

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

DOCKET NO. SDWA-10-2022-0260

ENI US OPERATING CO. INC.

CONSENT AGREEMENT

Beaufort Sea, Alaska

Respondent.

I. STATUTORY AUTHORITY

1.1 This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 1423(c) of the Safe Drinking Water Act (“SDWA”), 42 U.S.C. § 300h-2(c).

1.2 In accordance with Section 1423(c) of the SDWA, 42 U.S.C. § 300h-2(c), and the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22 (“Part 22 Rules”), EPA issues, and Eni US Operating Co. Inc. (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

1.3 Congress authorized EPA to administer the Underground Injection Control (“UIC”) program within any state that does not have an approved UIC program. SDWA § 1422(c), 42 U.S.C. § 300h-1(c).

1.4 The State of Alaska does not have an approved UIC program for Class I injection wells. Therefore, EPA Region 10 directly implements the Class I UIC program in the State of Alaska. 40 C.F.R. § 147.101.

1.5 Section 1423(a)(2) of the SDWA, 42 U.S.C. § 300h-2(a)(2), grants EPA enforcement authority whenever the Administrator finds that any person subject to any requirement of any applicable UIC program is violating that requirement. EPA's enforcement authority includes commencing a civil action under Section 1423(b) of the SDWA, 42 U.S.C. § 300h-2(b), or issuing an administrative order to require compliance with UIC regulations, to assess penalties, or both under Section 1423(c) of the SDWA, 42 U.S.C. § 300h-2(c).

1.6 Section 1445 of the SDWA, 42 U.S.C. § 300j-4, authorizes EPA to conduct inspections and to request information to determine whether the owner or operator of an injection well has acted or is acting in compliance with the UIC program.

1.7 Section 1445 of the SDWA, 42 U.S.C. § 300j-4, authorizes EPA to require an owner or operator of an injection well to establish and maintain records, make reports, conduct monitoring, and provide other information as is deemed necessary to determine whether the owner or operator has acted or is acting in compliance with Part C of the SDWA or its implementing regulations.

II. PRELIMINARY STATEMENT

2.1 Issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective. 40 C.F.R. §§ 22.13(b), 22.18.

2.2 The Director of the Enforcement and Compliance Assurance Division, EPA Region 10 ("Complainant") has been delegated the authority, pursuant to Section 1423(c) of the SDWA, 42 U.S.C. § 300h-2(c), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of the SDWA is proposed to be assessed.

2.3 Respondent is voluntarily entering into the terms of this Consent Agreement, and as a result, Respondent agrees not to request a hearing on this Consent Agreement at any time and Respondent also agrees to not request a hearing on the Final Order after it becomes effective in accordance with Paragraph 2.1. SDWA § 1423(c)(3)(A), 42 U.S.C. § 300h-2(c)(3)(A).

2.4 Respondent agrees not to contest EPA's jurisdiction or authority to enter into or enforce this Consent Agreement. Respondent agrees not to contest the validity of any terms and conditions of this Consent Agreement in any action to enforce, or any action arising from, this Consent Agreement.

2.5 This Consent Agreement and Final Order shall bind Respondent and its agents, employees, attorneys, successors, and assigns, and all persons, contractors, and consultants acting in concert with Respondent.

2.6 Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the SDWA together with the specific provisions of the SDWA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1 Underground injection is prohibited, except as authorized by rule or permit under the UIC program. 40 C.F.R. § 144.11.

3.2 Respondent is a corporation and is therefore a "person" within the meaning of the SDWA. SDWA § 1401(12), 42 U.S.C. §§ 300f(12); 40 C.F.R. § 144.3.

3.3 Respondent is the "owner" and/or "operator" of the injection well SD37-DSP1, which is located on a man-made gravel island named the Spy Island Drill Site within the tideland

waters of the Beaufort Sea approximately 40 miles northwest of Prudhoe Bay, Alaska (“the Facility”). 40 C.F.R. § 144.3.

3.4 On September 16, 2008, EPA issued Permit No. AK-11011-A for the Facility authorizing the injection of non-hazardous industrial waste in accordance with 40 C.F.R. § 144.33 and the conditions set forth in the Permit. On April 16, 2013, the Permit was reissued with a major modification and was renamed AK-11011-B. Permit No. AK-11011-B was reissued as AK-11011-C, effective on September 16, 2018, and was subject to minor modifications on May 2, 2019 (“the Permit”).

3.5 Construction for well SD37-DSP1 at the Facility was completed in October 2011.

3.6 At all times relevant to this Consent Agreement, Respondent operated at the Facility and well SD37-DSP1.

3.7 Well SD37-DSP1 at the Facility exists for the purpose of underground injection of non-hazardous industrial waste and is therefore a Class I UIC injection well. 40 C.F.R. §§ 144.3, 144.6, and 146.5.

3.8 As the “owner” and/or “operator” of the Class I injection well, Respondent is subject to regulation under the UIC program. 40 C.F.R. § 144.3.

3.9 According to Part I.E of the Permit, Respondent must comply with all conditions of the Permit. Any noncompliance with the Permit constitutes a violation of the SDWA.

Violations

Count 1: Unauthorized Injection During Loss of Mechanical Integrity

3.10 The statements in Paragraphs 1.1 – 3.9 are hereby incorporated by reference as if set forth in full.

3.11 Part II.C.3.c.5 of the Permit states that “[i]n the event that the well fails to demonstrate mechanical integrity during a test or a loss of mechanical integrity occurs during operation, the Permittee shall halt operation immediately and shall not resume operation until the Director or an EPA authorized representative gives approval to resume injection.”

3.12 On October 18, 2021, and October 19, 2021, the Facility lost mechanical integrity, and the Respondent injected waste material into well SD37-DSP1 to test the well’s mechanical integrity without EPA authorization. EPA alleges that this is in violation of Part II.C.3.c.5 of the Permit and is therefore a violation of the SDWA.

3.13 Under Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), and 40 C.F.R. Part 19, Respondent could be liable for administrative civil penalties up to \$25,076 per violation per day during which a violation continued as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, amended by the Debt Collection Improvement Act of 1996, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19.

Count 2: Exceedance of Annulus Pressure Limitation

3.14 The statements in Paragraphs 1.1 – 3.9 are hereby incorporated by reference as if set forth in full.

3.15 Part II.C.7 of the Permit states that “[a] positive surface pressure up to 1,500 [pounds per square inch] [“(]psi[”)”] is authorized for the inner annulus” of the injection well.

3.16 On October 18, 2021, and October 19, 2021, Respondent injected waste material into well SD37-DSP1 to test the well’s mechanical integrity without EPA authorization, despite a positive surface pressure for the inner annulus exceeding 1500 psi. EPA alleges that this is in violation of Part II.C.7 of the Permit and is therefore a violation of the SDWA.

3.17 Under Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), and 40 C.F.R. Part 19, Respondent could be liable for administrative civil penalties up to \$25,076 per violation per day during which a violation continued as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, amended by the Debt Collection Improvement Act of 1996, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19.

Count 3: Failure to Monitor Injection Rate on a Continuous Basis

3.18 The statements in Paragraphs 1.1 – 3.9 are hereby incorporated by reference as if set forth in full.

3.19 Part II.C.2 of the Permit states that “[d]uring injection, the Permittee shall monitor the well injection pressure, tubing-casing inner annulus pressure, and the injection rate on a continuous basis.”

3.20 Due to a malfunction of the electric stroke counter of the pump meter for well SD37-DSP1 at the Facility, EPA alleges that Respondent failed to continuously monitor the well injection rate for well SD37-DSP1 at the Facility from April 29, 2020, through June 2020 and from December 27, 2020, through November 8, 2021. EPA alleges that this is a violation of Part II.C.2 of the Permit and is therefore a violation of the SDWA.

3.21 Under Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), and 40 C.F.R. Part 19, Respondent could be liable for administrative civil penalties up to \$25,076 per violation per day during which a violation continued as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, amended by the Debt Collection Improvement Act of 1996, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19.

Count 4: Failure to Maintain Continuous Monitoring Device

3.22 The statements in Paragraphs 1.1 – 3.9 are hereby incorporated by reference as if set forth in full.

3.23 Part II.D.2 of the Permit states that “[t]he Permittee shall install, maintain, and use continuous monitoring devices to monitor injection pressure and rate for those streams that are hard-piped and continuous, and to monitor the pressure of non-freezing solution in the annulus between the tubing and the casing. Calculated flow data or periodic monitoring are not acceptable except as a back-up system if the primary continuous injection rate device malfunctions or power outage occurs.”

3.24 The electric stroke counter of the pump meter for well SD37-DSP1 at the Facility experienced a malfunction from April 29, 2020, through June 2020 and from December 27, 2020, through November 8, 2021. The electric stroke counter of the pump rate meter for well SD37-DSP1 at the Facility is essential to continuously monitor the injection rate. EPA alleges that this is a violation of Part II.D.2 of the Permit and is therefore a violation of the SDWA.

3.25 Under Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), and 40 C.F.R. Part 19, Respondent could be liable for administrative civil penalties up to \$25,076 per violation per day during which a violation continued as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, amended by the Debt Collection Improvement Act of 1996, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19.

Count 5: Failure to Properly Maintain Facility

3.26 The statements in Paragraphs 1.1 – 3.9 are hereby incorporated by reference as if set forth in full.

3.27 Part I.E.6 of the Permit states that “[t]he Permittee shall, at all times, properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Permittee to achieve compliance with the conditions of this permit.”

3.28 As a result of the stroke counter’s malfunction, EPA alleges that Respondent failed to properly maintain the electric stroke counter of the pump rate meter for well SD37-DSP1 at the Facility from April 29, 2020, through June 2020 and from December 27, 2020, through November 8, 2021. EPA alleges that this is a violation of Part I.E.6 of the Permit and is therefore a violation of the SDWA.

3.29 Under Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), and 40 C.F.R. Part 19, Respondent could be liable for administrative civil penalties up to \$25,076 per violation per day during which a violation continued as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, amended by the Debt Collection Improvement Act of 1996, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19.

IV. TERMS OF SETTLEMENT

4.1 Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2 Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3 Pursuant to Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), and in consideration of the statutory penalty factors identified in Section 1423(c)(4)(B) of the SDWA, 42 U.S.C. § 300h-2(c)(4)(B), EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$113,000 (the “Assessed Penalty”).

4.4 Respondent agrees to pay the Assessed Penalty within thirty (30) days of the effective date of the Final Order in accordance with Paragraph 2.1, and to undertake the actions specified in this Consent Agreement.

4.5 Payment under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check shall be payable to the order of "Treasurer, United States of America" and delivered to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

Respondent shall note on the check the title and docket number of this action.

4.6 Concurrently with payment, Respondent shall serve photocopies of the check, or proof of other payment method described in Paragraph 4.3, on the Regional Hearing Clerk and EPA Region 10 by electronic mail at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10
R10_RHC@epa.gov

Donna Ortiz
U.S. Environmental Protection Agency
Region 10
Ortiz.donna@epa.gov

4.7 If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of the Assessed Penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action to collect any unpaid penalties, together with costs, attorney's fees, and interest, as set forth

below. In any collection action, the validity, amount, and appropriateness of the penalty will not be subject to review. SDWA § 1423(c)(7), 42 U.S.C. § 300h-2(c)(7).

4.8 If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall also be responsible for payment of the following amounts:

4.8.1. *Interest.* Any unpaid portion of the Assessed Penalty will bear interest, at the rate established by the Secretary of the United States Treasury, from the effective date of the Final Order contained herein, provided, however, that no interest will be payable on any portion of the Assessed Penalty that is paid within thirty (30) days of the effective date of the Final Order contained herein. SDWA § 1423(c)(7), 42 U.S.C. § 300h-2(c)(7); 31 U.S.C. § 3717(a)(1).

4.8.2. *Nonpayment Penalty.* Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the Assessed Penalty that is more than ninety (90) days past due, which nonpayment shall be calculated as of the date the underlying penalty first becomes past due.

4.8.3. *Attorneys' Fees and Costs.* Pursuant to Section 1423(c)(7) of the SDWA, 42 U.S.C. § 300h-2(c)(7), should Respondent fail to pay the Assessed Penalty on a timely basis, Respondent shall also be required to pay the United States' enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings.

4.9 **Federal Tax.** The Assessed Penalty, including any additional costs incurred under Paragraphs 4.6.1 and 4.6.2, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes. 26 U.S.C § 162(f).

General Provisions

4.10 The undersigned representative of Respondent certifies that they are fully authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.11 Except as described in Paragraph 4.6 of this Consent Agreement, each party shall bear its own costs in bringing or defending this action.

4.12 For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in the Consent Agreement and to appeal the Final Order.

4.13 The provisions of this Consent Agreement and the Final Order shall bind Respondent and their agents, servants, employees, successors, and assigns.


4.14 Respondent consents to any conditions specified in this Consent Agreement.

4.15 The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10 as of the date signed below.

DATED:

FOR ENI US OPERATING CO. INC.:

10/18/2022



MASSIMO INSULLA
President and Chief Executive Officer
Eni US Operating Co. Inc.

FOR COMPLAINANT:

EDWARD J. KOWALSKI
Director
Enforcement and Compliance Assurance Division
EPA Region 10