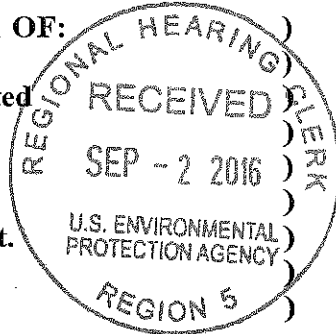


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

Cargill, Incorporated
St. Clair, Michigan

Respondent.



Docket No. SDWA-05-2016-0002

Proceeding Seeking a
Compliance Order and
Assessment of a Civil
Penalty Under Section
1423(c) of the Safe
Drinking Water Act,
42 U.S.C. §300h-2(c)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 1423(c) of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300h-2(c), and Sections 22.13(b) and 22.18(b)(2) and (3) 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. The Complainant is, by lawful delegation, the Director of the Water Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is the salt extraction business unit of Cargill, Incorporated, a Delaware corporation doing business in the State of Michigan.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the 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), 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 U.S. EPA to promulgate regulations for State underground injection control (UIC) programs to prevent the endangerment of underground sources of drinking water, including inspection, monitoring, recordkeeping and reporting requirements.

10. Section 1422(b) of SDWA, 42 U.S.C. § 300h-1(b), provides that States, upon receipt of U.S. EPA's approval of a proposed UIC program, may implement a Federally-enforceable UIC program in that State and obtain primary enforcement responsibility of that program (a concept called "primacy").

11. Pursuant to Sections 1421 and 1422 of SDWA, 42 U.S.C. §§ 300h and 300h-1, respectively, U.S. EPA promulgated UIC regulations at 40 C.F.R. Parts 144-147.

12. Federal regulations, at 40 C.F.R. § 144.3, define "well" as "a bored, drilled, or driven shaft whose depth is greater than the largest surface dimension; or, a dug hole whose depth is greater than the largest surface dimension; or, an improved sinkhole; or a subsurface fluid distribution system."

13. Federal regulations, at 40 C.F.R. § 144.6, define five classes of injection wells, including deep hazardous waste injection wells (Class I), wells for the reinsertion of

brines associated with the production of petroleum and natural gas (Class II), wells for the extraction of minerals (Class III), shallow wells for the disposal of hazardous waste (Class IV), and any well not included in the above descriptions (Class V).

14. The UIC program for the State of Michigan is set forth at 40 C.F.R. Part 147, Subpart X.

15. Pursuant to 40 C.F.R. § 147.1151, at all times relevant to this Complaint, U.S. EPA had primacy over Class III wells, as defined by 40 C.F.R. § 146.5, in the State of Michigan.

16. Pursuant to 40 C.F.R. § 147.1151, the UIC program for the State of Michigan for Class III wells, as defined by 40 C.F.R. § 146.5, consists of the UIC program requirements set forth at, *inter alia*, 40 C.F.R. Parts 124, 144, 146, 147 (Subpart X) and 148, and was effective on June 25, 1984.

17. The UIC program set forth at 40 C.F.R. § 147.1151, constitutes the “applicable underground injection control program” as defined by Section 1422(d) of SDWA, 42 U.S.C. § 300h-1(d), for the State of Michigan.

18. Section 1423(a) of SDWA, 42 U.S.C. § 300h-2(a), provides, *inter alia*, that the Administrator may issue an order under Section 1423(c), of SDWA, 42 U.S.C. § 300h-2(c), to any person found to be in violation of any regulation or requirement of an applicable UIC program in a State that does not have primacy.

19. Section 1423(c)(1) of SDWA, 42 U.S.C. 300h-2(c)(1), provides that U.S. EPA may issue to any person in violation of any regulation or requirement other than those relating to (A) the underground injection of brine or other fluids brought to the surface in connection with oil or natural gas production or (B) underground injection for

the secondary or tertiary recovery of oil or natural gas, an administrative order assessing a civil penalty of not more than \$10,000 for each day of violation for any past or current violation, up to a maximum administrative penalty of \$125,000, or requiring compliance with such regulation or requirement, or both. Pursuant to the Civil Penalties Inflation Adjustment Act, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996 (“DCIA”), 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19, increased the statutory maximum penalty to \$11,000 per day of violation under Section 1423(c)(1) of SDWA, 42 U.S.C. § 300h-2 (c)(1), for SDWA violations occurring after January 30, 1997, through January 12, 2009, and to \$16,000 per day for violations occurring after January 12, 2009. This statute and its regulations also increased the maximum penalty EPA may seek in this action to \$157,500 for violations occurring after March 15, 2004, through January 12, 2009, and to \$177,500 for violations occurring after January 12, 2009. For violations that occurred after January 12, 2009 through December 6, 2013, the statute also raised the maximum penalty EPA may seek to \$177,500. For violations that occurred after December 6, 2013, the statutory maximum amount of administrative penalties that can be assessed under SDWA Section 1423(c)(1), 42 U.S.C. § 300h-2(c)(1), was raised from \$177,500 to \$187,500.

Factual Allegations and Alleged Violations

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

21. Pursuant to the provisions of the Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*), Respondent is authorized to operate fifteen underground injection wells in St. Clair County, Michigan under EPA Permit MI-147-3G-A001 (“the Permit”) dated May

16, 1997.

22. At all times relevant to this CAFO, Respondent was the owner and operator of wells M3, M4, M5, M6, M7, M8, M9, M10, M11, M12 and M14 under the Permit. All of the wells are in St. Clair County, Michigan.

23. Wells M3, M4, M5, M6, M7, M8, M9, M10, M11, M12 and M14 are bored, drilled or driven shafts, or dug holes, whose depths are greater than the largest surface dimension.

24. Wells M3, M4, M5, M6, M7, M8, M9, M10, M11, M12 and M14 are “wells” as defined at 40 C.F.R. § 144.3.

25. At times relevant to this Complaint, Respondent has performed, or has been authorized to perform, the subsurface emplacement of brine and fresh water into wells M3, M4, M5, M6, M7, M8, M9, M10, M11, M12 and M14.

25. Brine and fresh water are materials or substances which flow or move in a semisolid, liquid, sludge, gas, or any other form or state.

26. Brine and fresh water are “fluids” as defined at 40 C.F.R. § 144.3.

27. The subsurface emplacement of brine and fresh water through wells M3, M4, M5, M6, M7, M8, M9, M10, M11, M12 and M14 is a “well injection” as defined at 40 C.F.R. § 144.3.

28. Respondent's “well injection” is an “underground injection” as defined by 40 C.F.R. § 144.3.

29. Wells M3, M4, M5, M6, M7, M8, M9, M10, M11, M12 and M14 are Class III wells as defined by 40 C.F.R. §§ 144.6 and 146.5.

COUNT I

Failure to Demonstrate Mechanical Integrity When Required

30. Complainant incorporates paragraphs 1 through 29 of this CAFO as if set forth in this paragraph.

31. Part I (E)(19) of the Permit (*see* Page 11 of the Permit) specifies the mechanical integrity requirements for the Cargill Wells. There are two parts to a mechanical integrity demonstration: The first component (*see* Part I (E)(19)(a), Page 11 of the Permit) demonstrates that there are no significant leaks in each well's casing, tubing or packer, and the second component (*see* Part I (E)(19)(b), Page 11 of the Permit) demonstrates that there is no significant movement into an underground source of drinking water through vertical channels adjacent to the wellbore.

32. Part I (E)(19) of the Permit also specifies the mechanical integrity demonstration schedule for each well. Both parts of the mechanical integrity test (Part I (E)(19)(a) and Part II (E)(19)(b)) must be demonstrated every 60 months from the date of the last approved demonstration.

33. The Respondent failed to timely perform fifteen mechanical integrity tests for the wells listed in Paragraph 29 (11 Part-1 and 4 Part-2 demonstrations) from the date of the last approved demonstration.

COUNT II

Failure to Notify the Director of Noncompliance

34. Complainant incorporates paragraphs 1 through 33 of this CAFO as if set forth in this paragraph.

35. Part I (E)(10)(f) of the Permit (*see* Page 7 of the permit) requires the permittee to report to the Director all instances of noncompliance, pursuant to Part I

(E)(10)(e)(i) and (ii).

36. The Respondent failed to timely notify the Director of the overdue mechanical integrity tests for the wells listed in Paragraph 29, which constitutes a violation of Part I (E)(10)(f) of the Permit.

COUNT III

Failure to Submit Test Results Within Sixty (60) Days

37. Complainant incorporates paragraphs 1 through 36 of this CAFO as if set forth in this paragraph.

38. The “Reporting Requirements section,” Part II (B)(3)(b) of the Permit (*see* Page 16 of the Permit), requires the permittee to submit to the Director reports and test results, including mechanical integrity tests, within 60 days of completion of the activity.

39. Respondent failed to submit fifteen mechanical integrity tests within the 60-day submission period, thus violating the reporting requirement described in Paragraph 38.

40. Respondent's violations of the Permit in Counts I, II and III, referenced above, subject Respondent to the issuance of an administrative order pursuant to Section 1423(c)(1) of SDWA, 42 U.S.C. § 300h-2(c)(1).

Civil Penalty

41. Section 1423(c)(4)(B) of SDWA, 42 U.S.C. § 300h-2(c)(4)(B), provides that, in assessing a civil penalty under Section 1423(c), U.S. EPA must take into account (i) the seriousness of the violation, (ii) the economic benefit (if any) resulting from the violation, (iii) any history of such violations, (iv) any good faith efforts to comply with the applicable requirements, (v) the economic impact of the penalty on the violator, and

(vi) such other matters as justice may require.

42. Based upon the factors set forth at Section 1423(c)(4)(B) of SDWA, 42 U.S.C. § 300h-2(c)(4)(B), and applicable penalty policies, including *Region 5 Underground Injection Control Proposed Administrative Order Penalty Policy* (September 21, 1994), Complainant has determined that an appropriate civil penalty to settle this action is \$70,000 (SEVENTY THOUSAND DOLLARS).

43. Within 30 days after the effective date of this CAFO, Respondent must pay a \$70,000 civil penalty for the SDWA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA, Region 5
P.O. Box 70753
Chicago, Illinois 60673

The check must note the following: Cargill, Incorporated, the docket number of this CAFO, and the billing document number **SDWA-05-2016-0002**

44. A transmittal letter, stating Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document number, must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Ray Urchel (WU-16J)
Underground Injection Control Branch
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Puja Lakhani (C-14J)

Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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

46. If Respondent does not timely pay the civil penalty, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

47. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

48. This Agreement, upon incorporation into a Final Order and full satisfaction by the parties, shall be a complete and full resolution of the Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

49. 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 violations of law not alleged in this CAFO.

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

51. Complainant is providing public notice of and a reasonable opportunity to comment on the proposed assessment of an administrative penalty against Respondent. The public notice and comment period will last for no less than 40 days before the issuance of an order assessing a civil penalty pursuant to 40 C.F.R. §22.45.

52. The terms of this CAFO bind the Complainant, the Respondent and Respondent's successors, and assigns.

53. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

54. Each party agrees to bear its own costs and attorney's fees in this action.

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

Cargill Incorporated, Respondent

8-24-16

Date

Kaye DeLange

Kaye DeLange, V.P. of Operations
Cargill, Incorporated

United States Environmental Protection Agency, Complainant

8/31/2014

Date

Tinka G. Hyde ACTING FOR

Tinka G. Hyde, Director
Water Division

**In the Matter
of: Cargill,
Incorporated
Docket No. SDWA-05-2016-0002**

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date

Robert A. Kaplan
Acting Regional Administrator
United States Environmental Protection Agency Region 5