

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**In the Matter of:**

**Gopher Resource, LLC  
Eagan, Minnesota,**

**Respondent.**

**Docket Nos. CERCLA-05-2024-0001  
EPCRA-05-2024-0003**

**Proceeding to Assess a Civil Penalty Under  
Section 109(b) of the Comprehensive  
Environmental Response, Compensation and  
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 the United States Environmental Protection Agency represented in this administrative action by lawful delegation, by the Manager of Emergency Response Branch 1, Superfund & Emergency Management Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is Gopher Resource, LLC, a Minnesota limited liability company doing business in the State of Minnesota.

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), 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)(3)(A) of EPCRA, 42 U.S.C. § 11004(a)(3)(A), 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 a 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. 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).

14. 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.

15. 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 \$67,544 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 6, 2023, or other amounts as penalty levels may be later adjusted at 40 C.F.R. Part 19.

### **EPA’s Factual Allegations and Alleged Violations**

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

17. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

18. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 685 Yankee Doodle Road, Eagan, Minnesota (facility).

19. At all times relevant to this CAFO, Respondent was “in charge” of the facility as that term is used in Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

20. Respondent’s facility includes buildings, structures, installations, equipment, and storage containers.

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

22. 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.

23. Respondent’s facility is a “facility” as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

24. Lead (CAS #7439-92-1) is a “hazardous substance” as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

25. Lead (CAS #7439-92-1) has a reportable quantity of 10 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

26. The elements and compounds listed in 40 C.F.R. Part 302, Table 302.4, including Lead (CAS #7439-92-1), are designated as hazardous substances under Section 102(a) of CERCLA, 42 U.S.C. § 9602(a).

27. Elements and compounds designated as hazardous substances are those “which, when released into the environment may present substantial danger to the public health or welfare or the environment” under Section 102(a) of CERCLA, 42 U.S.C. § 9602(a).

28. Lead (CAS #7439-92-1) is classified as a physical or health hazard, or hazard not otherwise classified.

29. Lead (CAS #7439-92-1) 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).

30. At all times relevant to this CAFO, Respondent produced, used, or stored lead at the facility.

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

#### **October 2, 2022, Lead Release**

32. On October 2, 2022, at or about 6:50 p.m. Central Time, a release occurred from Respondent’s facility of approximately 77 pounds of lead (the October 2, 2022 release).

33. In a 24-hour time period, the October 2, 2022 release of lead exceeded 10 pounds.

34. During the October 2, 2022 release, approximately 77 pounds of lead leaked, emitted, discharged, or escaped into the land surface, or ambient air.

35. The October 2, 2022 release is a “release” as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

36. The October 2, 2022 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 October 2, 2022 release on October 2, 2022, at approximately 6:50 p.m. Central Time.

38. The October 2, 2022 release required notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

39. The October 2, 2022 release required notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

40. According to Respondent, it took the following actions after the October 2, 2022 release: removed the affected baghouse cell from service, conducted a visual site inspection, and deployed industrial street sweepers to clean paved areas on Respondent's property that may have been impacted by the release.

#### **October 8, 2022, Lead Release**

41. On October 8, 2022, at or about 11:50 p.m. Central Time, a release occurred from Respondent's facility of approximately 17 pounds of lead (the October 8, 2022 release).

42. In a 24-hour time period, the October 8, 2022 release of lead exceeded 10 pounds.

43. During the October 8, 2022 release, approximately 17 pounds of lead leaked, emitted, discharged, or escaped into the land surface, or ambient air.

44. The October 8, 2022 release is a "release" as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

45. The October 8, 2022 release is a "release" as that term is defined under Section 329(8) of EPCRA, 42 U.S.C. § 11049(8).

46. Respondent had knowledge of the October 8, 2022 release on October 8, 2022, at approximately 11:50 p.m. Central Time.

47. The October 8, 2022 release was one for which notice was required under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

48. The October 8, 2022 release required notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

49. According to Respondent, it took the following actions after the October 8, 2022 release: removed the affected baghouse cell from service, conducted a visual site inspection, and utilized industrial street sweepers to clean paved areas on Respondent's property that may have been impacted by the release.

**Count 1** (failure to immediately notify NRC)

50. Complainant incorporates paragraphs 1 through 49 of this CAFO as if set forth in this paragraph.

51. Respondent notified the NRC of the October 2, 2022 release on October 3, 2022, at approximately 7:40 p.m. Central Time.

52. Respondent did not "notify immediately" the NRC as soon as Respondent had knowledge that the October 2, 2022 release was in a quantity equal to or greater than the reportable quantity for lead.

53. Respondent's failure to "notify immediately" the NRC of the October 2, 2022 release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

**Count 2** (failure to immediately notify SERC)

54. Complainant incorporates paragraphs 1 through 49 of this CAFO as if set forth in this paragraph.

55. Respondent notified the Minnesota SERC of the October 2, 2022 release on October 3, 2022, at approximately 3:40 p.m. Central Time.

56. Respondent did not "immediately provide notice" to the SERC after Respondent had knowledge that the October 2, 2022 release was in a quantity equal to or greater than the reportable quantity for lead.

57. Respondent's failure to "immediately provide notice" to the SERC of the October 2, 2022 release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

**Count 3** (failure to immediately notify NRC)

58. Complainant incorporates paragraphs 1 through 49 of this CAFO as if set forth in this paragraph.

59. Respondent notified the NRC of the October 8, 2022 release on October 9, 2022, at 3:08 p.m. Central Time.

60. Respondent did not "notify immediately" the NRC as soon as Respondent had knowledge that the October 8, 2022 release was in a quantity equal to or greater than the reportable quantity for lead.

61. Respondent's failure to "notify immediately" the NRC of the October 8, 2022 release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

**Count 4** (failure to immediately notify SERC)

62. Complainant incorporates paragraphs 1 through 49 of this CAFO as if set forth in this paragraph.

63. Respondent notified the Minnesota SERC of the October 8, 2022 release on October 9, 2022, at 6:55 a.m. Central Time.

64. Respondent did not "immediately provide notice" the SERC after Respondent had knowledge that the October 8, 2022 release was in a quantity equal to or greater than the reportable quantity for lead.

65. Respondent's failure to "immediately provide notice" to the SERC of the October 8, 2022 release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).



### Civil Penalty

66. Complainant has determined that an appropriate civil penalty to settle this action is \$22,194 for the CERCLA 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, 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. 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).

67. Within 30 days after the effective date of this CAFO, Respondent must pay a \$22,194 civil penalty for the CERCLA violations. Respondent must pay the penalty by submitting an electronic funds transfer, payable to "EPA Hazardous Substance Superfund," and sent to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
33 Liberty Street  
New York, NY 10045  
SWIFT address: FRNYUS33

In the comment or description field of the electronic funds transfer, state the following: Gopher Resource, LLC, the docket number of this CAFO **CERCLA-05-2024-0001**, and the billing document number **2752430B001**.

68. Complainant has determined that an appropriate civil penalty to settle this action is \$22,048 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 EPCRA/CERCLA Enforcement Response Policy.

69. Within 30 days after the effective date of this CAFO, Respondent must pay a \$22,048 civil penalty for the EPCRA violations. Respondent must pay the penalty by submitting an electronic funds transfer, payable to “Treasurer, United States of America,” and sent to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
33 Liberty Street  
New York, NY 10045  
SWIFT address: FRNYUS33

In the comment or description field of the electronic funds transfer, state the following:  
Gopher Resource, LLC and the docket number of this CAFO **EPCRA-05-2024-0003**.

70. Respondent must also send a copy of the payment to:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604  
[r5hearingclerk@epa.gov](mailto:r5hearingclerk@epa.gov)

James Entzminger (SE-5J)  
Chemical Emergency Preparedness  
and Prevention Section  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604  
[entzminger.james@epa.gov](mailto:entzminger.james@epa.gov)

James Bonar-Bridges (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604  
bonarbridges.james@epa.gov

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

72. 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.

73. 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**

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

75. 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.

76. 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.

77. 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.

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

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

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

81. 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.

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

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

**In the Matter of: Gopher Resource, LLC, Eagan, Minnesota**  
**Docket Nos. CERCLA-05-2024-0001, EPCRA-05-2024-0003**

**Gopher Resource, LLC, Respondent**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Livingston Haskell  
Senior Vice President & General Counsel  
Gopher Resource, LLC

**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: Gopher Resource, LLC, Eagan, Minnesota**  
**Docket Nos. CERCLA-05-2024-0001, EPCRA-05-2024-0003**

**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