



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

November 4, 2020

**ELECTRONIC MAIL  
DELIVERY RECEIPT REQUESTED**

Mr. Tony Sloma  
Senior EHS Manager - Ethanol  
The Andersons, Inc.  
1947 Briarfield Boulevard  
Maumee, Ohio 43537  
[Tony\\_Sloma@andersonsinc.com](mailto:Tony_Sloma@andersonsinc.com)

Re: Consent Agreement and Final Order  
The Andersons Marathon Holdings LLC (EPA I.D.: IND000810747 & MIK979454758)  
Docket No: **RCRA-05-2021-0002**

Dear Mr. Sloma:

Attached please find a copy of the signed, fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The original was filed on November 4, 2020, with the Regional Hearing Clerk (RHC).

Please pay the civil penalty in the amount of \$34,413 in the manner prescribed in paragraph 52 of the CAFO, and reference all checks with the docket number RCRA-05-2021-0002. Your payment is due within 30 calendar days of the effective date of the CAFO. Thank you for your cooperation in resolving this matter.

If you have any questions regarding this matter, please contact Todd Brown, of my staff, at [brown.todd@epa.gov](mailto:brown.todd@epa.gov) or (312) 886-6091.

Sincerely,

MICHAEL  
CUNNINGHAM  
M

Digitally signed by  
MICHAEL  
CUNNINGHAM  
Date: 2020.10.29  
09:01:00 -05'00'

Michael Cunningham, Chief  
RCRA Compliance Section 1

Attachment

cc: Alexandra Clark, Michigan Department of Environment, Great Lakes, and Energy (EGLE) ([clarka37@michigan.gov](mailto:clarka37@michigan.gov))  
Lonnie Lee, EGLE ([leel@michigan.gov](mailto:leel@michigan.gov))  
Bruce Kizer, Indiana Department of Environmental Management ([bkizer@idem.in.gov](mailto:bkizer@idem.in.gov))  
Pariss Coleman, The Andersons Marathon Holdings LLC ([Coleman@andersonsinc.com](mailto:Coleman@andersonsinc.com))



5. 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).

6. 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.

### **Jurisdiction and Waiver of Right to Hearing**

7. Jurisdiction for this action is conferred upon U.S. EPA by Sections 3006 and 3008 of RCRA, 42 U.S.C. §§ 6926 and 6928.

8. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

9. 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**

10. Pursuant to Sections 3002-3005 of RCRA, 42 U.S.C. §§ 6922-6925, U.S. EPA promulgated regulations [codified at 40 C.F.R. Parts 260 through 279,] governing generators and transporters of hazardous waste and facilities that treat, store, and dispose of hazardous waste.

11. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions.

12. Any violation of regulations promulgated pursuant to Subtitle C or any state provision authorized pursuant to Section 3006 of RCRA constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

13. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Indiana final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective January 31, 1986. 51 Fed. Reg. 3953 (January 31, 1986).

14. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Michigan final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective October 30, 1986. 51 Fed. Reg. 36804 (October 16, 1986).

15. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), U.S. EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified period, or both.

#### **Factual Allegations**

16. Respondent was and is a "person" as defined by 329 IAC §§ 3.1-4-1 and 3.1-4-20, Mich. Admin. Code r. 299.9106(i), and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

17. Respondent is an "owner" or "operator," as those terms are defined under 329 IAC § 3.1-4-1 of a facility located at 3389 West County Road 300 South, Logansport, Indiana (Logansport facility).

18. Respondent is the "owner" or "operator," as those terms are defined under Mich. Admin. Code. r. 299.9106(f) and (g), of a facility located at 26250 B Drive North, Albion, Michigan (Albion Facility).

19. At all times relevant to this Complaint, Respondent's Logansport Facility consisted of land and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.

20. At all times relevant to this Complaint, Respondent's Albion Facility consisted of land and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.

21. Respondent's Logansport Facility is a "facility," as that term is defined under 329 IAC § 3.1-4-1.

22. Respondent's Albion Facility is a "facility," as that term is defined under Mich. Admin. Code r. 299.9203.

23. Respondent's actions and processes at the Logansport Facility cause the production of "hazardous waste," as that term is defined under 329 IAC § 3.1-6-1.

24. Respondent's actions and processes at the Albion Facility cause the production of "hazardous waste," as that term is defined under Mich. Admin. Code r. 299.9203.

25. Respondent is a "generator" of hazardous waste, as that term is defined under 329 IAC § 3.1-4-1 and Mich. Admin. Code r. 299.9104(b).

26. Since at least 2015, Respondent generated 1000 kilograms or greater of hazardous waste in some calendar months (qualifying it as a "Large Quantity Generator"), at its Logansport Facility which it shipped off-site to a treatment, storage or disposal facility within the United States.

27. Since at least 2019, Respondent generated 1000 kilograms or greater of hazardous waste in some calendar months (qualifying it as a "Large Quantity Generator"), at its Albion Facility which it shipped off-site to a treatment, storage or disposal facility within the United States.

28. On August 20, 2020, U.S. EPA sent to Respondent a Notice of Potential RCRA Violations and Opportunity for Settlement.

29. The Notice letter identified potential RCRA violations, and an option and timeline for resolution of the matter through a streamlined settlement process.

30. The goal of the streamlined settlement process is to quickly and efficiently assess and resolve the matter, bring the facility into compliance, and enter into an agreed upon CAFO.

31. Thereafter, Respondent engaged with U.S. EPA to expeditiously assess the matter and agree to the entry into this CAFO.

### **Alleged Violations**

#### **Count I: Notification of Change of Hazardous Waste Activity**

32. Complainant incorporates paragraphs 1 through 31 of this CAFO as though set forth in this paragraph.

33. Pursuant to 329 IAC § 3.1-7-1 and Mich. Admin. Code r. 299.9301, a generator must determine the quantity of hazardous waste generated per month, so as to allow the generator to determine the applicability of the provisions of 329 IAC § 3.1-7-1 and Mich. Admin. Code r. 299.9301 that are dependent on quantity generated per month.

34. Pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), generators are required to file with an authorized State a notification (or if necessary a subsequent notification) including the types wastes handled and the type of hazardous waste activity (e.g., change to Large Quantity Generator status).

35. Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), is implemented through EPA Form 8700-12 (OMB 2050-0024), which requires notification if, among other things, a generator's hazardous waste activity changes to Large Quantity Generator status.

36. From at least 2015 until the present, Respondent did not submit a notification of the change of the Logansport Facility's type of hazardous waste activity to Large Quantity

Generator status in relevant months, in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

37. From at least 2019 until the present, Respondent did not submit a notification of the change of the Albion Facility's type of hazardous waste activity to Large Quantity Generator status in relevant months, in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

**Count II: Biennial Reporting**

38. Complainant incorporates paragraphs 1 through 31 of this CAFO as though set forth in this paragraph.

39. Pursuant to 329 IAC § 3.1-7-14, a generator of more than 1,000 kilograms of hazardous waste in a calendar month must provide to the director or the director's designee the data necessary for the department to prepare and submit Indiana's hazardous waste report as required. A Biennial Report is due by March 1 of each even numbered year.

40. In 2016 and 2018, Respondent did not prepare and submit a biennial report for the Logansport facility to the State of Indiana by March 1 for the preceding calendar year, in violation of 329 IAC 3.1-7-14.

41. Pursuant to Mich. Admin. Code r. 299.9308(1), a generator of more than 1,000 kilograms of hazardous waste in a calendar month must provide to the director or the director's designee the data necessary for the department to prepare and submit Michigan's hazardous waste report as required. A Biennial Report is due by March 1 of each even numbered year.

42. In 2020, Respondent did not prepare and submit a biennial report for the Albion facility to the State of Michigan by March 1 for the preceding calendar year, in violation of Mich. Admin. Code r. 299.9308(1).

### **Compliance Order**

43. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Respondent is hereby ordered to comply with the following requirements as expeditiously as possible and no later than 30 days from the effective date of this CAFO.

44. Respondent shall file with the Indiana Department of Environmental Management (IDEM) an updated Notification of RCRA Subtitle Activities (e.g. Site Identification Form 8700-12), including the types of wastes handled and the type of hazardous waste activity (e.g., change to Large Quantity Generator status) for the Logansport Facility. This updated Notification may be filed along with the Biennial Hazardous Waste Report(s).

45. Respondent shall file with IDEM Biennial Hazardous Waste Reports for the Logansport facility covering the years 2015 and 2017.

46. Respondent shall file with the Michigan Department of Environment, Great Lakes, and Energy (EGLE) an updated Notification of RCRA Subtitle Activities (e.g. Site Identification Form 8700-12 or Michigan form EQP5150), including the types of wastes handled and the type of hazardous waste activity (e.g., change to Large Quantity Generator status) for the Albion Facility. This updated Notification may be filed along with the Biennial Hazardous Waste Report.

47. Respondent shall file with EGLE a Biennial Hazardous Waste Report for the Albion Facility covering the year 2019.

48. Respondent shall submit the following certification to U.S. EPA that it has complied with the requirements in paragraphs 43 – 47, above:

I certify under the penalty of law that based on my review of all relevant information and documents, and inquiring of those individuals immediately responsible for providing all relevant information and documents, The Andersons Marathon Holdings LLC is in compliance with the requirements of this Compliance Order. I am aware that there are

significant penalties for submitting false information, including the possibility of fine and imprisonment.

Date \_\_\_\_\_ Signature and Title \_\_\_\_\_

49. If unable to certify compliance in paragraph 48, Respondent shall submit notification explaining why it is unable to comply, the actions it is taking to comply, and a proposed date that it will comply.

50. Respondent shall submit all certifications and notifications required under the Compliance Order to:

Land Enforcement and Compliance Assurance Branch  
Enforcement and Compliance Assurance Division  
U.S. EPA, Region 5  
R5lecab@epa.gov

And

Todd Brown  
Enforcement and Compliance Assurance Division  
U.S. EPA, Region 5  
brown.todd@epa.gov

### **Civil Penalty Order**

51. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant determined that an appropriate civil penalty to settle this action is \$34,413. In determining the penalty amount, Complainant took into account the above Factual Allegations, the seriousness of the violations, any good faith efforts to comply with the applicable requirements, and other factors as justice may require. Complainant also considered U.S. EPA's RCRA Civil Penalty Policy, dated June 23, 2003.

52. Within 30 days after the effective date of this CAFO, Respondent must pay a \$34,413 civil penalty for the RCRA violations by:

***For checks sent by regular U.S. Postal Service mail***, sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

The check must state Respondent's name and the docket number of this CAFO.

***For checks sent by express mail***, sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, Missouri 63101

The check must state Respondent's name and the docket number of this CAFO.

***For electronic funds transfer***, sending funds electronically, payable to "Treasurer, United States of America," and to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read:  
"D 68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state Respondent's name and the docket number of this CAFO.

53. Respondent must send a notice of payment that states Respondent's name and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604  
Or via email at Whitehead.ladawn@epa.gov

Land Enforcement and Compliance Assurance Branch  
Enforcement and Compliance Assurance Division  
U.S. EPA, Region 5  
R5lecab@epa.gov

Todd Brown  
Enforcement and Compliance Assurance Division  
U.S. EPA, Region 5  
Brown.todd@epa.gov

Jeffrey A. Cahn  
Office of Regional Counsel  
U.S. EPA, Region 5  
Cahn.jeff@epa.gov

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

55. 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.

56. 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 payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

### **General Provisions**

57. Respondent certifies that it is complying fully with the statutory and regulatory provisions alleged violated in this CAFO.

58. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: cahn.jeff@epa.gov (for Complainant), and Pariss\_Coleman@andersonsinc.com (for Respondent).

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

60. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

61. Payment of the civil penalty does not affect Respondent's continuing obligation to comply with RCRA and other applicable federal, state, local laws or permits.

62. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31, U.S. EPA's RCRA Civil Penalty Policy, and U.S. EPA's Hazardous Waste Civil Enforcement Response Policy (December 2003).

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

64. Each person signing this 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.

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

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

**The Andersons Marathon Holdings LLC, Respondent**

\_\_\_\_\_  
Date

**Ted Hafer**

Digitally signed by Ted  
Hafer  
Date: 2020.10.26  
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\_\_\_\_\_  
Ted Hafer  
–Vice President, Operations - Ethanol  
The Andersons, Inc.

**United States Environmental Protection Agency, Complainant**

\_\_\_\_\_  
Date

**MICHAEL  
HARRIS**

Digitally signed by  
MICHAEL HARRIS  
Date: 2020.11.02  
13:22:39 -06'00'

\_\_\_\_\_  
Michael D. Harris  
Division Director  
Enforcement and Compliance Assurance  
Division

**In the Matter of:**  
**The Andersons Marathon Holdings LLC**  
**Docket No. RCRA-05-2021-0002**

**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 COYLE** Digitally signed by ANN  
COYLE  
Date: 2020.11.03  
11:27:08 -06'00'

\_\_\_\_\_  
Ann L. Coyle  
Regional Judicial Officer  
United States Environmental Protection Agency  
Region 5

**CONSENT AGREEMENT AND FINAL ORDER**

**In the matter of The Andersons Marathon Holdings: Logansport, Indiana and Albion, Michigan**

**Docket Number:** RCRA-05-2021-0002

**CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number RCRA-05-2021-0002, which was filed on November 4, 2020 in the following manner to the following addresses:

Copy by E-mail to  
Respondent:

Tony Sloma  
Tony\_Sloma@andersonsinc.com

Copy by E-mail to  
Attorney for Complainant:

Jeffrey Cahn  
cahn.jeff@epa.gov

Copy by E-mail to  
Attorney for Respondent:

Pariss Coleman  
Coleman@andersonsinc.com

Copy by E-mail to  
RCRA CS1 Contact:

Todd Brown  
brown.todd@epa.gov

Copy by E-mail to  
Regional Judicial Officer:

Ann Coyle  
[coyle.ann@epa.gov](mailto:coyle.ann@epa.gov)

Dated: \_\_\_\_\_

LADAWN WHITEHEAD Digitally signed by LADAWN WHITEHEAD  
Date: 2020.11.04 11:40:52 -06'00'

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