

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



In the Matter of:) Docket No. CAA-05-2026-0028
)
Valicor Environmental Services, LLC) Proceeding to Assess a Civil Penalty
Dayton, Ohio,) Under Section 113(d) of the Clean Air Act,
) 42 U.S.C. § 7413(d)
Respondent.)
_____)

Consent Agreement and Final Order

A. Preliminary Statement

1. This is an administrative penalty assessment proceeding 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) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.1(a)(2), 22.13(b) and 22.18(b).

2. Complainant is the U.S. Environmental Protection Agency (EPA). The EPA Administrator has delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the CAA to the Division Director of the Region 5 Enforcement and Compliance Assurance Division.

3. Respondent is Valicor Environmental Services, LLC (Valicor), a corporation doing business in Ohio. Respondent is a “person,” as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

4. The EPA and Respondent agree that settling this action is in the public interest and consent to the entry of this Consent Agreement and Final Order (CAFO) pursuant to 40 C.F.R. § 22.18(b)(2) and (3) without the adjudication of any issues of law or fact.

5. Respondent agrees to comply with the terms of this CAFO.

B. Jurisdiction

6. The alleged violations in this CAFO are pursuant to Section 113(a)(3)(A) of the CAA.

7. The EPA and the United States Department of Justice have jointly determined that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.

8. On September 21, 2023, the EPA issued to Respondent a Finding of Violation (FOV) and provided a copy of the FOV to the Ohio Environmental Protection Agency (OEPA), providing notice to Respondent and OEPA that the EPA found Respondent committed the alleged violations described in Section E of this CAFO and providing Respondent an opportunity to confer with the EPA. On October 19, 2023, representatives of Respondent and the EPA conferred regarding the September 21, 2023 FOV.

9. The Regional Judicial Officer of Region 5 is authorized to ratify the Consent Agreement memorializing the settlement between the EPA and Respondent and to issue the attached Final Order. 40 C.F.R. §§ 22.4(b) and 22.18(b).

C. Statutory and Regulatory Background

10. The NESHAP from Off-Site Waste and Recovery Operations (Subpart DD) applies to each tank and container used to manage off-site material at a Subpart DD affected source.

11. The NESHAP, at 40 C.F.R. § 63.685(d) states:

Owners and operators controlling air emissions from a tank using Tank Level 2 controls shall use one of the following tanks:

- a. A fixed-roof tank equipped with an internal floating roof in accordance with the requirements specified in paragraph (e) of this section;
- b. A tank equipped with an external floating roof in accordance with the requirements specified in paragraph (f) of this section;
- c. A tank vented through a closed-vent system to a control device in accordance with the requirements specified in paragraph (g) of this section;
- d. A pressure tank designed and operated in accordance with the requirements specified in paragraph (h) of this section; or
- e. A tank located inside an enclosure that is vented through a closed-vent system to an enclosed combustion control device in accordance with the requirements specified in paragraph (i) of this section.

12. The NESHAP, at 40 C.F.R. § 63.685(g)(1)(ii), requires, in part, that for an owner or operator who controls tank air emissions by venting to a control device, the tank shall be covered by a fixed roof, and “[e]ach opening in the fixed roof not vented to the control device shall be equipped with a closure device.”

13. The NESHAP, at 40 C.F.R. § 63.685(g)(1)(iii), requires, in part, that for an owner or operator who controls tank air emissions by venting to a control device, the tank shall be covered by a fixed roof, and “[t]he fixed roof and its closure devices shall be made of suitable materials that will minimize exposure of the off-site material to the atmosphere, to the extent practical, and will maintain the integrity of the equipment throughout its intended service life. Factors to be considered when selecting the materials for and designing the fixed roof and closure devices shall

include: organic vapor permeability, the effects of any contact with the liquid and its vapor managed in the tank [...]"

14. The NESHAP, at 40 C.F.R. § 63.685(g)(2), requires, in part, that "[w]henver an off-site material is in the tank, the fixed roof shall be installed with each closure device secured in the closed position and the vapor headspace underneath the fixed roof vented to the control device [...]"

15. The NESHAP, at 40 C.F.R. § 63.688(b)(3)(i) states, in part, that for a container having a design capacity greater than 0.46 m³ and the container is in light-material service, the owner or operator must control air emissions from the container in accordance with the standards for Container Level 2 controls as specified in subpart PP of this part - National Emission Standards for Containers.

16. The NESHAP, at 40 C.F.R. § 63.693(b)(3), requires, in part, that whenever gases or vapors containing HAP are routed from a tank through a closed-vent system connected to a control device used to meet Tank Level 2 controls, the control device must be operating except for routine maintenance.

17. The NESHAP, at 40 C.F.R. § 63.693(b)(4)(i), requires the Facility to inspect and monitor the closed-vent system in accordance with the requirements specified in 40 C.F.R. § 63.695(c).

18. The NESHAP, at 40 C.F.R. § 63.693(f)(1)(ii)(A), requires, in part, that the RTO destroy the HAP listed in Subpart DD contained in the vent stream entering the vapor incinerator by 95 percent or more, on a weight-basis.

19. The NESHAP, at 40 C.F.R. § 63.695(c)(1)(ii)(C), requires the continuous monitoring system to monitor and record either an instantaneous data value at least once every 15 minutes or an average value for intervals of 15 minutes or less.

20. The NESHAP, at 40 C.F.R. § 63.695(e)(1)(ii), requires that the continuous monitoring system must be installed, calibrated, operated, and maintained in accordance with the manufacturer's specifications or other written procedures that provide reasonable assurance that the monitoring equipment is operating properly.

21. The NESHAP, at 40 C.F.R. § 63.695(e)(5), states, in part, that for each deviation from the minimum operating parameter limit established for the operating parameter, “the owner or operator shall be deemed to have failed to have applied control in a manner that achieves the required operating parameter limits. Failure to achieve the required operating parameter limits is a violation of this standard.”

22. The NESHAP, at 40 C.F.R. § 63.923(d) requires that whenever a regulated-material is in a container using Container Level 2 controls, the owner or operator shall install all covers and closure devices for the container, and secure and maintain each closure device in the closed position except under specified conditions while adding material to the container or removing material from the container, or as needed to perform routine activities other than transfer of regulated-material.

23. Title V of the CAA, 42 U.S.C. §§ 7661-7661f, and its implementing regulations at 40 C.F.R. Part 70, establish an operating permit program for major sources of air pollution.

24. Pursuant to Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), it is unlawful for any person to violate any requirement of an issued Title V permit.

25. All terms and conditions in a Title V permit are enforceable by EPA. See 40 C.F.R. § 70.6(b)(1).

26. On April 30, 2020, Ohio EPA issued a Title V permit to the Facility (the Permit).

27. Permit Condition B.6 incorporates the requirements of 40 C.F.R. § 63.693(f)(1)(ii)(A).

28. Permit Condition B.6 requires that the Facility install and operate a closed-vent system and a regenerative thermal oxidizer (RTO) at all times, including periods of startup, shutdown, and malfunction and achieve a destruction efficiency of 95% or greater of total organic compounds (TOC), less methane and ethane, and hazardous air pollutants (HAPs) on a dry weight basis.

29. Permit Condition B.8. requires that the Facility remove adequate moisture from the closed-vent system and other RTO related components to minimize or eliminate operational problems associated with moisture that could impact the continuous and proper operation of the RTO.

30. Permit Condition B.10 incorporates the requirements of 40 C.F.R. § 63.695(c)(1)(ii)(C).

31. Permit Condition B.10 requires that the permittee install, calibrate, maintain, and continuously operate at least one pressure monitoring device capable of measuring and recording the pressure within the closed-vent system no less than once every 15 minutes as required by Subpart DD.

32. Permit Condition B.11 incorporates the requirements of 40 C.F.R. § 63.695(e)(5), as they pertain to the pressure for the closed-vent system.

33. Permit Condition B.11 requires that the daily average pressure measured for the closed-vent system, when emissions units controlled by the RTO are in operation, shall not be less than the minimum pressure established during the most recent emissions test.

34. Permit Condition B.12 requires that the permittee install, calibrate, maintain, and continuously operate a pressure monitoring device at the end of each vent line of the closed-vent system if there is more than one line leading to the RTO.

35. Permit Condition B.12 further states that “These monitors shall be used in order to demonstrate that a negative pressure is maintained within the closed-vent system at all times one or more processes tied into the closed-vent system are operating [...]”.

36. Permit Condition C.10.c.1 states that, for Level 2 Tanks including the VDR (Emissions Unit T107), the permittee shall comply with the applicable restrictions required under 40 C.F.R. Part 63, Subpart DD, specifically standards for tanks and operation of tanks using level 2 control under 40 C.F.R. 63.685(d)(3) and (g).

37. Permit Condition C.2.c.1 incorporates the requirements of 40 C.F.R. § 63.923(d).

38. Permit Condition C.2.c.1 states that, for the Building G Sludge Press Roll-Off container (P040), the permittee shall comply with the applicable restrictions under 40 CFR Part 63, Subpart DD, which also references 40 CFR Part 63, Subpart PP, including 40 C.F.R. § 63.923(d) of Subpart PP.

39. Permit Conditions C.3.c.1, C.8.c.1, and C.10.c.1 incorporate the requirements of 40 C.F.R. § 63.693(b)(3).

40. Permit Conditions C.3.c.3 and C.8.c.1 incorporate the requirements of 40 C.F.R.

41. § 63.685(d)(3) and (g), for the DAF Flash and Effluent Tanks and Tank T118, respectively.

42. Permit Condition C.3.d.2, C.4.d.2, C.6.d.2, C.7.d.2, C.8.d.2, and C.10.d.2 incorporate the requirements of 40 C.F.R. § 63.695(e)(5), as they pertain to the RTO combustion temperature.

43. Permit Conditions C.3.d.2, C.4.d.2, C.6.d.2, C.7.d.2, C.8.d.2, and C.10.d.2 require that the combustion temperature measured within the RTO, when emissions units controlled by the RTO are in operation, shall not be less than average minimum temperature established during the most recent emissions test.

D. Stipulated Facts

44. As of December 22, 2022, Valicor has owned and operated an off-site waste and recovery operation located at 300 Cherokee Drive, Dayton, Ohio (the Facility).

45. Prior to December 22, 2022, the Facility was owned and operated by Clean Water Environmental, LLC (CWE).

46. At the Facility, Valicor operates the Building G Filter Press Feed Tank (T118).

47. At the Facility, Valicor operates the dissolved air filtration (DAF) system (P041) that includes, among other subunits, the DAF flash tank and the DAF effluent tank.

48. The DAF flash tank and the DAF effluent tank are both covered by a fixed roof.

49. The DAF flash tank is vented to a control device and is thus subject to 40 C.F.R. § 63.685(g)(1)(ii).

50. The DAF effluent tank is vented to a control device and is thus subject to 40 C.F.R. § 63.685(g)(1)(iii).

51. At the Facility, Valicor operates a closed vent system (CVS) routed to a regenerative thermal oxidizer (RTO), in order to control emissions from multiple tanks and other emissions units.

52. At the Facility, Valicor employs the Building G Sludge Press Roll-Off container to store sludge generated by the sludge press in Building G.

53. At the Facility, Valicor operates the Building B Sludge Settling Tank, Tank T-2 (T069). Valicor operates a pressure monitoring device along the CVS vent line leading to Tank T-2, in order to demonstrate negative pressure in compliance with Permit Condition B.12.

54. At the Facility, Valicor operates the Sequencing Batch Reactor (SBR) and Variable Depth Reactor (VDR) as part of a bioplant. Valicor operates a pressure monitoring device along the CVS

vent line leading to the SBR (SBR Gauge), in order to demonstrate negative pressure in compliance with Permit Condition B.12.

55. On May 3, 2023, approximately 4 months after Valicor took over the ownership and operation of the facility from CWE, EPA conducted an inspection of the Facility (May 3, 2023 Inspection). This inspection was prompted by an explosion in the facility's capture and control system that occurred on April 10, 2023.

56. At the May 3, 2023 Inspection, EPA conducted onsite monitoring using an optical gas imaging camera (FLIR) to detect potential emissions of organic air pollutants, and a Toxic Vapor Analyzer (TVA) to measure emissions of total organic compounds, as methane, at potential leak points.

57. On May 17, 2023 Valicor sent EPA a letter summarizing follow-up items from the May 3, 2023 Inspection (May 17, 2023 Letter).

58. On September 21, 2023 EPA issued its FOV letter.

59. On October 18, 2023, Valicor sent EPA a letter responding to each of the alleged violations in the September 21, 2023 FOV (October 18, 2023 Letter).

60. At the May 3, 2023 Inspection, EPA observed hydrocarbon emissions escaping from Tank T118 using FLIR technology. Upon further investigation, it became clear that there was an open hatch atop Tank T118. Facility representatives stated that they would work to close the open hatch.

61. In the May 17, 2023 Letter, Valicor stated that the hatch was properly closed on the date of the inspection, after EPA's departure, on May 3, 2023.

62. At the May 3, 2023 Inspection, on the fixed roof of the DAF Flash Tank, EPA observed an approximate 3-inch opening that was not equipped with a closure device.

63. Using the TVA, EPA recorded an organic vapor reading above 500 ppm as methane directly above the hole.

64. The May 17, 2023 Letter stated, “Valicor has since patched the hole and subsequent PID readings taken were observed at 0.1 ppm.”

65. At the May 3, 2023 Inspection, EPA observed that a significant portion of the fixed roof of the DAF Effluent Tank was covered with a thin rubber mat to cover an opening above the tank pump well, with visible gaps along the edges of the mat.

66. Using the TVA, EPA recorded an organic vapor reading of 282 ppm as methane near the gaps along the edges of the mat.

67. In a May 11, 2023 email, as a follow-up to the inspection, Valicor stated it had modified the mat on the DAF Effluent Tank and provided a photo confirming that the mat was still in place.

68. In the May 17, 2023 Letter, Valicor stated that it had installed a new cover on the tank, had sealed around the sump pump discharge pipe of the tank, and taken a follow up reading with a photo ionization detector, that measured 2.3 ppm. No photo or additional details of the new cover were provided.

69. In the October 18, 2023 Letter, Valicor stated that it had not been using the DAF or its ancillary systems since August 2023.

70. On April 17, 2023, and through a subsequent update on April 22, 2023 (April 22nd Deviation Report), Valicor reported a high temperature event that led to the destruction of a significant portion of the CVS ductwork, rendering the CVS inoperable, and requiring the shutdown of the RTO while several emission units continued to emit pollution.

71. The April 22nd Deviation Report described two critical incidents in the chain of events that ultimately lead to the damage to the CVS, both of which involved excess condensate buildup in the CVS and RTO:

- a. “Condensate with elevated LELs entered the inlet plenum of the RTO unit where the poppet valves are located. The condensate reached an elevation in the inlet plenum above the bottom of the poppet valves allowing this material to transfer to the outlet plenum side of the RTO, which has elevated temperatures coming off the media beds of the RTO Unit. This caused the stack temperature to increase and shut down the RTO unit.”
- b. While the RTO was shut down, and “[u]nknown to the personnel restarting the unit, the R1/R2 Tanks were being filled causing increased LEL conditions in the CVS that was blocked off due to the RTO shutdown closing the plant air damper from the CVS into the RTO.”

72. The April 22nd Deviation Report stated that several emission sources normally controlled by the RTO continued to emit during the time the RTO was shut down, and that the Bioplant tanks continued to be supplied with air during the time the RTO was shut down.

73. By virtue of these emission sources continuing to emit while the RTO was shut down, zero percent of the HAP contained in the vent stream routed to the RTO was destroyed.

74. Shortly after the event, Valicor shutdown all process operations, and did not restart the operations until after the RTO was back online, which minimized emissions. The blowers remained in operation at the bio plant to maintain viability of the biomass.

75. Valicor submitted its 2023 2nd quarter deviation report on July 31, 2023 (2nd Quarter Report).

76. The 2nd Quarter Report states that the RTO was shut down from April 10, 2023 until April 25, 2023.

77. The 2nd Quarter Report indicates that Valicor did not achieve its required 24-hour average RTO minimum combustion temperature and CVS vacuum pressure between April 10, 2023 and April 25, 2023.

78. The October 18, 2023 Letter outlines multiple steps that Valicor has taken to prevent similar high temperature events from occurring, including installation of a condensate knock out pot upstream of the RTO inlet fan to capture excess moisture, an automated sump pump on the cold-face plenum that pumps out any potential buildup of condensate in the RTO, a new fresh air damper, LEL meter, and associated controls. As of March 4, 2025, Valicor has also replaced the existing heat exchanger directly upstream of the RTO by installing and commencing operation of a more efficient unit consisting of 31 3'x3' plates (New Heat Exchanger), and began continuously monitoring and recording relative humidity at the inlet to the RTO, whenever the emissions units are in operation, as either an instantaneous value at least once every 15 minutes or an average value for intervals of 15 minutes or less and additionally began recording 1-hour and 24-hour block averages of these values.

79. On June 11, 2025 Valicor voluntarily replaced the then existing RTO unit with a new RTO unit as a capital replacement project. The new RTO was not installed to correct any alleged violations. The old RTO unit relied upon the indirect heat exchanger to regulate relative humidity. However, the new RTO unit uses a direct-fired preheater, upstream of the RTO's bed-switching valves, to regulate relative humidity. Therefore, the New Heat Exchanger is no longer necessary in order to regulate relative humidity.

80. On June 14, 2023 Valicor reported that the "failure of a pressure transmitter" led to the shutdown of the RTO on June 9, 2023. (June 14th Deviation Report)

81. The June 14th Deviation Report listed several emission sources normally controlled by the RTO that continued to emit during the time the RTO was shut down.

82. The June 14th Deviation Report states that Valicor did not achieve its required 24-hour average RTO minimum combustion temperature for 382 minutes on June 9, 2023.

83. On July 14, 2023, Valicor provided an addendum to the June 14th Deviation Report (July 14th Addendum Report), stating that after replacing the failed pressure transmitter, the new pressure transmitter was miscalibrated. The miscalibration caused four of the CVS pressure gauges at the ends of vent lines to display positive pressure and the CVS pressure at the RTO to be an estimated -0.35 inches of water column, thus not meeting the minimum vacuum pressure, from June 10, 2023 to June 16, 2023.

84. On August 15, 2023, Valicor provided another addendum to the July 14th Addendum Report (August 15th Addendum Report). The August 15th Addendum Report indicated Valicor was changing the standard operation procedure of the RTO and CVS to include checking for negative pressure when the biopant blowers are operating.

85. During the May 3, 2023 Inspection, EPA observed pressure gauges used to check for negative pressure at the end of each vent line of the closed-vent system. The Tank T-2 gauge was broken. At another gauge in Building B, the needle was near zero, and it was difficult to determine if pressure was slightly negative or slightly positive.

86. In the May 17, 2023 Letter, Valicor confirmed that that a faulty gauge was discovered on May 2, 2023, resulting in the installation of new gauges on May 3, 2023.

87. In the May 17, 2023 Letter, Valicor stated that it ordered new pressure gauges for the CVS system which have a better scale for measuring vacuum during inspections.

88. During the May 3, 2023 Inspection, EPA observed sludge placed on top of the temporary liner/cover of the Building G Sludge Press Roll-Off container. The sludge was, thus, exposed to the ambient air inside Building G.

89. In the October 18, 2023 Letter, Valicor stated that it implemented a policy that 3rd party contractors cannot switch roll-off containers without a Valicor team member being present to ensure the doors are closed after the roll-off box is changed.

90. On August 17, 2023, Valicor reported that on August 7, 2023, a failed natural gas safety valve on the RTO caused the failure of the RTO to maintain its minimum combustion temperature and ultimately led to the shutdown of the RTO for approximately 4.25 hours.

91. The Deviation Report listed several emission sources normally controlled by the RTO that continued to emit during the time the RTO was shut down.

92. The Deviation Report states that Valicor did not achieve its required 24-hour average RTO minimum combustion temperature for 255 minutes on August 7, 2023.

93. On August 25, 2023, Valicor sent EPA a letter (August 25, 2023 Letter) notifying EPA that through an internal investigation Valicor discovered that all CVS pressure gauges have not been calibrated on a quarterly basis, as required by the Facility's Preventative Maintenance and Operation Plan (PMOP).

94. The Facility's PMOP, including the requirement to calibrate the CVS pressure gauges on a quarterly basis, first became effective upon EPA approval on April 26, 2019, when CWE was the owner and operator of the facility.

95. In the August 25, 2023 Letter, Valicor stated that there was an inconsistency between PMOP Attachments 7 and 8. Specifically, the inspection checklist in Attachment No. 8 of the PMOP was missing the CVS gauge calibration requirement and that Valicor had since revised the checklist

to provide for the future quarterly calibration of the magnehelic gauges within the CVS and had educated the appropriate employees on the need to complete the calibration in accordance with the PMOP.

96. In the August 25, 2023 Letter, Valicor also notified EPA that a Valicor internal investigation discovered that in 2017 or 2018, CWE facility staff improperly adjusted the SBR Gauge to show a negative pressure reading, such that the gauge was effectively taken out of calibration and would not accurately show the pressure at the location of the gauge. The notification further states that no known changes were made to the SBR Gauge from the time of the improper adjustment until the time the gauge was replaced, a few weeks prior to August 25, 2023, and that the current SBR Gauge was believed to be providing accurate pressure readings. Valicor terminated the employees that were involved in the improper adjustment of the SBR Gauge.

97. During the May 3, 2023 Inspection, EPA observed hydrocarbon emissions from the VDR pressure relief poppet valve using FLIR technology.

98. Valicor did not indicate that the bioplant was experiencing an over-pressurization event.

99. The May 17, 2023 Letter stated that the Facility measured hydrocarbon emissions from the VDR and SBR vent stacks, presumably after the May 3, 2023 Inspection, and that the readings were 43.5 ppm and 41.7 ppm, respectively.

100. The October 18, 2023 Letter stated that the Facility's daily CVS inspection sheet was modified to incorporate documented visual inspection of the PRV's.

E. Allegations

101. By failing to control emissions from Tank T118, since at least May 3, 2023, Valicor is in violation of Permit Condition C.8.c.1 and 40 C.F.R. § 63.685(d)(3).

102. By failing to secure a closure device in the closed position and vent the vapor headspace to the control device at Tank T118, on May 3, 2023 and possibly earlier, Valicor is in violation of Permit Condition C.8.c.1 and 40 C.F.R. § 63.685(g)(2).

103. By failing to equip an opening in the fixed roof of the DAF Flash Tank with a closure device, from at least May 3, 2023 until as late as May 17, 2023, Valicor is in violation of 40 C.F.R. § 63.685(g)(1)(ii) and Permit Condition C.3.c.3.

104. By failing to maintain a fixed roof made of suitable materials which would be expected to maintain the integrity of the equipment through its intended service life, on the DAF Effluent Tank, since at least May 3, 2023, Valicor is in violation of 40 C.F.R. § 63.685(g)(1)(iii) and Permit Condition C.3.c.3.

105. By failing to operate a closed-vent system and a regenerative thermal oxidizer (RTO) at all times, including periods of startup, shutdown, and malfunction and achieve a destruction efficiency of 95% or greater of total organic compounds (TOC), less methane and ethane, and hazardous air pollutants (HAPs) on a dry weight basis, from April 10, 2023 until April 25, 2023, Valicor is in violation of Permit Condition B.6 and 40 C.F.R. § 63.693(f)(1)(ii)(A).

106. By failing to remove adequate moisture from the closed-vent system and other RTO related components to minimize or eliminate operational problems associated with moisture that could impact the continuous and proper operation of the RTO, Valicor is in violation of Permit Condition B.8.

107. By failing to operate the RTO at all times gases or vapors containing HAP are routed through the closed-vent system connected to the RTO, from April 10, 2023 until April 25, 2023, Valicor is in violation of Permit Conditions C.3.c.1, C.8.c.1, and C.10.c.1, and 40 C.F.R. § 63.693(b)(3).

108. By failing to meet the 24-hour minimum CVS vacuum pressure, from April 10, 2023 until April 25, 2023, Valicor is in violation of Permit Condition B.11 and 40 C.F.R. § 63.695(e)(5).

109. By failing to meet the 24-hour minimum RTO combustion temperature, from April 10, 2023 until April 25, 2023, Valicor is in violation of Permit Conditions C.3.d.2, C.4.d.2, C.6.d.2, C.7.d.2, C.8.d.2, and C.10.d.2, and 40 C.F.R. § 63.695(e)(5).

110. By failing to properly install, calibrate, maintain, and continuously operate at least one pressure monitoring device capable of measuring and recording the pressure within the closed-vent system no less than once every 15 minutes, from June 9, 2023 until June 16, 2023, Valicor is in violation of Permit Condition B.10 and 40 C.F.R. § 63.695(c)(1)(ii)(C).

111. By failing to operate the CVS and RTO at all times, including periods of startup, shutdown, and malfunction and achieve a destruction efficiency of 95% or greater of total organic compounds (TOC), less methane and ethane, and hazardous air pollutants (HAPs) on a dry weight basis, on June 9, 2023, Valicor is in violation of Permit Condition B.6 and 40 C.F.R. § 63.693(f)(1)(ii)(A).

112. By failing to operate the RTO at all times gases or vapors containing HAP are routed through the closed-vent system connected to the RTO, on June 9, 2023, Valicor is in violation of Permit Conditions C.3.c.1, C.8.c.1, and C.10.c.1, and 40 C.F.R. § 63.693(b)(3).

113. By failing to meet the 24-hour minimum RTO combustion temperature, for 382 minutes on June 9, 2023, Valicor is in violation of Permit Conditions C.3.d.2, C.4.d.2, C.6.d.2, C.7.d.2, C.8.d.2, and C.10.d.2, and 40 C.F.R. § 63.695(e)(5).

114. By failing to meet the 24-hour minimum CVS vacuum pressure, from June 10, 2023 until June 16, 2023, Valicor is in violation of Permit Condition B.11 and 40 C.F.R. § 63.695(e)(5).

115. By failing to demonstrate, based on the end-of-vent-line pressure gauge readings, that a negative pressure was maintained within the CVS, from June 10, 2023 until June 16, 2023, Valicor is in violation of Permit Condition B.12.

116. By failing to properly to install, calibrate, maintain and continuously operate a pressure monitoring device at the end of the vent line of the CVS leading to Tank T-2, from at least May 2, 2023 until May 3, 2023, Valicor is in violation of Permit Condition B.12.

117. By failing to demonstrate, based on the end-of-vent-line pressure gauge readings, that a negative pressure was maintained within the CVS since at least May 3, 2023, Valicor is in violation of Permit Condition B.12.

118. By failing to secure and maintain a closure device over the Building G Sludge Press Roll-Off container, on at least May 3, 2023, Valicor is in violation of the NESHAP, at 40 C.F.R. § 63.923(d) and Permit Condition C.2.c.1.

119. By failing to operate the RTO at all times gases or vapors containing HAP are routed through the closed-vent system connected to the RTO, on August 7, 2023, Valicor is in violation of Permit Conditions C.3.c.1, C.8.c.1, and C.10.c.1 and 40 C.F.R. § 63.693(b)(3).

120. By failing to meet the 24-hour minimum RTO combustion temperature, on August 7, 2023, Valicor is in violation of Permit Conditions C.3.d.2, C.4.d.2, C.6.d.2, C.7.d.2, C.8.d.2, and C.10.d.2, and 40 C.F.R. § 63.695(e)(5).

121. By failing to operate the CVS and RTO at all times, including periods of startup, shutdown, and malfunction and achieve a destruction efficiency of 95% or greater of TOC, less

methane and ethane, and HAPs on a dry weight basis, on August 7, 2023, Valicor is in violation of Permit Condition B.6 and 40 C.F.R. § 63.693(f)(1)(ii)(A).

122. By failing to complete quarterly calibrations of all CVS pressure gauges from April 26, 2019 until approximately August, 2023, Valicor is in violation of Permit Conditions B.10 and B.12 and 40 C.F.R. § 63.695(e)(1)(ii).

123. By failing to demonstrate that a negative pressure was maintained within the CVS at the SBR Gauge, from at least 2018 until approximately August, 2023, Valicor is in violation of Permit Condition B.12.

124. By failing to operate the VDR according to Level 2 Tanks controls, as evidenced via a leaking PRV atop the VDR, on at least May 3, 2023, Valicor failed to send emissions through a closed-vent system to a control device in violation of 40 C.F.R. § 63.685(d)(3) and (g)(2) and Permit Condition C.10.c.1.

F. Terms of Consent Agreement

125. For the purposes of this proceeding, as required by 40 C.F.R. § 22.18(b)(2),
Respondent:

- a. admits to the jurisdictional allegations in this CAFO;
- b. disputes all other allegations and alleged violations set forth in this CAFO and provided EPA with information in support of its position. For purposes of this proceeding only, Respondent neither admits nor denies the non-jurisdictional allegations in this CAFO.
- c. neither admits nor denies the allegations stated in Section E of this CAFO;
- d. consents to the assessment of a civil penalty as stated below;
- e. consents to any conditions specified in this CAFO;
- f. waives any right to contest the allegations set forth in Section E of this CAFO;
and

- g. waives its right to appeal this CAFO.
126. For the purposes of this proceeding, Respondent:
- a. agrees this CAFO states a claim upon which relief may be granted against Respondent;
 - b. acknowledges this proceeding constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
 - c. waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1);
 - d. waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c);
 - e. waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the Final Order accompanying the Consent Agreement; and
 - f. waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for noncompliance, and agrees that federal law shall govern in any such civil action.

127. 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 Respondent's cooperation, the EPA has determined that an appropriate civil penalty to settle this action is \$ 140,000.

128. Respondent agrees to pay a civil penalty in the amount of \$ 140,000("Assessed Penalty") within thirty (30) days after the date the Final Order ratifying this Consent Agreement is filed with the Regional Hearing Clerk ("Filing Date").

129. 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>.

130. When making a payment, Respondent shall:
- a. Identify every payment with Respondent's name and the docket number of this CAFO, CAA-05-2026-0028,
 - b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following person(s):

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

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

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to:
CINWD_AcctsReceivable@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.

131. 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 the full amount of the Assessed Penalty per this CAFO, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately owing, and the EPA is authorized to recover the following amounts.

- a. Interest. Interest begins to accrue from the Filing 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. § 7413(d)(5), 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 handing collection.
- c. Late Payment Penalty. A ten percent (10%) quarterly non-payment penalty.

132. 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, interest, or other charges and penalties per this CAFO, the EPA may take additional actions. Such actions the 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, per 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.

133. 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.

134. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant

to this CAFO shall not be deductible for purposes of federal taxes.

135. 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 wise.milton@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 does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA’s Cincinnati Finance Center with Respondent’s TIN, via email, within five (5) days of Respondent’s receipt of a TIN issued by the IRS.

136. By signing this CAFO, Respondent consents to the release of any information in this CAFO to the public and agrees this CAFO does not contain business information that is entitled to confidential treatment under 40 C.F.R. Part 2.

137. By signing this CAFO, the undersigned representative of the EPA and the undersigned representative of Respondent each certify that they are fully authorized to execute and enter into the terms and conditions of this CAFO and have the legal authority to bind the party they represent to this CAFO.

138. By signing this CAFO, Respondent certifies the information it has supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that, under 18 U.S.C. § 1001, there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information.

139. Each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding, except in the case of a civil action brought by the Attorney General of the United States to recover unpaid penalties as described above.

G. Effect of Consent Agreement and Final Order

140. The parties consent to service of this CAFO by e-mail at the following e-mail addresses: oviedo.luis@epa.gov (for the EPA), and tfinn@ralaw.com (for Respondent).

141. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this CAFO resolves only Respondent's liability for federal civil penalties for the violations specifically alleged in this CAFO.

142. This CAFO constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the

parties with respect to this matter with the exception of the administrative compliance order, docket number EPA-5-26-113(a)-OH-4 issued concurrently.

143. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both parties and approval of the Regional Judicial Officer.

144. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, authorized representatives, successors, and assigns.

145. Any violation of this CAFO may result in a civil judicial action for an injunction or civil penalties of up to \$124,426 per day per violation, or both, as provided in Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 40 C.F.R. § 19.4, as well as criminal sanctions as provided in Section 113(c) of the CAA, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this CAFO in an administrative, civil judicial, or criminal action.

146. Nothing in this CAFO relieves Respondent of the duty to comply with all applicable provisions of the CAA and other federal, state, or local laws or statutes, nor does it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor is it a ruling on, or determination of, any issue related to any federal, state, or local permit.

147. Nothing in this CAFO limits the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

148. The EPA reserves the right to revoke this CAFO and settlement penalty if and to the extent that the EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, and to assess and collect any civil penalties permitted by statute for any violation described herein. The

EPA will give Respondent written notice of its intent to revoke this CAFO, which will not be effective until received by Respondent.

H. Effective Date

149. This CAFO will be effective on the date of filing with the Regional Hearing Clerk. Upon filing, the EPA will transmit a copy of the filed CAFO to Respondent.

Consent Agreement in the Matter of Valicor Environmental Services, LLC, Docket No. CAA-05-2026-0028

For Valicor Environmental Services LLC, Respondent

Date

Ken Bentfeld
Senior Vice President

Consent Agreement in the Matter of Valicor Environmental Services, LLC, Docket No. CAA-05-2026-0028

For United States Environmental Protection Agency, Complainant

Carolyn Persoon
Division Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order

In the Matter of: Valicor Environmental Services, LLC

Docket No. CAA-05-2026-0028

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