UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF: Calumet Montana Refining, LLC 1900 10th Street Great Falls, MT 59404 Respondent.	)	**CONSENT AGREEMENT** Docket No. CAA-08-2024-0001

I. CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA or Complainant) and Calumet Montana Refining, LLC (Calumet or Respondent) agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits.

II. PRELIMINARY STATEMENT

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to sections 113(a)(3) and (d) of the Clean Air Act (CAA), 42 U.S.C. §§ 7413(a)(3) and (d).

2. Pursuant to section 113(d) of the CAA, 42 U.S.C. § 7413(d), the Administrator and the Attorney General jointly determined that this matter was appropriate for administrative penalty action.

3. The EPA Administrator has delegated these authorities to the EPA Regional Administrator of Region 8 who, in turn, has delegated it to the Complainant. The Complainant is the Manager of the Air and Toxics Enforcement Branch in the EPA Region 8 Enforcement and Compliance Assurance Division.

4. Respondent is Calumet, a limited liability company that is incorporated in the state of Delaware and authorized to conduct business in the state of Montana.

5. This Consent Agreement and Final Order (CAFO or Consent Agreement) asserts that Respondent has violated the chemical accident prevention provisions in 40 C.F.R. part 68, promulgated pursuant to section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and that Respondent is therefore in violation of sections 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7). This CAFO also serves as notice pursuant to section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), and 40 C.F.R. § 22.34, of the EPA's intent to issue an order assessing penalties for these CAA section 112(r)(7) violations.

6. To avoid the disruption of orderly business activities and the expense of litigation and to effect an expeditious settlement of this matter, Respondent, for purposes of this proceeding only, and as provided by 40 C.F.R. § 22.18(b)(2), agrees as follows:

a. Respondent admits that the EPA has jurisdiction over the subject matter of this Consent Agreement and over the Respondent and waives any defenses it might have as to jurisdiction. Respondent agrees not to contest the EPA's jurisdiction to enter into this Consent Agreement, Complainant's delegated authority to execute this Consent Agreement, and the EPA's authority to enforce the terms of this Consent Agreement through the executed Final Order.

b. Respondent neither admits nor denies the violations alleged in this Consent Agreement.

c. Respondent consents to the assessment of the full amount of the civil penalty as provided for in paragraph 59, below, and agrees to make payment in accordance with paragraph 61.

d. Respondent consents to all conditions specified in this Consent Agreement.

e. Respondent waives any right it might have to contest through a judicial or administrative hearing the factual allegations and violations of law as alleged.

f. Respondent waives the rights it might have to obtain judicial or administrative review of the Final Order accompanying this Consent Agreement under any otherwise applicable law.

7. The EPA and Respondent have entered into three separate Tolling Agreements which taken collectively toll claims from April 25, 2022, through January 31, 2024, for any applicable statute of limitations for civil claims brought by Complainant against Respondent for violations of the CAA section 112(r) and 40 C.F.R. part 68.

CAA SECTION 112(r) REGULATORY BACKGROUND

8. On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The Clean Air Act Amendments added section 112(r) to the CAA, 42 U.S.C. § 7412(r).

9. Section 112(r)(3), 42 U.S.C. § 7412(r)(3), mandates the Administrator to promulgate a list of regulated substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment, the threshold quantities, and defines the stationary sources that will be subject to the accident prevention regulations mandated by section 112(r)(7), 42 U.S.C. § 7412(r)(7). The list of regulated substances and threshold levels are codified at 40 C.F.R. § 68.130.

10. On June 20, 1996, the EPA promulgated a final rule known as the Chemical Accident Prevention Provisions, 40 C.F.R. part 68 (referred to as the "RMP Regulations"), which implements section 112(r)(7), 42 U.S.C. § 7412(r)(7), of the CAA. The RMP Regulations require owners and operators of stationary sources to develop and implement a risk management program that includes a hazard assessment, a prevention program, and an emergency response program. The risk management program must be described in a risk management plan that must be submitted to the EPA. The risk management plan must include a hazard assessment to assess the potential effects of an accidental release of any regulated substance, a program for preventing accidental releases of hazardous substances, and a response program providing for specific actions to be

taken in response to an accidental release of a regulated substance, to protect human health and the environment.

11. Section 112(r)(7)(B)(iii) of the CAA, 42 U.S.C. § 7412(r)(7)(B)(iii), and its regulations at 40 C.F.R. §§ 68.10(a) and 68.150(a), require the owner or operator of a stationary source at which a regulated substance is present in more than a threshold quantity to submit a risk management plan to the EPA no later than June 21, 1999, three years after the date on which a regulated substance is first listed under 40 C.F.R. § 68.130, or the date on which a regulated substance is first present above the threshold quantity in a process.

12. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), defines "stationary source," as "any buildings, structures, equipment, installations, or substance emitting stationary activities (i) which belong to the same industrial group, (ii) which are located on one or more contiguous properties, (iii) which are under the control of the same person (or persons under common control), and (iv) from which an accidental release may occur."

13. The regulations at 40 C.F.R. § 68.3 define "threshold quantity" as the quantity specified for regulated substances pursuant to section 112(r)(5) of the CAA, 42 U.S.C. § 7412(r)(5), listed in 40 C.F.R. § 68.130, table 1, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

14. The regulations at 40 C.F.R. § 68.3 define "regulated substance" as any substance listed pursuant to section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), in 40 C.F.R. § 68.130.

15. The regulations at 40 C.F.R. § 68.3 define "process" as any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities. For purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

16. The regulations at 40 C.F.R. § 68.3 define "covered process" as a process that has a regulated substance present in more than a threshold quantity as determined under 40 C.F.R. § 68.115.

CAA SECTION 112(r) GENERAL ALLEGATIONS

17. Respondent is a limited liability company formed in the state of Delaware and authorized to do business in the state of Montana.

18. Respondent is the owner and operator of an oil refinery located at 1900 10th Street, NE, Great Falls, Montana, 59404 (the Facility).

19. As a limited liability company, Respondent is a "person" as defined by section 302(e) of the CAA, 42 U.S.C. § 7602(e), and is subject to the assessment of civil penalties for the violations alleged herein.

20. Respondent is, and at times referred to herein was, the owner and operator of a "stationary source," as the term is defined in section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R.§ 68.3.

21. On September 9-13, 2019, the EPA inspected (the Inspection) the Facility to determine compliance with section 112(r) of the CAA and 40 C.F.R. part 68.

22. Based on the observations of the EPA inspectors at the inspection, the EPA has determined that Respondent uses, handles, and/or stores more than the threshold quantity of Flammable Mixture, Hydrogen flouride/Hydrofluoric acid, Butane, Isobutane, and Propane.

23. Flammable Mixture, Hydrogen flouride/Hydrofluoric acid, Butane, Isobutane, and Propane are regulated substances pursuant to 42 U.S.C. § 7412(r), in the list of regulated substances compiled at 40 C.F.R. §§ 68.3 and 68.130, tables 3 and 4.

24. At all relevant times, the Facility used, stored, or handled over a threshold quantity of Flammable Mixture, Hydrogen flouride/Hydrofluoric acid, Butane, Isobutane, and Propane and used those substances in a "process" as defined at 40 C.F.R. § 68.3.

25. The regulations at 40 C.F.R. § 68.10 set forth how the Chemical Accident Prevention Provisions of 40 C.F.R. part 68 apply to each program level of covered processes. Pursuant to 40 C.F.R. § 68.10(i), a covered process is subject to Program 3 requirements if the process does not meet the requirements of Program 1, as described in 40 C.F.R. § 68.10(g), and if it is in a specified North American Industrial Classification System (NAICS) code or is subject to the Occupational Safety and Health Administration (OSHA) process safety management standard at 29 C.F.R. § 1910.119.

26. Respondent's Facility is subject to the RMP Regulations applicable to "Program 3" facilities withing the meaning of 40 C.F.R. §§ 68.10(d) and 68.12(d).

27. In addition to the general requirements of 40 C.F.R. part 68, 40 C.F.R. § 68.12(d)(3) requires owners and operators of stationary sources with a process subject to Program 3 to implement the Program 3 prevention requirements of 40 C.F.R. §§ 68.65–68.87.

28. The EPA and Respondent entered into an Administrative Compliance Order on Consent (ACOC), Docket No. CAA-08-2022-0007, pursuant to sections 113 and 114 of the CAA, 42 U.S.C. §§ 7413 and 7414, which became effective on July 7, 2022. The ACOC summarized RMP deficiencies and potentially dangerous conditions observed by the EPA during the Inspection that had not been addressed; ordered Respondent to comply with those unaddressed RMP requirements at the Facility; and ordered Respondent to certify and document that it had corrected those deficiencies within one year from the effective date of the ACOC. The EPA received a notification of compliance certification from Respondent, dated July 20, 2023, which indicated that Respondent had corrected the RMP deficiencies outlined in the ACOC on or before July 1, 2023.

EPA FINDINGS OF CAA SECTION 112(r) and 40 C.F.R. Part 68 VIOLATIONS

29. 40 C.F.R. § 68.10(a) requires that except as provided in paragraphs (b) through (f) of this section, an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process, as determined under §68.115, shall comply with the requirements of this part. Respondent did not include their flare system as part of an RMP covered process. A process flow diagram for the flare system identified connections and collocation to other RMP covered processes and the ability to contain regulated substances. The

flare was observed to be operating at the time of the inspection. Respondent's failure to include their flare system as part of an RMP covered process is a violation of 40 C.F.R. § 68.10(a).

30. 40 C.F.R. § 68.22(a) requires that for analyses of offsite consequences, the following endpoints shall be used: (1) The toxic endpoints provided in appendix A of this part. Respondent did not use the appropriate endpoints provided in appendix A for their toxics worst-case scenario for a release of hydrogen fluoride. Respondent's failure to appropriately apply the endpoints in appendix A is a violation of 40 C.F.R. § 68.22(a).

31. 40 C.F.R. § 68.25(b) requires that the worst-case release quantity shall be the greater of the following: (1) For substances in a vessel, the greatest amount held in a single vessel, taking into account administrative controls that limit the maximum quantity. Respondent did not determine the greatest amount held in a single vessel to be their worst-case release quantity for their toxics worst case scenario of hydrogen fluoride. Respondent's failure to use the greatest amount held in a single vessel as the worst-case release quantity is a violation of 40 C.F.R. § 68.25(b).

32. 40 C.F.R. § 68.33(a) requires that the owner or operator shall list in the RMP environmental receptors within a circle with its center at the point of the release and a radius determined by the distance to the endpoint defined in §68.22(a) of this part. Respondent did not list in their RMP submission that Benton Lake National Wildlife Refuge was an environmental receptor within the circle of their toxics worst-case scenario of a release of hydrogen fluoride. Respondent's failure to identify environmental receptors is a violation of 40 C.F.R. § 68.33(a).

33. 40 C.F.R. § 68.65(c)(1)(iv) requires that information pertaining to the technology of the process shall include: (iv) Safe upper and lower limits for such items as temperatures, pressures, flows or compositions. Respondent failed to compile accurate safe limits for pressures in the facility's process safety information specific to vessel D-2816A. Respondent's failure to compile accurate safe limits in the facility's process safety information is a violation of 40 C.F.R. § 68.65(c)(1)(iv).

34. 40 C.F.R. § 68.65(d)(1)(viii) requires that information pertaining to the equipment in the process shall include: (viii) Safety systems (e.g. interlocks, detection or suppression systems). Respondent failed to include alarms and alarm setpoints pertaining to safety system LI-15507 in the facility's process safety information. Respondent's failure to include information pertaining to safety systems in the facility's process safety information is a violation of 40 C.F.R. § 68.65(d)(1)(viii).

35. 40 C.F.R. § 68.65(d)(2) requires that the owner or operator shall document that equipment complies with recognized and generally accepted good engineering practices. Respondent would not have been able to document that equipment in the process complied with recognized and generally accepted good engineering practices due to the presence of class 1, division 2-rated equipment installed in an environment identified as class 1, division 1. Respondent's inability to have been able to document that equipment in the process complied with recognized and generally accepted good engineering practices is a violation of 40 C.F.R. § 68.65(d)(2).

36. 40 C.F.R. § 68.65(d)(2) requires that the owner or operator shall document that equipment complies with recognized and generally accepted good engineering practices. Respondent would not have been able to document that equipment in the process complied with recognized and generally accepted good engineering practices due to a length of piping in the HTU that was being supported by a temporary support stand. Respondent's inability to have been able to

document that equipment in the process complied with recognized and generally accepted good engineering practices is a violation of 40 C.F.R. § 68.65(d)(2).

37. 40 C.F.R. § 68.67(c)(3) requires that the process hazard analysis shall address: (3) Engineering and administrative controls applicable to the hazards and their interrelationships such as appropriate application of detection methodologies to provide early warning of releases. Respondent failed to address engineering controls applicable to the hazards in the Alkylation Unit. The facility siting checklist in the Alkylation Unit process hazard analysis indicated that there was impact protection in high-traffic areas. It was observed thought, that impact protection around the Alkylation Unit was limited, which is adjacent to the main refinery road. Respondent's failure to address engineering controls applicable to the hazards in the Alkylation Unit is a violation of 40 C.F.R. § 68.67(c)(3).

38. 40 C.F.R. § 68.69(a)(1) requires that the owner or operator shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and shall address at least the following elements. (1) Steps for each operating phase. Respondent failed to develop operating procedures that provide clear instructions by not tagging or labeling valves and equipment in the units that corresponded to the steps in the associated operating procedures. Respondent's failure to develop operating procedures that provide clear instructions is a violation of 40 C.F.R. § 68.69(a)(1).

39. 40 C.F.R. § 68.69(a)(1)(iii) requires that the owner or operator shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and shall address at least the following elements. (1) Steps for each operating phase: (iii) Temporary operations. Respondent failed to develop a written operating procedure for the sampling and transport of hydrofluoric acid samples for analysis which is a reoccurring activity in the process. Respondent's failure to develop operating procedures for conducting activities involved in the covered process is a violation of 40 C.F.R. § 68.69(a)(1)(iii).

40. 40 C.F.R. § 68.69(a)(1)(iv) requires that the owner or operator shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and shall address at least the following elements. (1) Steps for each operating phase: (iv) Emergency shutdown including the conditions under which emergency shutdown is required, and the assignment of shutdown responsibility to qualified operators to ensure that emergency shutdown is executed in a safe and timely manner. Respondent failed to address the conditions under which emergency shutdown is required and the assignment of shutdown responsibility to ensure that emergency shutdown is executed in a safe and timely manner in SOP-015-201, SOP-015-209, or SOP-015-309. Respondent's failure to address the conditions under which emergency shutdown is required and the assignment of shutdown responsibility to ensure that emergency shutdown is executed in a safe and timely manner is a violation of 40 C.F.R. § 68.69(a)(1)(iv).

41. 40 C.F.R. § 68.69(a)(2) requires that the owner or operator shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and shall address at least the following elements. (2) Operating limits. Respondent failed to address operating limits for operating procedures in a manner consistent with their process safety information. Respondent's

failure to address operating limits for operating procedures in a manner consistent with their process safety information is a violation of 40 C.F.R. § 68.69(a)(2).

42. 40 C.F.R. § 68.69(a)(3)(i) requires that the owner or operator shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and shall address at least the following elements. (3) Safety and health considerations: (i) Properties of, and hazards presented by, the chemicals used in the process. Respondent failed to indicate which MSDS's should be reviewed or what chemicals are associated with the operating procedures SOP-017-103, SOP-015-309, SOP-015-201, SOP-015-209, and SOP-015-310. Respondent's failure to develop operating procedures that addressed safety and health considerations related to the chemicals used in the process is a violation of 40 C.F.R. §§ 68.69(a)(3)(i).

43. 40 C.F.R. § 68.69(a)(4) requires that the owner or operator shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and shall address at least the following elements. (4) Safety systems and their functions. Respondent failed to properly address safety systems such as alarms and interlocks in their operating procedures. Respondent's failure to properly address safety systems such as alarms and interlocks in their operating procedures is a violation of 40 C.F.R. §§ 68.69(a)(4).

44. 40 C.F.R. § 68.69(b) requires that operating procedures shall be readily accessible to employees who work in or maintain a process. Respondent failed to maintain operating procedures related to loss of power or control room console that were readily accessible to employees in the event of those events occurring. Respondent's failure to properly maintain operating procedures that are readily accessible to employees who work in or maintain a process is a violation of 40 C.F.R. §§ 68.69(b).

45. 40 C.F.R. § 68.73(b) requires that the owner or operator shall establish and implement written procedures to maintain the on-going integrity of process equipment. Respondent failed to establish and implement procedures to maintain the on-going integrity of non-safety integrity level (SIL)-rated instruments. Respondent's failure to establish and implement written procedures to maintain the on-going integrity of process equipment is a violation of 40 C.F.R. §§ 68.73(b).

46. 40 C.F.R. § 68.73(d)(1) requires that inspections and tests shall be performed on process equipment. Respondent failed to perform inspections and test on D-1715. Respondent's failure to perform inspections and test on process equipment is a violation of 40 C.F.R. §§ 68.73(d)(1).

47. 40 C.F.R. § 68.73(d)(3) requires that the frequency of inspections and tests of process equipment shall be consistent with applicable manufacturers' recommendations and good engineering practices, and more frequently if determined to be necessary by prior operating experience. Respondent failed to conduct a 5-year external inspection of E-1505 after September 2013 as required under API 510. Respondent's failure to inspect and test process equipment at frequencies consistent with applicable manufacturers' recommendations and good engineering practices is a violation of 40 C.F.R. §§ 68.73(d)(3).

48. 40 C.F.R. § 68.75(a), requires that the owner or operator shall establish and implement written procedures to manage changes (except for "replacements in kind") to process chemicals, technology, equipment, and procedures; and changes to stationary sources that affect a covered

process. Respondent failed to implement procedures to manage changes in the process by not completing an MOC when taking heat exchanger E-0310A out of service. Respondent's failure to implement procedures to manage changes in the process is a violation of 40 C.F.R. § 68.75(a).

49. 40 C.F.R. § 68.75(e), requires that if a change covered by this paragraph results in a change in the operating procedures or practices required by §68.69, such procedures or practices shall be updated accordingly. Respondent failed to update procedures covered by a change in the process when the facility physically removed heat exchanger E-0310A and did not update the operating procedures associated with the operation of the cat stabilizer accumulator located in the FCCU with this change. Respondent's failure to update procedures covered by a change in the process is a violation of 40 C.F.R. § 68.75(e).

50. 40 C.F.R. § 68.77(a), requires that the owner or operator shall perform a pre-startup safety review for new stationary sources and for modified stationary sources when the modification is significant enough to require a change in the process safety information. Respondent failed to perform a pre-startup safety review prior to the startup of D-1501 located in the Alkylation Unit as part of MOC #886887. Respondent's failure to perform a pre-startup safety review prior to startup is a violation of 40 C.F.R. § 68.77(a).

51. 40 C.F.R. § 68.79(a), requires that the owner or operator shall certify that they have evaluated compliance with the provisions of this subpart at least every three years to verify that procedures and practices developed under this subpart are adequate and are being followed. Respondent failed to certify that the audits conducted in 2014 and 2017 served as an evaluation of the facility's compliance with the provisions of subpart D. Respondent's failure to certify that they have evaluated compliance with the provisions of subpart D is a violation of 40 C.F.R. § 68.79(a).

52. 40 C.F.R. § 68.79(b), requires that the compliance audit shall be conducted by at least one person knowledgeable in the process. Respondent failed to ensure that the 2017 audit was conducted by at least one person from the facility to serve as someone knowledgeable in the process. Respondent's failure to ensure that the 2017 audit was conducted by at least one person knowledgeable in the process is a violation of 40 C.F.R. § 68.79(b).

53. 40 C.F.R. § 68.81(b), requires that an incident investigation shall be initiated as promptly as possible, but not later than 48 hours following the incident. Respondent failed to initiate an incident investigation within the 48-hour following an incident in 2018. Respondent's failure to initiate an incident investigation within the 48-hour following an incident is a violation of 40 C.F.R. § 68.81(b).

54. 40 C.F.R. § 68.85(b), requires that the hot work permit shall document that the fire prevention and protection requirements in 29 CFR 1910.252(a) have been implemented prior to beginning the hot work operations. Respondent failed to document on their hot work permit that the fire prevention and protection requirements in 29 CFR 1910.252(a) had been implemented prior to beginning the hot work operations for permit 38949 as the "Potential Hazards" section did not have the hazards "LEL" or "H2S" marked from the list in that section although signage in the immediate working area indicated that those hazards where present. Respondent's failure to document on their hot work permit that the fire prevention and protection requirements in 29 CFR 1910.252(a) had been implemented prior to beginning the hot work operations is a violation of 40 C.F.R. § 68.85(b).

55. 40 C.F.R. § 68.95(a)(1)(ii), requires that an emergency response plan, which shall be maintained at the stationary source and contain at least the following elements: (ii) Documentation of proper first-aid and emergency medical treatment necessary to treat accidental human exposures. Respondent failed to fully document proper first-aid and emergency medical treatment necessary to treat accidental human exposures to hydrofluoric acid exposure in their emergency response plan. Respondent's failure to document proper first-aid and emergency medical treatment necessary to treat accidental human exposures is a violation of 40 C.F.R. § 68.95(a)(1)(ii).

56. 40 C.F.R. § 68.160(b), requires that the registration shall include the following data: (6) The name, title, telephone number, 24- hour telephone number, and, as of June 21, 2004, the e-mail address (if an e-mail address exists) of the emergency contact. Respondent failed to provide a 24-hour telephone number for their emergency contact. The number in the RMP was an office number with no forwarding, so it appears to only be a business-hours telephone number. Respondent's failure to provide a 24-hour telephone number for their emergency contact is a violation of 40 C.F.R. § 68.160(b).

CAA SECTION 112(r) PENALTY LIABILITY

57. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), 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 whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of section 112(r) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations, limited to matters where the total penalty sought does not exceed $200,000 and the first alleged date of violation occurred no more than 12 months prior to the initiation of the administrative action, except where the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount or longer period of violation is appropriate for administrative penalty action. Such a determination was made as stated in paragraph 2, above. 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 this statutory maximum penalty to $55,808 per day per violation for violations that occurred after November 2, 2015, where penalties are assessed on or after January 6, 2023.

III. SETTLEMENT

58. Respondent consents to the issuance of this Consent Agreement, and consents for the purposes of settlement to the payment of the civil penalty, below.

IV. CIVIL PENALTY

59. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a total civil penalty in the amount of three hundred eighty-five thousand dollars ($385,000.00) for alleged violations of section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), which Respondent shall be liable to pay in accordance with the terms set forth below.

60. The CAA civil penalty stated herein is based upon Complainant's consideration of several factors, including, but not limited to, the penalty criteria set forth in section 113(e) of the CAA, 42 U.S.C. § 7413(e), and is consistent with 40 C.F.R. part 19 and the Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7) and 40 C.F.R. part 68 (June 2012).

61. Payment of the CAA civil penalty and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier's check, certified check, or electronic wire transfer, in the following manner:

a. All payments by Respondent shall include reference to Respondent's name and address, and the Docket Number of this action.

b. All checks in payment of the CAA civil penalty shall be made payable to the "United States Treasury."

c. All payments made by check in payment of the CAA civil penalty and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979078
St. Louis, MO 63197-9000

d. For additional information concerning other acceptable methods of payment of the civil penalty amounts see:

https://www.epa.gov/financial/makepayment

e. A copy of Respondent's checks or other documentation of payment of the penalties using the method selected by Respondent for payment shall be sent simultaneously to the following individuals:

Marc Weiner
Senior Assistant Regional Counsel
Weiner.Marc@epa.gov

and

Steven Ramirez
Ramirez.StevenA@epa.gov

62. 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, provide that the EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.

63. Payment of the CAA civil penalty is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed Final Order approving the Consent Agreement (CAFO). Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed CAFO, with a date stamp indicating the date on which the CAFO 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).

64. INTEREST: In accordance with 40 C.F.R § 13.11(a)(1), interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of the fully executed and filed CAFO is mailed or hand-delivered to Respondent. However, the EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R § 13.11(a).

65. ADMINISTRATIVE COSTS: The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to appendix 2 of EPA's Resources Management Directives – Case Management, chapter 9, the EPA will assess a $15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional $15.00 for each subsequent thirty (30) days the penalty remains unpaid.

66. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

67. Failure by the Respondent to pay the CERCLA civil penalty and the EPCRA civil penalty assessed by the Final Order in accordance with the terms of this CAFO may subject Respondent to a civil action to collect the assessed penalties, plus interest, pursuant to section 325 of EPCRA, 42 U.S.C. § 11045, and section 109 of CERCLA, 42 U.S.C. § 9609. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

68. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this CAFO.

69. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six percent (6%) 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. 31 U.S.C. § 3717(e)(2).

V. EFFECT OF SETTLEMENT AND RESERVATION OF RIGHTS

70. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of the CAA or any other applicable law.

71. The effect of settlement described in paragraph 70 is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in paragraph 71.

72. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and related to the counts set forth in this Consent Agreement.

73. Full payment of the penalty proposed in this Consent Agreement 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 law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of the CAA, and the regulations promulgated thereunder.

74. Complainant reserves the right to enforce the terms and conditions of this CAFO.

VI. GENERAL PROVISIONS

75. By signing this Consent Agreement, the undersigned representative of Respondent certifies that it is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party it represents to this Consent Agreement.

76. This Consent Agreement shall not dispose of the proceeding without a Final Order from the Regional Judicial Officer ratifying the terms of this Consent Agreement. This Consent Agreement shall be effective upon filing of the Final Order by the Regional Judicial Officer. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

77. The penalty specified herein shall represent civil penalties assessed by the EPA and shall not be deductible for purposes of federal, state, and local taxes.

78. This CAFO shall apply to and be binding upon Respondent and Respondent's agents, successors, and 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 Consent Agreement.

79. The EPA and Respondent agree to the use of electronic signatures for this matter pursuant to 40 C.F.R. § 22.6. The EPA and Respondent further agree to electronic service of this Consent Agreement and Final Order by email to the following:

The EPA:
Weiner.Marc@epa.gov
Ramirez.StevenA@epa.gov

Respondent:
eddie.lewis@nortonrosefulbright.com

VII. EFFECTIVE DATE

80. This Agreement shall become effective on the date (Effective Date) the Final Order is filed by the Regional Hearing Clerk.

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY, REGION 8,
Complainant.

Date: _____ By: SCOTT PATEFIELD Digitally signed by SCOTT PATEFIELD Date: 2023.12.01 09:44:35 -07'00'

Scott Patefield, Branch Manager
Air and Toxics Enforcement Branch
Enforcement and Compliance Assurance Division

CALUMET MONTANA REFINING, LLC
Respondent.

Date: 11/30/23 By: _____

Authorized Representative for Respondent

Name: MIKE ACHACOSO

Title: SENIOR VICE PRESIDENT - OPERATIONS