J W Dubey 1 is 494 psig.

82. Monthly monitoring reports submitted by the Respondent show that the J W Dubey 1 exceeded its maximum injection pressure during January 2019, June 2019, October

2019, November 2019, January 2020, February 2020, March 2020, April 2020, May 2020, and June 2020. Respondent reported the exceedances and resolved same.

83. Each day Respondent exceeded the maximum injection pressure limit constitutes a violation of Part II (B)(1)(a) of the Permit, the UIC regulations at 40 C.F.R. §§ 144.11 and 144.51(a), and the SDWA.

Count 13 – Unauthorized Injection

84. Part I (E)(17)(c)(iii) of the St. Adams 1-14 (EPA Permit No. MI-011-2D-0012) Permit states that after a loss of mechanical integrity occurs, operation shall cease and not resume until the director gives approval to recommence injection.

85. On November 29, 2021, Respondent notified EPA that the St. Adams 1-14 well may have lost mechanical integrity to ensure compliance with Permit No. MI-011-2D-0012. Respondent proactively ceased injection during the investigation and did not resume injection until documentation of a successful mechanical integrity test witnessed by the Michigan Department of Environment, Great Lakes and Energy (EGLE) was provided to EPA. Respondent later determined that in fact, the St. Adams did not lose mechanical integrity and no rework was required to pass a mechanical integrity test. EPA did not issue any orders requiring Respondent to cease injection.

86. On December 2, 2021, Respondent notified EPA through email that the issue was resolved and requested an expedited witnessed mechanical integrity test to comply with permit requirements. EPA approved the testing via email on December 3, 2021.

87. On December 8, 2021, Respondent notified EPA through email that no rework was needed and the well passed a mechanical integrity test on December 6, 2021. EPA confirmed receipt of the Respondent's communication on December 9, 2021.

88. On January 21, 2022, EPA emailed Respondent asking if injection had resumed. Respondent replied stating that Respondent resumed injection at the well. Injection resumed after Respondent provided EPA with proper documentation to prove no loss of mechanical integrity and a successful mechanical integrity test but prior to EPA issuing authorization to inject notice.

89. On February 9, 2022, EPA issued an authorization to inject notice.

90. Unauthorized injection constitutes a violation of Part I (E)(17)(c)(iii) of the Permit, the UIC regulations at 40 C.F.R. §§ 144.11 and 144.51(a), and the SDWA.

Civil Penalty

91. 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), Respondent's good faith and cooperation in resolving this matter, EPA has determined that an appropriate civil penalty to settle this action is \$189,586.16.

92. Within 30 days after the effective date of this CAFO, Respondent must pay a \$189,586.16 civil penalty by sending a cashier's or certified check, 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 check must note Respondent's name and the docket number of this CAFO.

93. 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, to the extent possible. Electronic submissions must be sent to the following

addresses: girouard.taylor@epa.gov, R5WECA@epa.gov and wood.nicole@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

Nicole Wood (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

94. This civil penalty is not deductible for federal tax purposes.
95. 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.
96. If Respondent does not pay timely the civil penalty under Paragraph 92 above and/or any stipulated penalties due under Paragraph 114 below, 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.

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

98. 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).

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

100. Except as provided in Paragraph 99 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal law administered by EPA.

Compliance Requirements

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

- (i) Immediately cease injection of fluids other than from sources owned and operated by Respondent, and approved by EPA;
- (ii) Within 30 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. Include certificate of gauge calibration and/or gauge replacement with the Respondent's annual report required by the Permits to be submitted to EPA;
- (iii) Within 30 days of the effective date of this CAFO, submit monthly EPA reports with required monitoring information postmarked no later than the 10th day of the month following the reporting period. Complete for the earlier of either 12 consecutive months from the effective date of this CAFO or until this CAFO is terminated;

- (iv) Within 180 days of the effective date of this CAFO, install and use flow meters or totalizers for all required flow and cumulative volume monitoring. If within 180 days of the effective date of this CAFO, Respondent requests to terminate the CAFO and EPA approves this request, Respondent no longer needs to comply with the CAFO requirement to install flow meters on the wells that will not be retained under EPA's primary enforcement authority in light of Michigan being granted Class II UIC primacy, and would be transferred to the State of Michigan's UIC program.

Within 180 days of the effective date of this CAFO, install and use flow meters or totalizers for all required flow and cumulative volume monitoring. If Respondent demonstrates completion of all other terms of the CAFO and installs flow meters on the EPA Direct Implementation (DI) wells identified in Exhibit A within 180 days, it can then request termination of the CAFO in writing as described in Paragraph 113. Provided EPA is satisfied with the request for termination, EPA may terminate the CAFO.

- (v) Within 180 days of the effective date of this CAFO, submit documentation to EPA identifying the date Respondent installed flow meters or totalizers to monitor flow and cumulative volume.
- (vi) Within 180 days of the effective date of this CAFO, complete and submit to EPA all applicable forms to reflect Respondent as the permittee and owner/operator of the wells covered by the Permits listed in Exhibit A;
- (vii) 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;
- (viii) Within 90 days of the effective date of this CAFO, submit to EPA for review and approval, and upon approval, 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.

102. All reports, notifications, documentation, submissions, and other correspondence required to be submitted by this CAFO must be submitted to EPA electronically, to the extent

possible. If electronic submittal is not possible, the submissions must be made by certified mail (return receipt requested) to the enforcement officer and EPA attorney whose names and address are identified in Paragraph 93 above.

103. Respondent must provide all electronic documents submitted pursuant to Paragraph 101 in an 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.

104. 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.

105. 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. § 2.203 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 regulations are at 40 C.F.R. Part 2, Subpart B.

106. Respondent should segregate any personally identifying information 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.

107. 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 the SDWA, 42 U.S.C. § 300h-2(b), as well as 18 U.S.C. §§ 1001 and 1341.

108. 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.

109. 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 because it seeks the collection of information by an agency from specific individuals or entities as part of an administrative action.

110. 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 101 and the amount paid pursuant to Paragraph 91 are restitution, remediation, or required to come into compliance with the law.

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

112. EPA may terminate this order at any time by written notice to Respondent.

113. Absent the notice described in Paragraph 112 and within 30 days after Respondent concludes that it has achieved compliance with all requirements of this order or that termination is otherwise appropriate, 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 this CAFO. Respondent must include the certification language required under Paragraph 104 in response to the request for termination and written final report, EPA may require additional information, actions, or evidence from Respondent to show compliance with this CAFO; EPA may pursue appropriate administrative or judicial action to require compliance with this CAFO; or EPA may accept the request for termination. This CAFO shall terminate on the date that EPA notifies Respondent in writing that EPA agrees with Respondent's request for termination.

Stipulated Penalties

114. If Respondent violates any requirement of Paragraph 101, Respondent must pay stipulated penalties to the United States in the following amounts per day for each day of violation of each requirement of Paragraph 101:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$1000	1 st through 14 th day
\$1500	15 through 30 th day
\$2500	31 st day and beyond

115. EPA agrees to provide timely guidance and assistance to Respondent in meeting the Compliance Requirements set forth herein.

116. EPA's determinations of whether Respondent violated Paragraph 101 will bind Respondent, unless the delay in complying with the subject requirement is determined to be caused by a force majeure event in accordance with Paragraph 117.

117. If an event occurs which causes or may cause a delay in complying with the requirements of Paragraph 101:

- a. Respondent must notify EPA in writing within ten days after learning of an event which caused or may cause a delay in completing the subject requirement. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past, current and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify EPA according to this paragraph, Respondent will not receive an extension of time to complete the subject requirement.
- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the requirement, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the subject requirement, EPA will notify Respondent in writing of its decision and any delay in completing the requirement will not be excused.
- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the subject requirement. Increased costs for completing the subject requirement will not be a basis for an extension of time under subparagraph b, above.

General Provisions

118. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: wood.nicole@epa.gov (for Complainant), and gabozzer@krlawtc.com, (for Respondent).

119. 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).

120. 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.

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

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

123. 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.

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

125. The parties acknowledge and agree that final approval by EPA of this CAFO is subject to Section 1423(c)(3) of the SDWA, 42 U.S.C. § 300h-2(c) which provides, among other procedural requirements, public notice and a reasonable opportunity to comment on any proposed penalty order.


126. 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 this proceeding may petition to set aside a consent agreement and final order on the basis that material evidence was not considered.

127. In accordance with Section 1423(c)(3)(D) of the SDWA, 42 U.S.C. § 300h-2(c)(3)(D), and 40 C.F.R. §§ 22.18(b)(3), 22.31(b), and 22.45, unless a proper request for judicial review or hearing is received, 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: Miller Energy Company II, C
Docket number. **SDWA-05-2023-0001**

Miller Energy Company II, LLC Respondent

11/7/2022
Date



Luke Miller
Managing Member of Miller Energy Company,
LLC; Manager of Miller Energy Partners LLC
and subsidiaries

Consent Agreement and Final Order
In the Matter of: Miller Energy Company II, LLC
Docket Number. SDWA-05-2023-0001

United States Environmental Protection Agency, Complainant

MICHAEL HARRIS Digitally signed by MICHAEL HARRIS
Date: 2022.11.21 12:23:30 -06'00'

Michael D. Harris *(signature and date)*

Director

Enforcement and Compliance Assurance Division

U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: Miller Energy Company II, LLC
Docket No. SDWA-05-2023-0001

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective 30 days after issuance, unless a proper request for judicial review or hearing is received. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18, 22.31. and, 22.31. and 22.45.45.

IT IS SO ORDERED.

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

Consent Agreement and Final Order
In the Matter of: Miller Energy Company II, LLC
Docket Number. SDWA-05-2023-0001

Exhibit A

For the scope of this CAFO, EPA issued the Permits identified below to Respondent and authorizes Respondent to operate an injection well and implement the requirements of 40 C.F.R. Parts 144, 145, 146, and 124. The (*) denotes permits that are located on tribal lands and will remain under EPA's DI authority.

EPA No. MI-017-2D-0003 "Joan Houser 1 "

EPA No. MI-073-2D-0008 "Roy J Embree B4"

EPA No. MI-111-2D-0028 "William Carter 6"

EPA No. MI-073-2D-0009 "Fred Beutler #2"

EPA No. MI-111-2D-0027 "G Root A-1"

EPA No. MI-111-2D-0017 "P E Baxter 4"

EPA No. MI-111-2D-0016 "Jessie B Richmond 1"

*EPA No. MI-073-2D-0021 "T W Wing 1"

*EPA No. MI-073-2D-0015 "J Fitzpatrick EST 1"

EPA No. MI-051-2R-A001 "Hostetler A- 2"

EPA No. MI-133-2D-0021 "L. M. Walker 2"

EPA No. MI-051-2R-A001 "Shumway 1"

EPA No. MI-051-2R-A001 "Havens-Denham 1-W"

EPA No. MI-117-2D-0010 "V. & A. Brake #2A"

EPA No. MI-111-2D-0026 "Herman Neitzke B-1"

*EPA No. MI-073-2D-0029 "Wezensky 1-25"

*EPA No. MI-073-2D-0028 "Fitzpatrick 1-12"

EPA No. MI-051-2R-0003 "Armstrong 1-0"

EPA No. MI-051-2R-A001 "Ruck 2"

EPA No. MI-111-2D-0019 "W & S Williams 1"

EPA No. MI-051-2D-0009 "State Buckeye C-4"

EPA No. MI-051-2R-A001 "Montelius 1-0"

EPA No. MI-051-2D-0011 "J Reed 2 BDW"

EPA No. MI-011-2D-0014 "O. Yenior #1 "

EPA No. MI-051-2R-A001 "Fitzwater 6"

EPA No. MI-051-2R-A001 "Woodring Estate #2"

EPA No. MI-051-2R-A001 "Cannell 1-W"

EPA No. MI-051-2D-0022 "Irvin Linaberry 2"

EPA No. MI-073-2D-0007 "Smock State Vernon #2-26"

EPA No. MI-051-2R-A002 "Smith Billings 5-0"

EPA No. MI-051-2R-A001 "Woodring 5"

EPA No. MI-111-2D-0029 "J W Campbell 11"

EPA No. MI-133-2D-0018 "Alf Zimmerman 2"

*EPA No. MI-073-2D-0014 "Moll 1-B"

EPA No. MI-011-2D-0019 "William Keef 3"

EPA No. MI-111-2R-A002 "S.H. Shaheen 1"

EPA No. MI-111-2D-0025 "Merton Emery 1"

EPA No. MI-051-2R-A002 “Wineman #3W”
EPA No. MI-051-2R-A002 “Fox Bloomfield 1-1”
EPA No. MI-051-2R-A002 “Nash Loar 1”
EPA No. MI-051-2R-A001 “Campbell 1-0”
EPA No. MI-111-2R-A002 “Eva B. Mieske 3-36”
EPA No. MI-111-2R-A002 “Dow Chemical 2-35”
EPA No. MI-011-2D-0012 “State Adams 1-14 BDW”
EPA No. MI-011-2D-0013 “J.W. Dubey #1 ”
EPA No. MI-143-2R-0004 “St Helen Unit 18-1”
EPA No. MI-133-2D-0003 “Shook 2”
EPA No. MI-073-2D-0002 “John Cummings 1-33”
EPA No. MI-117-2D-0022 “Borkholder 4-28”
*EPA No. MI-111-2R-A001 “Mt Pleasant Unit TR 54-1”
EPA No. MI-051-2D-0024 “Milton Davis Etal 1”
EPA No. MI-113-2D-0016 “Boersma 1”
EPA No. MI-111-2R-A002 “E. Kosciuszko 2”
EPA No. MI-111-2R-A002 “M. Skalnican 1”
EPA No. MI-051-2R-A002 “Nusbaum Kern 3-W”
EPA No. MI-111-2R-A002 “K.R. Hoenicke 1”
EPA No. MI-111-2R-A002 “M.W. Hoenicke A 1”
EPA No. MI-111-2R-A002 “F. Spittka Unit #1”
*EPA No. MI-111-2R-A001 “Mt. Pleasant Unit TR 52 -2”
EPA No. MI-073-2D-0031 “Murphy Oil Smock 1a-23”
EPA No. MI-111-2R-A002 “Soper #1”
EPA No. MI-051-2D-0025 “C H Keller 2”
EPA No. MI-051-2R-A002 “Hall Trego 1”
EPA No. MI-073-2D-0001 “Harold Cummings 1-33”
EPA No. MI-143-2R-0005 “St Helen Unit 15-9”
EPA No. MI-051-2D-0023 “Hoyt N Smart 1”
*EPA No. MI-073-2D-0022 “H E Tope A-2”
EPA No. MI-051-2R-A002 “Arkwright 1-35”
EPA No. MI-051-2R-A002 “Nash Loar 2”
EPA No. MI-051-2D-0006 “Whittle 1”
EPA No. MI-143-2D-0002 “St Helen Unit 2-1”
*EPA No. MI-111-2R-A001 “Mt Pleasant Unit TR 53-2”
EPA No. MI-143-2R-0002 “St Helen Unit 15-1”
EPA No. MI-051-2R-A002 “Arkwright 2-0”
EPA No. MI-051-2R-A001 “Fitzwater 5”
EPA No. MI-051-2R-A001 “Irvin 1-W”
EPA No. MI-051-2D-0002 “Chovich 1”
EPA No. MI-051-2R-A001 “Minnie Smith 1-35”
EPA No. MI-051-2R-A002 “State Buckeye A-8”
EPA No. MI-051-2R-A002 “McMahon 2-W”
EPA No. MI-051-2R-A001 “Sturm #3”
*EPA No. MI-073-2D-0023 “Asa Prout 1”
EPA No. MI-051-2R-A002 “McMahon Leo #9”

EPA No. MI-143-2R-0006 “St Helen Unit 18-4”
EPA No. MI-011-2D-0007 “L. Shephard #A-1”
EPA No. MI-073-2D-0010 “Conservation Estates 5-5”
EPA No. MI-143-2R-0007 “St Helen Unit 1-2”
*EPA No. MI-111-2R-A001 “Mt Pleasant Unit TR 122-4”
EPA No. MI-051-2D-0005 “Thompson 6 SWD”
EPA No. MI-017-2D-0006 “B Bis 1”
EPA No. MI-085-2D-0001 “Curt Pfuhl 2”
EPA No. MI-051-2D-0004 “State Buckeye G-1 SWD”
EPA No. MI-111-2R-A002 “Retzloff 1-31”
EPA No. MI-111-2R-A002 “Fick 1-6”
EPA No. MI-111-2R-A002 “Clara Datte 1-6”
EPA No. MI-111-2R-A002 “Wishowski 1-31”
EPA No. MI-111-2R-A002 “G. Mieske 2-6”
EPA No. MI-111-2R-A002 “G. Mieske 3-6”
EPA No. MI-111-2R-A002 “Peters 2-1”
EPA No. MI-111-2R-A002 “Gerstacker 1-36”
EPA No. MI-111-2R-A002 “Gerstacker 2-36”
EPA No. MI-073-2D-0033 “Vandersys 1-29”
EPA No. MI-073-2D-0035 “Higgins 1-2”
EPA No. MI-113-2D-0024 “Gernaat 1-24”
By Rule “St. Helen Unit #20-1”
By Rule “St. Helen Unit #15-53”
By Rule “St. Helen Unit #16-2#”
By Rule “St. Helen Unit #15-4”
By Rule “St. Helen Unit #19-1”
By Rule “St. Helen Unit #15-30”
By Rule “St. Helen Unit #15-8”
By Rule “St. Helen Unit #19-2”
By Rule “St. Helen Unit #13-1”
By Rule “St. Helen Unit #18-3”
By Rule “North Wise Unit 7-1”