



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
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5/6/2022

8:30 AM

Received by
 EPA Region VIII
 Hearing Clerk

DOCKET NO.: EPCRA-08-2022-0003

IN THE MATTER OF:)	
)	
CALUMET MONTANA REFINING LLC)	FINAL ORDER
)	
)	
)	
RESPONDENT)	

Pursuant to 40 C.F.R. § 22.13(b) and §§ 22.18(b)(2) and (3) of EPA’s Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon filing this Consent Agreement and Final Order.

SO ORDERED THIS 6th **DAY OF** May, **2022.**

KATHERIN HALL
 Katherin E. Hall
 Regional Judicial Officer

Digitally signed by
 KATHERIN HALL
 Date: 2022.05.06
 07:14:00 -06'00'

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF:)
)
Calumet Montana Refining, LLC)
1900 10th Street NE)
Great Falls, MT 59404)
)
Respondent.)
_____)

**CONSENT AGREEMENT AND
FINAL ORDER**

Docket No.: EPCRA-08-2022-0003

I. INTRODUCTION

1. This is an administrative penalty assessment proceeding pursuant to 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 of Practice), as codified at 40 C.F.R. part 22.
2. Calumet Montana Refining, LLC (Respondent) owns and/or operates the Calumet Montana Refinery (Facility) located in Great Falls, Montana.
3. EPA and Respondent, having agreed settlement of this action is in the public interest, consent to the entry of this consent agreement (Agreement) without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Agreement.

II. JURISDICTION

4. This Agreement is issued under the authority vested in the Administrator of the EPA by section 325 of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11045, also known as the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA or the Act). The undersigned EPA official has been duly authorized to institute this action.
5. The Regional Judicial Officer is authorized to approve this Agreement with a final order. 40 C.F.R. §§ 22.4(b) and 22.18(b).
6. The Final Order approving this Agreement simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

III. GOVERNING LAW

7. Pursuant to sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, the EPA promulgated the Toxic Chemical Release Reporting: Community Right-to-Know Rule, 40 C.F.R. part 372. Section 313(b) of EPCRA and 40 C.F.R. § 372.22 applies to owners and operators of facilities that have 10 or more full-time employees; are in specific Standard Industrial Classification Codes; and manufacture, process, or otherwise use a toxic chemical listed under section 313(c) of EPCRA and 40 C.F.R. § 372.65, in quantities exceeding the appropriate threshold as set forth in 40 C.F.R. § 372.25. Under section 313(b) of EPCRA, owners and operators are required to annually submit a Toxic Chemical Release Inventory Reporting Form, EPA Form 9350-1 (Form R), for each toxic chemical listed under section 313(c) of EPCRA and 40 C.F.R. § 372.65, that was manufactured,

processed, or otherwise used during the preceding calendar year in quantities exceeding the established toxic chemical thresholds. 40 C.F.R. § 372.10 requires each person subject to the reporting requirements of section 313 of EPCRA must maintain records, including documentation supporting the report, for a period of three years from the date of submission of the report.

IV. STIPULATED FACTS

8. Respondent is a limited liability company authorized to do business in the state of Montana.
9. Respondent is a “person” as that term is defined by section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
10. Respondent is the owner or operator of a “facility” as that term is defined by section 329(4) of EPCRA, 42 U.S.C. § 11049(4).
11. Respondent’s facility has 10 or more “full-time employees” as that term is defined by 40 C.F.R. § 372.3.
12. Respondent’s facility is in a primary North American Industry Classification System (NAICS) subsector or industry code listed in 40 C.F.R. § 372.23. Specifically, Respondent owns and operates a facility located at 1900 10th Street NE, Great Falls, Montana, 59404 (Facility), which is in the NAICS code 324110 (Petroleum Refineries).
13. Respondent’s facility manufactures, processes or otherwise uses toxic chemicals listed under 40 C.F.R. § 372.65, for which reporting is required pursuant to 40 C.F.R. § 372.22.
14. From September 9-13, 2019, authorized representatives of the EPA conducted an inspection (the EPA inspection) of the Facility, with the consent of the Respondent, to determine compliance with EPCRA. During the EPA inspection, the EPA representatives observed alleged violations of EPCRA 313. The alleged violation of law is described in section V, below.

V. ALLEGED VIOLATION OF LAW

15. 40 C.F.R. § 372.10(a) provides that each person subject to the reporting requirements must retain documentation supporting the report submitted under 40 C.F.R. § 372.30 including documentation supporting the calculations of the quantity of each toxic chemical released to the environment or transferred to an off-site location for a period of 3 years from the date of the submission of a report under 40 C.F.R. § 372.30. Respondent was unable to provide documentation supporting the calculations of the quantities of each toxic chemical released to the environment or transferred to an off-site location for reporting year 2016 which would have been submitted no earlier than January 1, 2017. By failing to retain documentation supporting the report submitted under 40 C.F.R. § 372.30 for a period of 3 years from the date of the submission, Respondent violated 40 C.F.R. § 372.10(a).

VI. TERMS OF CONSENT AGREEMENT

16. For the purpose of this proceeding, Respondent:
 - a. admits the jurisdictional allegations in section II of this Agreement;
 - b. Neither admits nor denies the alleged violation of law stated in section V of this Agreement;

- c. consents to the assessment of a civil penalty as stated below;
 - d. consents to the conditions specified in this Agreement;
 - e. acknowledges this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
 - f. waives any right to contest any final order approving this Agreement; and
 - g. waives any rights it may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel compliance with the Agreement or Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.
17. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), as amended, 40 C.F.R. § 372.18, and 40 C.F.R part 19 authorize EPA to assess a civil penalty of not more than \$62,689 for each violation of EPCRA.
18. In determining the amount of the penalty to be assessed, the EPA is required to consider, in addition to such other factors as justice may require, to the extent known, the nature, circumstances, extent and gravity of the violations alleged, any of Respondent's history of prior violations of EPCRA, or lack thereof, and degree of culpability, and any voluntary disclosure, or lack thereof.
19. Based on the alleged violation of law, and after consideration of the statutory factors in paragraph 18 above, EPA has determined a civil penalty of twenty-four thousand, seven hundred nine dollars (\$24,709) is appropriate to settle this matter.
20. Penalty Payment. Respondent agrees to:
- a. pay a civil penalty in the amount of \$24,709 within 30 calendar days of the Effective Date of this Agreement;
 - b. pay the civil penalty using any method provided on the following website <https://www.epa.gov/financial/makepayment> and <https://www.epa.gov/financial/additional-instructions-making-payments-epa>;
 - c. identify the payment with the docket number that appears on the final order,
 - d. within 24 hours of payment, email proof of payment to Steven Ramirez and Marc Weiner at ramirez.stevena@epa.gov and weiner.marc@epa.gov (proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate payment has been made according to EPA requirements, in the amount due, and identified with the docket number that appears on the final order).
21. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, EPA may:
- a. request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United

States' enforcement expenses; "and a 10% quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5)";

- b. refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 13.13, 13.14, and 13.33;
 - c. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. part 13, subparts C and H; and
 - d. suspend or revoke Respondents' licenses or other privileges or suspend or disqualify Respondents from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.
22. Consistent with section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), Respondent will not deduct penalties paid under this Agreement for federal tax purposes.
23. Respondent agrees, by signing this Agreement, that the alleged violation has been corrected.
24. Respondent agrees and certifies, by signing the Agreement, that the Facility is in full compliance with section 313 of EPCRA.
25. This Agreement applies to Respondent and its officers, directors, employees, agents, trustees, authorized representatives, successors, and assigns. Respondent must give written notice and a copy of this Agreement to any successors-in-interest prior to transfer of any interest in the Facility. Any change in ownership or corporate control of Respondent, including but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Agreement.
26. The undersigned representative of Respondent certifies he or she is fully authorized to execute and enter into the terms and conditions of this Agreement and has the legal capacity to bind the party they represent to this Agreement.
27. Except as qualified by paragraph 21, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.
28. The parties consent to service of the Final Order by email at the following addresses: weiner.marc@epa.gov (for Complainant), and eddie.lewis@nortonrosefulbright.com (for Respondent).

VII. EFFECT OF CONSENT AGREEMENT

29. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Agreement resolves only Respondent's liability for federal civil penalties for the violation specifically alleged above.
30. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Environmental Appeals Board/Regional Judicial Officer, or other delegatee.

31. Any violation of this Agreement, and subsequently issued final order approving this Agreement, may result in a civil judicial action for an injunction or civil penalties of not more than \$62,689 per violation, as provided in section 325(c) of EPCRA, 42 U.S.C. § 11045(c) and adjusted for inflation pursuant to 40 C.F.R. part 19. The EPA may use any information submitted under this Agreement in an administrative, civil judicial, or criminal action.
32. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
33. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
34. If and to the extent EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to EPA, EPA reserves any and all of its legal and equitable rights.


VIII. EFFECTIVE DATE

35. This Agreement shall become effective on the date the Final Order is filed by the hearing clerk.

Consent Agreement - EPCRA - In the Matter of: Calumet Montana Refining, LLC

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY REGION 8,
Complainant.**


Date: _____

By: **DAVID
COBB**  Digitally signed by
DAVID COBB
Date: 2022.05.02
12:55:23 -06'00'

David Cobb, Chief
Toxics and Pesticides Enforcement Section,
Air and Toxics Enforcement Branch,
Enforcement and Compliance Assurance Division

**CALUMET MONTANA REFINING, LLC
Respondent.**

Date: 5/2/2022

By: 

(Print Name) Mark W Condon

(Print Title) VP, Operations

CERTIFICATE OF SERVICE

The undersigned certifies that the attached **CONSENT AGREEMENT** and the **FINAL ORDER** in the matter of **CALUMET MONTANA REFINING LLC; DOCKET NO.: EPCRA-08-2022-0003** were sent via certified receipt email on May 6, 2022, to:

Respondent

Eddie Lewis
Norton Rose Fulbright US LLP
eddie.lewis@nortonrosefulbright.com

EPA Region 8

Marc Weiner
Enforcement Attorney
Office of Regional Counsel

EPA Financial Center

Jessica Chalifoux
U. S. Environmental Protection Agency
Cincinnati Finance Center
Chalifoux.Jessica@epa.gov

May 6, 2022

Kate Tribbett
Acting Regional Hearing Clerk