



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
June 23, 2022

ELECTRONIC SERVICE VIA EMAIL
RETURN RECEIPT REQUESTED

Vincent Atriano
Attorney
Squire Patton Boggs (USA) LLP
2000 Huntington Center
41 High Street
Columbus, Ohio 43215

Re: INEOS Nitriles USA, LLC, Lima, Ohio, Consent Agreement and Final Order
Docket Nos. CERCLA-05-2022-0008 EPCRA-05-2022-0010 MM-05-2022-0007

Dear Mr. Atriano:

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 June 23, 2022.

Please have your client pay the Comprehensive Environmental Response, Compensation and Liability Act civil penalty in the amount of \$16,313 in the manner prescribed in paragraph 65, and your client must reference their check with the billing document number 2752230b009 and the docket number CERCLA-05-2022-0008.

Please have your client pay the Emergency Planning and Community Right-to-Know Act civil penalty in the amount of \$40,568 in the manner prescribed in paragraph 67, and your client must reference their check with the docket number EPCRA-05-2022-0010.

Your client's payments are due on July 25, 2022.

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,
MICHAEL
HANS
Michael E. Hans, Supervisor
Chemical Emergency Preparedness
and Prevention Section

Digitally signed by
MICHAEL HANS
Date: 2022.06.14
12:26:02 -05'00'

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. CERCLA-05-2022-0008 EPCRA-05-2022-0010 MM-05-2022-0007
)	
INEOS Nitriles USA, LLC)	Proceeding to Assess a Civil Penalty Under
Lima, Ohio,)	Section 109(b) of the Comprehensive
)	Environmental Response, Compensation and
Respondent.)	Liability Act, and Section 325(b)(2) of the
)	Emergency Planning and Community Right-
)	to-Know Act of 1986

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 Manager of Emergency Response Branch 1, Superfund & Emergency Management Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is INEOS Nitriles USA, 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. Respondent neither admits nor denies the factual allegations and conclusions of law 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), 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.

11. Section 304(a)(1) of EPCRA, 42 U.S.C. § 11004(a)(1), 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 an extremely hazardous substance in quantities equal to or greater than a reportable quantity occurs 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).

12. 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.

13. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), requires that, as soon as practicable after a release which requires notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), the owner or operator of the facility must provide written follow-up emergency notice setting forth and updating the information required under Section 304(b), 42 U.S.C. § 11004(b).

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), Section 325(b)(2) of EPCRA, 42 U.S.C. § 11045(b)(2), and 40 C.F.R. Part 19 authorizes U.S. EPA to assess a civil penalty of up to \$62,689 per day of violation, for violations of CERCLA Section 103 and EPCRA Section 304 that occurred after November 2, 2015, and for which penalties are assessed on or after January 12, 2022, or other amounts as penalty levels may be later adjusted at 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

Type text here

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 1900 Fort Amanda Road, Lima, 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, 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.
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. Anhydrous ammonia (CAS #7664-41-7) is a “hazardous substance” as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
26. Anhydrous ammonia (CAS #7664-41-7) has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

27. Anhydrous ammonia is classified as a physical or health hazard, a simple Type text here asphyxiant, or hazard not otherwise classified.

28. Anhydrous ammonia (CAS #7664-41-7) 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 Complaint, Respondent produced, used, or stored anhydrous ammonia at the facility.

30. Anhydrous ammonia (CAS #7664-41-7) is an “extremely hazardous substance” according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

31. Anhydrous ammonia (CAS #7664-41-7) has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 355, Appendix A.

32. On January 22, 2022, at or about 9:43 a.m., a release occurred from Respondent’s facility of approximately 317 pounds of anhydrous ammonia (the release).

33. In a 24-hour time period, the release of anhydrous ammonia exceeded 100 pounds.

34. During the release, approximately 317 pounds of anhydrous ammonia spilled, leaked, emitted, discharged, or escaped into the ambient air.

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

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

37. Respondent had knowledge of the release on January 22, 2022, at approximately 9:43 a.m.

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

39. The release required notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

40. The release was likely to affect Ohio.

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

42. The release was likely to affect Allen County, Ohio.

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

Count 1 (failure to immediately notify NRC)

44. Complainant incorporates paragraphs 1 through 43 of this CAFO as if set forth in this paragraph.

45. Respondent notified the NRC of the release on February 2, 2022, at 10:23 a.m.

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

47. 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 immediately notify SERC)

48. Complainant incorporates paragraphs 1 through 43 of this CAFO as if set forth in this paragraph.

49. Respondent notified the Ohio SERC of the release on February 2, 2022, at 10:28 a.m.

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

51. 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 immediately notify LEPC)

52. Complainant incorporates paragraphs 1 through 43 of this CAFO as if set forth in this paragraph.

53. Respondent notified the LEPC of the release on February 2, 2022, at 10:32 a.m.

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

55. 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).

Count 4 (written notice to SERC)

56. Complainant incorporates paragraphs 1 through 43 of this CAFO as if set forth in this paragraph.

57. Respondent provided written follow-up emergency notice of the release to the SERC on March 1, 2022.

58. Respondent did not provide the SERC written follow-up emergency notice of the release as soon as practicable after the release occurred.

59. Respondent's failure to provide written follow-up emergency notice to the SERC as soon as practicable after the release occurred is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c).

Count 5 (written notice to LEPC)

60. Complainant incorporates paragraphs 1 through 43 of this CAFO as if set forth in this paragraph.

61. Respondent provided written follow-up emergency notice of the release to the LEPC on March 1, 2022.

62. Respondent did not provide the LEPC written follow-up emergency notice of the release as soon as practicable after the release occurred.

63. Respondent's failure to provide written follow-up emergency notice of the release to the LEPC as soon as practicable after the release occurred is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c).

Civil Penalty

64. Complainant has determined that an appropriate civil penalty to settle this action is \$16,313 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).

65. Within 30 days after the effective date of this CAFO, Respondent must pay a \$16,313 civil penalty for the CERCLA violation. Respondent must pay the penalty by submitting an Automated Clearinghouse (ACH) also known as REX or remittance express, 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 area of the electronic funds transfer, state the following: INEOS Nitriles USA, LLC, the docket number of this CAFO and the billing document number 2752230B009.

66. Complainant has determined that an appropriate civil penalty to settle this action is \$40,568 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 U.S. EPCRA/CERCLA Enforcement Response Policy.

67. Within 30 days after the effective date of this CAFO, Respondent must pay a \$40,568 civil penalty for the EPCRA violations. Respondent must pay the penalty by submitting an ACH electronic funds transfer, payable to “Treasurer, United States of America,” 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 area of the electronic funds transfer, state the following: INEOS Nitriles USA, LLC and the docket number of this CAFO EPCRA-05-2022-0010.

68. Respondent must send a copy of the electronic payment via email to:

Acting Regional Hearing Clerk (E-19J)
r5hearingclerk@epa.gov

James Entzminger (SE-5J)
entzminger.james@epa.gov

Robert H. Smith (C-14J)
smith.roberth@epa.gov

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

70. 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.

71. 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

72. The parties consent to service of this CAFO by email at the following valid email addresses: smith.roberth@epa.gov (for Complainant) and vincent.atriono@squirepb.com (for Respondent).

73. 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.

74. 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.

75. 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.

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

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

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

79. 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.

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

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

In the Matter of: INEOS Nitriles USA, LLC, Lima, Ohio
Docket Nos. EPCRA-05-2022-0008 CERCLA-05-2022-0010 MM-05-2022-0007

INEOS Nitriles USA, LLC, Respondent

6-13-22
Date



William Allan Best, II
INEOS Nitriles Lima Site Director
INEOS Nitriles USA, LLC

U.S. Environmental Protection Agency, Complainant

June 14, 2022
Date

Jason El-Zein Digitally signed by
Jason El-Zein
Date: 2022.06.14
14:44:53 -04'00'

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

June 15, 2022
Date

DOUGLAS BALLOTTI Digitally signed by
DOUGLAS BALLOTTI
Date: 2022.06.15
10:26:02 -05'00'

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

In the Matter of: INEOS Nitriles USA, LLC, Lima, Ohio
Docket Nos. CERCLA-05-2022-0008 EPCRA-05-2022-0010 MM-05-2022-0007

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: 2022.06.22
13:28:16 -05'00'

Date

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

In the Matter of: INEOS Nitriles USA, LLC, Lima, Ohio
Docket Nos. EPCRA-05-2022-0008 CERCLA-05-2022-0010 MM-05-2022-0007

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 June 23, 2022 in the following manner to the addressees:

Electronic Service via Email

Return Receipt Requested: Vincent Atriano
Attorney
Squire Patton Boggs (USA) LLP
2000 Huntington Center
41 High Street
Columbus, Ohio 43215
vincent.atriano@squirepb.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: _____

Isidra Martinez
Acting Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5