



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

August 17, 2021

ELECTRONIC SERVICE
VIA E-MAIL

Kate Vaccaro
Attorney
Manko, Gold, Katcher, Fox, LLP
401 City Avenue, Suite 901
Bala Cynwyd, Pennsylvania 19004

Re: Toledo Refining Company, LLC, Oregon, Ohio, Consent Agreement and Final Order
Docket Nos. MM-05-2021-0003 CERCLA-05-2021-0004 EPCRA-05-2021-0006

Dear Ms. Vaccaro:

Enclosed please find a copy of the fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the original CAFO with the Regional Hearing Clerk on August 17, 2021.

Please have your client pay the Comprehensive Environmental Response, Compensation and Liability Act civil penalty in the amount of \$20,512 in the manner prescribed in paragraph 54 and reference your check with the billing document number 2752130B004 and the docket number CERCLA-05-2021-0004.

Please have your client pay the Emergency Planning and Community Right-to-Know Act civil penalty in the amount of \$41,024 in the manner prescribed in paragraph 56 and reference your check with the docket number EPCRA-05-2021-0006.

Your client's payments are due on September 16, 2021.

Please feel free to contact James Entzminger at (312) 886-4062 if you have any questions regarding the enclosed documents. Please direct any legal questions to Robert H. Smith, Associate Regional Counsel, at (312) 886-0765. Thank you for your assistance in resolving this matter.

Sincerely,

Hans, Mick Digitally signed by Hans, Mick
Date: 2021.08.11 14:34:15
-05'00'

Michael E. Hans, Chief
Chemical Emergency Preparedness
and Prevention Section

Enclosure

cc: Ms. Laura Factor, Co-Chairperson (w/ enclosure)
Assistant Director
Ohio EPA - Director's Office
Post Office Box 1049
Columbus, Ohio 43216-1049
Laura.Factor@epa.ohio.gov

Ms. Sima Merick, Co-Chairperson (w/ enclosure)
State Emergency Response Commission
Ohio Emergency Management Agency
2855 West Dublin-Granville Road
Columbus, Ohio 43235-2206
smerick@dps.ohio.gov

Jeff Beattie (w/ enclosure)
Ohio Environmental Protection Agency
Post Office Box 1049
Columbus, Ohio 43216-1049
Jeffrey.beattie@epa.ohio.gov

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket Nos. MM-05-2021-0003 CERCLA-05-2021-0004 EPCRA-05-2021-0006
)	
Toledo Refining Company LLC Oregon, Ohio,)	Proceeding to Assess a Civil Penalty Under Section 109(b) of the Comprehensive Environmental Response, Compensation and Liability Act, and Section 325(b)(2) of the Emergency Planning and Community Right- to-Know Act of 1986
Respondent.)	
)	

**Consent Agreement and Final Order
Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 109(b) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609(b), Section 325(b)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(b)(2), 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 Chief of Emergency Response Branch 1, Superfund & Emergency Management Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is Toledo Refining Company LLC, a Delaware Limited Liability Company doing business in the State of Ohio.

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. Pursuant to Paragraphs 54 and 56, below, of this CAFO, Respondent consents to the assessment of the civil penalty specified in this CAFO, and the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO. For the purpose of this proceeding, Respondent neither admits nor denies the factual allegations and conclusions of law in this CAFO.

8. The EPA and Respondent expressly acknowledge that Respondent's agreement to pay the penalty pursuant to Paragraphs 54 and 56, below, shall not constitute an admission of factual allegations and conclusions of law in this proceeding, and is neither intended nor shall be construed as an admission that may be relied on for any purpose by any party not a party to this proceeding.

9. 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

10. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires any person in charge of a facility to immediately notify the National Response Center (NRC) as soon as that person has knowledge of any release of a hazardous substance from the facility in an amount equal to or greater than the reportable quantity of the hazardous substance.

11. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304 of EPCRA, 42 U.S.C. § 11004, provide a mechanism to alert federal, state, and local agencies that a response action may be necessary to prevent deaths or injuries to emergency responders, facility personnel

and the local community. A delay or failure to notify could seriously hamper the governments' response to an emergency and pose serious threats to human health and the environment.

12. Section 304(a)(3)(A) of EPCRA, 42 U.S.C. § 11004(a)(3)(A), requires that the owner or operator of a facility must immediately provide notice, as described in Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), if a release of a substance not on the list referred to in Section 302(a), 42 U.S.C. § 11002(a), occurs in quantities equal to or greater than a reportable quantity from a facility at which hazardous chemicals are produced, used or stored and such release requires notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

13. Under Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), notice required under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), must be given immediately after the release by the owner or operator of a facility to the community emergency coordinator for the local emergency planning committee (LEPC) for any area likely to be affected by the release and to the state emergency response commission (SERC) of any state likely to be affected by a release.

14. Under Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), with certain exceptions, the term "hazardous chemical" has the meaning given such term by 29 C.F.R. § 1910.1200(c).

15. Under 29 C.F.R. § 1910.1200(c), a hazardous chemical is any chemical which is classified as a physical or health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified.

16. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), and Section 325(b)(2) of EPCRA, 42 U.S.C. § 11045(b)(2), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103, and EPCRA Section 304. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. No. 114-74, § 701, 129 Stat. 584, 599 (2015), amending 28 U.S.C. § 2461 note, and the implementing regulations at 40 C.F.R. Part

19 increased the statutory maximum penalty to \$59,017 per day of violation for each day that occurred after November 2, 2015, and for which penalties are assessed on or after December 23, 2020.

Factual Allegations and Alleged Violations

17. Respondent is a “person” as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

18. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

19. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 1819 Woodville Road, Oregon, Lucas County, Ohio (facility).

20. At all times relevant to this CAFO, Respondent was in charge of the facility.

21. Respondent’s facility consists of a building, structure, equipment, storage container, or any site or area where a hazardous substance has been deposited, stored, placed, or otherwise come to be located.

22. Respondent’s facility is a “facility” as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

23. Respondent’s facility consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

24. Respondent’s facility is a “facility” as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

25. Benzene (CAS #71-43-2) is a “hazardous substance” as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

26. Benzene (CAS #71-43-2) has a reportable quantity of 10 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

27. Benzene (CAS #71-43-2) is classified as a physical or health hazard, or hazard not otherwise classified.

28. Benzene (CAS #71-43-2) is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

29. At all times relevant to this CAFO, Respondent produced, used, or stored benzene at the facility.

30. On August 5, 2020, at or about 12:05 a.m., a release occurred from Respondent’s facility of approximately 29 pounds of benzene (the release).

31. In a 24-hour time period, the release of benzene exceeded 10 pounds.

32. During the release, approximately 29 pounds of benzene leaked, emitted, discharged, or escaped, into the ambient air.

33. The release is a “release” as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

34. The release is a “release” as that term is defined under Section 329(8) of EPCRA, 42 U.S.C. § 11049(8).

35. Respondent had knowledge of the release on August 5, 2020, at approximately 12:05 a.m.

36. The release was one for which notice was required under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

37. The release was one for which notice was required under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

38. The release was likely to affect Ohio.

39. At all times relevant to this CAFO, the Ohio Environmental Protection Agency was the SERC for Ohio under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

40. The release was likely to affect Lucas County Ohio.

41. At all times relevant to this CAFO, the Lucas County LEPC was the LEPC for Lucas County Ohio under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

Count 1 (failure to notify NRC)

42. Complainant incorporates Paragraphs 1 through 41 of this CAFO as if set forth in this paragraph.

43. Respondent notified the NRC of the release on August 5, 2020, at 1:56 p.m.

44. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the release.

45. Respondent's failure to immediately notify the NRC of the release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

Count 2 (failure to notify SERC)

46. Complainant incorporates Paragraphs 1 through 41 of this CAFO as if set forth in this paragraph.

47. Respondent notified the Ohio SERC of the release on August 5, 2020, at 2:03 p.m.

48. Respondent did not immediately notify the SERC after Respondent had knowledge of the release.

49. Respondent's failure to immediately notify the SERC of the release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

Count 3 (failure to notify LEPC)

50. Complainant incorporates Paragraphs 1 through 41 of this CAFO as if set forth in this paragraph.

51. Respondent notified the Lucas County LEPC of the release on August 5, 2020, at 2:15 p.m.

52. Respondent did not immediately notify the LEPC after Respondent had knowledge of the release.

53. Respondent's failure to immediately notify the LEPC of the release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

Civil Penalty

54. Complainant has determined that an appropriate civil penalty to settle this action is \$20,512 for the CERCLA violation. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violation, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violation and any other matters as justice may require. Complainant also considered U.S. EPA's Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response Compensation and Liability Act, dated September 30, 1999 (EPCRA/CERCLA Enforcement Response Policy). In full and final settlement and resolution of all allegations referenced in the foregoing Findings of Fact and Conclusions of Law, and in full satisfaction of all federal civil penalty claims pursuant thereto, for purpose of this proceeding, Respondent consents to the assessment of civil penalty for the violations of CERCLA set forth above, in the amount of \$20,512.

55. Within 30 days after the effective date of this CAFO, Respondent must pay a \$20,512 civil penalty for the CERCLA violation. Respondent must pay the penalty by submitting an electronic funds transfer, payable to “EPA Hazardous Substance Superfund,” and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, NY 10045
SWIFT address: FRNYUS33

In the comment or description field of the electronic funds transfer, state the following: Toledo Refining Company LLC, the docket number of this CAFO and the billing document number.

56. Complainant has determined that an appropriate civil penalty to settle this action is \$41,024 for the EPCRA violations. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and with respect to Respondent, its ability to pay, effect on ability to continue to do business, prior history of violations, economic benefit or savings resulting from the violations and any other matters as justice may require. Complainant also considered the U.S. EPA’s EPCRA/CERCLA Enforcement Response Policy. In full and final settlement and resolution of all allegations referenced in the foregoing Findings of Fact and Conclusions of Law, and in full satisfaction of all federal civil penalty claims pursuant thereto, for purpose of this proceeding, Respondent consents to the assessment of civil penalty for the violations of EPCRA set forth above, in the amount of \$41,024.

57. Within 30 days after the effective date of this CAFO, Respondent must pay a \$41,024 civil penalty for the EPCRA violations. Respondent must pay the penalty by submitting an 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, NY 10045
SWIFT address: FRNYUS33

In the comment or description field of the electronic funds transfer, state the following: Toledo Refining Company LLC, and the docket number of this CAFO.

58. Respondent must send a copy of each payment method to:

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

James Entzminger (SE-5J)
Chemical Emergency Preparedness
and Prevention Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Robert H. Smith (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

60. 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.

61. Pursuant to 31 C.F.R. § 901.9, in the event that Respondent does not timely pay the civil penalty in accordance with Paragraphs 55 and 57, above, 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, U.S. EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

62. The parties' consent to service of this CAFO by email at the following valid email addresses: smith.roberth@epa.gov (for Complainant) and KVaccaro@mankogold.com (for Respondent).

63. Full payment of the penalty and compliance with this CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

64. 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.

65. Respondent certifies that it is complying with Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304 of EPCRA, 42 U.S.C. § 11004.

66. This CAFO does not affect Respondent's responsibility to comply with CERCLA, EPCRA, and other applicable federal, state, and local laws and regulations.

67. This CAFO is a "final order" for purposes of U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

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

69. Each person signing this consent 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.

70. Each party agrees to bear its own costs and attorney's fees in this action.

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

In the Matter of: Toledo Refining Company LLC, Oregon, Ohio

Docket No. MM-05-2021-0003 CERCLA-05-2021-0004 EPCRA-05-2021-0006

Toledo Refining Company LLC, Respondent

AUGUST 9, 2021
Date



Michael Gudgeon
Refinery Manager
Toledo Refining Company LLC

U.S. Environmental Protection Agency, Complainant

August 12, 2021
Date

Jason El-Zein Digitally signed
by Jason El-Zein
Date: 2021.08.12
08:29:58 -04'00'

Jason El-Zein
Chief, Emergency Response Branch 1
Superfund & Emergency Management Division
U.S. Environmental Protection Agency
Region 5

August 12, 2021
Date

Short, Thomas Digitally signed
by Short, Thomas
Date: 2021.08.12
11:37:20 -05'00' for

Douglas Ballotti
Director
Superfund & Emergency Management Division
U.S. Environmental Protection Agency
Region 5

In the Matter of: Toledo Refining Company LLC, Oregon, Ohio

Docket No. MM-05-2021-0003 CERCLA-05-2021-0004 EPCRA-05-2021-0006

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.

**ANN
COYLE**

Digitally signed by
ANN COYLE
Date: 2021.08.17
08:39:39 -05'00'

Date

Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

In the Matter of: Toledo Refining Company LLC, Oregon, Ohio

Docket No. MM-05-2021-0003 CERCLA-05-2021-0004 EPCRA-05-2021-0006

Certificate of Service

I certify that I sent a true and correct copy of the foregoing Consent Agreement and Final Order, which was filed on August 17, 2021 in the following manner to the addressees:

Copy by E-mail to
Attorney for Respondent: Kate Vaccaro
KVaccaro@mankogold.com

Copy by E-mail to
Attorney for Complainant: Robert H. Smith
Smith.roberth@epa.gov

Copy by E-mail to
Regional Judicial Officer: Ann Coyle
Coyle.ann@epa.gov

Dated: _____

LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5