



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9

In the Matter Of:)	Docket No.: UIC-09-2023-0066
)	
Hilmar Cheese Company, Inc.)	Proceeding under Section 1423(c) of the
Hilmar, California,)	Safe Drinking Water Act,
)	42 U.S.C. § 300h-2(c)
Respondent.)	
<hr/>)	

Consent Agreement and Final Order

Statutory Authority and Parties

1. The United States Environmental Protection Agency (EPA), Region 9 and Hilmar Cheese Company, Inc. (“Hilmar”, “Respondent”) (collectively the “Parties”) agree to settle this matter and consent to the filing of this Consent Agreement and Final Order (CA/FO). This CA/FO 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)(1), 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 40 C.F.R. Part 22.

2. Complainant is, by lawful delegation, the Director of the Enforcement and Compliance Assurance Division of EPA, Region 9. The Administrator of EPA delegated to the Regional Administrator of EPA Region 9 the authority to bring and settle this action under the SDWA. In turn, the Regional Administrator further delegated the authority to bring this action and sign a consent agreement settling this action under the SDWA to the Director of the Enforcement and Compliance Assurance Division.

3. Respondent is Hilmar Cheese Company, Inc. a corporation doing business in California.

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. *See* 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 terms of this CA/FO, including the assessment of the civil penalty as specified below.

Jurisdiction and Waiver of Right to Judicial Review and Hearing

7. Consistent with 40 C.F.R. 22.18(b)(2), for the purpose of this proceeding, Respondent: admits the jurisdictional allegations in this CA/FO; neither admits nor denies the specific factual allegations in this CA/FO; consents to the assessment of the stated civil penalty, and to all conditions specified in the Consent Agreement; and waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.

8. Respondent further 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 CA/FO 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 CA/FO pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06; any right to contest the allegations in this CA/FO; and its

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

Respondent also consents to the issuance of this CA/FO without further adjudication.

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 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 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. Section 1422(c) of SDWA, 42 U.S.C. § 300h-1(c), provides that the Administrator for EPA shall prescribe UIC programs applicable to those states that have not obtained primary enforcement responsibility of their UIC programs (a concept called “primacy”) or do not have primacy for all types of wells.

13. Pursuant to Sections 1421 and 1422 of 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. 40 C.F.R. § 144.1(g) provides that the UIC programs regulate underground injection by six classes of wells and all owners or operators of these injection wells must obtain authorization for injection activity associated with these wells either by permit or rule. Class I wells include (1) wells used 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) other 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 wells which inject fluids below the lower most formation containing an underground source of drinking water within one quarter mile of the well bore. 40 C.F.R. § 144.6(a)(1)-(3).

14. 40 C.F.R. § 144.11 further prohibits any underground injection, except into a well authorized by rule or by permit issued under the UIC program.

15. 40 C.F.R. § 144.51(a) provides that any UIC permittee must comply with all conditions of its permit. Any permit noncompliance constitutes a violation of SDWA and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application; except that the permittee need not comply with the provisions of this permit to the extent and for the duration such noncompliance is authorized in an emergency permit under 40 C.F.R. § 144.34.

16. Section 1401(6) of SDWA, 42 U.S.C. § 300f(6), and 40 C.F.R. § 144.3 define “contaminant” as any physical, chemical, biological, or radiological substance or matter in water.

17. 40 C.F.R. § 144.3 defines “fluid” as any material or substance which flows or

moves whether in a semisolid, liquid, sludge, gas, or any other form or state.

18. 40 C.F.R. § 144.3 defines “injection well” as a “well” into which “fluids” are being injected.

19. 40 C.F.R. § 144.3 defines “permit” as an authorization, license, or equivalent control document issued by EPA or an approved State to implement the requirements of 40 C.F.R. Parts 144, 145, 146 and 124.

20. Section 1401(12) of SDWA, 42 U.S.C. § 300f(12), defines “person” as an individual, corporation, company, association, partnership, State, municipality, or Federal agency (and includes officers, employees, and agents of any corporation, company, association, State, municipality, or Federal agency). *See also* 40 C.F.R. § 144.3.

21. 40 C.F.R. § 144.3 defines “underground injection” as a “well injection.”

22. 40 C.F.R. § 144.3 defines “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.

23. 40 C.F.R. § 144.3 defines “well injection” as the subsurface emplacement of fluids through a well.

24. 40 C.F.R. § 144.51(q) requires owners or operators of Class I wells to “maintain mechanical integrity as defined in 40 C.F.R. § 146.8.”

25. A Class I UIC well has mechanical integrity when “(1) There is no significant leak in the casing, tubing or packer; and (2) There is no significant fluid movement into an underground source of drinking water through vertical channels adjacent to the injection well bore.” See 40 C.F.R. § 146.8.

26. EPA administers and has primary enforcement responsibility for the UIC program

in the State of California for Class I wells.

27. Section 1423(a)(2) of SDWA, 42 U.S.C. § 300h-2(a)(2), provides that any person found to be in violation of any requirement of an applicable UIC program in a state that does not have primacy may be assessed a civil penalty and be subject to an order requiring compliance pursuant to Section 1423(c)(1) of SDWA, 42 U.S.C. § 300h-2(c)(1).

28. Under Section 1423(c)(1) of 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 \$27,018 for each day of violation, up to a maximum administrative penalty of \$337,725 for violations occurring after November 2, 2015 and where penalties are assessed on or after January 6, 2023 and/or issue an order requiring compliance.

Factual Allegations and Alleged Violations

29. Respondent is a corporation, and as such, 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.

30. Respondent owns and operates a Class I well facility located at 9001 North Lander Avenue, Hilmar, California (the “Facility”).

31. At all times relevant to this CA/FO, Respondent owned and/or operated one (1) active UIC Class I well located at the Facility, known as the “WD-3”, and one (1) currently inactive well, known as “WD-2”, that are subject to the UIC program requirements set forth at 40 C.F.R. Parts 124, 144, 146, 147, and 148.

32. Previously, the Respondent operated pursuant to EPA-issued UIC permit No. CA10500001 from January 9, 2006, until September 27, 2021, (“2006 Permit”). Minor Modifications to Permit No. CA10500001 became effective on May 22, 2008 and February 2, 2011. These modifications addressed, among other things, drilling, work-over, plugging,

corrective action, well operation, monitoring, and recordkeeping.

33. On August 26, 2015, Hilmar provided EPA with a timely application for renewal of its UIC Class I permit. Upon receiving supplemental information from the applicant, which the Region had requested, the Region determined that the application was administratively complete, which administratively extended the 2006 permit until the renewal was issued. 40 C.F.R. § 144.37.

34. Currently, Respondent operates under EPA-issued UIC permit No. R9UIC-CA1-FY15-2R effective September 27, 2021 (“2021 Permit”) to present.

35. The Permits authorize the underground injection of nonhazardous treated wastewater from various process units at the Facility. At the time alleged violations occurred, wastewater sources permitted for injection included, per a minor modification to the 2006 Permit dated July 7, 2011: “Injection fluids will consist of Hilmar Cheese Company facility wastewater, including wastewater generated from the sanitizing of equipment and tanks, general facility wash down, equipment blow down, and tanker truck wash outs. Concentrated salt and ultrafiltration and reverse osmosis reject solutions (brine), separated from reclaimed water make up the deep well injectate. Additional brine wastes from water reclamation or production areas may be blended with the salt concentrate solution. The brine solution may also contain trace contaminants from chemicals used in the treatment process, including residual minerals and organic material.”

36. On March 4, 2021, pursuant to Section 1445(b) of the SDWA, 42 U.S.C. § 300j-4(b) and Part III.E.8 of the 2006 Permit, EPA conducted a virtual inspection of the Facility via video conference to evaluate Respondent’s compliance with the requirements of its 2006 Permit. As part of the virtual inspection, EPA also requested additional data and records, which Hilmar

provided on March 15, 2021. EPA's final inspection report was provided to Respondent on May 11, 2021. Respondent provided a written response to the inspection report to EPA on June 24, 2021.

37. Based on EPA's review of the records provided and observations during its inspection, EPA Inspectors observed the following areas of concern:

(1) Failure to establish annular pressure change (2006 Permit minor modification Part II.C.8(b), July 7, 2011);

(2) Substantial failure to maintain 100 psi of annular space at well WD-2 (2006 Permit minor modification Part II.C.8(b), July 7, 2011); and

(3) Failure to report monitoring data per permit requirements in January, February and September 2020.

38. Under 40 C.F.R. § 144.51(a) and Part III.E.1 of the 2006 Permit, Respondent is required to comply with all conditions of the Permit and any noncompliance constitutes a violation of SDWA and is grounds for enforcement action.

Count I - Failure to Make Required Notification

39. Paragraphs 1 through 38 of this CA/FO are hereby incorporated by reference as if set forth in full.

40. The minor modification to the 2006 Permit, dated July 7, 2011, states in Part II.C.8(b) that "the Permittee shall determine the range of fluctuation of annular pressure for the well during periods of normal operation and shall include this normal pressure range in their quarterly reports. Any annular pressure outside of the normal range shall be considered a loss of mechanical integrity".

41. During the March 2021 inspection, Hilmar Cheese staff were not able to provide EPA Inspectors with the established annular pressure range for wells WD-2 or WD-3.

42. In response to an area of concern noted in EPA's inspection report stating that Hilmar Cheese was not able to provide an annular pressure range for wells WD-2 and WD-3 during the March 4, 2021, inspection, Hilmar Cheese responded that an annular pressure range was established on March 15, 2021.

43. Respondent violated the 2006 Permit Condition Part II.C.8.(b) by failing to report annular pressure range of fluctuation for wells WD-2 and WD-3 between July 7, 2011, and March 15, 2021.

Count II – Substantial Failure to Comply with Operating Requirements

44. Paragraphs 1 through 43 of this CA/FO are hereby incorporated by reference as if set forth in full.

45. The minor modification to the 2006 Permit, dated July 7, 2011, states in Part II.C.8(b) that "A minimum pressure of one hundred (100) psi at shut-in conditions shall be maintained on the tubing/casing annulus".

46. During the March 2021 virtual inspection by EPA, Hilmar Cheese staff stated that well WD-2 has been shut-in and idle since March 2012.

47. In its response to the inspection report, Hilmar stated that an annulus pressurizing tool was constructed and installed on well WD-2 on May 13, 2021, and went into service on June 22, 2021.

48. Hilmar Cheese provided well monitoring data for well WD-2 showing annular pressure values of less than 100 psi between April 2017 and June 2021.

49. Respondent violated the 2006 Permit condition Part II.C.8(b) by failing to maintain a minimum annular pressure of 100 psi between April 2017 and June 2021.

Count III - Failure to Retain Records

50. Paragraphs 1 through 49 of this CA/FO are hereby incorporated by reference as if set forth in full.

51. Permit Condition Part II.D.1(a) of the 2006 Permit states all parameters that are to be monitored as a part of the monitoring program.

52. Permit Condition Part II.D.3 of the 2006 Permit states requirements for data that is to be stored and transmitted to EPA via accurate and timely quarterly reporting.

53. The quarterly report submitted by Hilmar Cheese on April 22, 2020, stated that a data card error caused data loss in January and February 2020 for well WD-2.

54. During the March 2021 inspection of the Facility, Hilmar Cheese staff stated that data card errors caused data loss in January and February 2020 for well WD-2.

55. Respondent has not provided EPA with quarterly reporting data for January or February 2020 as of the date of this agreement.

56. As required by Part II.D.3, Respondent was in violation of the 2006 Permit by failing to provide January and February 2020 monitoring data.

Civil Penalty

57. 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.

58. Based upon the facts alleged in this CA/FO, the factors listed in Section 1423(c)(4)(B) of SDWA, 42 U.S.C. 300h-2(c)(4)(B), and Respondent's good faith and cooperation in resolving this matter, EPA has determined that an appropriate civil penalty to settle this action is NINETY-TWO THOUSAND DOLLARS (\$92,000).

59. Within thirty (30) days of the Effective Date of this CA/FO, Respondent must pay the NINETY-TWO THOUSAND DOLLARS (\$92,000) civil penalty. Respondent may pay the penalty by check (mail or overnight delivery), wire transfer, automated clearing house, or online payment. Payment instructions are available at: epa.gov/financial/makepayment. Payments made by a cashier's check or certified check must 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 979078
St. Louis, MO 63197-9000

60. Concurrent with making the payment pursuant to Paragraph 59, Respondent must provide a letter with evidence of the payment and the title and docket number of this action, to the EPA Region 9 Regional Hearing Clerk, via email, at:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 9 - Office of Regional Counsel
r9HearingClerk@epa.gov

Respondent shall also send copies of the letter via email to the EPA Region 9 Enforcement and Compliance Assurance Division's Enforcement Officer and the EPA Region 9 Office of Regional Counsel Attorney in accordance with Paragraph 62.

61. A transmittal letter, stating Respondent's name, complete address, and the case docket number must accompany the payment made in accordance with Paragraph 59.

62. All reports, notifications, documentation, submissions, and other correspondence required to be submitted by this Order must be submitted to EPA electronically, to the extent possible. If electronic submittal is not possible, the submissions must be made by certified mail (return receipt requested). Electronic submissions must be sent to the following addresses: scavello.grant@epa.gov, and magnuson.janet@epa.gov. The subject line of all email correspondence must include the facility name, docket number, and subject of the deliverable. All electronically-submitted materials must be in final and searchable format, such as Portable Document Format (PDF) with Optical Character Recognition (OCR) applied. Mailed submissions must be sent to the following addresses:

Grant Scavello, Physical Scientist
U.S. Environmental Protection Agency, Region 9
Enforcement and Compliance Assurance Division
75 Hawthorne Street (ENF-3-2)
San Francisco, CA 94105

Janet A. Magnuson, Attorney-Advisor
U.S. Environmental Protection Agency, Region 9
Office of Regional Counsel
75 Hawthorne Street (ORC-2-3)
San Francisco, CA 94105

63. At the time of penalty payment, Respondent must also send copies of the notice of payment and transmittal letter to the email or mail addresses, as specified in Paragraph 62.

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

65. 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 CA/FO: 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 \$15 handling charge fee 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.

66. If Respondent does not pay timely the civil penalty due under Paragraph 59 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 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.

General Provisions

67. This CA/FO may be executed and transmitted by facsimile, email or other electronic means, and in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute an instrument. If any portion of this CA/FO is determined to be unenforceable by a competent court or tribunal, the Parties agree that the remaining portions shall remain in full force and effect.

68. The parties consent to service of this CA/FO by e-mail at the following valid e-mail addresses: magnuson.janet@epa.gov for Complainant and environmental@hilmarcheese.com for Respondent.

69. Full compliance with this CA/FO shall 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 violation of law.

70. This CA/FO does not affect Respondent's responsibility to comply with SDWA and other applicable federal, state, or local laws and permits.

71. Consistent with Paragraph 7 of this CA/FO, where Respondent neither admits nor denies the specific factual allegations of this CA/FO, this CA/FO 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).

72. The provisions of this CA/FO shall apply to and be binding upon Respondent, its officers, directors, agents, servants, authorized representatives, employees, and successors or assigns. Action or inaction of any persons, firms, contractors, employees, agents, or corporations acting under, through, or for Respondent shall not excuse any failure of Respondent to fully perform its obligations under this CA/FO.

73. Each person signing this CA/FO 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 CA/FO.

74. Each party agrees to bear its own costs and attorney fees in this action.

75. This CA/FO constitutes the entire agreement between the parties.

76. The parties acknowledge and agree that final approval by EPA of this CA/FO is subject to 40 C.F.R. § 22.45(c)(4) which sets forth requirements under which a person not a party to this proceeding may petition to set aside a consent agreement and final order on the basis that material evidence was not considered.

77. Pursuant to 40 C.F.R. § 22.45, this CA/FO will be subject to a thirty (30)-day public notice and comment at least forty (40) days prior to it becoming effective through the issuance of the final order by the Regional Judicial Officer.

78. In accordance with 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 CA/FO shall become effective on the date that the Final Order contained in this CA/FO, having been approved and issued by the Regional Judicial Officer, is filed with the Regional Hearing Clerk (the “Effective Date”).

79. This CA/FO will terminate after Respondent has complied with all terms of the CA/FO throughout its duration.

**Consent Agreement and Final Order
In the Matter of Hilmar Cheese Company, Inc.
Docket Number.: UIC-09-2023-0066**

Hilmar Cheese Company, Inc. Respondent

7/24/2023

Date

DocuSigned by:
Jeremy Travis

Jeremy Travis
Vice President of Quality and Technical Services

United States Environmental Protection Agency, Region 9, Complainant

AMY MILLER- Digitally signed by AMY
BOWEN MILLER-BOWEN
Date: 2023.08.02 15:29:21
-07'00'

Date

Amy C. Miller-Bowen
Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 9

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9**

In the Matter Of:)	Docket No.: UIC-09-2023-0066
)	
Hilmar Cheese Company, Inc.)	Proceeding under Section 1423(c) of the
Hilmar, California,)	Safe Drinking Water Act,
Respondent.)	42 U.S.C. § 300h-2(c)
<hr/>)	

FINAL ORDER

The United States Environmental Protection Agency Region IX (“EPA”), and the Respondent Hilmar Cheese Company, Inc. (“Respondent”), having entered into the foregoing Consent Agreement, and EPA having duly publicly noticed the Stipulations and Findings and Final Order regarding the matters alleged therein,

IT IS HEREBY ORDERED THAT:

1. The foregoing Consent Agreement and this Final Order (Docket No. UIC-09-2023-0066) be entered;
2. Respondent pay an administrative civil penalty of **\$92,000** dollars to the Treasurer of the United States of America in accordance with the terms set forth in the Consent Agreement; and
3. Respondent comply with all other requirements of the Consent Agreement.

This Final Order is effective on the date that it is filed. This Final Order constitutes full adjudication of the allegations in the Consent Agreement entered into by the Parties in this proceeding.

BEATRICE WONG Digitally signed by
BEATRICE WONG
Date: 2023.10.19
12:31:05 -07'00'

Beatrice Wong Date
Regional Judicial Officer
U.S. EPA - Region IX

