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CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

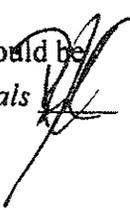
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	Case No. 3:11MJ8007
	)	
Plaintiff,	)	
	)	JUDGE JAMES R. KNEPP, II
v.	)	
	)	
TOLEDO FACILITY, LLC,	)	
	)	<u>PLEA AGREEMENT</u>
Defendant.	)	

Pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, and in consideration of the mutual promises set forth below, the United States Attorney's Office for the Northern District of Ohio (hereinafter "USAO"), by and through its undersigned attorney(s), and the defendant, **TOLEDO FACILITY, LLC**, is a Delaware limited liability company (hereinafter "Defendant"), agree as follows:

**MAXIMUM PENALTIES AND OTHER CONSEQUENCES OF PLEADING GUILTY**

1. **Waiver of Constitutional Trial Rights.** Defendant understands that Defendant has the right to plead not guilty and go to trial. At trial, Defendant would be

*Defendant's Initials* 

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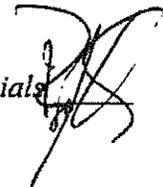
presumed innocent, have the right to trial by jury or, with the consent of the United States, to trial by the Court, the right to the assistance of counsel, the right to confront and cross-examine adverse witnesses and subpoena witnesses to testify for the defense. Defendant understands that Defendant has the right to an attorney at every stage of the proceedings and, if necessary, one will be appointed to represent Defendant. Defendant understands that by pleading guilty, Defendant specifically and voluntarily waives each of these trial rights, except the right to counsel. Defendant understands that a guilty plea is a complete admission of guilt and if the Court accepts the guilty plea, the Court will find Defendant guilty without a trial.

2. **Statutory Penalties.** Defendant understands that the statutory maximum penalties, and minimum penalties if applicable, for the count(s) to which Defendant agrees to plead guilty is/are as follows:

<u>Count</u>	<u>Statute and Description of Offense</u>	<u>Statutory Sentence Per Count</u>
1	33 U.S.C. § 1319(c)(1)(A) (Violation of Approved Pretreatment Program)	Probation: 5 years Statutory fine: \$200,000

3. **Special Assessment.** In addition to the penalty listed above, Defendant will be required to pay a mandatory special assessment of \$125 for each count of conviction, for a total of \$125, due immediately upon sentencing.

Defendant's Initials



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4. **Costs.** The Court may order Defendant to pay the costs of prosecution and sentence, including probation.

5. **Restitution.** The Court may order Defendant to pay restitution as a condition of the sentence and/or probation.

6. **Violation of Probation/Supervised Release.** If Defendant violates any term or condition of probation the Court may extend the term of probation, impose more restrictive conditions of probation, or revoke probation and resentence the organization.

**PLEA(S) AND OTHER CHARGE(S)**

7. **Agreement to Plead Guilty.** Defendant agrees to plead guilty to the Information in this case.

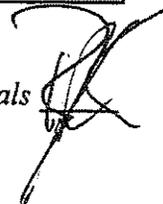
8. **Agreement Not to Bring Certain Other Charges.** The USAO will not bring any other criminal charges against Defendant relating to conduct charged in the Information and/or described in the Factual Basis section of this agreement based on facts currently within the knowledge of the USAO.

**ELEMENTS OF THE OFFENSE**

9. The elements of the offense(s) to which Defendant will plead guilty are:

<b>33 U.S.C. § 1319(c)(1)(A): Violation of Approved Pretreatment Program</b>	
<b>One:</b>	The Defendant, negligently;
<b>Two:</b>	Violated any requirement in a pretreatment program;
<b>Three:</b>	Approved under the Clean Water Act.

Defendant's Initials



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**SENTENCING STIPULATIONS AND AGREEMENTS**

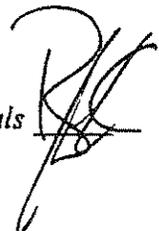
10. **Sentencing Guidelines.** Defendant understands that sentencing rests within the discretion of the Court; that federal sentencing law requires the Court to impose a sentence which is sufficient, but not greater than necessary, to comply with the purposes of 18 U.S.C. § 3553(a), and that the Court must consider among other factors the advisory United States Sentencing Guidelines in effect at the time of sentencing and that in determining the sentence, the Court may depart or vary from the advisory guideline range.

11. **Stipulated Guideline Computation.** The parties agree that, pursuant to United States Sentencing Guideline § 8C2.1, the provisions of §§ 8C2.2 through 8C2.9 do not apply for purposes of calculating a fine.

12. **Presentence Report.** Defendant understands that the advisory guideline range will be determined by the Court at the time of sentencing, after a presentence report has been prepared by the U.S. Probation Office and reviewed by the parties. Defendant further understands that it is the obligation of the government to provide to the U.S. Probation Office all known information regarding Defendant's conduct subject to its limited use under U.S.S.G. §1B1.8 and not protected under the proffer agreement if any.

13. **Right of Allocution.** Defendant understands and agrees that the USAO reserves the opportunity to speak at Defendant's sentencing. The USAO agrees that Defendant reserves the right of allocution at sentencing.

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14. **Acceptance of Responsibility.** The USAO has no reason to believe at this time that Defendant has not clearly and affirmatively accepted personal responsibility for Defendant's criminal conduct. The USAO agrees to recommend a reduction for acceptance of responsibility under U.S.S.G. § 3E1.1, provided Defendant's conduct continues to reflect Defendant's acceptance of responsibility. Defendant understands it will be up to the Court at the time of sentencing to determine whether a reduction for acceptance of responsibility is appropriate.

15. **Criminal History Category.** The parties have no agreement about the Criminal History Category applicable in this case. Defendant understands that the Criminal History Category will be determined by the Court after the completion of a Pre-Sentence Investigation by the U.S. Probation Office.

16. **Fine.** The parties agree to recommend that Defendant pay a fine of \$112,500 as part of the sentence. Defendant understands that the fine is not deductible for federal income tax purposes.

17. **Community Service.** The parties agree to recommend to the Court that Defendant make a community service payment in amount of \$37,500 in accordance with the principles set forth in §8B1.3 of the Federal Sentencing Guidelines and in furtherance of satisfying the sentencing principles provided for under 18 U.S.C. § 3553(a). Defendant and USAO agree that the organizational community service payment agreed to in this plea agreement shall be made on the day of sentencing. The

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community service payment will be made to the Ohio Environmental Protection Agency ("Ohio EPA"), Division of Surface Water. The Ohio EPA catalogs and evaluates watersheds in the State of Ohio. These funds will be used by Ohio EPA as part of this process for evaluating and improving Ohio's watersheds in Northwest Ohio. The money order should be made payable to the "Treasurer, State of Ohio," Ref: Toledo Facility, LLC, and delivered to Donna Waggoner at Ohio EPA's Central District Office, P.O. Box 1049, Columbus, OH 43216-1049. Because the community service payments are designated as community service by an organization, Defendant further agrees that it will not seek any reduction in its tax obligations as a result of these community service payments. In addition, since these payments constitute community service as part of the Defendant's guilty plea, neither Defendant nor any related entity or agent will characterize, publicize or refer to these community service payments as voluntary donations or contributions.

**WAIVER OF APPEAL AND POST-CONVICTION ATTACK**

18. **Waiver of Appellate Rights.** Defendant acknowledges having been advised by counsel of Defendant's rights, in limited circumstances, to appeal the conviction or sentence in this case, including the appeal right conferred by 18 U.S.C. § 3742, and to challenge the conviction or sentence collaterally through a post-conviction proceeding, including a proceeding under 28 U.S.C. § 2255. Defendant expressly and voluntarily waives those rights, except as specifically reserved below. Defendant reserves

*Defendant's Initials*



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the right to appeal: (a) any punishment in excess of the statutory maximum; (b) any sentence to the extent it exceeds the maximum of the sentencing range determined under the advisory Sentencing Guidelines in accordance with the sentencing stipulations and computations in this agreement, using the Criminal History Category found applicable by the Court; or (c) the Court's determination of Defendant's Criminal History Category. Nothing in this paragraph shall act as a bar to Defendant perfecting any legal remedies Defendant may otherwise have on appeal or collateral attack with respect to claims of ineffective assistance of counsel or prosecutorial misconduct.

**FACTUAL BASIS AND RELEVANT CONDUCT**

19. Defendant agrees that the following summary fairly and accurately sets forth Defendant's offense conduct and a factual basis for the guilty plea. Defendant further agrees that the facts set forth in the summary are true and could be established beyond a reasonable doubt if the case were to proceed to trial:

The Administrator of the United States Environmental Protection Agency ("U.S. EPA") delegated to the State of Ohio, through the Ohio Environmental Protection Agency ("Ohio EPA"), the authority to approve pretreatment programs in the State of Ohio. The City of Toledo has a pretreatment program approved by the Ohio EPA.

Toledo's pretreatment program requires the reporting of operating upsets. Specifically, upon an operating upset which results in a prohibited discharge, the discharger shall immediately notify the City of Toledo by telephone. Toledo's

Defendant's Initials



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pretreatment program prohibits the discharge of wastewater with a pH less than 5 or greater than 12.

The conduct in this case occurred at a tank cleaning facility at 6626 State Route 795 in Walbridge, Ohio (the "Facility"). At the time of such conduct the Facility was under different ownership and was owned and operated by PSC Container Services, LLC. Accordingly, after the purchase transaction was completed, Defendant has agreed to assume legal responsibility for the conduct at the Facility detailed below. The Facility cleans tankers from over-the-road tank trucks. These tanks contain a variety of residual industrial wastes. These wastes include acids.

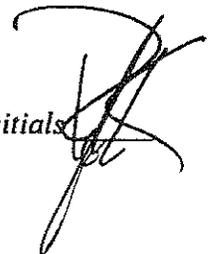
A substantial amount of water is used to clean the tanks at the Facility. The used cleaning water is discharged into the sewer system. To limit the amount of pollutants discharged into the sewer system, the Facility treats the wastewater using a pretreatment system. The pretreatment system reduces the amount of pollution in the wastewater to an acceptable level. Part of the pretreatment system adjusts the pH of the wastewater to a range between 6.5 and 10.5.

The Facility is connected to the City of Toledo sewer system.

On July 14, 2006, an over-the-road tanker used to transport hydrochloric acid was brought to the Facility for cleaning.

As part of the cleaning procedure water was added to the tanker and the resultant mixture was directed into the facility's pretreatment system.

*Defendant's Initials*



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Employees at the Facility first measured the pH of the mixture and found it to be zero.

Employees at the Facility attempted to raise the pH of the mixture to an acceptable level by adding treatment chemicals in order to neutralize the mixture to legal limits prior to discharge. However, even after treating the mixture with all the chemicals on-hand at the facility to neutralize the mixture, the measured pH of the mixture was approximately three.

The Facility employees became concerned that there was not enough volume left in the pretreatment system to handle further treatment of the mixture. After contacting the Regional Manager, the decision was made to override the pretreatment system and discharge the mixture without further treatment.

While the pH of the mixture was measured to be three, the actual pH of the mixture may have been as high as 14 due to aggressive over-treatment of the mixture and the temporary failure of the monitoring probes to accurately analyze the pH in the mixture due to the extremely concentrated acid and rapid rise of the pH in the mixture during treatment. Either pH, three or 14, was outside of the range required by Toledo's pretreatment program..

Approximately 3,000 gallons of the treated mixture was discharged into the City of Toledo sewer system.

*Defendant's Initials*



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The City of Toledo was not notified, either before, or after, the treated mixture was discharged to the sewer system.

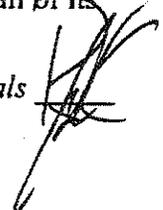
**OTHER PROVISIONS**

20. **Agreement Silent About Matters Not Expressly Addressed.** This agreement is silent about all aspects of the determination of sentence not expressly addressed herein, and the parties are free to advise the Court of facts and to make recommendations to the Court with respect to all aspects of sentencing not agreed to herein.

21. **Sentencing Recommendations Not Binding on the Court.** Defendant understands that the recommendations of the parties will not be binding upon the Court, that the Court alone will decide the advisory guideline range under the Sentencing Guidelines, whether there is any basis to depart from that range or impose a sentence outside the advisory guideline range, and what sentence to impose. Defendant further understands that once the Court has accepted Defendant's guilty plea, Defendant will not have the right to withdraw such a plea if the Court does not accept any sentencing recommendations made on Defendant's behalf or if Defendant is otherwise dissatisfied with the sentence.

22. **Consequences of Breaching the Plea Agreement.** Defendant understands that if Defendant breaches any promise in this agreement or if Defendant's guilty plea is rejected by the Court or is vacated or set aside, the USAO will be released from all of its

Defendant's Initials

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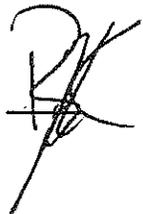
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obligations under this agreement and may institute or maintain any charges and make any recommendations with respect to sentencing that otherwise would be prohibited under the terms of the agreement. Defendant understands, however, that a breach of the agreement by Defendant will not entitle Defendant to withdraw, vacate, or set aside Defendant's guilty plea or conviction.

23. **Agreement not Binding on other Jurisdictions and Agencies.** Defendant understands that this plea agreement is binding only on the United States Attorney's Office for the Northern District of Ohio. It does not bind any other United States Attorney, any other federal agency, or any state or local government.

24. **Defendant is Satisfied with Assistance of Counsel.** Defendant makes the following truthful statements: I have discussed this case and this plea agreement in detail with my attorney who has advised me of my Constitutional and other trial and appeal rights, the nature of the charges, the elements of the offenses the United States would have to prove at trial, the evidence the United States would present at such trial, possible defenses, the advisory Sentencing Guidelines and other aspects of sentencing, and other potential consequences of pleading guilty in this case. I have had sufficient time and opportunity to discuss all aspects of the case in detail with my attorney and have told my attorney everything I know about the charges, any defenses I may have to the charges, and all personal and financial circumstances in possible mitigation of sentence. I am satisfied with the legal services and advice provided to me by my attorney.

Defendant's Initials

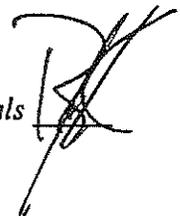
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25. **Agreement Is Complete and Voluntarily Entered.** Defendant and Defendant's undersigned attorney state that this agreement is the entire agreement between Defendant and the USAO and that no other promises or inducements have been made, directly or indirectly, by any agent or representative of the United States government concerning any plea to be entered in this case. In particular, no promises or agreements have been made with respect to any actual or prospective civil or administrative proceedings or actions involving Defendant, except as expressly stated herein. In addition, Defendant states that no person has threatened or coerced Defendant to do or to refrain from doing anything in connection with this case, including Defendant's decision to enter a guilty plea. Finally, Defendant acknowledges that this agreement cannot be modified unless in writing and subject to approval by the Court.

26. **Authority of Toledo Facility, LLC, Representative to Enter into Plea Agreement.** The Attorney for Toledo Facility, LLC, Robert J. Karl, is authorized to enter into this plea agreement on behalf of Defendant as evidenced by the Certificate of Formation of Limited Liability Company of Defendant, and previously provided to the USAO as a condition of this Plea Agreement.

*Defendant's Initials*

A handwritten signature in black ink, appearing to be 'R. J. Karl', written over a grid of lines.

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**SIGNATURES**

**Defendant:** I have read this entire plea agreement and have discussed it with my attorney. I have initialed each page of the agreement to signify that I understand and approve the provisions on that page. I am entering this agreement voluntarily and of my own free will. No threats have been made to me, nor am I under the influence of anything that could impair my ability to understand this agreement.

  
Robert J. Karl  
Attorney on Behalf of Defendant

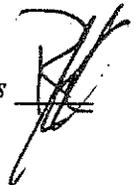
10-25-11  
Date

**Defense Counsel:** I have read this plea agreement and concur in Defendant pleading in accordance with terms of the agreement. I have explained this plea agreement to Defendant, and to the best of my knowledge and belief, Defendant understands the agreement.

  
Robert J. Karl  
Counsel for Defendant

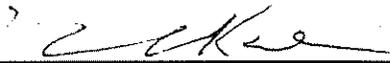
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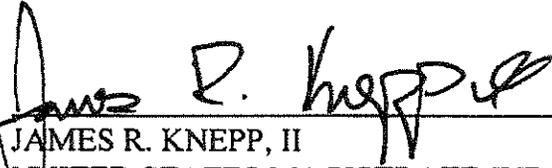
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**United States Attorney's Office:** I accept and agree to this plea agreement on behalf of the United States Attorney for the Northern District of Ohio.

  
\_\_\_\_\_  
Thomas A. Karol (#0023122)  
Assistant U. S. Attorney  
U.S. Attorney's Office  
Four Seagate, Third Floor  
Toledo, Ohio 43604  
(419) 241-0725  
(419) 259-6360 (facsimile)  
E-mail:

10/25/2011  
\_\_\_\_\_  
Date

APPROVED:

  
\_\_\_\_\_  
JAMES R. KNEPP, II  
UNITED STATES MAGISTRATE JUDGE

10/25/2011  
\_\_\_\_\_  
Date

Defendant's Initials \_\_\_\_\_