

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket Nos. CERCLA-05-2023-0007
)	EPCRA-05-2023-0008
Duluth Entertainment and)	Proceeding to Assess a Civil Penalty Under
Convention Center)	Section 109(b) of the Comprehensive
Duluth, Minnesota,)	Environmental Response, Compensation and
)	Liability Act, and Section 325(b)(2), (c)(1),
Respondent.)	and (c)(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), (c)(1) and (c)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. §§ 11045(b)(2), (c)(1), (c)(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 Duluth Entertainment and Convention Center, organized under Minnesota law to conduct 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)(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), the owner or operator of a facility must give the notice required under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), immediately after the release, 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. Section 311 of EPCRA, 42 U.S.C. § 11021, and its implementing regulations at 40 C.F.R. Part 370, require the owner or operator of a facility, which is required by the Occupational Safety and Health Act (OSHA) to prepare or have available a material safety data sheet (MSDS) or safety data sheet (SDS) for a hazardous chemical, to submit to the SERC, community emergency coordinator for the LEPC, and the fire department with jurisdiction over the facility an MSDS or SDS for each such hazardous chemical present at the facility at any one time in an amount equal to or greater than 10,000 pounds, and for each extremely hazardous substance present at the facility in an amount equal to or greater than 500 pounds, or the threshold planning quantity (TPQ), whichever is lower, or to submit a list of such chemicals. The owner or operator must submit the required MSDS or SDS or list within three months after the owner or operator is first required to have the MSDS or SDS available or after the hazardous

chemical requiring an MSDS or SDS first becomes present at the facility in an amount exceeding the threshold level.

15. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370, require the owner or operator of a facility, which is required by the OSHA to prepare or have available an MSDS or SDS for a hazardous chemical, to prepare and submit to the SERC, community coordinator for the LEPC and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter, an emergency and hazardous chemical inventory form (Tier I or Tier II as described in 40 C.F.R. Part 370). The form must contain the information required by Section 312(d) of EPCRA, covering all hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds and all extremely hazardous substances present at the facility at any one time in amounts equal to or greater than 500 pounds or the threshold planning quantity designated by U.S. EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

16. Sections 311 and 312(a) of EPCRA, 42 U.S.C. §§ 11021 and 11022(a), assists state commissions, local committees, and fire departments in planning for emergencies and makes information on chemical presence and hazards available to the public. A delay in reporting could result in harm to human health and the environment.

17. Under 29 C.F.R. § 1910.1200(b)(1), all employers are required to provide information to their employees about the hazardous chemicals to which they are exposed including, but not limited to, MSDS or SDS.

18. 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).

19. 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.

20. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), Sections 325(b)(2) and (c)(1) of EPCRA, 42 U.S.C. § 11045(b)(2) and (c)(1), 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, EPCRA Sections 304, 312 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.

21. Section 325(c)(2) of EPCRA, 42 U.S.C. § 11045(c)(2), and 40 C.F.R. Part 19 authorizes U.S. EPA to assess a civil penalty of up to \$27,018 per day of violation, for violations of EPCRA Section 311 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.

Factual Allegations and Alleged Violations

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

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

24. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 327 Harbor Drive, Duluth, Minnesota (facility).

25. At all times relevant to this CAFO, Respondent was an employer at the facility.

26. At all times relevant to this CAFO, Respondent was in charge of the facility.

27. Respondent's facility consists of a building, structure, 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.

28. Respondent's facility is a "facility" as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

29. 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.

30. Respondent's facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

Anhydrous Ammonia

31. 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).

32. 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.

33. Anhydrous ammonia (CAS #7664-41-7) is classified as a physical or health hazard, a simple asphyxiant, or hazard not otherwise classified.

34. 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).

35. At all times relevant to this CAFO, Respondent produced, used, or stored anhydrous ammonia at the facility.

36. 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).

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

38. Anhydrous ammonia (CAS #7664-41-7) has a minimum threshold level of 500 pounds, as provided in 40 C.F.R. Part 370.

39. During at least one period of time in calendar year 2020, anhydrous ammonia was present at the facility in an amount equal to or greater than the minimum threshold level.

40. During at least one period of time in calendar year 2021, anhydrous ammonia was present at the facility in an amount equal to or greater than the minimum threshold level.

41. OSHA requires Respondent to prepare, or have available, an MSDS or SDS for anhydrous ammonia.

42. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including anhydrous ammonia on or before March 1, 2021, for calendar year 2020.

43. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including anhydrous ammonia on or before March 1, 2022, for calendar year 2021.

Sulfuric Acid

44. Sulfuric acid (CAS #7664-93-9) is classified as a physical or health hazard, a simple asphyxiant, or hazard not otherwise classified.

45. Sulfuric acid (CAS #7664-93-9) 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).

46. At all times relevant to this CAFO, Respondent produced, used, or stored sulfuric acid at the facility.

47. Sulfuric acid (CAS #7664-93-9) is an “extremely hazardous substance” according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

48. Sulfuric acid (CAS #7664-93-9) has a minimum threshold level of 500 pounds, as provided in 40 C.F.R. Part 370.

49. During at least one period of time in calendar year 2018, sulfuric acid was present at the facility in an amount equal to or greater than the minimum threshold level.

50. During at least one period of time in calendar year 2019, sulfuric acid was present at the facility in an amount equal to or greater than the minimum threshold level.

51. During at least one period of time in calendar year 2020, sulfuric acid was present at the facility in an amount equal to or greater than the minimum threshold level.

52. During at least one period of time in calendar year 2021, sulfuric acid was present at the facility in an amount equal to or greater than the minimum threshold level.

53. OSHA requires Respondent to prepare, or have available, an MSDS or SDS for sulfuric acid.

54. Respondent was required to submit to the SERC, LEPC, and fire department on or before March 31, 2019, an MSDS or SDS for sulf or a list including sulfuric acid.

55. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including sulfuric acid on or before March 1, 2019, for calendar year 2018.

56. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including sulfuric acid on or before March 1, 2020, for calendar year 2019.

57. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including sulfuric acid on or before March 1, 2021, for calendar year 2020.

58. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including sulfuric acid on or before March 1, 2022, for calendar year 2021.

Release Reporting

59. On July 13, 2021, between 6:00 p.m. and 6:15 p.m., a release occurred from Respondent's facility of approximately 500 pounds of anhydrous ammonia (the release).

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

61. During the release, approximately 500 pounds spilled, leaked, pumped, discharged, or escaped into the or ambient air.

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

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

64. Respondent had knowledge of the release on July 13, 2021, at approximately 6:15 p.m., Central Time.

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

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

67. The release was likely to affect Minnesota.

68. 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).

69. At all times relevant to this CAFO, the Duluth Fire Department was the fire department with jurisdiction over the facility.

Count 1 (failure to immediately notify NRC)

70. Complainant incorporates paragraphs 1 through 69 of this CAFO as if set forth in this paragraph.

71. April 29, 2022, at 11:18 am Central Time, Respondent notified the NRC of the July 13, 2021, release.

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

73. 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)

74. Complainant incorporates paragraphs 1 through 69 of this CAFO as if set forth in this paragraph.

75. On May 13, 2022, Respondent notified the Minnesota SERC of the July 13, 2021, release.

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

77. Respondent's failure to immediately notify the Minnesota SERC of the release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

Count 3 (written notice to SERC)

78. Complainant incorporates paragraphs 1 through 69 of this CAFO as if set forth in this paragraph.

79. On May 13, 2022, Respondent provided a written follow-up emergency notice of the release to the Minnesota SERC.

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

81. Respondent's failure to provide written follow-up emergency notice to the Minnesota 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 4 (EPCRA 311/SERC)

82. Complainant incorporates paragraphs 1 through 69 of this CAFO as if set forth in this paragraph.

83. Respondent submitted to the SERC an MSDS for sulfuric acid or a list showing sulfuric acid on November 4, 2022.

84. Each day Respondent failed to submit to the SERC an MSDS for sulfuric acid or a list showing sulfuric acid by March 31, 2019, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 5 (EPCRA 311/fire department)

85. Complainant incorporates paragraphs 1 through 69 of this Complaint as if set forth in this paragraph.

86. Respondent submitted to the Duluth Fire Department an MSDS for sulfuric acid or a list showing sulfuric acid on November 4, 2022.

87. Each day Respondent failed to submit to the Duluth Fire Department an MSDS for sulfuric acid or a list showing sulfuric acid by March 31, 2019, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 6 (EPCRA 312/Past Year)

88. Complainant incorporates paragraphs 1 through 69 of this CAFO as if set forth in this paragraph.

89. On November 4, 2022, Respondent submitted to the Minnesota SERC and the Duluth Fire Department, a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid for calendar year 2018.

90. Each day Respondent failed to submit to the Minnesota SERC and the Duluth Fire Department, a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid by March 1, 2019, for calendar year 2018, constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 7 (EPCRA 312/Past Year)

91. Complainant incorporates paragraphs 1 through 69 of this CAFO as if set forth in this paragraph.

92. On November 4, 2022, Respondent submitted to the Minnesota SERC and Duluth Fire Department a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid for calendar year 2019.

93. Each day Respondent failed to submit to the Minnesota SERC and Duluth Fire Department a completed Emergency and Hazardous Chemical Inventory Form including sulfuric

acid by March 1, 2020, for calendar year 2019, constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 8 (EPCRA 312/SERC)

94. Complainant incorporates paragraphs 1 through 69 of this CAFO as if set forth in this paragraph.

95. On November 4, 2022, Respondent submitted to the Minnesota SERC a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia and sulfuric acid for calendar year 2020.

96. Each day Respondent failed to submit to the Minnesota SERC a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia and sulfuric acid by March 1, 2021, for calendar year 2020, constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 9 (EPCRA 312/fire department)

97. Complainant incorporates paragraphs 1 through 69 of this CAFO as if set forth in this paragraph.

98. On November 4, 2022, Respondent submitted to the Duluth Fire Department a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia and sulfuric acid for calendar year 2020.

99. Each day Respondent failed to submit to the Duluth Fire Department a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia and sulfuric acid by March 1, 2021, for calendar year 2020, constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 10 (EPCRA 312/SERC)

100. Complainant incorporates paragraphs 1 through 69 of this CAFO as if set forth in this paragraph.

101. On March 14, 2022, Respondent submitted to the Minnesota SERC a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia and sulfuric acid for calendar year 2021.

102. Each day Respondent failed to submit to the Minnesota SERC a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia and sulfuric acid by March 1, 2022, for calendar year 2021, constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 11 (EPCRA 312/fire department)

103. Complainant incorporates paragraphs 1 through 69 of this CAFO as if set forth in this paragraph.

104. On March 14, 2022, Respondent submitted to the Duluth Fire Department a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia and sulfuric acid for calendar year 2021.

105. Each day Respondent failed to submit to the Duluth Fire Department a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia and sulfuric acid by March 1, 2022, for calendar year 2021, constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Civil Penalty

106. Complainant has determined that an appropriate civil penalty to settle this action is \$26,008 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).

107. Within 30 days after the effective date of this CAFO, Respondent must pay a \$26,008 civil penalty for the CERCLA violation. Respondent must pay the penalty by sending a cashier's or certified check, payable to "EPA Hazardous Substance Superfund," to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

For checks sent by express mail, by sending a cashier's or certified check, payable to "EPA Hazardous Substance Superfund," to:

U.S. Bank
Government Lockbox 979076
U.S. EPA Superfund Payments
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check must note the following: Duluth Entertainment and Convention Center, the docket number of this CAFO **CERCLA-05-2023-0007**, and the billing document number **2752330B007**.

108. Complainant has determined that an appropriate civil penalty to settle this action is \$92,187 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. EPA's Enforcement Response Policy for Sections 304, 311 and 312 of the EPCRA/CERCLA Enforcement Response Policy.

109. Within 30 days after the effective date of this CAFO, Respondent must pay a \$92,187 civil penalty for the EPCRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

For checks sent by express mail, by 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, MO 63101

The check must note the following: Duluth Entertainment and Convention Center and the docket number of this CAFO **EPCRA-05-2023-0008**.

110. A transmittal letter, stating Respondent's name, the case name, Respondent's complete address, the case docket numbers and the billing document number, if any, must accompany each payment. Respondent must send a copy of the checks and transmittal letters, via electronic mail, to:

Regional Hearing Clerk (E-19J)
R5hearingclerk@epa.gov

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

Emily Lane (C-14J)
lane.emily@epa.gov

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

112. 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. Respondent acknowledges that the validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

113. 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

114. The parties' consent to service of this CAFO by email at the following valid email addresses: lane.emily@epa.gov (for Complainant) and dhartman@decc.org (for Respondent). Respondent understands that the CAFO will become publicly available upon filing. Respondent understands that the CAFO will become publicly available upon proposal for public comment and upon filing.

115. 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.

116. 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.

117. Respondent certifies that it is complying with Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), Sections 304, 311, 312(a) of EPCRA, 42 U.S.C. §§ 11004, 11021, 11022(a).

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

119. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31, and U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

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

121. Each person signing this CAFO 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.

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

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

In the Matter of: Duluth Entertainment and Convention Center, Duluth, Minnesota
Docket No. **CERCLA-05-2023-0007; EPCRA-05-2023-0008**

Duluth Entertainment and Convention Center, Respondent

4-7-2023
Date



Dan Hartman
Executive Director
Duluth Entertainment and Convention Center

**In the Matter of: Duluth Entertainment and Convention Center, Duluth, Minnesota
Docket No. CERCLA-05-2023-0007; EPCRA-05-2023-0008**

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: Duluth Entertainment and Convention Center, Duluth, Minnesota
Docket No. CERCLA-05-2023-0007; EPCRA-05-2023-0008

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