

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

FILED

Sep 26, 2024

8:23 am

U.S. EPA REGION 5
HEARING CLERK

In the Matter Of:)	Docket No. SDWA-05-2024-0004
)	
Shell Catalysts & Technologies LP)	Proceeding under Section 1423(c) of the
Michigan City, Indiana,)	Safe Drinking Water Act,
)	42 U.S.C. § 300h-2(c)
Respondent.)	
_____)	

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 Shell Catalysts & Technologies LP, a company doing business in Indiana.

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 Indiana. The UIC program for the State of Indiana is set forth at 40 C.F.R. Part 147, Subpart P and consists of the UIC program requirements of 40 C.F.R. Parts 124, 144, 146, and 148 and the additional requirements set forth in the remainder of Subpart P.

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 are used by (1) by 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) 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 and (3) radioactive waste disposal which inject fluids

below the lowermost formation containing an underground source of drinking water within one quarter mile of the well bore. 40 C.F.R. § 144.6(a).

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) of the SDWA, 42 U.S.C. § 300h-2(a), authorizes EPA to assess a civil penalty to any person found to be in violation of any requirement of an applicable UIC program and/or order compliance with such requirement or regulation pursuant to Section 1423(c) of the SDWA, 42 U.S.C. § 300h-2(c).

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 \$27,894 for each day of violation, up to a maximum administrative penalty of \$348,671 for SDWA violations occurring after November 2, 2015, and/or issue an order requiring compliance.

Factual Allegations and Alleged Violations

21. Respondent is a company, 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 IN-091-1I-0001, IN-091-1I-0002, and IN-091-1I-0006 (the Permits) for Well No. 1, Well No. 2, and Well No. 3 (the Wells) to Respondent to operate these underground injection wells located in LaPorte County, Indiana in accordance with the respective Permits.

23. The Permits authorize the underground injection of nonhazardous industrial

wastewater into the Wells, subject to the terms and conditions set forth in the Permits.

24. The Wells authorized by the Permits are injection wells. 40 C.F.R. § 144.3.

25. Nonhazardous industrial wastewater 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.

26. The subsurface emplacement of nonhazardous industrial wastewater through the Wells is a “well injection.” 40 C.F.R. § 144.3.

27. Respondent’s facility located at 1800 E US Highway 12, Michigan City, IN 46360 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.

28. The well injections authorized by the Permits occurred at Respondent’s injection wells.

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

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

31. On August 28, 2023, pursuant to EPA’s authority under 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 1800 E US Highway 12, Michigan City, IN 46360 (August 2023 Inspection).

32. On November 9, 2023, EPA issued a Notice of Violation (NOV) to Respondent alleging certain potential violations of the SDWA regulations and the SDWA.

33. On December 7, 2023, EPA and Respondent discussed the violations.

34. On November 22, 2023, and December 15, 2023, EPA received Respondent's written responses to the NOV.

35. Under 40 C.F.R. § 144.51(a) and Part I(E) 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: Well 3 Overdue for a Part II Mechanical Integrity Test (MIT)

36. Part I(G)(2)(b) of the Permits requires that an approved temperature, noise, oxygen activation, or other approved log (also known as a Part II MIT) shall be run at least once every sixty months from the date of the last approved demonstration to test for movement of fluid along the bore hole.

37. The last Part II MIT for Well 3 (Permit IN-091-11-006) was completed on April 6, 2018. The most recent Part II MIT was due to be completed by April 6, 2023. Well 3 was in operation without an up to date and passing Part II MIT from April 6, 2023, to August 9, 2023. Upon realizing the well was past due for testing, Respondent shut off the well and reported the issue to EPA on August 9, 2023. Respondent completed and passed a Part II MIT on Well 3 on August 15, 2023.

38. Each day Respondent was overdue for Part II MIT for Well 3 constitutes a violation of Part I(G)(2)(b) of the Permit and Section 1423 of the SDWA; 42 U.S.C § 300h-2.

COUNT 2: Submission of Inaccurate Information

39. Part II(D)(1)(a) of the Permits require maximum injection pressures to be reported in a monthly report.

40. Part I(E)(11) of the Permits require all reports or other information required to be submitted by this permit or requested by the Director shall be signed and certified in accordance with 40 C.F.R. § 144.32.

41. 40 C.F.R. § 144.32 provides that any person signing a document under paragraph (a) or (b) of this section shall make the following certification:

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.

42. EPA reviewed monthly operating reports submitted to EPA by Respondent from June 2021 to June 2023. During this period, there were two instances in which Respondent reported maximum injection pressures (MIP) above their permitted limit. These occurred at Well 1 on January 23, 2023, and at Well 3 on June 7, 2023. There were two additional instances in which Respondent reported MIP exceedances that would have triggered an automatic well shut-off. These occurred at Well 1 on January 13, 2022, and at Well 3 on August 16, 2022.

43. On September 11, 2023, Respondent stated that all four apparent MIP exceedances did not represent real world conditions at the wells and were caused by simulated training exercises. The monthly reports for those dates did not distinguish between actual and simulated MIP values.

44. Each instance Respondent failed to report accurate MIP values in its monthly operating reports constitutes a violation of Part II(D)(1)(a), Part I(E)(11) and Section 1423 of the SDWA; 42 U.S.C § 300h-2.

Civil Penalty

45. 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), the appropriate EPA UIC Program Judicial and Administrative Order Settlement 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 \$6,710.

46. Within 30 days after the effective date of this CAFO, Respondent must pay a \$6,710 civil penalty by an on-line payment. To pay on-line, go to www.pay.gov. Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

47. 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: Adamiec.James@epa.gov, R5WECA@epa.gov, GarlSmith.Emma@epa.gov, and Grubb.Christopher@epa.gov.

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

49. 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.

50. 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.

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

52. 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).

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

54. Except as provided in Paragraph 51, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal law administered by EPA.

Compliance Requirements

55. As provided by Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), Respondent shall, from the effective date of this Order, comply with the following:

- a. Remove or make note of any simulated test values that are not representative of actual well conditions in Respondent's monthly reports.
- b. Within 90 days of the effective date of this CAFO, submit to EPA for review and implement a standard operating procedure ("SOP") providing:
 - (1) adequate direction to all staff or contractors in monitoring, recording, and reporting practices required by the Permit[s];
 - (2) procedures for

measuring and reporting injection pressure, annulus pressure, annulus/tubing differential, flow rate, temperature, sight glass level, cumulative volume, annulus fluid loss, physical characteristics of injected fluids, chemical composition of injected fluids and pH; and (3) procedures for maintenance of monitoring information 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.

56. To the extent possible, Respondent must electronically submit all reports, notifications, documentation, submissions, and other correspondence required to be submitted by Paragraph 55 to EPA. If electronic submittal is not possible, the submissions must be made by certified mail (return receipt requested) to the enforcement officers and EPA attorneys whose names and contact information are identified in Paragraph 47, above.

57. Respondent must provide all electronic documents submitted pursuant to Paragraph 55 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.

58. 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.

59. 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 55, 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).

60. 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.

61. 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.

62. Submissions required by Paragraph 55 shall be deemed submitted on the date they are sent electronically or on the date postmarked if sent by U.S. mail.

63. The information required to be submitted pursuant to Paragraph 55 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.

64. 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 55 and the amount paid pursuant to Paragraph 45 are restitution, remediation, or required to come into compliance with the law.

65. EPA may use any information submitted in accordance with Paragraph 55 in support of an administrative, civil, or criminal action against Respondent.

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

67. Absent the notice described in Paragraph 66, Respondent may request in writing that EPA terminate this Compliance Order. With this request for termination, Respondent must submit to the EPA enforcement officer identified in Paragraph 47 a written final report and certification of completion describing all actions taken to comply with all requirements of the compliance program in Paragraph 55 and the approximate cost to do so. Respondent must include the certification language required under Paragraph 58. 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

68. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: GarlSmith.Emma@epa.gov and Grubb.Christopher@epa.gov (for Complainant), and Aselda.Thompson@shell.com (for Respondent). Respondent understands that the CAFO will become publicly available upon proposal for public comment and upon filing.

69. 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).

70. 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.

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

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

73. 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.

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

75. 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.

76. 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: Shell Catalysts & Technologies LP
Docket Number. SDWA-05-2024-0004

Shell Catalysts & Technologies LP, Respondent

Kenny Limmer Digitally signed by Kenny Limmer
Date: 2024.06.20 17:54:50 -05'00'

Shell Catalysts & Technologies LP Representative Date

United States Environmental Protection Agency, Complainant

MICHAEL HARRIS Digitally signed by MICHAEL HARRIS
Date: 2024.07.11 09:50:48 -05'00'

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

Consent Agreement and Final Order
In the Matter of: Shell Catalysts & Technologies LP
Docket No. SDWA-05-2024-0004

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: _____ Date: _____
Ann Coyle
Regional Judicial Officer
Region 5
U.S. Environmental Protection Agency