



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 West Jackson Boulevard  
Chicago, Illinois 60604



EXPEDITED SETTLEMENT AGREEMENT AND FINAL ORDER

DOCKET NOs: **CERCLA-05-2023-0012; EPCRA-05-2023-0014**

CERCLA PAYMENT DOCKET NO: CERCLA-23-ESA-002

EPCRA PAYMENT DOCKET NO: EPCRA-23-ESA-003

**This Expedited Settlement Agreement is issued to:**

Lima Refining Company

1150 South Metcalf Street

Lima, Ohio 45804

**for alleged violations of Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act and Section 304 of the Emergency Planning and Community Right-To-Know Act.**

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The United States Environmental Protection Agency, Region 5, and Lima Refining Company ("Respondent") (jointly "the Parties") have agreed to the settlement of this action before the filing of a complaint. This action is thus simultaneously commenced and concluded by this Expedited Settlement Agreement ("ESA") and Final Order. *See* 40 C.F.R. §§ 22.13(b) and 22.18(b)(2)-(3).

This is an administrative action for the assessment of civil penalties instituted pursuant to EPA's authority under Section 109 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9609, and Sections 325 of the Emergency Planning and Community Right-To-Know Act ("EPCRA"), 42 U.S.C. § 11045. The U.S. Environmental Protection Agency has jurisdiction over this matter pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, Section 325 of EPCRA, 42 U.S.C. § 11045, and 40 C.F.R. §§ 22.1(a)(7) and (8), and 22.4 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"). The Director of the Superfund & Emergency Management Division, EPA Region 5, has been delegated the authority to issue an Administrative Complaint seeking the assessment of civil penalties for violations of Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of EPCRA, 42 U.S.C. § 11004. The Regional Judicial Officer for Region 5 of EPA is authorized to issue a Final Order, which concludes this matter pursuant to 40 C.F.R. § 22.18. The Regional Administrator has delegated the authority to issue Final Orders ratifying settlements pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(3) to the Regional Judicial Officer, Office of Regional Counsel, EPA Region 5. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Sections 22.18(c) and 22.31(a) of the Consolidated Rules of Practice.

## ALLEGED VIOLATIONS

Complainant alleges that, at all times relevant to the allegations described in this Agreement, Respondent was a “person” in charge of a “facility” from which a “hazardous substance” was “released,” other than a “federally-permitted release,” within the meaning of Subsections 101(9), (10), (14), (21) and (22) of CERCLA, 42 U.S.C. § 9601(9), (10), (14), (21) and (22). Complainant alleges that, at all times relevant to the allegations described in this Agreement, Respondent was an “owner or operator,” of a “facility” from which there was a “release” of an “extremely hazardous substance” within the meaning of Subsections 329(3), (4) and (8) of EPCRA, 42 U.S.C. § 11049(3), (4) and (8).

On December 3, 2022, at or about 12:59 a.m., a release of hydrogen sulfide occurred from Respondent’s facility 1150 South Metcalf Street, Lima, Ohio, of approximately 677 pounds of hydrogen sulfide (the hydrogen sulfide release). The release of hydrogen sulfide exceeded 100 pounds within a 24-hour period and the release resulted in the potential for exposure to persons beyond the site or sites on which the facility is located.

Respondent did not immediately notify the National Response Center (NRC) as soon as Respondent knew or should have known of the hydrogen sulfide release. Respondent’s failure to immediately notify the NRC of the hydrogen sulfide release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a). In failing to comply with Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), Respondent is subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

Respondent did not immediately notify the State Emergency Response Commission (SERC) as soon as Respondent knew or should have known of the hydrogen sulfide release. Respondent’s failure to immediately notify the SERC of the hydrogen sulfide release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a). In failing to comply with Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), Respondent is subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

Respondent did not immediately notify the Local Emergency Planning Committee (LEPC) as soon as Respondent knew or should have known of the hydrogen sulfide release. Respondent’s failure to immediately notify the LEPC of the hydrogen sulfide release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a). In failing to comply with Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), Respondent is subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

On December 3, 2022, at or about 7:00 p.m., a release of sulfur dioxide occurred from Respondent’s facility 1150 South Metcalf Street, Lima, Ohio, of approximately 1,123 pounds of sulfur dioxide (the sulfur dioxide release). The release of sulfur dioxide exceeded 500 pounds within a 24-hour period and the release resulted in the potential for exposure to persons beyond the site or sites on which the facility is located.

Respondent did not immediately notify the SERC as soon as Respondent knew or should have known of the sulfur dioxide release. Respondent’s failure to immediately notify the SERC

of the sulfur dioxide release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a). In failing to comply with Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), Respondent is subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

Respondent did not immediately notify the LEPC as soon as Respondent knew or should have known of the sulfur dioxide release. Respondent's failure to immediately notify the LEPC of the sulfur dioxide release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a). In failing to comply with Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), Respondent is subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

### SETTLEMENT

In consideration of the Respondent's prior history of such violations and such other matters as justice may require, and upon consideration of the entire record, the parties enter into the ESA in order to settle the violations cited above for the total penalty amount of \$5,000 for the CERCLA violation and \$10,000 for the EPCRA violations. In signing this ESA, Respondent: (1) admits that EPA has jurisdiction over Respondent's conduct as alleged herein; (2) neither admits nor denies the factual allegation(s) contained herein; (3) consents to the assessment of this penalty; and (4) waives any right to request a hearing to contest any fact or allegation or appeal the final order accompanying this ESA. Respondent consents to, and is bound by, the terms and conditions of this ESA.

By its signature below Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that: (1) the alleged violation(s) has/have been corrected; and (2) Respondent is submitting payment of the civil penalty as described below. Respondent also: (1) admits that EPA has jurisdiction over Respondent's conduct as alleged herein; (2) neither admits nor denies the factual allegation(s) contained herein, except as provided in the jurisdictional admission above; (3) consents to the assessment of this penalty; and (4) waives any right to request a hearing to contest any fact or allegation or appeal the final order accompanying this ESA. Respondent consents to, and is bound by, the terms and conditions of this ESA.

Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this ESA and Final Order. Late payment of the agreed upon penalty may subject Respondent to interest, administrative costs and late payment penalties in accordance with 40 C.F.R. § 13.11.

Respondent must send a certified, company, or cashier's check for the CERCLA violation payable to "EPA Hazardous Substance Superfund," in the amount of \$5,000 to:

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

Respondent must send a certified, company, or cashier's check for the EPCRA violations (payable to the "Treasurer, United States of America") in the amount of \$10,000 in payment of the full penalty amount to the following address:

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

The payment docket number of this ESA **must be included on the checks.** (The payment docket number is located at the top left corner of this ESA.)

This original ESA and **a copy of the check must be sent via email to:**

James Entzminger  
U.S. EPA Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604  
entzminger.james@epa.gov

Upon the issuance of the Final Order, Respondent's correction of the alleged violation, and confirmation of receipt of Respondent's payment of the civil penalty, Respondent's liability is resolved only for any federal civil penalties due as a result of the specific facts and violations alleged in this ESA. This ESA, the Final Order, and Respondent's full payment of the civil penalty set forth herein, do not affect the right of EPA to pursue appropriate injunctive, other equitable relief, or criminal sanctions for any violations of law. EPA also does not waive any enforcement authority for any other violation of CERCLA, EPCRA, or any other statute. The issuance of the Final Order does not waive, extinguish, or otherwise affect Respondent's duty to comply with CERCLA, EPCRA, the regulations promulgated thereunder, or any other applicable law or requirement.

If the signed original ESA **with an attached copy of the check** is not returned to the **EPA Region 5 office** at the above address in correct form by Respondent within 45 days of the date of Respondent's receipt of this ESA, the proposed ESA is withdrawn, without prejudice to EPA's ability to file an enforcement action for the violations identified in this ESA.

Respondent certifies that it is complying with Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304 of EPCRA, 42 U.S.C. § 11004.

This ESA is binding on the Parties signing below.

Each Party to this action shall bear its own costs and fees, if any.

Each Person signing this ESA 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.

In the Matter of: Lima Refining Company, Lima, Ohio  
Docket No. **CERCLA-05-2023-0012; EPCRA-05-2023-0013**

**FOR RESPONDENT:**

Signature: Steve Schwartz for Dean Hendley Date: 7/5/23

Name (print): Steve Schwartz

Title (print): Director of Maintenance & Construction

Name of facility: Lima Refining Co.

**FOR COMPLAINANT:**

**DOUGLAS  
BALLOTTI**

Digitally signed by  
DOUGLAS BALLOTTI  
Date: 2023.07.07 09:01:20  
-05'00'

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

Douglas Ballotti, Director  
Superfund & Emergency Management Division  
U.S. Environmental Protection Agency

In the Matter of: Lima Refining Company, Lima, Ohio  
Docket No. CERCLA-05-2023-0012; EPCRA-05-2023-0014

FINAL ORDER

This Expedited Settlement 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.

**ANN COYLE**  
Digitally signed by ANN  
COYLE  
Date: 2023.07.10  
10:55:23 -05'00'

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Ann Coyle, Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 5

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