

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

Sunoco Partners Marketing &
Terminals L.P.
Taylor, Michigan

Respondent.

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Docket No. SDWA-05-2017-0001

Proceeding Seeking
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 (U.S. EPA), Region 5.
3. Respondent engages in the transport and storage of hydrocarbons, and does 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 six classes of injection wells, including

deep hazardous and nonhazardous 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), any well not included in the other descriptions (Class V), and wells for the geologic sequestration of carbon dioxide (Class VI).

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. For violations of the previously referenced exceptions to Section 1423(c)(1) of SDWA, 42 U.S.C. 300h-2(c)(1), found at Section 1423(c)(2) of SDWA, 42 U.S.C. 300h-2(c)(2), U.S. EPA may issue an administrative order assessing a civil penalty of not more than \$5,000 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, the statutory maximum penalty increased 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; to \$16,000 per day for violations occurring after January 12, 2009 through November 2, 2015; and, to \$21,563 per day for violations occurring after November 2, 2015. This statute and its regulations also increased the maximum penalty U.S. EPA may seek in this action to \$157,500 for violations occurring after March 15, 2004 through January 12, 2009; to \$177,500 for violations occurring after January 12, 2009 through December 6, 2013; and to \$187,500 for violations occurring after December 6, 2013 through

November 2, 2015. For violations occurring after November 2, 2015, 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 to \$269,535.

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 holds an area permit for Class III underground injection wells in Wayne County, Michigan under U.S. EPA Permit MI-163-3G-A002 ("the Permit"), with the most recent permit modification dated June 14, 2006.
22. At all times relevant to this CAFO, Respondent was the owner and operator of well Inkster #14 in Wayne County, Michigan under the Permit.
23. Inkster #14 is a bored, drilled or driven shaft, or dug hole, whose depth is greater than the largest surface dimension.
24. Well Inkster #14 is a "well" as defined at 40 C.F.R. § 144.3.
25. At all times relevant to this Complaint, Respondent was not authorized to perform, the subsurface emplacement of brine and fresh water into well Inkster #14.
26. Brine and fresh water are materials or substances which flow or move in a semisolid, liquid, sludge, gas, or any other form or state.
27. Brine and fresh water are "fluids" as defined at 40 C.F.R. § 144.3.
28. The subsurface emplacement of brine and fresh water through well Inkster #14 is a "well injection" as defined at 40 C.F.R. § 144.3.
29. Respondent's "well injection" is an "underground injection" as defined by

40 C.F.R. § 144.3.

30. Well Inkster #14 is a Class III well as defined by 40 C.F.R. §§ 144.6 and 146.5.

COUNT I

Injection Prior to Receiving Authorization from the Director

31. Complainant incorporates paragraphs 1 through 30 of this CAFO as if set forth in this paragraph.
32. Part I (E)(10)(a)-(e) of the Permit (*See Pages 6-7 of the Permit*) specifies five requirements that the Respondent must have completed prior to commencing injection into the newly drilled Inkster Well #14.
33. Page 1 of the Permit also specifies that "Injection shall not commence into any newly drilled or converted well until the operator has received authorization in accordance with Part I (E)(10) of this Permit."
34. Respondent failed to complete conditions, as required at Part I(E)(10):
- (c) "Mechanical integrity of the well has been demonstrated in accordance with Part I (E)(18)"; and,
 - (e) "Construction is complete and the permittee has submitted to the Director, by certified mail with return receipt requested, a notice of completion of construction using U.S. EPA Form 7520-10, a plugging and abandonment plan, a copy of the State permit and either: (i) The Director has inspected or otherwise reviewed the new injection well and finds it is in compliance with the conditions of the Permit; or (ii) The permittee has not received, within thirteen (13) days of the date of the Director's receipt of the report required above, notice from the Director of his or her intent to inspect or otherwise review the new injection well, in which case prior inspection or review is waived and

the permittee may commence injection.”

35. Respondent’s failure to receive authorization from the Director prior to commencing injection constitutes a violation of Conditions Part I (E)(10) of the Permit.
36. Respondent’s violation of Part I (E)(10) of the Permit subjects Respondent to the issuance of an administrative order for penalty pursuant to Section 1423(c)(1) of SDWA, 42 U.S.C. § 300h-2(c)(1).

COUNT II

Failure to Submit Quarterly Reports

37. Complainant incorporates paragraphs 1 through 30 of this CAFO as if set forth in this paragraph.
38. Part II (B)(3) of the Permit (*See Page 13 of the Permit*) requires the permittee to submit the results of the injection fluid analyses specified in Permit conditions in Part II (B)(2)(c) and in Part III (A) (*See Pages 12 and A-1 of the Permit*) no later than the 10th day of the month following the end of the reporting period.
39. Injection into Inkster Well #14 commenced on November 17, 2015 and continued until July 22, 2016. The first Quarterly Report covering the Fourth Quarter of 2015 was due to the Director in January 2016 with a postmark no later than January 10, 2016. Subsequent Quarterly Reports were due to be postmarked by April 10, 2016 and July 10, 2016. Respondent failed to submit the three (3) Quarterly Reports by the dates above. Respondent submitted the final monitoring information for the Fourth Quarter of 2015 on September 8, 2016.
40. Respondent’s violation of Part II (B)(3) of the Permit subjects Respondent to the issuance of an administrative order pursuant to Section 1423(c)(1) of SDWA,

42 U.S.C. § 300h-2(c)(1).

COUNT III

Failure to Monitor Chemical Composition of Injected Fluid

41. Complainant incorporates paragraphs 1 through 30 of this CAFO as if set forth in this paragraph.
42. Part II (B)(2)(c) of the Permit (*See* Page 12 of the Permit) requires the permittee to monitor the nature of the injection fluid as specified in Part III (A) of the Permit (*See* Page A-1 of the Permit).
43. Part III (A) of the Permit (*See* Page A-1 of the Permit) requires the permittee to monitor the Chemical Composition of Injected Fluid quarterly. Part III (A) of the Permit also defines the Chemical Composition analysis to include sodium, calcium, magnesium, total iron, chloride, sulfate, carbonate, bicarbonate, sulfide, total dissolved solids, pH, and resistivity (ohm-meters @ 75° F).
44. Respondent failed to monitor half of the analytes in the Fourth Quarter of 2015 and failed to monitor all of the analytes in the First and Second Quarters of 2016.
45. Respondent's violation of Part II (B)(2)(c) of the Permit subjects 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

46. 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.

47. 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 \$140,000 (ONE HUNDRED FORTY THOUSAND DOLLARS).

48. Within 30 days after the effective date of this CAFO, Respondent must pay a \$140,000 civil penalty for the SDWA violations by one of the methods below:

a) Sending a cashier's or certified check by regular U.S. Postal Service mail, payable to "Treasurer, United States of America," to:

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

b) 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 state the following: Sunoco Partners Marketing & Terminals L.P. and the docket number of this CAFO.

c) 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

Field Tag 4200 of the Fedwire message should read: "D68010727 Environmental Protection Agency." In the comment or description field of the electronic funds transfer, state the following: Sunoco Partners Marketing & Terminals L.P. and the docket number of this CAFO.

- d) Automated Clearinghouse (ACH) electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 -- checking

In the comment area of the electronic funds transfer, state the following Sunoco Partners Marketing & Terminals L.P. and the docket number of this CAFO.

- e) On-line payment, go to www.pay.gov. Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

49. Respondent must send a copy of a document showing payment and a transmittal letter, stating Respondent's name, the case title, Respondent's complete address, and the case docket number to:

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

Andrew Greenhagen (WU-16J)
Underground Injection Control Branch

U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Thomas Turner (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

50. This civil penalty is not deductible for federal tax purposes.
51. If Respondent does not timely pay the civil penalty, U.S. 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.
52. 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

53. 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.
54. This CAFO does not affect the rights of U.S. 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.

55. This CAFO does not affect Respondent's responsibility to comply with SDWA and other applicable federal, state, and local laws.
56. 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.
57. The terms of this CAFO bind the Complainant, the Respondent and Respondent's successors, and assigns.
58. 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.
59. Each party agrees to bear its own costs and attorney's fees in this action.
60. This CAFO constitutes the entire agreement between the parties.

In the Matter of: Sunoco Partners Marketing & Terminals L.P.
Docket No. SDWA-05-2017-0001

Sunoco Partners Marketing & Terminals L.P., Respondent

5/2/17



Date

David R. Chalson
Sunoco Partners Marketing & Terminals L.P.
By: Sunoco Logistics Partners Operations GP LLC,
Its general partner

United States Environmental Protection Agency, Complainant

5/10/17



Date

Christopher Korleski
Director, Water Division

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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

Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5