

PUBLIC NOTICE

Arbor Operating, LLC
333 W. Grandview Parkway, Suite 401
Traverse City, Michigan 49684



Docket No. SDWA-05-2020-0002

The U.S. Environmental Protection Agency, Region 5, is providing this notice of its intent to enter a Consent Agreement and Final Order (CAFO) with Arbor Operating, LLC (Respondent) which alleges Respondent failed to comply with requirements for its five Underground Injection Control (UIC) permits listed below (the Permits) and federal regulations at its Class II disposal injection well facilities in Michigan.

Smolarz #D2-32 well (EPA No. MI-137-2D-0307), Otsego County, MI;
Flesher #D1-28 well (EPA No. MI-137-2D-0321), Otsego County, MI;
TEL #B2-25 SWD well (EPA No. MI-101-2D-C030), Manistee County, MI;
Sorgett #1-26 SWD well (EPA No. MI-141-2D-0003), Presque Isle County, MI and
Schmuckal #2-3 SWD well (EPA No. MI-055-2D-0043), Grand Traverse County, MI.

EPA has the authority to file the CAFO under Section 1423(c)(2) of the Safe Drinking Water Act (SDWA), 42 U.S.C. §300-2h. The CAFO proposes that Respondent pay a civil penalty of \$42,000 and meet compliance requirements to improve the operation, monitoring, and record keeping practices of its injection wells. The CAFO includes stipulated penalties if the Respondent violates the agreed compliance requirements. In determining this penalty amount, EPA considered (i) the seriousness of the violations, (ii) the economic benefit resulting from the violations, (iii) any history of such violations, (iv) any good faith efforts to comply with the applicable requirements, (v) the economic impact of the penalty, and (vi) such other matters as justice may require. Based upon the facts alleged in this CAFO and the UIC Program Judicial and Administrative Order Settlement Penalty Policy (September 1993), EPA determined the appropriate civil penalty to settle this action is \$42,000.

The Respondent incurred penalties for violating the Permits and the UIC regulations at 40 C.F.R. Part 144 from January 2015 to March 2018 by failing to: 1) accurately record injection pressure, 2) accurately record annulus pressure, 3) accurately report annulus pressure, 4) retain records of monitoring, calibration, and maintenance, 5) comply with fluid analysis and reporting, 6) comply with brine manifest reporting requirements, and 7) comply with annual reporting requirements.

Annulus pressure monitoring with a gauge plays an essential role in detecting leaks and protecting underground sources of drinking water. Failing to take weekly annulus pressure measurements was a serious impediment to the discovery of potential leaks and threats to underground drinking water sources. It further represents significant harm to the regulatory scheme, since weekly annulus pressure monitoring with a gauge is of great importance where mechanical integrity testing is only required every five years. Monitoring with calibrated instruments and accurate reporting are also vital to protecting USDWs because the activities ensure that the wells have "mechanical integrity," are not leaking, and are being operated for the

purposes for which they were designed and permitted. Retaining complete records is also necessary for EPA to make informed decisions, and validate reports submitted to the Agency.

A copy of the Proposed CAFO may be viewed online at: www.epa.gov/aboutepa/epa-region-5#events by clicking on the "Proposed Consent Agreement and Final Order" link on the Region 5 events calendar for the docket number identified above. Alternatively, the CAFO may be received by contacting the Regional Hearing Clerk at the address listed below.

OPPORTUNITY FOR COMMENT: Section 1423(c)(3) of SDWA, 42 U.S.C. §300h-2(c)(3), requires that EPA provides public notice of, and reasonable opportunity to comment on any proposed order.

Any person who wishes to comment on this proposed CAFO may submit written comments, may attend or present evidence at any hearing scheduled on this matter, or both, by following the procedures in 40 C.F.R. § 22.45, particularly Subpart (c) *comment by a person who is not a party*. This portion of the code of federal regulations may be accessed at <https://www.gpo.gov/fdsys/pkg/CFR-2015-title40-vol1/pdf/CFR-2015-title40-vol1-sec22-45.pdf> or through <http://www.archives.gov/federal-register/cfr/>. You may also wish to review 40 C.F.R. Part 22 to learn more about the procedures and rules of practice governing the administrative assessment of civil penalties.

Comments should be made in writing to the Regional Hearing Clerk at:

Case Docket No. SDWA-05-2020-0002
Regional Hearing Clerk
Mail Code EC-19J
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Written comments may be submitted to the Regional Hearing Clerk by email to whitehead.ladawn@epa.gov; by fax to (312) 692-2405; or by mail or delivery to the Clerk's address above. Your comments should include the case name, docket number, and your complete mailing address. If you plan to deliver your comments or other documents in person, please call the Regional Hearing Clerk at (312) 886-3713 for further instructions. Comments and documents sent to any EPA employee other than the Regional Hearing Clerk are not assured of consideration in this matter.

Note that the Agency requires your mailing address because we must use the U.S. Postal Service should we need to reply, request additional information or notify you of a hearing, and to provide a copy of any consent agreement and proposed final order.

All written comments must be received in the Regional Hearing Clerk's Office no later than 4:00 p.m., Central Time, of the Comment Period End Date shown on the Region 5 events calendar page for this docket number: www.epa.gov/aboutepa/epa-region-5#events.

All documents filed in this proceeding (including documents submitted by the Respondent or by the public) are available for public inspection by appointment only between 9 a.m. and 4:30 p.m. (Central Time) Monday through Friday at the EPA Regional Office in Chicago, IL. An appointment for such an inspection may be made by calling (312) 886-3713 or by writing the Regional Hearing Clerk at the address above.

Any person wishing to participate in this proceeding must notify the Regional Hearing Clerk in writing within the public notice period and provide his name, complete mailing address, and state that he wishes to participate in the proceeding. *See* 40 C.F.R. § 22.45(c)(1).

Should EPA choose to issue the CAFO after considering any comments received, EPA will send a copy of the CAFO assessing a penalty to any persons who submitted written comments during the public comment period. Commenters will then have 30 days to petition the Regional Administrator to set aside the CAFO on the basis that material evidence was not considered. The specific procedures that apply when a commenter petitions the Regional Administrator include, among other things, an opportunity for EPA to withdraw the CAFO. If EPA does not withdraw the CAFO within 15 days of receipt of the petition, a Petition Officer shall be assigned to consider and rule on the petition. The Petition Officer shall issue written findings as to, among other things, the extent to which the petition states an issue relevant and material to the issuance of the CAFO and whether resolution of the proceeding is appropriate without a hearing. *See* 40 C.F.R. § 22.45(c)(4).

If a hearing is held, EPA will advise commenters who, during the public comment period, submitted a written request to participate in a hearing of the date, time, and place of the hearing, which they may attend and present evidence on the appropriateness of the proposed penalty assessment by following the instructions in 40 C.F.R. 22.45(c)(1).