



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590  
September 15, 2021

**ELECTRONIC SERVICE**  
**VIA E-MAIL**

Gary Powell  
General Counsel  
Emery Oleochemicals LLC  
4900 Este Avenue  
Cincinnati, Ohio 45232  
gary.powell@emeryoleo.com

Re: Emery Oleochemicals LLC, Cincinnati, Ohio, Consent Agreement and Final Order  
Docket No. CERCLA-05-2021-0005

Dear Mr. Powell:

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 September 15, 2021.

Please have your client pay the Comprehensive Environmental Response, Compensation and Liability Act civil penalty in the amount of \$13,675 in the manner prescribed in paragraph 28 and reference your check with the billing document number 2752130B005 and the docket number CERCLA-05-2021-0005.

Your client's payment is due on October 15, 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 Sophie Grueterich at (312) 353-6482. Thank you for your assistance in resolving this matter.

Sincerely,

**Hans, Mick** Digitally signed by Hans, Mick  
Date: 2021.09.08 09:17:37  
-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](mailto: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](mailto: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](mailto:Jeffrey.beattie@epa.ohio.gov)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket No. CERCLA-05-2021-0005</b>
	)	
<b>Emery Oleochemicals LLC</b>	)	<b>Proceeding to Assess a Civil Penalty Under</b>
<b>Cincinnati, Ohio,</b>	)	<b>Section 109(b) of the Comprehensive</b>
	)	<b>Environmental Response, Compensation and</b>
<b>Respondent.</b>	)	<b>Liability Act</b>

**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), 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 Emery Oleochemicals 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. 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 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 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.

10. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), provides a mechanism to alert federal 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.

11. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103. 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**

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

13. At all times relevant to this CAFO, Respondent was in charge of its facility located at 4900 Este Avenue, Cincinnati, Ohio (facility).

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

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

16. Sulfuric acid (CAS #7664-93-9) is a “hazardous substance” as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

17. Sulfuric acid (CAS #7664-93-9) has a reportable quantity of 1,000 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

18. On October 13, 2020, at or about 11:00 a.m., a release occurred from Respondent’s facility of approximately 5,766 pounds of sulfuric acid (the release).

19. In a 24-hour time period, the release of sulfuric acid exceeded 1,000 pounds.

20. During the release, approximately 5,766 pounds of sulfuric acid spilled or leaked into the land surface or subsurface strata.

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

22. Respondent had knowledge of the release on October 13, 2020, at approximately 11:00 a.m.

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

24. Respondent notified the NRC of the release on October 13, 2020, at 1:30 p.m.

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

26. 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).

#### **Civil Penalty**

27. Complainant has determined that an appropriate civil penalty to settle this action is \$13,675 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).

28. Within 30 days after the effective date of this CAFO, Respondent must pay a \$13,675 civil penalty for the CERCLA violation. Respondent must pay the penalty by ACH electronic funds transfer, payable to "EPA Hazardous Substance Superfund," and sent to:

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

In the comment or description field of the electronic funds transfer, state the following: “Emery Oleochemicals LLC,” the docket number of this CAFO, and the billing document number.

29. Respondent must send a copy of the payment 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

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

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

31. 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.

32. 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.

### **General Provisions**

33. The parties' consent to service of this CAFO by email at the following valid email addresses: [grueterich.sophie@epa.gov](mailto:grueterich.sophie@epa.gov) (for Complainant) and [gary.powell@emeryoleo.com](mailto:gary.powell@emeryoleo.com) (for Respondent).

34. 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.

35. 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.

36. Respondent certifies that it is complying with Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

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

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

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

40. 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.

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

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

In the Matter of: Emery Oleochemicals LLC, Cincinnati, Ohio  
Docket No. CERCLA-05-2021-0005

**Emery Oleochemicals LLC, Respondent**

09-02-2021  
Date

  
\_\_\_\_\_  
Jay Taylor  
Emery Oleochemicals Group CEO and Regional Managing  
Director  
Emery Oleochemicals LLC



**U.S. Environmental Protection Agency, Complainant**

\_\_\_\_\_  
Date

**Jason El-Zein**  
Digitally signed by  
Jason El-Zein  
Date: 2021.09.09  
14:38:47 -04'00'

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

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Digitally signed by  
Ballotti, Doug  
Date: 2021.09.14  
08:33:23 -05'00'

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

**In the Matter of: Emery Oleochemicals LLC, Cincinnati, Ohio**  
**Docket No. CERCLA-05-2021-0005**

**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: 2021.09.14  
16:03:22 -05'00'

\_\_\_\_\_  
Date

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

**In the Matter of: Emery Oleochemicals LLC, Cincinnati, Ohio**  
Docket No. CERCLA-05-2021-0005

**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 September 15, 2021 in the following manner to the addressees:

Copy by Email

Attorney for Respondent: Gary Powell  
General Counsel  
Emery Oleochemicals LLC  
4900 Este Avenue  
Cincinnati, Ohio 45232  
gary.powell@emeryoleo.com

Copy by E-mail to

Attorney for Complainant: Sophie Grueterich  
Grueterich.sophie@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