

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter Of:)	Docket No. SDWA-05-2023-0003
)	
Leelanau Fruit Company)	Proceeding under Section 1423(c) of the
Buckley, Michigan,)	Safe Drinking Water Act,
)	42 U.S.C. § 300h-2(c)
Respondent.)	
<hr/>)	

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 Leelanau Fruit Company, a corporation doing business in Michigan.
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 program in the State of Michigan. The UIC program for the State of Michigan is set forth at 40 C.F.R. Part 147, Subpart X, and consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart.

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 defined as (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; and (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. 40 C.F.R. § 144.6(a)(1 and 2).

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)(2) of the SDWA, 42 U.S.C. § 300h-2(a)(2), authorizes EPA to assess a civil penalty to any person found to be in violation of any requirement of an applicable UIC program in a state that does not have primacy and order compliance with such requirement or regulation pursuant to Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1).

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 \$16,000 or \$7,500 for each day of violation, up to a maximum administrative penalty of \$177,500 for SDWA violations occurring after January 12, 2009 through December 6, 2013; \$16,000 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; \$25,076 for each day of violation, up to a maximum administrative penalty of \$313,448 for SDWA violations occurring after November 2, 2015 and/or issue an order requiring compliance.

Factual Allegations and Alleged Violations

21. Respondent is a corporation, 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 Permit MI-165-1I-0001 (the Permit) to Respondent to operate an underground injection well, located in Wexford County, Michigan commonly known as the Fee No. 1 well, in accordance with the Permit.

23. The Permit authorizes the underground injection of wastewaters generated from any fruit processing or storage operations conducted by Leelanau Fruit Company into the Fee No. 1 well, subject to the terms and conditions set forth in the Permit.

24. 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.

25. The subsurface emplacement of wastewater through Fee No. 1 well is a “well injection.” 40 C.F.R. § 144.3.

26. Respondent’s facility located at 10760 N M-37, Buckley, MI 49620 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.

27. At all times relevant to this CAFO, Respondent owned and operated a well injection in the State of Michigan and was thus subject to the UIC program requirements set forth at 40 C.F.R. Parts 124, 144, 146, 147 Subpart X, and 148.

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

29. On September 9, 2021, pursuant to 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 Permit, EPA inspected Respondent’s facility located at 10760 N M-37, Buckley, MI 49620.

30. On May 2, 2022, EPA issued a Notice of Potential Violation/Opportunity to Confer (NOPV) to Respondent alleging certain potential violations of the SDWA regulations and

the SDWA.

31. Under 40 C.F.R. § 144.51(a) and Part I(E)(1) of the Permit, Respondent is required to comply with all conditions of the Permit and any noncompliance constitutes a violation of the SDWA.

COUNT 1: Failure to Operate within Permitted Pressure Requirements

32. At all times relevant to this CAFO, Part III(A) of the Permit for the Fee No. 1 well required Respondent to comply with the operating requirements, including the minimum annulus/tubing differential pressure of 100 psig.

33. In reports submitted to EPA, the annulus/tubing differential at the Fee No. 1 well was below 100 psig in July 2018.

34. Respondent's failure to maintain a differential pressure above the operating minimum is a violation of Part III(A) of the Permit for the Fee No. 1 well.

35. Each failure to comply with the pressure operating requirements constitutes a violation of Part III(A) of the Permit for the Fee No. 1 well and Section 1423 of the SDWA; 42 U.S.C § 300h-2.

Civil Penalty

36. 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), EPA's UIC Program Judicial and Administrative Order Settlement Penalty Policy (September 1993) (EPA's UIC Penalty Policy), EPA has determined that an appropriate civil penalty to settle this action is \$3,796.68.

37. Within 30 days after the effective date of this CAFO, Respondent must pay a \$3,796.68 civil penalty by electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045

In the comment or description field of the electronic funds transfer, state Respondent's name and the docket number of this CAFO.

38. 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:

Dix.Monica@epa.gov, R5WECA@epa.gov, and Lane.Emily@epa.gov. If electronic submittal is not possible, the submissions must be made by certified mail (return receipt requested) and mailed to the following addresses:

Monica Dix (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

Emily Lane (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

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

40. 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.

41. 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.

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

43. 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).

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

45. Except as provided in Paragraph 42, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal law administered by EPA.

Compliance Requirements

46. 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:

- (i) For the annual report following the effective date of this CAFO, include documentation of automatic shutoff testing with the Respondent's annual report required by the Permit to be submitted to EPA, and postmarked no later than the 10th day of the first month;
- (ii) For the annual report following the effective date of this CAFO, include documentation of gauge calibration certification and/or gauge replacement with the Respondent's annual report required by the Permit to be submitted to EPA, and postmarked no later than the 10th day of the first month;
- (iii) Within 14 days of the effective date of this CAFO, use calibrated gauges for all monitoring required by the Permit and/or replace them with new gauges on an annual basis;
- (iv) Within 90 days of the effective date of this CAFO, list total volume injected to date in monthly reports submitted to EPA.
- (v) Within 90 days of the effective date of this CAFO, sample for all the constituents required in the Waste Analysis Plan of the EPA permit and include the data in quarterly reports submitted to EPA.
- (vi) Within 90 days of the effective date of this CAFO, submit to EPA for review and approval, and upon approval, 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 Permit. 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 Permit 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.

47. To the extent possible, Respondent must electronically submit all reports, notifications, documentation, submissions, and other correspondence required to be submitted by Paragraph 46 to EPA. If electronic submittal is not possible, the submissions must be made by certified mail (return receipt requested) to the enforcement officer whose name and address is identified in Paragraph 38, above.

48. Respondent must provide all electronic documents submitted pursuant to Paragraph 46 in unsecured, accessible, and searchable format such 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.

49. 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.

50. 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 46, 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).

51. 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.

52. 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.

53. Submissions required by Paragraph 46 shall be deemed submitted on the date they are sent electronically or on the date postmarked if sent by U.S. mail.

54. The information required to be submitted pursuant to Paragraph 46 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.

55. 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 46 and the amount paid pursuant to Paragraph 37 are restitution, remediation, or required to come into compliance with the law.

56. EPA may use any information submitted in accordance with Paragraph 46 in support of an administrative, civil, or criminal action against Respondent.

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

58. Absent the notice described in Paragraph 57, Respondent may request in writing that EPA terminate this CAFO. With this request for termination, Respondent must submit to the EPA enforcement officer a written final report and certification of completion describing all actions taken to comply with all requirements of the compliance program in Paragraph 46. Respondent must include the certification language required under Paragraph 49. 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

59. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: lane.emily@epa.gov (for Complainant), and heidi@leelanaufuit.com and al@leelanaufuit.com (for Respondent). Respondent understands that the CAFO will become publicly available upon proposal for public comment and upon filing.

60. 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).

61. 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.

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

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

64. 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.

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

66. 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.

67. 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: Leelanau Fruit Company
Docket Number. SDWA-05-2023-0003**

Leelanau Fruit Company, Respondent

4-5-23
Date


Glenn F. LaCross
President, Leelanau Fruit Company

United States Environmental Protection Agency, Complainant

Date

MICHAEL HARRIS
Digitally signed by
MICHAEL HARRIS
Date: 2023.05.15
11:11:43 -05'00'

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

**Consent Agreement and Final Order
In the Matter of: Leelanau Fruit Company
Docket No. [#] SDWA-05-2023-0003**

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). This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18, 22.31, and 22.45. IT IS SO ORDERED.

By: ANN COYLE Digitally signed by ANN
COYLE
Date: 2023.06.26
13:44:51 -05'00' Date: _____
Ann Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5