

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. SDWA-05-2020-0006	
)		
Paxton Resources, LLC)	Proceeding under Section 1423(c) of the	
Gaylord, Michigan)	Safe Drinking Water Act,	
)	42 U.S.C. § 300h-2(c)	
Respondent.)		Type text here
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CONSENT AGREEMENT AND FINAL ORDER

I. STATUTORY AUTHORITY

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 22.13(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 Title 40 of the Code of Federal Regulations (“C.F.R.”) Part 22.

2. The authority to take action under Section 1423(c) of SDWA, 42 U.S.C. § 300h-2(c), is delegated to the Administrator of the U.S. Environmental Protection Agency (“EPA”). The Administrator of EPA delegated the authority to issue this consent agreement and final order (“CAFO”) to the Regional Administrator of EPA Region 5, who delegated the authority to the Director of the Enforcement and Compliance Assurance Division (Complainant).

3. Pursuant to Section 1422 of SDWA, 42 U.S.C. § 300h-1, and EPA’s regulations at 40 C.F.R. § 147.1151, EPA has primary enforcement responsibility for the Underground Injection Control (“UIC”) program in the State of Michigan to ensure that owners or operators of injection wells within Michigan comply with the requirements of SDWA.

4. Complainant is initiating this administrative action under Section 1423(a)(2) of SDWA, 42 U.S.C. § 300h-2(a)(2), which authorizes EPA to issue an order assessing a civil penalty against any person found to be in violation of any requirement of an applicable UIC program and requiring the person to comply.

II. JURISDICTION AND WAIVERS

5. 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 CAFO. *See* 40 C.F.R. § 22.13(b).

6. 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. This CAFO constitutes a civil settlement and satisfaction of all alleged violations described herein.

7. For purposes of this administrative proceeding only, Paxton Resources, LLC (“Respondent”) admits the jurisdictional allegations in this CAFO and neither admits nor denies the remaining allegations in this CAFO.

8. Respondent consents to the terms of this CAFO, including the assessment of the civil penalty and the compliance requirements specified below.

9. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO including, but not limited to, its right to request a hearing under 40 C.F.R. § 22.15(c) and Section 1423(c)(3) of SDWA, 42 U.S.C. § 300h-2(c)(3); its right to seek federal judicial review of the CAFO pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706; any right to contest the allegations in this CAFO; and its

right to appeal this CAFO under Section 1423(c)(6) of SDWA, 42 U.S.C. § 300h-2(c)(6).

Respondent also consents to the issuance of this CAFO without further adjudication.

III. ALLEGATIONS

10. Respondent is a limited liability company registered to do business in Michigan with an office located at 132 North Otsego Avenue, Gaylord, Michigan 49753.

11. 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.

12. Pursuant to SDWA, 42 U.S.C. § 300f *et seq.*, and EPA’s implementing regulations at 40 C.F.R. Parts 124, 144, 146 and 147, EPA authorized Respondent to operate Class II injection wells in Antrim, Alcona, Oscoda, and Otsego Counties, Michigan, pursuant to the following permits (the “Permits”): (1) Alba B4-27 SWD, MI-009-2D-0154; (2) Birch Creek B2-11 SWD, MI-001-2D-0032; (3) Mohammed C4-1 SWD, MI-135-2D-0021; (4) JA Bott A4-13 SWD, MI-137-2D-0111; (5) Bluelite B2-10 SWD, MI-137-2D-0294; (6) Gornick B3-18 SWD, MI-137-2D-0295; and (7) Gornick D4-22 SWD, MI-137-2D-0313.

13. At all times relevant to this CAFO, Part I (E)(1) of each Permit required Respondent to comply with all conditions of the Permit (except to the extent and for the duration such non-compliance is authorized by an emergency permit pursuant to 40 C.F.R. § 144.34).

14. Under 40 C.F.R. § 144.51(a), the permittee must comply with all conditions of its permit, and each day of non-compliance constitutes a violation of SDWA and is grounds for enforcement action, permit termination, revocation and reissuance, or modification, or denial of a permit renewal application.

15. At all times relevant to this CAFO, Respondent owned and operated the Alba B4-27 SWD, Birch Creek B2-11 SWD, Mohammed C4-1 SWD, JA Bott A4-13 SWD,

Bluelite B2-10 SWD, Gornick B3-18 SWD, and Gornick D4-22 SWD wells, and was thus subject to conditions in the Permits and the UIC program requirements set forth at 40 C.F.R. Parts 124, 144, 146, and 147.

16. At no time relevant to this CAFO did the Respondent apply for and obtain an emergency permit for any of the wells listed in Paragraph 12 above pursuant 40 C.F.R. § 144.34.

Count I – Failure to Record Weekly Injection Pressure

17. The factual allegations set forth in Paragraphs 10 through 16 above are incorporated by reference into Count I as if fully set forth herein.

18. At all times relevant to this CAFO, Part II (B)(2)(d) and Part III (A) of the Permits required Respondent to monitor and record injection pressure at least weekly.

19. In accordance with Part II (B)(2)(d) of the Permits, all gauges used in monitoring are to be calibrated in accordance with Part I (E)(17)(e).

20. From May, 2014, to August, 2016, inclusive, Respondent failed to record weekly measurements of injection pressure in accordance with Part II (B)(2)(d) and Part III (A) of the Permits.

21. Respondent's failure to record weekly measurements of injection pressure is a violation of the Permits, the UIC regulations at 40 C.F.R. § 144.51, and SDWA.

Count II – Failure to Report Weekly Injection Pressure Measurements

22. The factual allegations set forth in Paragraphs 10 through 16 above are incorporated by reference into Count II as if fully set forth herein.

23. At all times relevant to this CAFO, Part II (B)(2)(d), Part II (B)(3)(a), and Part III (A) of the Permits require weekly measurements of injection pressure to be reported to EPA in a monitoring report submitted every month.

24. Respondent's monthly monitoring reports for each well identified in Paragraph 12 above uniformly report the injection pressure as "Vacuum" for each week from May, 2014, to August, 2016, inclusive.

25. From May, 2014, to August, 2016, inclusive, Respondent did not report each weekly measurement of injection pressure to EPA in Respondent's monthly monitoring reports in accordance with Part II (B)(2)(d), Part II (B)(3)(a), and Part III (A) of the Permits.

26. Respondent's failure to report weekly measurements of injection pressure to EPA in Respondent's monthly monitoring reports is a violation of the Permits, the UIC regulations at 40 C.F.R. § 144.51(a), and SDWA.

Count III - Failure to Monitor Weekly Annulus Pressure

27. The factual allegations set forth in Paragraphs 10 through 16 above are incorporated by reference into Count III as if fully set forth herein.

28. At all times relevant to this CAFO, Part II (B)(2)(d) and Part III (A) of the Permits require annulus pressure to be monitored and recorded at least weekly.

29. From May, 2014, to August, 2016, inclusive, Respondent failed to take weekly measurements of annulus pressure, or to record such measurements, in accordance with Part II (B)(2)(d) and Part III (A) of the Permits.

30. Respondent's failure to monitor and record weekly measurements of annulus pressure is a violation of the Permits, the UIC regulations at 40 C.F.R. § 144.51(a), and SDWA.

Count IV - Failure to Report Accurate Weekly Measurements of Annulus Pressure

31. The factual allegations set forth in Paragraphs 10 through 16 above are incorporated by reference into Count IV as if fully set forth herein.

32. At all times relevant to this CAFO, Part II (B)(2)(d), Part II (B)(3)(a), and Part III (A) of the Permits require the weekly measurements of annulus pressure to be reported to EPA in a monitoring report submitted every month.

33. Respondent's monthly monitoring reports for each well identified in Paragraph 12 above uniformly report the annulus pressure as "0" (zero) for each week from May, 2014, to August, 2016, inclusive.

34. From May, 2014, to August, 2016, inclusive, Respondent failed to report accurate weekly measurements of annulus pressure to EPA in Respondent's monthly monitoring reports in accordance with Part II (B)(2)(d), Part II (B)(3)(a), and Part III (A) of the Permits.

35. Respondent's failure to report accurate weekly measurements of annulus pressure to EPA in Respondent's monthly monitoring reports is a violation of the Permits, the UIC regulations at 40 C.F.R. § 144.51, and SDWA.

**Count V - Failure of Responsible Corporate Officer
or Duly Authorized Representative to Sign Reports**

36. The factual allegations set forth in Paragraphs 10 through 16 above are incorporated by reference into Count V as if fully set forth herein.

37. Under Part I (E)(11) of the Permits, all reports or other information requested by EPA shall be signed and certified according to 40 C.F.R. § 144.32.

38. Under 40 C.F.R. § 144.32(b), all reports required by permits or other information requested by EPA shall be signed by a person described in 40 C.F.R. § 144.32(a), or by a duly authorized representative of that person.

39. Under 40 C.F.R. § 144.32(a), a responsible corporate officer may sign reports on behalf of a corporation. "Responsible corporate officer" for purposes of this section means:

- (i) A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or
- (ii) the manager of one or more manufacturing, production, or operating facilities ... if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

40. Under 40 C.F.R. § 144.32(b)(1), a person is a “duly authorized representative” only if: (1) the authorization is by a person described in 40 C.F.R. § 144.32(a), (2) the authorization specifies an individual or a position having overall responsibility for overall operations such as a plant manager, operator of a well or well field, superintendent, or position of equivalent authority, and (3) the written authorization is submitted to EPA.

41. On March 16, 2017, Scott Lampert, identifying himself as “Owner” on behalf of Respondent, verified in writing to EPA that Mark Bailey, Paxton Operations Manager, is an “authorized Officer” for Respondent.

42. From May, 2014, through July, 2018, inclusive, EPA received monthly, quarterly, and annual monitoring reports of monitoring results from the Respondent that were signed by Noreen Barrie, Production Assistant.

43. At all times relevant to this CAFO, Noreen Barrie was not a responsible corporate officer as defined under 40 C.F.R. § 122.32(a), or a duly authorized representative under 40 C.F.R. § 122.32(b).

44. From May, 2014 through July, 2018, inclusive, Respondent failed to submit weekly, monthly, and annual monitoring reports that were signed and certified by a responsible corporate officer or a duly authorized representative.

45. Respondent’s failure to submit weekly, monthly, and annual monitoring reports that were signed and certified by a responsible corporate officer or a duly authorized

representative is a violation of the Permits, the UIC regulations at 40 C.F.R. §§ 144.32 and 144.51, and SDWA.

IV. CIVIL PENALTY

46. Under Section 1423(c)(2) of 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 \$7,500 for each day of violation, up to a maximum administrative penalty of \$187,500 for SDWA violations occurring after December 6, 2013 through November 2, 2015, and \$11,665 for each day of violation, up to a maximum administrative penalty of \$291,641 for SDWA violations occurring after November 2, 2015.

47. Section 1423(c)(4)(B) of SDWA, 42 U.S.C. 300h-2(c)(4)(B), requires the Administrator to take into account the seriousness of the violation, the economic benefit (if any) resulting from the violation, any history of such violations, any good faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require, when assessing a civil penalty for violations of SDWA.

48. Based upon the facts alleged in this CAFO, the factors listed in Section 1423(c)(4)(B) of 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"), and Respondent's good faith and cooperation in resolving this matter, EPA has determined that an appropriate civil penalty to settle this action is **\$73,755**.

49. Within 30 days of the effective date of this CAFO, Respondent must pay a \$73,755 civil penalty by sending a cashier's or certified check by express mail, 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.

50. At the time of payment, Respondent must also send a copy of a notice of payment and a transmittal letter, stating Respondent's name and complete address, and the docket number of this CAFO, to EPA at the following addresses:

Timothy Elkins (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

Kevin Chow (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

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

52. 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 from the date payment was due at a rate established by the Secretary of the Treasury; the United States' enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings; a \$15 handling charge each month that any portion of the penalty is more than 30 days past due; and 6% per year penalty on any principal amount 90 days past due.

V. COMPLIANCE REQUIREMENTS

53. As provided by Section 1423(c)(2) of SDWA, 42 U.S.C. § 300h-2(c)(2),

Respondent shall, from the effective date of this CAFO:

- (i) Sample, analyze, record and retain all monitoring information in accordance with the Permits and 40 C.F.R. § 144.51(j), including (1) the date, exact place, and time of sample or measurements, (2) the individual or individuals who performed the sampling or measurements, (3) a precise description of both sampling methodology and the handling of samples, (4) the date or dates analyses were performed, (5) the individual or individuals who performed the analyses, (6) the analytical techniques or methods used, and (7) the results of such analysis;
- (ii) In accordance with the terms of the Permits, and in accordance with 40 C.F.R. § 144.51(j), the Respondent shall retain records of all monitoring information including calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation;
- (iii) 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;
- (iv) Within 30 days of the effective date of this CAFO, establish and implement a record keeping system capable of properly preserving and retaining records required by the Permits;
- (v) Within 30 days of the effective date of this CAFO, submit to EPA copies of all field records of monitoring information specified in (i) above with its monthly reports, for 12 months from the effective date of this CAFO. Reports and records of all monitoring information shall be postmarked no later than the 10th day of the month following the reporting period;
- (vi) Within 90 days of the effective date of this CAFO, Respondent will submit to EPA for review and approval, and shall 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.

54. In accordance with Part I (E)(11) of the Permit, all reports, notifications, documentation, and submissions required by this CAFO shall be signed by a responsible corporate officer or 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.”

55. 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. § 2.302(a)(2). The manner of asserting such claims is specified in 40 C.F.R. § 2.203(b). The name and address of any permit applicant or permittee and information which deals with the existence, absence, or level or contaminants in drinking water is not entitled to confidential treatment. 40 C.F.R. § 144.5. Information subject to a business confidentiality claim is available to the public only to the extent, and by means of the procedures, set forth in 40 C.F.R. Part 2, Subpart B. If Respondent does not assert a claim of business confidentiality when it submits the information, EPA may make the information available to the public without further notice.

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

57. 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.

58. Upon EPA approval, submissions by Respondent are incorporated and enforceable as part of this CAFO. In case of inconsistency between any submission by Respondent and this CAFO and its subsequent modifications, this CAFO and its subsequent modifications shall control.

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

60. 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.

VI. GENERAL PROVISIONS

61. Pursuant to 40 C.F.R. § 22.5, the parties consent to service of this CAFO by email at the following email addresses: chow.kevin@epa.gov (for Complainant) and gabozzer@krlawtc.com (for Respondent).

62. Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations alleged in this CAFO. Complainant may not seek additional federal civil penalties for the violations alleged in this CAFO. Violation of this CAFO shall be deemed a violation of SDWA for purposes of Section 1423(b) of SDWA, 42 U.S.C. § 300h-2(b).

63. If Respondent does not pay timely the civil penalty, EPA may request the United States Department of Justice to 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.

64. If Respondent fails to comply with the requirements set forth in Paragraph 53, EPA may request the United States Department of Justice to bring an action to seek penalties for violating this CAFO.

65. This CAFO does not in any case 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.

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

67. Respondent certifies that it is complying with Section 1423 of SDWA, 42 U.S.C. § 300h-2, and its Permits.

68. 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 SDWA, 42 U.S.C. § 300h-2(c)(4)(B).

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

70. 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.

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

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

73. 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

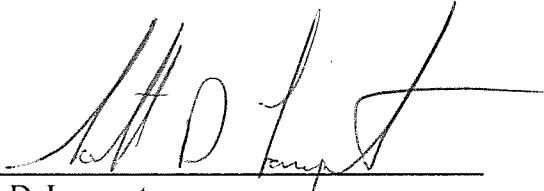
to his proceeding may petition to set aside a consent agreement and final order on the basis that material evidence was not considered.

74. In accordance with Section 1423(c)(3)(D) of 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, this CAFO shall become effective 30 days after the date that the Final Order contained in this CAFO, having been approved and issued by the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

**Consent Agreement and Final Order
In the Matter of: Paxton Resources, LLC
Docket No. SDWA-05-2020-0006**

Paxton Resources, LLC, Respondent

7/31/2020
Date



Scott D. Lampert
Member
Paxton Resources, LLC

**Consent Agreement and Final Order
In the Matter of: Paxton Resources, LLC
Docket No. SDWA-05-2020-0006**

United States Environmental Protection Agency, Complainant

Date

**MICHAEL
HARRIS**

Digitally signed by
MICHAEL HARRIS
Date: 2020.08.23
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Michael D. Harris
Director
Enforcement and Compliance Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: Paxton Resources, LLC
Docket No. SDWA-05-2020-0006

FINAL ORDER

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective 30 days after 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.

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