



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
FEB 17 2017

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dennis Gavin, Owner
Caledonia Haulers, Inc.
420 W. Lincoln Street
Caledonia, Minnesota 55921
Dennisg@caledoniahaulers.com

Re: Caledonia Haulers, Inc., Caledonia, Minnesota Consent Agreement and Final Order,
Docket No. **EPCRA-05-2017-0010**

Dear Mr. Gavin:


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 **FEB 17 2017**.

Please pay the EPCRA civil penalty in the amount of \$12,749 in the manner prescribed in paragraphs 42 and 43, and reference your check with the docket number **EPCRA-05-2017-0010**.

The payment is due on **MAR 20 2017**.

Please feel free to contact Ruth McNamara at (312) 353-3193 or by email at mcnamara.ruth@epa.gov if you have any questions regarding the enclosed documents. Please direct any legal questions to Robert Guenther, Associate Regional Counsel, at (312) 886-0566 or by email at guenther.robert@epa.gov. Thank you for your assistance in resolving this matter.

Sincerely,


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

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)	Docket No.: EPCRA-05-2017-0010
)	
CALEDONIA HAULERS, INC.,)	Proceeding to Assess a Civil Penalty
CALEDONIA, MINNESOTA,)	Under Section 325(c)(1) of the Emergency
)	Planning and Community Right-to-Know
RESPONDENT.)	Act, 42 U.S.C. § 11045(c)(1)
_____)	

CONSENT AGREEMENT AND FINAL ORDER

1. This is an administrative action commenced and concluded under section 325(c)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c)(1), 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), codified at 40 C.F.R. part 22.

2. Complainant is, by lawful delegation, the Chief of the Enforcement and Compliance Assurance Branch, Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is Caledonia Haulers, Inc., a corporation organized under the laws of the State of Minnesota.

4. According to 40 C.F.R. § 22.13(b), 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).

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 and to the civil penalty assessed herein.

JURISDICTION AND WAIVER OF THE RIGHT TO A 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 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. part 370, require the owner or operator of a facility, which is required by the Occupational Health and Safety Act (OSHA) to prepare or have available a MSDS for a hazardous chemical, to submit to the SERC and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter, an emergency and hazardous chemical inventory form (Tier I or Tier II as described in 40 C.F.R. part 370). The form must contain the information required by section 312(d) of EPCRA, covering all hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds and all extremely hazardous chemicals present at the facility at any one time in amounts equal to or greater than 500 pounds or the threshold planning quantity designated by U.S. EPA at 40 C.F.R. part 355, appendices A and B, whichever is lower.

10. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), assists state and local committees in planning for emergencies and makes information on chemical presence and hazards available to the public. A delay in reporting could result in harm to human health and the environment.

11. Federal regulations, at 29 C.F.R. § 1910.1200(b)(1), require all employers to provide information to their employees about the hazardous chemicals to which they are exposed including, but not limited to, MSDSs.

12. Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), with certain exceptions, gives the term “hazardous chemical” the meaning given by 29 C.F.R. § 1910.1200(c).

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

14. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation EPCRA section 312. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R. part 19 increased these statutory maximum penalties to \$37,500 per day of violation for violations that occurred after January 12, 2009.

FACTUAL ALLEGATIONS AND ALLEGED VIOLATIONS

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

16. At all times relevant to this CAFO, Respondent was an owner or operator of two facilities. The first is located at 420 West Lincoln Street, Caledonia, Minnesota (the Lincoln Street facility). The second is located on Highway 44, Caledonia, Minnesota (the Highway 44 facility).

17. At all times relevant to this CAFO, Respondent was an employer at both the Lincoln Street and Highway 44 facilities.

18. Respondent's Lincoln Street and Highway 44 facilities each consist 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.

19. Respondent's facilities are each a "facility" as that term is defined under section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

20. Diesel fuel (CAS # 68476-30-2) is classified as a physical and health hazard.

21. Diesel fuel has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. part 370.

22. Sulfuric acid (CAS # 7664-93-9) is an "extremely hazardous substance" according to section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

23. Sulfuric acid has a minimum threshold level of 500 pounds, as provided in 40 C.F.R. part 370.

24. Nitric acid (CAS # 7697-37-2) is an "extremely hazardous substance" according to section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

25. Nitric acid has a minimum threshold level of 500 pounds, as provided in 40 C.F.R. part 370.

26. OSHA requires Respondent to prepare, or have available, an MSDS for each of sulfuric acid, nitric acid and diesel fuel.

27. At all times relevant to this CAFO, the Minnesota State Homeland Security and Emergency Management Agency was the SERC for the State of Minnesota under section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

28. At all times relevant to this CAFO, the Caledonia Fire Department was the fire department with jurisdiction over the facility.

29. During at least one period of time in each of calendar years 2011, 2012 and 2013, diesel fuel was present at Respondent's Lincoln Street facility in an amount equal to or greater than the minimum threshold levels found at 40 C.F.R. part 370.

30. During at least one period of time in each of calendar years 2011, 2012 and 2013, sulfuric acid and nitric acid were present at Respondent's Highway 44 facility in amounts equal to or greater than the minimum threshold levels found at 40 C.F.R. part 370.

31. Respondent was required to submit to the SERC and local fire department a completed emergency and hazardous chemical inventory form for its Lincoln Street facility including diesel fuel on or before March 1, 2012, for calendar year 2011.

32. Respondent was required to submit to the SERC and local fire department a completed emergency and hazardous chemical inventory form for its Highway 44 facility including sulfuric acid and nitric acid on or before March 1, 2012, for calendar year 2011.

33. Respondent was required to submit to the SERC and local fire department a completed emergency and hazardous chemical inventory form for its Lincoln Street facility including diesel fuel on or before March 1, 2013, for calendar year 2012.

34. Respondent was required to submit to the SERC and local fire department a completed emergency and hazardous chemical inventory form for its Highway 44 facility including sulfuric acid and nitric acid on or before March 1, 2013, for calendar year 2012.

35. Respondent was required to submit to the SERC and local fire department a completed emergency and hazardous chemical inventory form for its Lincoln Street facility including diesel fuel on or before March 1, 2014, for calendar year 2013.

36. Respondent was required to submit to the SERC and local fire department a completed emergency and hazardous chemical inventory form for its Highway 44 facility including sulfuric acid and nitric acid on or before March 1, 2014, for calendar year 2013.

37. Respondent submitted to the Minnesota SERC and Caledonia Fire Department completed Emergency and Hazardous Chemical Inventory Forms including diesel fuel at its Lincoln Street facility on June 23, 2014, for calendar years 2011, 2012 and 2013.

38. Respondent submitted to the Minnesota SERC and Caledonia Fire Department completed Emergency and Hazardous Chemical Inventory Forms including sulfuric acid and nitric acid at its Highway 44 facility on June 23, 2014, for calendar years 2011, 2012 and 2013.

39. Each day Respondent failed to submit to the SERC and local fire department a completed Emergency and Hazardous Chemical Inventory Form including diesel fuel at its Lincoln Street facility by March 1 of the year following calendar years 2011, 2012 and 2013 constitutes a separate violation of section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

40. Each day Respondent failed to submit to the SERC and local fire department a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and nitric acid at its Highway 44 facility by March 1 of the year following calendar years 2011, 2012 and 2013 constitutes a separate violation of section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

CIVIL PENALTY

41. Complainant has determined that an appropriate civil penalty to settle this action is \$12,749 for the EPCRA violations alleged in this CAFO. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and with respect to Respondent, its willingness to undertake the supplemental environmental project described below, its ability to pay, prior history of violations, economic benefit or savings

resulting from the violations 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).

42. Within 30 days after the effective date of this CAFO, Respondent must pay a \$12,749 civil penalty for the EPCRA violations alleged in this CAFO. Respondent must pay the penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The check must note the case caption and the docket numbers of this CAFO.

43. A transmittal letter, stating Respondent's name, the case name, Respondent's complete address and the case docket number must accompany the payment. Respondent must send a copy of the checks and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3511

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

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

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

45. If Respondent does not timely pay the civil penalty or any stipulated penalties due under paragraph 55, below, 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. Respondent agrees that the validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

46. 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, U.S. EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

SUPPLEMENTAL ENVIRONMENTAL PROJECT

47. Respondent must complete a supplemental environmental project (SEP) designed to protect the public health and the environment by providing emergency response equipment to local emergency response agencies in Houston County, Minnesota, the location of the facilities which are the basis of this action. Specifically, Respondent will provide the Brownsville Fire Department with \$2,344 of equipment, Spring Grove Fire Department with \$1,369, Eitzen Fire Department with \$15,367 and the Caledonia Fire Department with \$27,227. The total expenditure is \$46,497.

48. Respondent will complete the purchase and ensure delivery of the equipment to the above-listed agencies within 60 days of the filing of this CAFO.

49. By executing this CAFO, Respondent certifies as follows:

I certify that Caledonia Haulers, Inc., is not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that Caledonia Haulers, Inc., has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

I certify that Caledonia Haulers, Inc., is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to U.S. EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

50. Respondent must maintain copies of the underlying research and data for all reports submitted to U.S. EPA according to this CAFO. Respondent must provide the documentation of any underlying research and data to U.S. EPA within seven days of U.S. EPA's request for the information.

51. Respondent must submit a SEP completion report to U.S. EPA by 90 days after the filing of this CAFO with the Regional Hearing Clerk. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized costs of goods and services used to complete the SEP documented by

copies of invoices, purchase orders or canceled checks that specifically identify and itemize the individual costs of the goods and services;

- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

52. Respondent must submit all notices and reports required by this CAFO by first class mail to Ruth McNamara of the Chemical Emergency Preparedness and Prevention Section at the address specified in paragraph 43, above.

53. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

54. Following receipt of the SEP completion report described in paragraph 51, above, U.S. EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 55, below.

55. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, including

the schedule in paragraph 47, Respondent must pay a penalty of \$37,197.

- b. If Respondent did not complete the SEP satisfactorily, but U.S. EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 47, Respondent will not be liable for any stipulated penalty under subparagraph a, above.
- c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 47, Respondent must pay a penalty of \$7,500.
- d. If Respondent did not submit timely the SEP completion report, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty Per Violation Per Day</u>	<u>Period of Violation</u>
\$100	1st through 14th day
\$250	15th through 30th day
\$500	31st day and beyond

56. U.S. EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

57. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraphs 42 and 43, above, and will pay interest, handling charges and nonpayment penalties on any overdue amounts.

58. Any public statement that Respondent makes referring to the SEP must include the following language, "Respondent undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Respondent for violations of the Emergency Preparedness and Community Right-to-know Act, or EPCRA."

59. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

GENERAL PROVISIONS

60. Consistent with the Standing Order Authorizing E-Mail Service of Orders and Other Documents issued by the Regional Administrator or Regional Judicial Officer under the Consolidated Rules, dated March 27, 2015, the parties consent to service of this filed CAFO by e-mail at the following valid e-mail addresses: guenther.robert@epa.gov (for Complainant) and Dennisg@caledoniahaulers.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

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

62. 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.

63. Respondent certifies that it is complying with section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

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

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

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

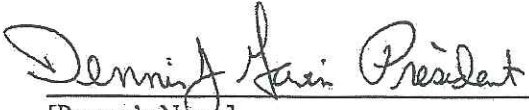
67. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

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

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

Caledonia Haulers, Inc., Respondent

1-27-17
Date



[Person's Name]
[Person's Title]
Caledonia Haulers, Inc.

U.S. Environmental Protection Agency, Complainant

02-09-2017
Date


M. Cecilia Moore, Chief
Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency
Region 5

2/10/2017
Date


Douglas Ballotti, Acting Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

In the Matter of: Caledonia Haulers, Inc.
Docket No. EPCRA-05-2017-0010



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.

February 15, 2017
Date

Ayn L Coyle
~~Robert A. Kaplan~~ *Ayn L Coyle*
Acting Regional Administrator *Regional Judicial*
U.S. Environmental Protection Agency *Officer*
Region 5

In the Matter of: Caledonia Haulers, Inc.
Docket No. EPCRA-05-2017-0010



CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing *Consent Agreement and Final Order*, which was filed on FEB 17 2017, in the following manner to the addressees:

Copy by Certified Mail
Return-receipt:

Dennis Gavin, Owner
Caledonia Haulers, Inc.
420 W. Lincoln Street
Caledonia, Minnesota 55921
Dennisg@caledoniahaulers.com

Copy by E-mail to
Attorney for Complainant:

Robert Guenther
guenther.robert@epa.gov

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated:

2/17/2017



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