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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

THOMAS PETROLEUM LLC

RESPONDENT

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DOCKET NO. EPCRA-06-2019-0501

CONSENT AGREEMENT AND FINAL ORDER

The Director, Enforcement and Compliance Assurance Division, United States Environmental Protection Agency, Region 6 (Complainant), and Thomas Petroleum LLC (Respondent) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

I. FINDINGS OF FACT

1. The Amended Complaint in this proceeding alleges Respondent violated Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.22 and 372.30 by filing required notices after their due date.

2. In accordance with 40 C.F.R. § 22.18(b)(2) and (3) of the Consolidated Rules of Practice, in this CAFO Complainant alleges and sets forth all causes of action alleged in the Amended Complaint.

3. This proceeding for the assessment of civil penalties pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), is now concluded by the issuance of this CAFO against Respondent, pursuant to 40 C.F.R. § 22.18(b)(2) and (3).

II. TERMS OF SETTLEMENT

A. GENERAL PROVISIONS

4. For the purposes of this proceeding, Respondent admits the jurisdictional allegations of this CAFO; however, Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

5. Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth therein, and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

6. Compliance with all the terms and conditions of this CAFO shall resolve only those violations which are set forth herein.

7. Respondent consents to the issuance of this CAFO and to the assessment and payment of the stated civil penalty in the amount and by the method set forth in this CAFO.

8. Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on behalf of Respondent is duly authorized to bind Respondent to the terms and conditions of this CAFO.

9. Respondent agrees that the provisions of this CAFO shall be binding on Respondent and its successors and assigns.

10. Respondent hereby certifies that as of the date of the execution of this CAFO, Respondent has corrected the violations alleged in this CAFO and is now, to the best of its knowledge, in compliance with all applicable requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.

B. CIVIL PENALTY

11. In settlement of EPA's claims for civil penalties assessable for the violations alleged in this CAFO, Respondent consents to and is hereby ordered to pay a civil penalty of **\$265,000**, which Respondent shall be liable to pay in accordance with the terms set forth below.

12. The civil penalty is based upon EPA's consideration of a number of factors in accordance and consistent with Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) and the "Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990)," dated August 10, 1992 (Amended, 1996, 1997, and 2001; and updated in accordance with the 2016 Civil Monetary Penalty Inflation Adjustment Rule on February 24, 2017).

13. These factors consider the nature, circumstances, extent and gravity of the alleged violations, and with respect to Respondent, ability to pay, history of prior EPCRA Section 313 violations, the degree of culpability, economic benefit or savings (if any) resulting from the violations, and other factors as justice may require.

14. In addition, some of these factors are based on the unique circumstances of this case and do not apply to or otherwise affect the calculation of penalties in any other matter. Among those factors are those listed in the Parties' Prehearing Exchange and the significant negative effects of COVID-19 on Respondent's business as certified by Respondent.

15. Respondent consents to the issuance of this Consent Agreement and consents for the purposes of settlement to the payment of the civil penalty cited in Paragraph 11 above.

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16. Respondent shall pay the assessed civil penalty in four payments of \$66,250. Within sixty (60) days of the effective date of this CAFO, Respondent shall make the first payment, with subsequent payments due April 30, 2021, October 31, 2021, and April 30, 2022.

17. Respondent shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal Service mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal Service mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

U.S. Bank
Government Lockbox 979077 US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

PLEASE NOTE: Docket number EPCRA-06-2019-0501 shall be clearly typed on the check, or other method of payment, to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference Respondent's name and address, the case name, and docket number of the CAFO. Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

David Riley
Toxics Enforcement Section (ECDST)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270-2102;

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270-2102

Respondent's adherence to this request will ensure proper credit is given when penalties are received by EPA and acknowledged in the Region.

18. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

19. If Respondent fails to timely submit payment as detailed above, Respondent may be subject to a civil action pursuant to Section 325(f) of EPCRA, 42 U.S.C. § 11045(f), to collect any unpaid portion of the assessed penalty, together with interest, handling charges and nonpayment penalties as set forth below.

20. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue once any of the payment dates detailed above are missed and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

21. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

22. This document is a "Final Order" as that term is defined in the "Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990)," dated August 10, 1992 (Amended, 1996, 1997, and 2001; and updated in accordance with the 2016 Civil Monetary Penalty Inflation Adjustment Rule on February 24, 2017) for the purpose of demonstrating a history of "prior such violations."

C. RETENTION OF ENFORCEMENT RIGHTS

23. EPA does not waive any rights or remedies available to EPA for any other violations by Respondent of Federal or State laws, regulations, or permitting conditions.

24. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.

25. Except as specifically provided in this CAFO, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from Respondent's facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

D. COSTS

26. Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. § 17.

E. TERMINATION

27. Upon final payment as required by this CAFO, this CAFO shall be deemed terminated and satisfied. Effective upon termination of this CAFO and subject to Section III.C above, all causes of action alleged in this CAFO shall be fully and finally resolved.

F. EFFECTIVE DATE

28. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:

FOR THE RESPONDENT:

Date: 8/27/2020



Thomas Petroleum LLC

FOR THE COMPLAINANT:

SAMUEL TATES

Digitally signed by SAMUEL TATES
DN: c=US, o=U.S. Government, ou=Environmental
Protection Agency, cn=SAMUEL TATES,
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Date: 2020.08.28 08:53:15 -05'00'

Cheryl T. Seager
Director
Enforcement and
Compliance Assurance Division
U.S. EPA Region 6

IV. FINAL ORDER

Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. § 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Consent Agreement. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

**Rucki,
Thomas**

Thomas Rucki
Regional Judicial Officer

Digitally signed by Rucki, Thomas
DN: cn=Rucki, Thomas,
email=Rucki.Thomas@epa.gov
Date: 2020.08.28 14:11:29 -05'00'

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Consent Agreement and Final Order (CAFO) was emailed to the Regional Hearing Clerk, U.S. EPA - Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270-2102, and a true and correct copy of the CAFO was delivered to the following individual(s) by the method indicated below:

Electronic Mail

Ragna Henrichs
Porter Hedges LLP
1000 Main Street, 30th Floor
Houston, TX 77002
RHenrichs@porterhedges.com

Attorney for Respondent

JAMES MURDOCK

Digitally signed by JAMES
MURDOCK
Date: 2020.08.28 13:04:28 -05'00'

James Murdock