

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2023-0042
)	
Lakeshore Railcar & Tanker Services LLC)	Proceeding to Assess a Civil Penalty
East Chicago, Indiana)	Under Section 113(d) of the Clean Air Act,
)	42 U.S.C. § 7413(d)
Respondent.)	
_____)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 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. Complainant is the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Lakeshore Railcar & Tanker Services LLC (Lakeshore), a limited liability corporation doing business in Indiana.

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 to the terms of this 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 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), states that whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of this subchapter, section 7603 of this title, subchapter IV-A, subchapter V, or subchapter VI of this chapter, including, but not limited to, a requirement or prohibition of any rule, plan, order, waiver, or permit promulgated, issued or approved under those provisions or subchapters the Administrator may (A) issue an administrative penalty order, (B) issue an order requiring such person to comply with such requirement or prohibition, (C) bring a civil action, or (D) request the Attorney General to commence a criminal action.

10. The authority provided for in Sections 113(a)(1) and (a)(3), 42 U.S.C. § 7413(a)(1) and (2), has been delegated to the Director of the Enforcement and Compliance Assurance Division.

11. On October 17, 1995, EPA approved Rule 8, Federally Enforceable State Operating Permits Program, as part of the federally enforceable State Implementation Plan (SIP) for Indiana. *See* 60 Fed. Reg. 43008.

12. On June 17, 2002, EPA granted final approval for Indiana's Part 70 Permit Program. 40 C.F.R. Part 70 Appendix A.

13. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$55,808 per day of violation up to a total of \$446,456 for violations under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19 that occurred after November 2, 2015.

14. Section 113(d)(1), 42 U.S.C. § 7413(d)(1), limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

15. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations

16. Lakeshore owns and operates a stationary rail tank car, railcar, and truck tanker cleaning facility located at 1150 E 145th Street, East Chicago, Indiana 46312 (Facility). Facility may refer to Lakeshore or its predecessor United Transportation Group (UTG), but, in either case, refers to the entity owning or operating an emission source at 1150 E 145th Street, East Chicago, Indiana 46312.

17. The Facility is a stationary source as defined in Indiana's Part 70 Permit Program, 326 IAC § 2-7-1(39), and incorporated by reference in Indiana's SIP, and the CAA.

18. The Facility is a major source, 326 IAC § 2-7-1(22), with the potential to emit VOCs in quantities equal to or greater than 100 tons per year (TPY).
19. The Facility is a major stationary source with the potential to emit at least 10 TPY of a single hazardous air pollutant (HAP) and the potential to emit at least 25 tons per year of combined HAPs.
20. The Facility is a source required to have a permit under 40 C.F.R. Part 70. 326 IAC § 2-7-2(a).
21. The Facility obtained a Federally Enforceable State Operating Permit (FESOP), which may be issued to sources otherwise required to have a Part 70 permit. 326 IAC § 2-8-2.
22. EPA issued a Notice of Violation and Finding of Violation (NOV/FOV) on June 30, 2015 to UTG for violations of UTG's FESOP (2009 FESOP) (renewal issued by Indiana Department of Environmental Management on July 21, 2009), the Indiana SIP, and Section 110 of the CAA, 42 U.S.C. § 7410.
23. On September 30, 2016, EPA issued an Administrative Consent Order (2016 ACO) to UTG which outlined compliance measures for the alleged violations at the Facility, including, but not limited to:
 - a. exceeding the volatile organic compound (VOC) and hazardous air pollutant (HAP) emission limit of 4.88 tons per twelve consecutive month period, in violation of the Facility's 2009 FESOP [Condition D.2.1.(a)], 326 IAC § 2-8-4(1) of the Indiana SIP, and Section 110 of the CAA, 42 U.S.C. § 7410; and
 - b. failing to maintain adequate combustion of gases with appropriate heating values at the flare such that it achieves a ninety-eight percent destruction efficiency for VOC and HAP, in violation of the Facility's 2009 FESOP [Condition D.2.4.(a)];

326 IAC 2-8, 326 IAC § 8-7-3(1-2), and 326 IAC 8-7-4 of the Indiana SIP; and Section 110 of the CAA, 42 U.S.C. § 7410.

24. The ACO became effective September 30, 2016, and it terminated one year after its effective date, but only if the Facility complied with all the terms of the ACO.

25. On July 12, 2021, EPA issued a Finding of Violation (2021 FOV) to Lakeshore alleging that Lakeshore: 1) failed to properly monitor and record net heating values for vent gas to the flare during pressurized rail tank car purging/degassing operations; and 2) failed to maintain the minimum standard of 200 Btu/scf for each one-hour rolling average of the net heating values of the vent gas to the flare, during entire periods of time when emissions are vented to the flare in order to comply with the emission limit and destruction efficiency as required by the 2009 FESOP Conditions D.2.1.(a) and D.2.4.(a), and 326 IAC § 2-8-4(1), 326 IAC 2-8, 326 IAC § 8-7-3(1-2), and 326 IAC 8-7-4 of the Indiana SIP.

26. On September 1, 2021, representatives of Lakeshore and EPA discussed the 2021 FOV.

27. EPA and Lakeshore had ongoing phone and email discussions to ensure that Lakeshore was properly implementing the requirements needed to demonstrate compliance.

28. On November 24, 2021, Lakeshore confirmed the Facility had implemented alternative operational measures with respect to the process to ensure proper combustion at the flare.

29. On August 18, 2023, Lakeshore confirmed it has not operated the pressurized rail tank car purging/degassing operations (which was the subject of the FOV) since June 9, 2023.

30. On August 18, 2023, Lakeshore confirmed that the flare required by the no-longer-operating pressurized rail tank car purging/degassing operations is being removed from the Facility.

31. On August 25, 2023, Lakeshore confirmed that it no longer operates the pressurized tank car purging/degassing operations at the Facility, and the Facility is removing the flare and the associated emissions source (the pressurized rail tank car purging/degassing operations) from the existing air permit.

Alleged Violations

32. Lakeshore failed to properly monitor and record net heating values for vent gas to the flare during pressurized rail tank car purging/degassing operations on various days between December 20, 2018 until January 8, 2019, and February 20, 2019 until August 18, 2020 to ensure compliance with 2009 FESOP Conditions D.2.1.(a) and D.2.4.(a), and 326 IAC § 2-8-4(1), 326 IAC 2-8, 326 IAC § 8-7-3(1-2), and 326 IAC 8-7-4 of the Indiana SIP.

33. Lakeshore failed to maintain the minimum standard of 200 Btu/scf for each one-hour rolling average of the net heating values of the vent gas to the flare, during entire periods of time when emissions are vented to the flare. These violations occurred on average approximately 28% of the time emissions were vented to the flare from July 11, 2018 through February 20, 2019, and from August 18, 2020 through January 20, 2021 to ensure compliance with 2009 FESOP Conditions D.2.1.(a) and D.2.4.(a), and 326 IAC § 2-8-4(1), 326 IAC 2-8, 326 IAC § 8-7-3(1-2), and 326 IAC 8-7-4 of the Indiana SIP.

34. Lakeshore failed to apply for a permit modification, within 330 days of the effective date of the Order, for inclusion as “applicable requirements” (as that term is defined at 40 C.F.R. 70.2).

Civil Penalty

35. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case and other factors such as cooperation and prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$153,000.

a. Penalty Payment. Respondent agrees to pay the civil penalty of \$153,000 within 30 days after the effective date of this CAFO using any method provided in the table below.

Payment Method	Payment Instructions
Automated Clearinghouse (ACH) payments made through the US Treasury	<p>US Treasury REX/Cashlink ACH Receiver ABA: 051036706 Account Number: 310006, Environmental Protection Agency CTX Format Transaction Code 22 – checking</p> <p>In the comment area of the electronic funds transfer, state Respondent’s name and the CAFO docket number.</p>
Wire transfers made through Fedwire	<p>Federal Reserve Bank of New York ABA: 021030004 Account Number: 68010727 SWIFT address: FRNYUS33 33 Liberty Street New York, NY 10045 Beneficiary: US Environmental Protection Agency</p> <p>In the comment area of the electronic funds transfer, state Respondent’s name and the docket number of this CAFO.</p>
<p>Payments made through Pay.gov</p> <p>Payers can use their credit or debit cards (Visa, MasterCard, American Express & Discover) as well as checking account information to make payments.</p>	<ul style="list-style-type: none"> • Go to Pay.gov and enter “SFO 1.1” in the form search box on the top left side of the screen. • Open the form and follow the on-screen instructions. • Select your type of payment from the "Type of Payment" drop down menu. • Based on your selection, the corresponding line will open and no longer be shaded gray. Enter the CAFO docket number into the field
<p>Cashier’s or certified check payable to “Treasurer, United States of America.”</p> <p>Please note the CAFO docket number on the check</p>	<p>For standard delivery: U.S. Environmental Protection Agency Fines and Penalties Cincinnati Finance Center P.O. Box 979078 St. Louis, Missouri 63197-9000</p> <p>For signed receipt confirmation (FedEx, UPS, Certified Mail, etc): U.S. Environmental Protection Agency Government Lockbox 979078 U.S. EPA Fines and Penalties 1005 Convention Plaza SL-MO-C2-GL St. Louis, Missouri 63101</p>

36. Within 24 hours of the payment of the civil penalty Respondent must send a notice of payment and states Respondent's name and the docket number of this CAFO to EPA at the following addresses:

Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
R5airenforcement@epa.gov

Cynthia A. King
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
King.Cynthia@epa.gov

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
r5hearingclerk@epa.gov

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

38. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

39. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This

nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

General Provisions

40. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: king.cynthia@epa.gov (for Complainant), and pnehring@mohangroble.com (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

41. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

42. The effect of the settlement described in paragraph 41, above, is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in paragraphs 26-31 of this CAFO.

43. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

44. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 41, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

45. Respondent certifies that since it has terminated the flare operations, it is complying fully with operating standards set forth in Condition D.1 of its FESOP No. F089-37256-00469 (issued on October 1, 2016), Administrative Amendment 089-39674-00469 (issued on March 1, 2018), and Administrative Amendment 089-42403-00469 (issued on February 3,

2020), and 326 IAC § 2-3, 326 IAC § 2-8, and 326 IAC § 8-7 of the Indiana SIP, as applicable to allegations in Paragraphs 32 and 33.

46. This CAFO constitutes an “enforcement response” as that term is used in EPA’s Clean Air Act Stationary Civil Penalty Policy to determine Respondent’s “full compliance history” under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

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

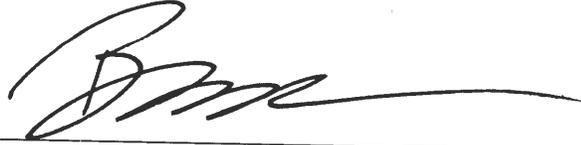
48. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

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

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

Lakeshore Railcar & Tanker Services LLC, Respondent

9-28-2023
Date



Lakeshore Railcar & Tanker Services LLC
Bradley S. Gordon, General Counsel

EIN 47-3915825

Tax Identification Number

United States Environmental Protection Agency, Complainant

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

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In the Matter of: Lakeshore Railcar & Tanker Services LLC
Docket No. CAA-05-2023-0042

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