

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5



In the Matter of: ) Docket No. CERCLA-05-2024-0004  
)  
Clean Harbors Environmental ) Proceeding to Assess a Civil Penalty Under  
Services, Inc. ) Section 109(b) of the Comprehensive  
Cincinnati, Ohio, ) Environmental Response, Compensation and  
) Liability Act  
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), 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 Manager of Emergency Response Branch 1, Superfund & Emergency Management Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is Clean Harbors Environmental Services, Inc., a corporation organized under the laws of the State of Massachusetts and 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 government's response(s) to an emergency and pose serious threats to human health and the environment.

11. The regulation at 40 C.F.R. § 302.6 requires in relevant part that any person in charge of a facility shall, as soon as he or she has knowledge of any release (other than a federally permitted release or application of a pesticide) of a hazardous substance from such facility in a quantity equal to or exceeding the reportable quantity in any 24-hour period, immediately notify the National Response Center.

12. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), and 40 C.F.R. Part 19 authorize U.S. EPA to assess a civil penalty of up to \$69,733 per day of violation, for violations of CERCLA

Section 103 that occurred after November 2, 2015, and for which penalties are assessed on or after December 27, 2023, or other amounts as penalty levels may be later adjusted at 40 C.F.R. Part 19.

**Factual Allegations and Alleged Violations**

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

14. At all times relevant to this CAFO, Respondent was in charge of the facility located at 4910 Spring Grove Avenue, Cincinnati, Ohio (facility).

15. Respondent’s facility consists of storage containers, motor vehicles, rolling stock, or any site or area where a hazardous substance has been or otherwise come to be located.

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

17. Chromic acid (CAS #7738-94-5) is a “hazardous substance” as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

18. Chromic acid (CAS #7738-94-5) has a reportable quantity of 10 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

19. At all times relevant to this CAFO, chromic acid was stored at Respondent’s facility.

20. Between on or about July 27, 2023, and on or about July 31, 2023, a release occurred from Respondent’s facility of approximately 198.49 pounds of chromic acid (the release).

21. During the release, approximately 198.49 pounds of chromic acid spilled, leaked, discharged, escaped or were dumped on or into the land surface or subsurface strata.

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

23. No later than 12:45 p.m. on July 31, 2023, Respondent had actual or constructive knowledge that the release equaled or exceeded the reportable quantity for chromic acid.

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

25. Respondent notified the NRC of the release on July 31, 2023, at 2:27 p.m.

26. Respondent did not immediately notify the NRC as soon as Respondent had actual or constructive knowledge of the release of a reportable quantity of chromic acid.

27. 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**

28. Complainant has determined that an appropriate civil penalty to settle this action is Thirteen-Thousand One-Hundred and Fifty-Five dollars (\$13,155). 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).

29. Within 30 days after the effective date of this CAFO, Respondent must pay the \$13,155 civil penalty for the CERCLA violation. Respondent must pay the penalty by sending a cashier's or certified check, payable to "EPA Hazardous Substance Superfund," to:

U.S. Environmental Protection Agency  
P.O. Box 979078  
St. Louis, MO 63197-9000

For checks sent by express mail, by sending a cashier's or certified check, payable to "EPA Hazardous Substance Superfund," to:

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

The check must note the following: Clean Harbors Environmental Services, Inc., the docket number of this CAFO CERCLA-05-2024-0004, and the billing document number 2752430B004.

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

Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)  
[r5hearingclerk@epa.gov](mailto:r5hearingclerk@epa.gov)

James Entzminger (SE-5J)  
[entzminger.james@epa.gov](mailto:entzminger.james@epa.gov)

James Cha (C-14J)  
[Cha.james@epa.gov](mailto:Cha.james@epa.gov)

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

32. 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.

33. 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**

34. The parties' consent to service of this CAFO by email at the following valid email addresses: [cha.james@epa.gov](mailto:cha.james@epa.gov) (for Complainant) and [Fitzpatrick.timmery@cleanharbors.com](mailto:Fitzpatrick.timmery@cleanharbors.com) (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

35. 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.

36. 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.

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

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

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

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

41. 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.

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

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

**In the Matter of: Clean Harbors Environmental Services, Inc., Cincinnati, Ohio**  
**Docket No. CERCLA-05-2024-0004**

**Clean Harbors Environmental Services, Inc., Respondent**

3/5/24  
Date

Gwendolyn T. Hill  
Gwendolyn Hill  
Senior Vice President  
Clean Harbors Environmental Services, Inc.

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

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

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

**In the Matter of: Clean Harbors Environmental Services, Inc., Cincinnati, Ohio**  
**Docket No. CERCLA-05-2024-0004**

**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.

\_\_\_\_\_  
Date

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