

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 3  
Philadelphia, Pennsylvania 19103



In the Matter of: :  
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 Lake Erie Biofuels, LLC dba HeroBX : U.S. EPA Docket No. CAA-03-2024-0102  
 1540 East Lake Road :  
 Erie, Pennsylvania 16511 : Proceeding under 113(d) of the Clean Air Act,  
 : 42 U.S.C. § 7413(d)  
 Respondent. :  
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 Erie Facility :  
 1670 East Lake Road :  
 Erie, Pennsylvania 16511 :  
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 Facility. :  
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CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region 3 (“Complainant”) and Lake Erie Biofuels, LLC doing business as HeroBX (“Respondent”) (collectively the “Parties”), pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated the authority to enter into agreements concerning administrative penalties to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “Consent Agreement and Final Order”) resolve Complainant’s civil penalty claims against Respondent under the Clean Air Act (or the “Act”) for the violations alleged herein.
2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

**JURISDICTION**

3. The U.S. Environmental Protection Agency (“EPA”) has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(2).

**GENERAL PROVISIONS**

5. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.
6. Except as provided in Paragraph 5, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
7. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this Consent Agreement and Final Order.
8. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and Final Order and waives its right to appeal the accompanying Final Order.
9. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
10. Respondent shall bear its own costs and attorney’s fees in connection with this proceeding.
11. Pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), the Administrator and the Attorney General, each through their respective delegates, have jointly determined that this administrative penalty action is appropriate.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

12. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.

13. Section 111 of the Act, 42 U.S.C. § 7411, requires the Administrator of EPA to publish a list of categories of stationary sources that cause, or contribute significantly to, air pollution which may reasonable be anticipated to endanger public welfare, and to promulgate Federal standards of performance, which may consist of design, equipment, work practice, or operational standards, for new sources within such category.
14. Section 114 of the Act, 42 U.S.C. § 7414, authorizes: the Administrator of EPA to require any person who owns or operates any emission source or who is otherwise subject to the requirements of the Act to, among other things, provide information as the Administrator might reasonably require or sample emissions for the purpose of determining compliance with Act requirements including standards of performance under Section 111 of the Act, 42 U.S.C. § 7411; or the Administrator's authorized representative, among other things, upon the presentation of credentials, to enter, have access to and copy records, inspect monitoring equipment, or sample emissions.
15. Section 116 of the Act, 42 U.S.C. § 7416, establishes in relevant part that nothing in the Act precludes or denies the right of any State to adopt or enforce any standard or limitation respecting emissions of air pollutants, or any requirement respecting control or abatement of air pollution; except that if an emission standard or limitation is in effect under Section 111 of the Act, 42 U.S.C. § 7411, such State may not adopt or enforce any emission standard or limitation which is less stringent than the standard or limitation under such section.
16. Section 301 of the Act, 42 U.S.C. § 7601, authorizes the Administrator of EPA to prescribe such regulations as are necessary to carry out functions under the Act, and to delegate to any officer or employee of the EPA powers and duties under the Act as deemed necessary or expedient.
17. The Administrator of EPA determined that the synthetic organic chemical manufacturing industry (SOCMI) contributes significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. Pursuant to Sections 101, 111, 114, 116, and 301 of the Act, 42 U.S.C. §§ 7401, 7411, 7414, 7416, and 7601, EPA promulgated standards of performance for volatile organic compounds (VOC) emissions from SOCMI distillation operations and reactor processes, codified at 40 C.F.R Part 60, Subparts NNN and RRR, respectively, that include *inter alia* performance standards, as well as provisions for monitoring of emissions and operations, test methods and procedures and reporting and recordkeeping.
18. Pursuant to Section 111(e) of the Act, 42 U.S.C. § 7411(e), any owner or operator of any new source must operate such a source in accordance with applicable standards of performance ("NSPS").

**NSPS 40 C.F.R. Part 60, Subpart NNN**

19. Effective June 29, 1990, EPA promulgated the “Standards of Performance for Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry Distillation Operations,” found at 40 C.F.R. Part 60, Subpart NNN, 55 Fed. Reg. 26,942 (June 29, 1990) (“NSPS Subpart NNN”).
20. Pursuant to 40 C.F.R. § 60.660 *Applicability and designation of affected facility*, NSPS Subpart NNN designates an “affected facility” to include each distillation unit not discharging its vent stream into a recovery system that is part of a process unit that produces any of the chemicals listed in § 60.667 as a product, co-product, by-product, or intermediate, except as provided in § 60.660(c), for which construction, modification, or reconstruction commenced after December 30, 1983. 40 C.F.R. § 60.660(b)(1).
21. Pursuant to 40 C.F.R. §60.661 *Definitions*, NSPS Subpart NNN defines:
  - a. (a) “[d]istillation unit” to mean a device or vessel in which distillation operations occur, including all associated internals (such as trays or packing) and accessories (such as reboiler, condenser, vacuum pump, steam jet, etc.), plus any associated recovery system;
  - b. “[p]rocess unit” to mean equipment assembled and connected by pipes or ducts to produce, as intermediates or final products, one or more of the chemicals in § 60.667. A process unit can operate independently if supplied with sufficient fuel or raw materials and sufficient product storage facilities; and
  - c. “TRE index value” to mean a measure of the supplemental total resource requirement per unit reduction of total organic carbon (“TOC”) associated with an individual distillation vent stream, based on vent stream flow rate, emission rate of TOC net heating value, and corrosion properties (whether or not the vent stream is halogenated), as quantified by the equation given under § 60.664(e).

40 C.F.R. § 60.661.
22. Pursuant to 40 C.F.R. § 60.662 *Standards*, NSPS Subpart NNN requires, for each vent stream, owners or operators, on and after the date on which the initial performance test required by §§ 60.8 and 60.664 is completed, but not later than 60 days after achieving the maximum production rate at which the affected facility will be operated, or 180 days after the initial start-up, whichever date comes first, to either:
  - a. Reduce emissions of total organic compounds (TOC) (less methane and ethane) by 98 weight-percent, or to a TOC (less methane and ethane) concentration of 20 parts per million volume (ppmv), on a dry basis corrected to 3 percent oxygen, whichever is less stringent. If a boiler or process heater is used to

- comply with this paragraph, then the vent stream shall be introduced into the flame zone of the boiler or process heater; or
- b. Combust the emissions in a flare that meets the requirements of § 60.18; or
- c. Maintain a TRE index value greater than 1.0 without use of VOC emission control devices.

40 C.F.R. § 60.662.

23. Pursuant to 40 C.F.R. § 60.664 *Test methods and procedures*, for the purposes of demonstrating compliance with the standards under § 60.662(a), NSPS Subpart NNN requires (except as provided under § 60.8(b)) Method 18 in 40 C.F.R. 60, Appendix A to be used to determine the concentration of TOC in the control device outlet and the concentration of TOC in the inlet when the reduction efficiency of the control device is to be determined as specified in § 60.664(b). 40 C.F.R. § 60.664(b)(4). Sections 8.2.2.2. and 8.4.3.1. of Method 18 specify that a test consists of three runs. Appendix A-6 to Part 60 – Test Methods 16 through 18.

#### **NSPS 40 C.F.R. Part 60, Subpart RRR**

24. Effective August 31, 1993, EPA promulgated the “Standards of Performance for Volatile Organic Compound (VOC) Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes, found at 40 C.F.R. Part 60, Subpart RRR, 58 Fed. Reg. 45,962 (August 31, 1993) (“NSPS Subpart RRR”).
25. Pursuant to 40 C.F.R. § 60.700 *Applicability and designation of affected facility*, NSPS Subpart RRR designates an “affected facility” to include each reactor process not discharging its vent stream into a recovery system that is part of a process unit that produces any of the chemicals listed in § 60.707 as a product, co-product, by-product, or intermediate, except as provided in § 60.700(c), for which construction, modification, or reconstruction commenced after June 29, 1990. 40 C.F.R. §§ 60.700(a) and (b)(1).
26. Pursuant to 40 C.F.R. § 60.701 *Definitions*, NSPS Subpart RRR defines:
- a. (a) “[r]eactor processes” to mean unit operations in which one or more chemicals, or reactants other than air, are combined or decomposed in such a way that their molecular structures are altered and one or more new organic compounds are formed.” 40 C.F.R. § 60.701;
  - b. “[p]rocess unit” to mean equipment assembled and connected by pipes or ducts to produce, as intermediates or final products, one or more of the chemicals in § 60.707. A process unit can operate independently if supplied with sufficient fuel or raw materials and sufficient product storage facilities; and
  - c. “[t]otal resource effectiveness or TRE index value” to mean a measure of the supplemental total resource requirement per unit reduction of TOC associated

with a vent stream from an affected reactor process facility, based on vent stream flow rate, emission rate of TOC, net heating value, and corrosion properties (whether or not the vent stream contains halogenated compounds), as quantified by the equation given under § 60.704(e).

40 C.F.R. § 60.701.

27. Pursuant to 40 C.F.R. § 60.702 *Standards*, NSPS Subpart RRR requires, for each vent stream, owners or operators, on and after the date on which the initial performance test required by §§ 60.8 and 60.704 is completed, but not later than 60 days after achieving the maximum production rate at which the affected facility will be operated, or 180 days after the initial start-up, whichever date comes first, to either:
- a. Reduce emissions of total organic compounds (TOC) (less methane and ethane) by 98 weight-percent, or to a TOC (less methane and ethane) concentration of 20 ppmv, on a dry basis corrected to 3 percent oxygen, whichever is less stringent. If a boiler or process heater is used to comply with this paragraph, then the vent stream shall be introduced into the flame zone of the boiler or process heater; or
  - b. Combust the emissions in a flare that meets the requirements of § 60.18; or
  - c. Maintain a TRE index value greater than 1.0 without use of VOC emission control devices.

40 C.F.R. § 60.702.

28. Pursuant to 40 C.F.R. § 60.704 *Test methods and procedures*, for the purposes of demonstrating compliance with the standards under § 60.702(a), NSPS Subpart RRR requires (except as provided under § 60.8(b)) Method 18 in in 40 C.F.R. 60, Appendix A to be used to determine the concentration of TOC in the control device outlet and the concentration of TOC in the inlet when the reduction efficiency of the control device is to be determined as specified in § 60.704(b). 40 C.F.R. § 60.704(b)(4). Sections 8.2.2.2. and 8.4.3.1. of Method 18 specify that a test consists of three runs. Appendix A-6 to Part 60 – Test Methods 16 through 18.
29. At all times relevant to the violations identified herein, Respondent was a limited liability company registered in the State of Delaware with a principal place of business located at 1540 East Lake Road in Erie, Pennsylvania.
30. Respondent is a “person” as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).
31. At all times relevant to the violations identified herein, Lake Erie Biofuels owned and operated a biodiesel production facility located at 1670 East Lake Road in Erie, Pennsylvania (“Erie Facility”). The Erie Facility began operations in 2007.

32. Respondent's Erie Facility is subject to both NSPS Subpart NNN and NSPS Subpart RRR.
33. Respondent conducted a performance test on or about July 2, 2008. According to the corresponding August 7, 2008 Scrubber Efficiency Testing on Methanol Scrubber Test Report ("2008 Performance Test Report"), the objective of the test program was to "quantify the methanol removal efficiency from the methanol scrubber."
34. According to the 2008 Performance Test Report, the reduction of methanol emissions from the scrubber at the Erie Facility was 99.7% based on three test runs. The 2008 Performance Test Report indicates that Respondent used Method 308 to determine the concentration of methanol in the scrubber inlet and outlet as well as the methanol removal efficiency of the scrubber for comparing test results with the NSPS Subpart NNN and NSPS Subpart RRR standards at 40 C.F.R. §§ 60.62(a) and 60.702.
35. On or about July 10-11, 2017, authorized representatives from the EPA's National Enforcement Investigations Center ("NEIC") conducted a compliance investigation of the Erie Facility under the authority of Section 114 of the Act, 42 U.S.C. § 7414 ("2017 Inspection").
36. During the 2017 Inspection, the NEIC inspectors observed that the Erie Facility uses a scrubber (analogous to absorber) as a final control device, and that no material is recovered from the scrubber.
37. On July 2, 2019, the EPA issued an information request letter pursuant to Section 114(a) of the Act, 42 U.S.C. § 7414(a), requiring Respondent to, among other things, submit a testing protocol and conduct a performance test to determine the TOC (less methane and ethane) removal efficiency of the scrubber. The EPA's June 2, 2019 letter specified that the performance testing must use EPA Reference Methods 1-4 and 18 and must include compounds identified during presurvey sampling pursuant to Section 16 of Method 18.
38. On or about September 10, 2020, Respondent submitted a performance testing protocol that, based on presurvey sampling, identified methanol and hexane as the primary organic compounds in the gas stream. This performance testing protocol was approved by the EPA on or about September 14, 2020.
39. Respondent conducted a performance test on or about October 7, 2020. According to the corresponding November 4, 2020 Scrubber System VOC Efficiency Test Report ("2020 Performance Test Report"), the objective of the test program was to "quantify the VOC emissions and removal efficiency from the Biodiesel Production Vent Gas Scrubber system associated with the biodiesel production unit."

40. According to the 2020 Performance Test Report, Respondent used Method 18 to determine the concentration of TOC (less methane and ethane) in the scrubber inlet and outlet, and TOC (less methane and ethane) removal efficiency of the scrubber, for purposes of demonstrating compliance with the NSPS Subpart NNN and NSPS Subpart RRR standards at 40 C.F.R. §§ 60.662(a) and 60.702(a).
41. The 2020 Performance Test Report states that "[d]ue to the known chemistry of the process, and the results of the pre-test survey, the USEPA has agreed that the Total Organic Compounds (TOCs) are limited to methanol and hexane."
42. According to the 2020 Performance Test Report, the reduction of TOC (less methane and ethane) emissions from the scrubber at the Erie Facility was 97.99% based on three test runs.
43. The 2020 Performance Test Report results included gas chromatography data which showed peaks within the chromatograms suggesting that additional organic compounds were present in the gas stream other than methanol and hexane. After additional analysis, Respondent subsequently reported the identity of the additional organic compounds to be n-butane and n-pentane.
44. On or about May 4, 2021, the data from the October 7, 2020 performance test was reprocessed for n-butane and n-pentane. Even though it was noted that n-butane and n-pentane were both outside the calibrated range of the instrument for a number of injections from the performance test runs, the results provided by Respondent showed that the reduction of TOC (less methane and ethane) emissions from the scrubber at the Erie Facility - when n-butane and n-pentane are included as part of the outlet gas stream in addition to methanol and hexane - was as low as 96.25%. (The concentration of hexane, n-pentane, and n-butane was not measured in the inlet sampling data.)
45. On May 24, 2022, the EPA issued Respondent a notice of violation for the failure of the scrubber associated with the biodiesel production operations at its Erie Facility to reduce emissions of TOC (less methane and ethane) by 98%, as required by NSPS Subpart NNN and NSPS Subpart RRR standards at 40 C.F.R. §§ 60.662(a) and 60.702(a).
49. The EPA and Respondent met on June 27, 2022, September 13, 2023, March 8, 2023, and July 5, 2023, and regularly communicated about the process changes, additional controls, presurvey testing, testing protocols, and other actions necessary for the Erie Facility to be able to demonstrate compliance with NSPS Subpart NNN and NSPS Subpart RRR standards at 40 C.F.R. §§ 60.662(a) and 60.702(a).
50. On August 31, 2023, the EPA issued an Administrative Compliance Order on Consent under Section 113(a) of the Act, 42 U.S.C. § 7413(a), requiring Respondent to *inter alia* submit for the EPA's approval an NSPS Subpart NNN and NSPS Subpart RRR compliant



testing protocol for determining the TOC (less methane and ethane) control efficiency of the scrubber at the Erie Facility, conduct a performance test, submit a report of the testing results, and, if passing, apply with the Pennsylvania Department of Environmental Protection to incorporate operating parameters and parameter ranges recorded during the performance test into the State Only Operating Permit for the Erie Facility. Docket No.CAA-03-2023-0127DA.

51. Following the issuance of the May 24, 2022 notice of violation, Respondent employed several process changes at the Erie Facility including removing and replacing the scrubber packing material.
52. On or about October 11, 2023, Respondent conducted a performance test pursuant to a testing protocol that was approved by EPA. According to the corresponding November 9, 2023 Source Test Report (“2023 Performance Test Report”), the testing involved three test runs, and Method 18 was used to determine the concentration of TOC (less methane and ethane) in the scrubber inlet and outlet, and the TOC (less methane and ethane) removal efficiency of the scrubber, for purposes of demonstrating compliance with the NSPS Subpart NNN and NSPS Subpart RRR standards at 40 C.F.R. §§ 60.662(a) and 60.702(a).
53. According to the 2023 Performance Test Report, the reduction of TOC (less methane and ethane) emissions from the scrubber at the Erie Facility was 99.8%, and the reduction of methanol from the scrubber at the Erie Facility was 99.97%.

#### **Count I**

##### **Failure to Meet NSPS Subpart NNN and NSPS Subpart RRR Standards**

54. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
55. At all times relevant to the violations alleged herein, both NSPS Subpart NNN and NSPS Subpart RRR required owners or operators to either:
  - a. Reduce emissions of total organic compounds (TOC) (less methane and ethane) by 98 weight-percent, or to a TOC (less methane and ethane) concentration of 20 ppmv, on a dry basis corrected to 3 percent oxygen, whichever is less stringent. If a boiler or process heater is used to comply with this paragraph, then the vent stream shall be introduced into the flame zone of the boiler or process heater; or
  - b. Combust the emissions in a flare that meets the requirements of § 60.18; or
  - c. Maintain a TRE index value greater than 1.0 without use of VOC emission control devices.

40 C.F.R. §§ 60.662 and 60.702.

56. On or about October 7, 2020, Respondent conducted a performance test showing that the reduction of TOC (less methane and ethane) emissions from the scrubber at the Erie Facility - when n-butane and n-pentane are included as part of the outlet gas stream in addition to methanol and hexane - was as low as 96.25%.
57. Respondent subsequently employed several process changes at the Erie Facility including removing and replacing the scrubber packing material.
58. On April 26, 2023, Respondent conducted an engineering study showing that the reduction of TOC (less methane and ethane) emissions from the scrubber at the Erie Facility - when n-butane and n-pentane are included as part of the outlet gas stream in addition to methanol and hexane - was approximately 99.8%. On or about October 11, 2023, Respondent conducted a performance test using substantially the same test method and including the same compounds as the engineering study showing that the reduction of TOC (less methane and ethane) emissions from the scrubber at the Erie Facility was 99.8%, and the reduction of methanol from the scrubber at the Erie Facility was 99.97%.
59. By failing to demonstrate a scrubber TOC (less methane and ethane) removal efficiency of 98% at its Erie Facility, Respondent violated the NSPS Subpart NNN and NSPS Subpart RRR standards at 40 C.F.R. §§ 60.662(a) and 60.702(a) from at least October 7, 2020 through April 26, 2023, and is subject to penalties under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

#### CIVIL PENALTY

60. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of *ONE HUNDRED AND SEVENTY-NINE THOUSAND TWO HUNDRED AND TWENTY-FIVE* dollars (\$179,225), which Respondent shall be liable to pay in accordance with the terms set forth below.
61. The civil penalty is based upon EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth in Section 113(e)(1) of the Act, 42 U.S.C. § 7413(e)(1), including, the following: the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation and such other factors as justice may require. These factors were applied to the particular facts and circumstances of this case

with specific reference to EPA's October 25, 1991 Clean Air Act Stationary Source Civil Penalty Policy which reflects the statutory penalty criteria and factors set forth at Section 113(e)(1) of the Act, 42 U.S.C. § 7413(e)(1), the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.

62. Respondent agrees to pay a civil penalty in the amount of \$179,225 ("Assessed Penalty") within thirty (30) days of the Effective Date of this Consent Agreement and Final Order.
63. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.
64. When making a payment, Respondent shall:
  - a. Identify every payment with Respondent's name and the docket number of this Consent Agreement, Docket No. CAA-03-2024-0102, and
  - b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve Proof of Payment simultaneously **by email** to the following person(s):

Jennifer Abramson  
Senior Assistant Regional Counsel  
[Abramson.Jennifer@epa.gov](mailto:Abramson.Jennifer@epa.gov),

U.S. Environmental Protection Agency  
Cincinnati Finance Center  
[CINWD\\_AcctsReceivable@epa.gov](mailto:CINWD_AcctsReceivable@epa.gov),

and

U.S. EPA Region 3 Regional Hearing Clerk  
[R3\\_Hearing\\_Clerk@epa.gov](mailto:R3_Hearing_Clerk@epa.gov).

"Proof of Payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent's name.

65. Interest, Charges, and Penalties on Late Payments. Pursuant to 42 U.S.C. § 7413(d)(5), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty per this Consent Agreement, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and EPA is authorized to recover the following amounts.
- a. Interest. Interest begins to accrue from the Effective Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. Per 42 U.S.C. § 7524(c)(6), interest will be assessed pursuant to 26 U.S.C. § 6621(a)(2), that is the IRS standard underpayment rate, equal to the Federal short-term rate plus 3 percentage points.
  - b. Handling Charges. The United States' enforcement expenses including, but not limited to, attorneys' fees and costs of handling collection.
  - c. Late Payment Penalty. A ten percent (10%) quarterly non-payment penalty.
66. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty per this Consent Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following.
- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
  - b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
  - c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
  - d. Request that the Attorney General bring a civil action in the appropriate district court to enforce the Final Order and recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, pursuant to 42 U.S.C. § 7413(d)(5). In any such action, the validity, amount, and

appropriateness of the Assessed Penalty and Final Order shall not be subject to review.

67. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.
68. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Consent Agreement shall not be deductible for purposes of federal taxes.
69. Payment of the civil penalty is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed Consent Agreement and Final Order. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).
70. The parties consent to service of the Final Order by e-mail at the following valid email addresses: Abramson.Jennifer@epa.gov (for Complainant), and rgandley@mijb.com (for Respondent).
71. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service ("IRS") annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, **including** amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:
  - a. Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
  - b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for

issuance of a TIN;

- c. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Center at [henderson.jessica@epa.gov](mailto:henderson.jessica@epa.gov), within 30 days after the Final Order ratifying this Consent Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and
- d. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days after the effective date, then Respondent, using the same email address identified in the preceding sub-paragraph, shall further:
  - i. notify EPA's Cincinnati Finance Center of this fact, via email, within 30 days after the 30 days after the effective date of the Final Order per Paragraph 78; and
  - ii. provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's issuance and receipt of the TIN.

#### **GENERAL SETTLEMENT CONDITIONS**

- 72. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.
- 73. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Consent Agreement and Final Order, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

#### **CERTIFICATION OF COMPLIANCE**

- 74. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with the Administrative Order on

Consent between Respondent and EPA, Docket No. CAA-03-2023-0127DA., which addresses the violations alleged herein.

**OTHER APPLICABLE LAWS**

75. Nothing in this Consent Agreement and Final Order shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA’s authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This Consent Agreement and Final Order does not constitute a waiver, suspension or modification of the requirements of the Clean Air Act, or any regulations promulgated thereunder.

**RESERVATION OF RIGHTS**

76. This Consent Agreement and Final Order resolves only EPA’s claims for civil penalties for the specific violations alleged against Respondent in this Consent Agreement and Final Order. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. This settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under the Clean Air Act, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order after its effective date.

**EXECUTION /PARTIES BOUND**

77. This Consent Agreement and Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.

**EFFECTIVE DATE**

78. The effective date of this Consent Agreement and Final Order (“Effective Date”) is the date on which the Final Order, signed by the Regional Administrator of EPA, Region 3, or his/her designee, the Regional Judicial Officer, is filed along with the Consent Agreement with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

**ENTIRE AGREEMENT**

79. This Consent Agreement and Final Order constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this Consent Agreement and Final Order.



For Respondent: Lake Erie Biofuels, LLC

Date: 6/10/2024

By:   
Chris Peterson, President  
Lake Erie Biofuels, LLC

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement & Compliance Assurance Division of the United States Environmental Protection Agency, Region 3, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

By: \_\_\_\_\_  
[Digital Signature and Date]  
Karen Melvin, Director  
Enforcement & Compliance Assurance Division  
U.S. EPA – Region 3  
Complainant

Attorney for Complainant:

By: \_\_\_\_\_  
[Digital Signature and Date]  
Jennifer M. Abramson  
Senior Assistant Regional Counsel  
U.S. EPA – Region 3

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 3  
Philadelphia, Pennsylvania 19103



In the Matter of: :  
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 :  
 Lake Erie Biofuels, LLC dba HeroBX : U.S. EPA Docket No. CAA-03-2024-0102  
 1540 East Lake Road Erie, :  
 Pennsylvania 16511 : Proceeding under 113(d) of the Clean Air Act,  
 : 42 U.S.C. § 7413(d)  
 Respondent. :  
 :  
 :  
 Erie Facility :  
 1670 East Lake Road :  
 Erie, Pennsylvania 16511 :  
 :  
 Facility. :  
 :

**FINAL ORDER**

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region 3, and Respondent, Lake Erie Biofuels, LLC doing business as HeroBX have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's October 25, 1991 Clean Air Act Stationary Source Civil Penalty Policy, and the statutory factors set forth in Section 113(e)(1) of the Act, 42 U.S.C. § 7413(e)(1).

**NOW, THEREFORE, PURSUANT TO** Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **ONE HUNDRED AND SEVENTY-NINE THOUSAND TWO HUNDRED AND TWENTY-FIVE dollars (\$179,225)**, in accordance with the payment provisions set forth in the Consent Agreement and in 40 C.F.R. § 22.31(c), and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency Action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent’s obligation to comply with all applicable provisions of the Clean Air Act and the regulations promulgated thereunder.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Date: \_\_\_\_\_

By: \_\_\_\_\_

Joseph J. Lisa  
Regional Judicial and Presiding Officer  
U.S. EPA Region 3

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 3  
Philadelphia, Pennsylvania 19103

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 Respondent. :  
 :  
 :  
 Erie Facility :  
 1670 East Lake Road :  
 Erie, Pennsylvania 16511 :  
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 :  
 Facility. :

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CERTIFICATE OF SERVICE

I certify that the foregoing **Consent Agreement and Final Order** was filed with the EPA Region 3 Regional Hearing Clerk on the date that has been electronically stamped on the **Consent Agreement and Final Order**. I further certify that on the date set forth below, I caused to be served a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following addresses:

Copies served via email to:

Chris Peterson, President  
Lake Erie Biofuels, LLC  
[CPeterson@herobx.com](mailto:CPeterson@herobx.com)  
1540 East Lake Road  
Erie, PA 16511

Robert E. Gandley  
MacDonald, Illig, Jones & Britton LLP  
[rgandley@mijb.com](mailto:rgandley@mijb.com)  
100 State Street, Suite 700  
Erie, PA 16507

Jennifer M. Abramson  
Senior Assistant Regional Counsel  
U.S. EPA, Region 3  
[Abramson.Jennifer@epa.gov](mailto:Abramson.Jennifer@epa.gov)

Parmatma Adhikari  
Environmental Engineer  
U.S. EPA, Region 3  
[Adhikari.Parmatma@epa.gov](mailto:Adhikari.Parmatma@epa.gov)

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[Digital Signature and Date]  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 3