

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

Received by
EPA Region 7
Hearing Clerk

BEFORE THE ADMINISTRATOR

In the Matter of)	
)	
The Andersons Marathon)	<u>CONSENT AGREEMENT</u>
Holdings LLC,)	
)	Docket No. EPCRA-07-2022-0083
)	
Respondent.)	
)	
Proceeding under Section 325(c) of the)	
Emergency Planning and Community)	
Right-to Know Act, 42 U.S.C. § 11045(c))	
)	
)	

I. PRELIMINARY STATEMENT

1. The United States Environmental Protection Agency, Region 7 (EPA or Complainant) and The Andersons Marathon Holdings LLC (Respondent) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

2. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this consent agreement (“Consent Agreement” or “Agreement”) and the attached final order (“Final Order” or “Order”) without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Consent Agreement and Final Order.

II. Jurisdiction

3. This proceeding is an administrative action for the assessment of civil penalties pursuant to Section 325(c) of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045(c).

4. This Consent Agreement serves as notice that EPA alleges that Respondent has violated the reporting requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, and the regulations promulgated thereunder.

5. The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. § 22.4(a) and 22.18(b).

6. The issuance of this Consent Agreement and attached Final Order simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

III. Parties

7. Complainant, by delegation from the Administrator of EPA and from the Regional Administrator, EPA Region 7, is the Director of the Enforcement and Compliance Assurance Division, EPA Region 7.

8. Respondent is The Andersons Marathon Holdings LLC, a company registered and authorized to do business in the State of Iowa. Respondent owns and operates an ethanol production facility at 2404 Lincoln Highway, Denison, Iowa 51442, in Denison, Iowa (“Respondent’s facility”).

IV. Statutory and Regulatory Requirements

9. The Emergency Planning and Community Right-to-Know Act of 1986 was created to help communities plan for chemical emergencies. It requires industry to report on the storage, use and release of hazardous substances to federal, state, and local governments. EPCRA requires state and local governments and Indian tribes to use this information to prepare for and protect their communities from potential risks.

10. Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.22 and 372.30 require the owner or operator of a facility that:

- a. has ten or more full-time employees;
- b. is an establishment with a primary Standard Industrial Code (SIC) major group or industry code listed in 40 C.F.R. § 372.23(a) or a primary North American Industry Classification System (NAICS) subsector or industry code listed in 40 C.F.R. §§ 372.23(b) or (c); and
- c. “manufactured, processed, or otherwise used” a toxic chemical listed under Subsection 313(c) of EPCRA, 42 U.S.C. § 11023(c), and 40 C.F.R. § 372.65, in excess of the threshold quantity established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. §§ 372.25, 372.27 or 372.28 during the calendar year

to complete and submit a toxic chemical release inventory Form R to the Administrator of EPA and to the State in which the subject facility is located by July 1, for the preceding calendar year,

for each toxic chemical known by the owner or operator to be manufactured (including imported), processed, or otherwise used at the facility.

11. According to Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, the threshold amount for reporting under Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.30 is 25,000 pounds for any toxic chemical “manufactured or processed” and 10,000 pounds for any toxic chemical “otherwise used” for the applicable calendar year. Alternative reporting thresholds for certain other chemicals are set forth in 40 C.F.R. §§ 372.27 and 372.28.

12. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation, if, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of Section 313, 42 U.S.C. § 11023. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$62,689 for violations that occur after November 2, 2015, and for which penalties are assessed on or after January 12, 2022.

A. Definitions

13. The term “facility” means “all 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 (or by any person which controls, is controlled by, or under common control with such person). A facility may contain more than one establishment.” Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3.

14. The term “person” means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or interstate body. Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

15. The term “full-time employees” means “2,000 hours per year of full-time equivalent employment. A facility would calculate the number of full-time employees by totaling the hours worked during the calendar year by all employees, including contract employees, and dividing that total by 2,000 hours.” 40 C.F.R. § 372.3.

16. The term “toxic chemical” means a “chemical or chemical category listed in 40 C.F.R. § 372.65.” 40 C.F.R. § 372.3.

17. The term “manufacture” means “to produce, prepare, import or compound a toxic chemical. Manufacture also applies to a toxic chemical that is produced coincidentally during the manufacture, processing, use or disposal of another chemical or mixture of chemicals, including a toxic chemical that is separated from that other chemical or mixture of chemicals as a byproduct, and a toxic chemical that remains in that other chemical mixture of chemicals as an impurity.” 40 C.F.R. § 372.3.

18. The term “process” means “the preparation of a toxic chemical, after its manufacture, for distribution in commerce: (1) in the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such substance; or (2) as part of an article containing the toxic chemical. Process also applies to the processing of a toxic chemical contained in a mixture or trade name product.” 40 C.F.R. § 372.3.

19. The term “otherwise use” means “any use of a toxic chemical, including a toxic chemical contained in a mixture or other trade name product or waste, that is not covered by the terms ‘manufacture’ or ‘process.’ Otherwise use of a toxic chemical does not include disposal, stabilization (without subsequent distribution in commerce), or treatment for destruction unless: (1) the toxic chemical that was disposed, stabilized, or treated for destruction was received from off-site for the purposes of further waste management; or (2) the toxic chemical that was disposed, stabilized, or treated for destruction was manufactured as a result of waste management activities on materials received from off-site for the purposes of further waste management activities. Relabeling or redistributing of the toxic chemical where no repackaging of the toxic chemical occurs does not constitute otherwise use or processing of the toxic chemical.” 40 C.F.R. § 372.3.

B. Factual Allegations

20. Respondent is, and at all times referred to herein was, a “person” as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

21. Respondent’s facility, located at 2404 Lincoln Highway in Denison, Iowa (“Respondent’s facility”), is a “facility” as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and by 40 C.F.R. § 372.3.

22. Respondent’s facility has ten or more “full-time employees” pursuant to Section 313(b)(1)(A) of EPCRA, 42 U.S.C. § 11023(b)(1)(A), and as defined by 40 C.F.R. § 372.3.

23. Respondent’s facility is classified as NAICS Code 325193 – Ethyl Alcohol Manufacturing.

24. Acetaldehyde, acrolein, methanol, formic acid, benzene, ethylbenzene, n-Hexane, toluene and formaldehyde are listed chemicals pursuant to 40 C.F.R. § 372.65 and therefore are “toxic chemicals” within the meaning of 40 C.F.R. § 372.3.

25. During reporting years 2015, 2016, 2017, 2018, and 2019, the toxic chemicals identified in Paragraph 24 were “manufactured, processed, or otherwise used” as those terms are defined by 40 C.F.R. § 372.3 at Respondent’s facility.

26. On December 10, 2020, EPA sent an information request letter to Respondent, seeking information about Respondent’s compliance with Toxics Release Inventory reporting requirements. Respondent provided a response on January 20, 2021.

27. On June 24, 2021, Complainant and Respondent entered into a Tolling Agreement for the EPCRA claims dated June 24, 2016, through the present. The Tolling Period lasted through June 24, 2022, and was extended to September 25, 2022, through a First Amended Tolling Agreement signed by both Parties.

V. EPA's Allegations

28. Complainant hereby states and alleges that Respondent has violated EPCRA, and federal regulations promulgated thereunder, as follows:

Count 1-Failure to Report Acetaldehyde

29. Paragraphs 1 through 27 are incorporated by reference as if fully set forth herein.

30. Pursuant to Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, the threshold reporting quantity for manufacturing, processing, or otherwise using acetaldehyde is 25,000 pounds.

31. During reporting years 2015, 2016, 2017, 2018, and 2019, Respondent's facility manufactured, processed, and/or otherwise used in excess of the applicable threshold quantities the toxic chemical acetaldehyde.

32. Respondent failed to file a Form R report for acetaldehyde with the Administrator of EPA and the State of Iowa for 2015 by the July 1, 2016, deadline. Respondent filed the Form R report on or about April 19, 2021.

33. Respondent failed to file a Form R report for acetaldehyde with the Administrator of EPA and the State of Iowa for 2016 by the July 1, 2017, deadline. Respondent filed the Form R report on or about April 19, 2021.

34. Respondent failed to file a Form R report for acetaldehyde with the Administrator of EPA and the State of Iowa for 2017 by the July 1, 2018, deadline. Respondent filed the Form R report on or about April 19, 2021.

35. Respondent failed to file a Form R report for acetaldehyde with the Administrator of EPA and the State of Iowa for 2018 by the July 1, 2019, deadline. Respondent filed the Form R report on or about April 20, 2021.

36. Respondent failed to file a Form R report for acetaldehyde with the Administrator of EPA and the State of Iowa for 2019 by the July 1, 2020, deadline. Respondent filed the Form R report on or about April 19, 2021.

37. The failure to timely submit a Form R report for acetaldehyde is a violation of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30.

38. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), it is proposed that a civil penalty be assessed against Respondent for the violations of EPCRA identified above, the amount of which is set forth in Paragraph 133 of the Consent Agreement below.

Count 2-Failure to Report Acrolein

39. Paragraphs 1 through 27 are incorporated by reference as if fully set forth herein.

40. Pursuant to Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, the threshold reporting quantity for manufacturing, processing, or otherwise using acrolein is 25,000 pounds.

41. During reporting years 2015, 2016, 2017, 2018, and 2019, Respondent's facility manufactured, processed, and/or otherwise used in excess of the applicable threshold quantities the toxic chemical acrolein.

42. Respondent failed to file a Form R report for acrolein with the Administrator of EPA and the State of Iowa for 2015 by the July 1, 2016, deadline. Respondent filed the Form R report on or about April 19, 2021.

43. Respondent failed to file a Form R report for acrolein with the Administrator of EPA and the State of Iowa for 2016 by the July 1, 2017, deadline. Respondent filed the Form R report on or about April 19, 2021.

44. Respondent failed to file a Form R report for acrolein with the Administrator of EPA and the State of Iowa for 2017 by the July 1, 2018, deadline. Respondent filed the Form R report on or about April 19, 2021.

45. Respondent failed to file a Form R report for acrolein with the Administrator of EPA and the State of Iowa for 2018 by the July 1, 2019, deadline. Respondent filed the Form R report on or about April 20, 2021.

46. Respondent failed to file a Form R report for acrolein with the Administrator of EPA and the State of Iowa for 2019 by the July 1, 2020, deadline. Respondent filed the Form R report on or about April 19, 2021.

47. The failure to timely submit a Form R report for acrolein is a violation of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30.

48. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), it is proposed that a civil penalty be assessed against Respondent for the violations of EPCRA identified above, the amount of which is set forth in Paragraph 133 of the Consent Agreement below.

Count 3-Failure to Report Methanol

49. Paragraphs 1 through 27 are incorporated by reference as if fully set forth herein.

50. Pursuant to Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, the threshold reporting quantity for manufacturing, processing, or otherwise using methanol is 25,000 pounds.

51. During reporting years 2016, 2017, and 2018, Respondent's facility manufactured, processed, and/or otherwise used in excess of the applicable threshold quantities. the toxic chemical methanol.

52. Respondent failed to file a Form R report for methanol with the Administrator of EPA and the State of Iowa for 2016 by the July 1, 2017, deadline. Respondent filed the Form R report on or about April 19, 2021.

53. Respondent failed to file a Form R report for methanol with the Administrator of EPA and the State of Iowa for 2017 by the July 1, 2018, deadline. Respondent filed the Form R report on or about April 19, 2021.

54. Respondent failed to file a Form R report for methanol with the Administrator of EPA and the State of Iowa for 2018 by the July 1, 2019, deadline. Respondent filed the Form R report on or about April 20, 2021.

55. The failure to timely submit a Form R report for methanol is a violation of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30.

56. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), it is proposed that a civil penalty be assessed against Respondent for the violations of EPCRA identified above, the amount of which is set forth in Paragraph 133 of the Consent Agreement below.

Count 4-Failure to Report Formic Acid

57. Paragraphs 1 through 27 are incorporated by reference as if fully set forth herein.

58. Pursuant to Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, the threshold reporting quantity for manufacturing, processing, or otherwise using formic acid is 25,000 pounds.

59. During reporting years 2016, 2017, 2018, and 2019, Respondent's facility manufactured, processed, and/or otherwise used in excess of the applicable threshold quantities the toxic chemical formic acid.

60. Respondent failed to file a Form R report for formic acid with the Administrator of EPA and the State of Iowa for 2016 by the July 1, 2017, deadline. Respondent filed the Form R report on or about April 19, 2021.

61. Respondent failed to file a Form R report for formic acid with the Administrator of EPA and the State of Iowa for 2017 by the July 1, 2018, deadline. Respondent filed the Form R report on or about April 19, 2021.

62. Respondent failed to file a Form R report for formic acid with the Administrator of EPA and the State of Iowa for 2018 by the July 1, 2019, deadline. Respondent filed the Form R report on or about April 20, 2021.

63. Respondent failed to file a Form R report for formic acid with the Administrator of EPA and the State of Iowa for 2019 by the July 1, 2020, deadline. Respondent filed the Form R report on or about April 19, 2021.

64. The failure to timely submit a Form R report for formic acid is a violation of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30.

65. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), it is proposed that a civil penalty be assessed against Respondent for the violations of EPCRA identified above, the amount of which is set forth in Paragraph 133 of the Consent Agreement below.

Count 5-Failure to Report Benzene

66. Paragraphs 1 through 27 are incorporated by reference as if fully set forth herein.

67. Pursuant to Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, the threshold reporting quantity for manufacturing, processing, or otherwise using benzene is 25,000 pounds.

68. During reporting years 2015, 2016 and 2017, Respondent's facility manufactured, processed, and/or otherwise used in excess of the applicable threshold quantities the toxic chemical benzene.

69. Respondent failed to file a Form R report for benzene with the Administrator of EPA and the State of Iowa for 2015 by the July 1, 2016, deadline. Respondent filed the Form R report on or about September 1, 2021.

70. Respondent failed to file a Form R report for benzene with the Administrator of EPA and the State of Iowa for 2016 by the July 1, 2017, deadline. Respondent filed the Form R report on or about June 28, 2019.

71. Respondent failed to file a Form R report for benzene with the Administrator of EPA and the State of Iowa for 2017 by the July 1, 2018, deadline. Respondent filed the Form R report on or about June 28, 2019.

72. The failure to timely submit a Form R report for benzene is a violation of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30.

73. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), it is proposed that a civil penalty be assessed against Respondent for the violations of EPCRA identified above, the amount of which is set forth in Paragraph 133 of the Consent Agreement below.

Count 6-Failure to Report Toluene

74. Paragraphs 1 through 27 are incorporated by reference as if fully set forth herein.

75. Pursuant to Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, the threshold reporting quantity for manufacturing, processing, or otherwise using toluene is 25,000 pounds.

76. During reporting years 2015, 2016 and 2017, Respondent's facility manufactured, processed, and/or otherwise used in excess of the applicable threshold quantities the toxic chemical toluene.

77. Respondent failed to file a Form R report for toluene with the Administrator of EPA and the State of Iowa for 2015 by the July 1, 2016, deadline. Respondent filed the Form R report on or about September 1, 2021.

78. Respondent failed to file a Form R report for toluene with the Administrator of EPA and the State of Iowa for 2016 by the July 1, 2017, deadline. Respondent filed the Form R report on or about June 28, 2019.

79. Respondent failed to file a Form R report for toluene with the Administrator of EPA and the State of Iowa for 2017 by the July 1, 2018, deadline. Respondent filed the Form R report on or about June 28, 2019.

80. The failure to timely submit a Form R report for toluene is a violation of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30.

81. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), it is proposed that a civil penalty be assessed against Respondent for the violations of EPCRA identified above, the amount of which is set forth in Paragraph 133 of the Consent Agreement below.

Count 8-Failure to Report n-Hexane

82. Paragraphs 1 through 27 are incorporated by reference as if fully set forth herein.

83. Pursuant to Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, the threshold reporting quantity for manufacturing, processing, or otherwise using n-Hexane is 25,000 pounds.

84. During reporting years 2015, 2016, 2017, 2018 and 2019, Respondent's facility manufactured, processed, and/or otherwise used in excess of the applicable threshold quantities the toxic chemical n-Hexane.

85. Respondent failed to file a Form R report for n-Hexane with the Administrator of EPA and the State of Iowa for 2015 by the July 1, 2016, deadline. Respondent filed the Form R report on or about September 1, 2021

86. Respondent failed to file a Form R report for n-Hexane with the Administrator of EPA and the State of Iowa for 2016 by the July 1, 2017, deadline. Respondent filed the Form R report on or about June 28, 2019.

87. Respondent failed to file a Form R report for n-Hexane with the Administrator of EPA and the State of Iowa for 2017 by the July 1, 2018, deadline. Respondent filed the Form R report on or about June 28, 2019.

88. Respondent failed to file a Form R report for n-Hexane with the Administrator of EPA and the State of Iowa for 2018 by the July 1, 2019, deadline. Respondent filed the Form R report on or about September 1, 2019.

89. Respondent failed to file a Form R report for n-Hexane with the Administrator of EPA and the State of Iowa for 2019 by the July 1, 2020, deadline. Respondent filed the Form R report on or about June 28, 2019.

90. The failure to timely submit a Form R report for n-Hexane is a violation of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30.

91. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), it is proposed that a civil penalty be assessed against Respondent for the violations of EPCRA identified above, the amount of which is set forth in Paragraph 133 of the Consent Agreement below.

Count 9-Failure to Report Formaldehyde

92. Paragraphs 1 through 27 are incorporated by reference as if fully set forth herein.

93. Pursuant to Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, the threshold reporting quantity for manufacturing, processing, or otherwise using formaldehyde is 25,000 pounds.

94. During reporting year 2019, Respondent's facility manufactured, processed, and/or otherwise used at in excess of the applicable threshold quantities the toxic chemical formaldehyde.

95. Respondent failed to file a Form R report for formaldehyde with the Administrator of EPA and the State of Iowa for 2019 by the July 1, 2020, deadline. Respondent filed the Form R report on or about April 19, 2021.

96. The failure to timely submit a Form R report for formaldehyde is a violation of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30.

97. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), it is proposed that a civil penalty be assessed against Respondent for the violations of EPCRA identified above, the amount of which is set forth in Paragraph 133 of the Consent Agreement below.

Count 10-Data Quality Error n-Hexane

98. Paragraphs 1 through 27 are incorporated by reference as if fully set forth herein.

99. During reporting year 2018, Respondent's facility manufactured, processed, and/or otherwise used in excess of the applicable threshold quantity the toxic chemical n-Hexane.

100. On June 28, 2019, Respondent filed with the Administrator of EPA a Form R which stated that in 2018, Respondent released or transferred off-site 505 pounds of n-Hexane.

101. On September 1, 2021, Respondent filed with the Administrator of EPA a revised Form R for calendar year 2018, to amend the total on-site releases and off-site disposal previously reported in 2018 to 2,895 pounds of n-Hexane released or transferred off-site.

102. Respondent's failure to identify the appropriate category of chemical use and calculate releases, which resulted in a data quality significant error of its use of n-Hexane, and its failure to complete a reasonable estimate of the quantity which it released into the environment, violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30.

103. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), it is proposed that a civil penalty be assessed against Respondent for the violation of EPCRA identified above, the amount of which is set forth in Paragraph 133 of the Consent Agreement below.

Count 11-Data Quality Error-n-Hexane

104. Paragraphs 1 through 27 are incorporated by reference as if fully set forth herein.

105. During the reporting year 2019, Respondent's facility manufactured, processed and/or otherwise used in excess of the applicable threshold quantity the toxic chemical n-Hexane.

106. On July 1, 2020, Respondent filed with the Administrator of EPA a Form R which stated that in 2019, Respondent released or transferred off-site 2,536 pounds of n-Hexane.

107. On September 1, 2021, Respondent filed with the Administrator of EPA a revised Form R for calendar year 2019, to amend the total on-site releases and off-site disposal previously reported in 2019 to 2,886 pounds of n-Hexane released or transferred off-site.

108. Respondent's failure to identify the appropriate category of chemical use and calculate releases, which resulted in a data quality significant error of its use of n-Hexane, and its failure to complete a reasonable estimate of the quantity which it released into the environment, violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30.

109. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), it is proposed that a civil penalty be assessed against Respondent for the violation of EPCRA identified above, the amount of which is set forth in Paragraph 133 of the Consent Agreement below.

Count 12-Data Quality Error Ammonia

110. Paragraphs 1 through 27 are incorporated by reference as if fully set forth herein.

111. During reporting year 2015, Respondent's facility manufactured, processed, and/or otherwise used at Respondent's facility in excess of the applicable threshold quantity the toxic chemical ammonia.

112. On June 22, 2016, Respondent filed with the Administrator of EPA a Form R which stated that in 2015, Respondent released or transferred off-site 10 pounds of ammonia.

113. On September 1, 2021, Respondent filed with the Administrator of EPA a revised Form R for calendar year 2015, to amend the total on-site releases and off-site disposal previously reported in 2015 to 4,922 pounds of ammonia released or transferred off-site.

114. Respondent's failure to identify the appropriate category of chemical use and calculate releases, which resulted in a data quality significant error of its use of ammonia, and its failure to complete a reasonable estimate of the quantity which it released into the environment, violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30.

115. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), it is proposed that a civil penalty be assessed against Respondent for the violation of EPCRA identified above, the amount of which is set forth in Paragraph 133 of the Consent Agreement below.

Count 13-Data Quality Error Ammonia

116. Paragraphs 1 through 27 are incorporated by reference as if fully set forth herein.

117. During reporting year 2016, Respondent's facility manufactured, processed, and/or otherwise used at Respondent's facility in excess of the applicable threshold quantity the toxic chemical ammonia.

118. On June 21, 2017, Respondent filed with the Administrator of EPA a Form R which stated that in 2016, Respondent released or transferred off-site 755 pounds of ammonia.

119. On September 1, 2021, Respondent filed with the Administrator of EPA a revised Form R for calendar year 2016, to amend the total on-site releases and off-site disposal previously reported in 2016 to 4,826 pounds of ammonia released or transferred off-site.

120. Respondent's failure to identify the appropriate category of chemical use and calculate releases, which resulted in a data quality significant error of its use of ammonia, and its

failure to complete a reasonable estimate of the quantity which it released into the environment, violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30.

121. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), it is proposed that a civil penalty be assessed against Respondent for the violation of EPCRA identified above, the amount of which is set forth in Paragraph 133 of the Consent Agreement below.

Count 14-Data Quality Error Ammonia

122. Paragraphs 1 through 27 are incorporated by reference as if fully set forth herein.

123. During reporting year 2017, Respondent's facility manufactured, processed, and/or otherwise used at Respondent's facility in excess of the applicable threshold quantity the toxic chemical ammonia.

124. On June 5, 2018, Respondent filed with the Administrator of EPA a Form R which stated that in 2017, Respondent released or transferred off-site 255 pounds of ammonia.

125. On September 1, 2021, Respondent filed with the Administrator of EPA a revised Form R for calendar year 2017, to amend the total on-site releases and off-site disposal previously reported in 2017 to 4,785 pounds of ammonia released or transferred off-site.

126. Respondent's failure to identify the appropriate category of chemical use and calculate releases, which resulted in a data quality significant error of its use of ammonia, and its failure to complete a reasonable estimate of the quantity which it released into the environment, violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30.

127. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), it is proposed that a civil penalty be assessed against Respondent for the violation of EPCRA identified above, the amount of which is set forth in Paragraph 133 of the Consent Agreement below.

VI. CONSENT AGREEMENT

128. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- a. admits the jurisdictional allegations set forth herein;
- b. neither admits nor denies the specific factual allegations stated herein;
- c. consents to the assessment of a civil penalty as stated below;
- d. consents to the issuance of any specified compliance or corrective action order;
- e. consents to any conditions specified in herein;

- f. consents to any stated Permit Action;
- g. waives any right to contest the alleged violations of law set forth in Section V of this Agreement; and
- h. waives its rights to appeal the Order accompanying this Agreement.

129. Respondent consents to the issuance of this Consent Agreement Final Order and agrees to comply with the terms of this Consent Agreement and Final Order.

130. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees incurred as a result of this action.

131. Respondent certifies by signing this Agreement that, to the best of its knowledge, Respondent's facility is in compliance with all requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, and all regulations promulgated thereunder.

132. The parties consent to service of this Consent Agreement and Final Order electronically at the following e-mail addresses: HertzWu.Sara@epa.gov (for Complainant) and Terri.Czajka@icemiller.com and Donald.Snemis@icemiller.com (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

A. Penalty Payment

133. Respondent agrees that, in settlement of the claims alleged in this Agreement, Respondent shall pay a civil penalty of Two Hundred and Nine Thousand, Two Hundred Forty-One Dollars and No Cents (\$209,241.00) within thirty (30) days of the effective date of this Final Order. Payment shall be made by cashiers or certified check or by alternate payment method described at <http://www.epa.gov/financial/makepayment>. Payment must identify the docket number for this matter, be made payable to the "United States Treasury," and shall be remitted to:

U.S. Environmental Protection Agency, Region 7
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

134. A copy of the check or other information confirming payment shall be e-mailed to:

Regional Hearing Clerk
R7_Hearing_Clerk_Filings@epa.gov;

and to:

Sara Hertz Wu
HertzWu.sara@epa.gov.

135. Late Payment Provisions. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the date required. Interest will be assessed at a rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b). A charge will be assessed to cover the costs of the debt collection, including processing and handling costs and attorneys' fees. In addition, a non-payment penalty charge of six (6) percent per year, compounded annually, will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. *31 C.F.R. §§ 901.9(c) and (d).*

136. Failure to pay the assessed penalty may result in the referral of this matter to the United States Department of Justice for collection. If payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury, pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

B. Effect of Consent Agreement and Final Order and Reservation of Rights

137. Full payment of the civil penalty proposed herein shall only resolve Respondent's liability for federal civil penalties for the violations of EPCRA alleged in this document. Complainant reserves the right to take any enforcement action with respect to any other violations of EPCRA or any other applicable law and/or regulation administered by the EPA.

138. The effect of settlement described in Paragraph 137 above is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 139 of this Agreement.

139. Respondent certifies by signing this Consent Agreement that it is presently in compliance with all requirements of EPCRA and its implementing regulations.

140. Nothing in this Agreement shall be construed as a release from any other action under law and/or regulation administered by EPA. 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 or statutes, nor shall it restrict the 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.

141. Nothing herein shall be construed to limit the power of the 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.

C. General Provisions

142. This Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.

143. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Agreement and to legally bind Respondent to it.

144. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

145. This Agreement shall apply to and be binding upon Respondent and Respondent's agents, successors, and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Agreement.

146. Respondent and Complainant shall each bear their own costs and attorneys' fees incurred as a result of this matter.

147. Penalties paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

**COMPLAINANT:
U. S. Environmental Protection Agency**

Date: _____ By: _____
David Cozad
Director
Enforcement and Compliance Assurance Division

Date: _____ By: _____
Sara Hertz Wu
Senior Regional Counsel
Office of Regional Counsel

RESPONDENT:
The Andersons Marathon Holdings LLC

Date: 8/9/22 By: 

William Kewegetz
Printed Name

President, Andersons Trade and Processing
Title

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

In the Matter of:

The Andersons Marathon
Holdings LLC,

Respondent.

Proceeding under Section 325(c) of the
Emergency Planning and Community
Right-to Know Act, 42 U.S.C. § 11045(c)

FINAL ORDER

Docket No. EPCRA-07-2022-0083

Pursuant to 40 C.F.R. § 22.18(b) of the EPA’s Consolidated Rules of Practice and Section 325(c) of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11045(c), the foregoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

Respondent is ORDERED to comply with all terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Date: _____ By: _____
Karina Borromeo
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 7

CERTIFICATE OF SERVICE
To be completed by EPA

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order, EPA Docket No. EPCRA-07-2022-0083, was sent this day in the following manner to the following addressees:

Copy via e-mail to Complainant:

Sara Hertz Wu, Office of Regional Counsel
HertzWu.Sara@epa.gov

Sean Bergin, Enforcement and Compliance Assurance Division
Bergin.Sean@epa.gov

Copy via e-mail to counsel for Respondent:

Terri Czajka
Ice Miller, LLP
Terri.Czajka@icemiller.com

Donald Snemis
Ice Miller, LLP
Donald.Snemis@icemiller.com

Dated this _____ day of _____, _____.

Signed