

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In The Matter Of:)	Docket No. SDWA-05-2020-0001
)	
Kraft Heinz Foods Company)	Proceeding under Section 1423(c) of the
Holland, Michigan)	Safe Drinking Water Act,
Respondent.)	42 U.S.C. § 300h-2(c)
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Consent Agreement and Final Order

Statutory Authority

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)(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. The Complainant is, by lawful delegation, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Kraft Heinz Foods Company (Kraft Heinz), a Pennsylvania limited liability company 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). *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 CAFO, including the assessment of the civil penalty specified below.

Jurisdiction and Waiver of Right to Judicial Review and Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO including, but not limited to, its right to request a hearing under 40 C.F.R. § 22.15(c) and Section 1423(c)(3) of SDWA, 42 U.S.C. § 300h-2(c)(3); its right to seek federal judicial review of the CAFO pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06; any right to contest the allegations in this CAFO; and its right to appeal this CAFO under Section 1423(c)(6) of SDWA, 42 U.S.C. § 300h-2(c)(6). Respondent also consents to the issuance of this CAFO without further adjudication.

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 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.

12. 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.

13. 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. Injection well owners and operators, and EPA shall comply with these requirements.

14. 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 be authorized either by permit or rule. Class I non-hazardous wells include industrial 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)(2).

15. 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.

16. 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 an 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.

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. 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 pursuant to Section 1423(c)(1) of SDWA, 42 U.S.C. § 300h-2(c)(1).

25. 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 \$57,317 for each day of violation, up to a maximum administrative penalty of \$286,586 for SDWA violations occurring after November 2, 2015.

Factual Allegations and Alleged Violations

26. 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.

27. At all times relevant to this CAFO, Respondent was an owner and operator of an underground injection well in Ottawa County, Michigan called Well No. 1.

28. At all times relevant to this CAFO, Respondent was authorized to operate Well No. 1 under EPA Permit MI-139-1I-0001 (“the Permit”) dated April 22, 2008 and effective on May 22, 2008.

29. Well No. 1 is a bored, drilled or driven shaft, or dug hole, whose depth is greater than the largest surface dimension.

30. Well No. 1 is a “well” as defined at 40 C.F.R. § 144.3.

31. At all times relevant to this CAFO, Respondent has performed, or has been authorized to perform, the subsurface emplacement of brine and fresh water into Well No. 1.

32. Brine and fresh water are materials or substances which flow or move in a semisolid, liquid, sludge, gas, or any other form or state.

33. Brine and fresh water are “fluids” as defined at 40 C.F.R. § 144.3.

34. 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.

35. The subsurface emplacement of brine and fresh water through Well No. 1 is a “well injection” as defined at 40 C.F.R. § 144.3.

36. Respondent's "well injection" is an "underground injection" as defined by 40 C.F.R. § 144.3.

37. Well No. 1 is a Class I well as defined by 40 C.F.R. §§ 144.6 and 146.5.

Count 1 – Exceeding Maximum Injection Pressure

38. The statements in Paragraphs 1 through 37 of this CAFO are hereby incorporated by reference as if set forth in full.

39. Part II(B)(1) of the Permit explains that the Well's injection pressure is limited.

40. The maximum injection pressure of 1,108 pounds per square inch/gauge (psig) is specified at Part III(A) of the Permit.

41. Monitoring reports that Kraft Heinz submitted to EPA show that Well No. 1 exceeded its maximum injection pressure on 20 separate days between July 26, 2016 and November 6, 2016.

42. During the period specified in paragraph 41 above, the exceedances ranged from 1,111 psig on July 28, 2016 to 1,143 psig, which was reported on both August 16, 2016 and August 24, 2016.

43. At all times relevant to this CAFO, Respondent was restricted to operate the well within the permitted 1,108 psig maximum injection pressure.

44. Thus, each day Respondent exceeded the Well's maximum injection pressure constitutes a violation of Part II(B)(1) of the permit and applicable regulations, the UIC regulations at 40 C.F.R. § 144.51(a), and SDWA.

Civil Penalty

45. 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.

46. Based upon the facts alleged in this CAFO, the factors listed in Section 1423(c)(4)(B) of SDWA, 42 U.S.C. 300h-2(c)(4)(B), EPA's UIC Program Judicial and Administrative Order Settlement Penalty Policy (September 1993) (EPA's UIC Penalty Policy), and Respondent's good faith and cooperation in resolving this matter, EPA has determined that an appropriate civil penalty to settle this action is \$48,825.

47. Within 30 days of the effective date of this CAFO, Respondent must pay a \$48,825 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.

48. A transmittal letter, stating Respondent's name, complete address, and the case docket number must accompany the payment.

49. At the time of payment, Respondent must also send copies of the notice of payment and transmittal letter to the following addresses:

Ray Urchel (ECW-15J)
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Susan Prout (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

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

51. 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 \$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.

52. 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 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

53. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: Prout.Susan@epa.gov (for Complainant) and kg@nijmanfranzetti.com (for Respondent).

54. Full payment of the penalty as described in Paragraph 46 above, and full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations and facts alleged in this CAFO. Violation of this CAFO shall be deemed a violation of SDWA for purposes of Section 1423(b) of SDWA, 42 U.S.C. § 300h-2(b).

55. Full compliance with this CAFO 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.

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

57. Respondent certifies that it is complying with SDWA, its implementing regulations, and the Permit.

58. This CAFO constitutes a "previous violation" as that term is used in EPA's UIC Penalty Policy and to determine Respondent's "history of such violations" under Section 1423(c)(4)(B) of SDWA, 42 U.S.C. § 300h-2(c)(4)(B).

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

60. 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.

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

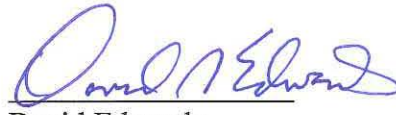
62. This CAFO constitutes the entire agreement between the parties.

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

64. In accordance with Section 1423(c)(3)(d) of SDWA and 40 C.F.R. § 22.18(b)(3), 22.31(b), and 22.45, this CAFO shall be effective 30 days after the date that the final order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or the Regional Administrator, is filed with the Regional Hearing Clerk.

Kraft Heinz Foods Company, Respondent

11/18/2019
Date


David Edwards
Plant Manager

United States Environmental Protection Agency, Complainant

12-16-19
Date

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

**Consent Agreement and Final Order
In the Matter of: Kraft Heinz Company
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SDWA-05-2020-0001

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective 30 days after filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18, 22.31 and 22.45. IT IS SO ORDERED.

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