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U.S. EPA REGION 5
HEARING CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter Of:) Docket No. SDWA-05-2024-0003
)
Consumers Energy Company) Proceeding under Section 1423(c) of the
Jackson, MI,) Safe Drinking Water Act,
) 42 U.S.C. § 300h-2(c)
Respondent.)
_____)

Consent Agreement and Final Order

Preliminary Statement

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 22.1(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 Consumers Energy Company (Consumers Energy), 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. On July 28, 2022, EPA approved the State of Michigan’s application for primacy to administer the UIC program for Class II wells in the State. 87 Fed. Reg. 45,251 (July 28, 2022). While the State of Michigan administers the UIC program for Class II injection wells, EPA retains direct enforcement and permitting authority for certain Class II wells. See UIC Program MOU between the State of Michigan and the Environmental Protection Agency. On August 29, 2022, EPA notified Respondent, via a letter titled “US Environmental Protection Agency Retains Direct Enforcement Authority of Your Class II Permits,” that EPA retains direct enforcement authority for the injection well Permits referenced in this CAFO.

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 II wells inject fluids which are brought to the surface in connection with natural gas storage operations, or conventional oil or natural gas production and may be commingled with waste waters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection; for enhanced recovery of oil or natural gas; and for storage of hydrocarbons which are liquid at standard temperature and pressure. 40 C.F.R. § 144.6(b)(1).

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 and/or order compliance with such requirement or regulation pursuant to Section 1423(c)(2) of the SDWA, 42 U.S.C. § 300h-2(c)(2).

20. Under Section 1423(c)(2) of the 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 \$13,508 for each day of violation, up to a maximum administrative penalty of \$337,725 for SDWA violations occurring after November 2, 2015, where penalties are assessed on or after January 6, 2023, 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 EPA Permit No. “MI-005-2D-0001”, “MI-005-2D-0002”, “MI-147-2D-0009” (the Permit(s)) to Respondent to operate underground injection wells, located in Allegan and St. Clair Counties, Michigan commonly known as the 0-142 Overisel Field, the Francis Goodman 4, and the BD-139 wells, in accordance with its respective Permit. The 0-142 Class II well operates in Allegan County under the February 7, 2003 Permit No. MI-005-2D-0001; the Francis Goodman 4 Class II well operates in Allegan County under February 12, 2003 Permit No. MI-005-2D-0002; and the BD-139 Class II well operates in St. Clair County under February 21, 2003 Permit No. MI-147-2D-0009.

23. Each of the Permits listed in Paragraph 22 authorizes the underground injection of saltwater condensate that has been brought to the surface in connection with Respondent’s natural gas storage operations into the respective 0-142 Overisel Field well, Francis Goodman 4 well, and the BD-139 well, subject to the terms and conditions set forth in the respective Permit.

24. The 0-142 Overisel Field, Francis Goodman 4, and BD-139 wells authorized by the Permits listed in Paragraph 22 are each injection wells. 40 C.F.R. § 144.3.

25. Saltwater condensate 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.

26. The subsurface emplacement of saltwater condensate through the 0-142 Overisel Field well, through the Francis Goodman 4 well, and through the BD-139 well is “well injection.” 40 C.F.R. § 144.3.

27. Respondent’s injection well facilities for each well described in Paragraph 22 are facilities or activities as defined by 40 C.F.R. § 144.3 because each of those wells is an UIC

“injection well,” or another facility or activity that is subject to regulation under the UIC program.

28. The well injections authorized by the Permits listed in Paragraph 22 occurred at Respondent’s respective injection wells listed in Paragraph 22.

29. At all times relevant to this CAFO, Respondent owned and operated injection wells 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.

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

31. On July 30, 2019, 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 1(E)(7) of the respective Permit listed in Paragraph 22 for each of those wells, EPA inspected Respondent’s facility located in Allegan County, Michigan, containing the 0-142 Overisel Field well and the Respondent’s facility located in Allegan County, Michigan containing the Francis Goodman # 4 well.

32. On October 23, 2019, 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 1(E)(7) of the Permit listed in Paragraph 22 for that well, EPA inspected Respondent’s facility located at St. Clair County, Michigan, containing well BD-139.

33. On January 28, 2021, EPA issued a request for information (Information Request) to Respondent pursuant to Section 1445(a) of the SDWA, 42 U.S.C. § 300j-4(a), 40 C.F.R. §§ 144.17 and 144.51(h), and Part 1(E)(6) of the respective Permit listed in Paragraph 22, to gather and submit to EPA information related to those Permits and operations, maintenance, and recordkeeping of the 0-142 Overisel Field well, the Francis Goodman 4 well, and the BD-139

well.

34. On March 15, 2021, and May 27, 2021, EPA received Respondent's responses to EPA's Information Request (Respondent's Response).

35. On June 8, 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.

36. On July 22, 2022, EPA received Respondent's written response to the NOPV.

37. On August 9, 2022, EPA and Respondent discussed the potential violations.

38. On August 12, 2022, EPA emailed Respondent follow up questions.

39. On September 16, 2022, EPA received Respondent's written response to follow-up questions from the NOPV discussion.

40. Under 40 C.F.R. § 144.51(a) and Part 1(E)(1) of the Permits listed in Paragraph 22, Respondent is required to comply with all conditions of those Permits and any noncompliance constitutes a violation of the SDWA.

COUNT 1: Submission of Inaccurate Reports

41. UIC permits must require samples and measurements taken for the purpose of monitoring to be representative of the monitored activity. 40 C.F.R. § 144.51(j)(1).

42. At all times relevant to this CAFO, Part II (B)(2)(a) in each of the Permits listed at Paragraph 22 required samples and measurements taken for the purpose of monitoring as required in Part II(B)(3) to be representative of the monitored activity.

43. Pursuant to 40 C.F.R. § 144.32(b), all reports required by Permits, other than information requested by the Director, must be signed by an authorized representative described in 40 C.F.R. § 144.32(a) and certified as described in 40 C.F.R. § 144.32(d).

44. At all times relevant to this CAFO, Part II (B)(3)(a) in each of the Permits listed at Paragraph 22 required monitoring results obtained each week to be signed and certified according to 40 C.F.R. § 144.32. This certification includes the statement that “the information submitted is, to the best of my knowledge and belief, true, accurate, and complete.”

45. At all times relevant to this CAFO, Part II (B)(3)(a) in each of the Permits listed at Paragraph 22 required Respondent to report the weekly measurements of annulus pressure, injection pressure, cumulative volume, and flow rate on a monthly basis.

46. During the October 23, 2019 inspection at the BD-139 well, the EPA inspector found that it was unclear how Consumers Energy uses monitoring data it collects to complete monthly monitoring reports submitted to EPA.

47. Field records Respondent submitted for wells 0-142 Overisel Field, Francis Goodman 4, and BD-139 with Respondent’s Response to EPA’s Information Request were not consistent with the respective monthly monitoring reports Respondent had submitted to EPA under Part II (B)(3)(a) of the permits listed in Paragraph 22 for each of those three wells. EPA’s review of the monthly reports Respondent submitted under those permits listed in Paragraph 22 and of the field records in Respondent’s Response, indicates Respondent submitted 5 inaccurate monthly reports to EPA as follows: the monthly reports Respondent submitted under EPA Permit No. MI-005-2D-0001 for July 2020 and December 2020 for the 0-142 Overisel Field well; the monthly reports Respondent submitted under EPA Permit No. MI-005-2D-0002 for August 2019 and September 2019 for the Goodman 4 well; and the monthly report Respondent submitted under EPA Permit No. MI-147-2D-0009 for March 2020 for the BD-139 well. Respondent maintains that these inaccuracies were due to spreadsheet calculation or data transfer errors.

48. The 5 monthly reports identified in Paragraph 47 did not reflect the actual measurements taken of the annulus pressure, injection pressure, cumulative volume, and/or flow rate of the 0-142 Overisel Field well, the Goodman 4 well, and the BD-139 well, respectively, for the respective time period as required by 40 C.F.R. § 144.51(j)(1) and Part II (B)(3)(a) of the permits for those wells listed in Paragraph 22.

49. Each month Respondent submitted an inaccurate monitoring report for the 0-142 Overisel Field well, the Goodman 4 well, or the BD-139 well constituted a violation of the conditions of the respective Permit listed at Paragraph 22 for that well, a violation of 40 C.F.R. §§ 144.11, 144.51(j), and a violation of Section 1423 of the SDWA, 42 U.S.C § 300h-2.

COUNT 2: Failure to Retain Records

50. 40 C.F.R. § 144.51(j)(2) provides that a permittee shall retain records of all monitoring information including, inter alia, calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit for a period of at least 3 years from the date of the sample, measurement, report, or application. Part I(E)(8)(a) of each of the Permits listed at Paragraph 22 states that the permittee shall retain all records of monitoring information, including all calibration and maintenance records and copies of all records required by the Permit, for a period of at least three (3) years from the sample, measurement, or report.

51. During the July 30, 2019 inspection of the 0-142 Overisel Field well and the Francis Goodman 4 well, EPA requested the last three months of field records for both wells that Respondent used to generate the monthly monitoring reports it submitted to EPA.

52. During the July 30, 2019 inspection, Respondent could not provide field records prior to June 2019 for either the Overisel Field well or the Francis Goodman 4 well.

53. The January 28, 2021 Information Request, among other things, requested Respondent to provide copies of all records (e.g. daily sheets, notes, raw data, etc.) Respondent relied on to generate Monthly Reports submitted to EPA for the Permits listed in paragraph 22. It said these include all records of the dates, times, techniques or methods, results, and the names of the individuals who performed measurements of injection pressure, annulus pressure, cumulative volume and flow rate.

54. In the Response to EPA's January 28, 2021 Information Request, Consumers stated that "Prior to November 2019, field notes were not always retained once reports to EPA were complete".

55. Respondent has not provided records for all monitoring reports issued in the three years prior to January 28, 2021 for the Francis Goodman 4 and 0-142 Overisel Field wells listed in Paragraph 22.

56. Consumers failed to retain all records of monitoring information for a period of at least three (3) years from the sample, measurement, or report for the 0-142 Overisel Field well and the Francis Goodman 4 well as required by Part I(E)(8)(a) of the Permits listed in Paragraph 22 for those wells.

57. Based on its review of the field records provided in Consumers' Response, EPA determined Consumers failed to retain for at least three years the records of the monitoring information for at least 3 monthly reports it submitted, including for reports it submitted between July 2018 through September 2018 as follows: records required to be retained by EPA Permit No. MI-005-2D-0001 for the monthly reports from July 2018 for the 0-142 Overisel Field well; records required to be retained by EPA Permit No. MI-005-2D-0002 for the monthly reports from August 2018 and September 2018 for the Goodman 4 well.

58. Respondent's failure to retain records of all monitoring information, including all calibration and maintenance records, and copies of all records required by the Permits for a period of at least three years is a violation of the Permits, the UIC regulation at 40 C.F.R. §§ 144.11 and 144.51(j), and SDWA.

COUNT 3: Failure to Monitor

59. Part II(B)(2)(d) of each of the Permits listed at Paragraph 22 states that the injection pressure, annulus pressure, flow rate and cumulative volume shall be recorded at least weekly by the permittee.

60. Respondent provided EPA a table on August 18, 2023, on its record retention, and retransmitted records referenced in that table to EPA on September 6, 2023.

61. Based on its review of the field records Consumers provided on September 6, 2023, EPA determined Consumers failed to monitor at the required frequency in at least 6 monthly reports it submitted, including reports it submitted between November 2018 through May 2019 as follows: records required to be retained by EPA Permit No. MI-005-2D-0001 for the monthly reports for November 2018, April 2019 and May 2019 for the 0-142 Overisel Field well; records required to be retained by EPA Permit No. MI-005-2D-0002 for the monthly reports for November 2018, December 2018, and January 2019 for the Goodman 4 well.

62. Respondent's failure to monitor by failing to record injection pressure, annulus pressure, flow rate and/or cumulative volume on at least a weekly basis is a violation of the Permits, the UIC regulation at 40 C.F.R. § 144.11, and SDWA.

Civil Penalty

63. 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 \$11,959.54

64. Within 30 days after the effective date of this CAFO, Respondent must pay a \$11,959.54 civil penalty by: sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

For standard delivery:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979078
St. Louis, Missouri 63197-9000

For signed receipt confirmation (FedEx, UPS, Certified Mail, etc):

U.S. Environmental Protection Agency
Government Lockbox 979078
3180 Rider Trail S.
Earth City, Missouri 63045

The check must note Respondent's name and the docket number of this CAFO.

65. 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 gonzalez.maria@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

Maria Gonzalez (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

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

67. 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.

68. 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.

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

70. 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).

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

72. Except as provided in Paragraph 69, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal law administered by EPA.

Compliance Requirements

73. As provided by Section 1423(c)(2) of the SDWA, 42 U.S.C. § 300h-2(c)(2), Respondent must, from the effective date of this Order:

- (i) Sample, analyze, record and retain all monitoring information in accordance with the Permits listed in Paragraph 22 and 40 C.F.R. § 144.51(j), including the date, exact place, and time of sample or measurements, the individual(s) who performed the sampling or measurements, the methods used, the results, and all calibration records from the date of the sample, measurement or report;
- (ii) 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;
- (iii) For the 6 months following the effective date of this CAFO, submit to EPA copies of all records of monitoring information including field records with its monthly reports. Reports and records of all monitoring information shall be postmarked no later than the 10th day of the month following the reporting period;
- (iv) 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 Permits listed in Paragraph 22. 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 those 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.

74. To the extent possible, Respondent must electronically submit all reports, notifications, documentation, submissions, and other correspondence required to be submitted by Paragraph 73 to EPA at the emails identified in Paragraph 65, above. If electronic submittal is not possible, the submissions must be made by certified mail (return receipt requested) to the enforcement officer and EPA attorney whose name and address is identified in Paragraph 65, above.

75. Respondent must provide all electronic documents submitted pursuant to Paragraph 73 in unsecured, accessible, searchable, format 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.

76. 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.

77. 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 73, 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).

78. 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.

79. 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.

80. Submissions required by Paragraph 73 shall be deemed submitted on the date they are sent electronically or on the date postmarked if sent by U.S. mail.

81. The information required to be submitted pursuant to Paragraph 73 is not subject to the approval requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. §§ 3501-3521, because it seeks the collection of information by an agency from specific individuals or entities as part of an administrative action.

82. 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 73 and the amount paid pursuant to Paragraph 64 are restitution, remediation, or required to come into compliance with the law.

83. EPA may use any information submitted in accordance with Paragraph 73 in support of an administrative, civil, or criminal action against Respondent.

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

85. Absent the notice described in Paragraph 84, 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 73. Respondent must include the certification language required under Paragraph 76. 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

86. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: gonzalez.maria@epa.gov (for Complainant), and scott.sinkwitts@cmsenergy.com, (for Respondent). Respondent understands that the CAFO will become publicly available upon proposal for public comment and upon filing.

87. 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).

88. 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.

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

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

91. 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.

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

93. 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.

94. 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: Consumers Energy Company
Docket Number. SDWA-05-2024-0003

Consumers Energy Company, Respondent

12-21-2023

Date



Patrick J. Frontjes
Director of Gas Transmission and Storage

United States Environmental Protection Agency, Complainant

Date

MICHAEL HARRIS

Digitally signed by MICHAEL
HARRIS
Date: 2024.01.09 10:53:24 -06'00'

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: Consumers Energy
Docket No. SDWA-05-2024-0003**

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