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7 UNITED STATES
8 ENVIRONMENTAL PROTECTION AGENCY
9 REGION IX

10 In the matter of:) Docket No. EPCRA-09-2012-DD05
11)
12 Kaiser Aluminum Alexco, LLC,) CONSENT AGREEMENT
AND FINAL ORDER
13 Respondent.) pursuant to 40 C.F.R. §§ 22.13(b),
22.18(b)(2), and 22.18(b)(3)
14

15 I. CONSENT AGREEMENT

16 The United States Environmental Protection Agency, Region IX ("EPA"), and Kaiser
17 Aluminum Alexco, LLC (the "Respondent") agree to settle this matter and consent to the entry of
18 this Consent Agreement and Final Order ("CAFO").

19 A. AUTHORITY AND PARTIES

20 1. This is a civil administrative action brought under Section 325(c) of the Emergency
21 Planning and Community Right-To-Know Act ("EPCRA"), 42 U.S.C. § 11045(c), for
22 assessment of a civil administrative penalty against Respondent for its failure to submit timely,
23 complete and correct Toxic Chemical Release Inventory Forms for calendar years 2007, 2008,
24 and 2009 in violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and the implementing
25 regulations set forth at 40 C.F.R. Part 372.

26 2. Complainant is the Director of the Communities and Ecosystems Division in EPA,
27 Region IX (the "Complainant"). Pursuant to EPA Delegation Order Number 22-3-A, dated May
28 11, 1994, the Administrator of EPA has delegated the authority to file this action under EPCRA

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1 to the Regional Administrator of EPA, Region IX, and pursuant to EPA Regional Order Number
2 R1260.14B, dated May 19, 2005, the Regional Administrator re-delegated that authority to
3 Complainant.

4 **B. STATUTORY AND REGULATORY BASIS**

5 3. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA
6 promulgated regulations on February 16, 1988 (53 Fed. Reg. 4525), setting forth requirements for
7 the submission of information relating to the release of toxic chemicals under EPCRA Section
8 313. These regulations, as amended, are presently codified at 40 C.F.R. Part 372.

9 4. Sections 313(a) and (b) of EPCRA, 42 U.S.C. §§ 11023(a) and (b), and 40 C.F.R.
10 §§ 372.22 and 372.30, provide that the owner or operator of a facility must submit to EPA and
11 the State in which the facility is located a chemical release form published under Section 313(g)
12 of EPCRA for each toxic chemical or toxic chemical category listed under Section 313(c) of
13 EPCRA and 40 C.F.R. § 372.65 that it manufactured, processed or otherwise used if: (i) the
14 facility has ten or more full-time employees; (ii) the facility is in North American Industry
15 Classification System Code 331316; and (iii) the facility manufactured, processed or otherwise
16 used during the calendar year the listed toxic chemical or toxic chemical category in excess of the
17 threshold quantity established under Section 313(f) of EPCRA and 40 C.F.R. § 372.25 (or 40
18 C.F.R. § 372.28 for a chemical of special concern).

19 5. Pursuant to Section 313(g) of EPCRA, 42 U.S.C. § 11023(g), EPA published a
20 uniform Toxic Chemical Release Inventory Form (hereinafter referred to as a "Form R") for
21 facilities that are subject to the reporting requirements of Section 313. Sections 313(a) and (b) of
22 EPCRA, 42 U.S.C. §§ 11023(a) and (b), and 40 C.F.R. § 372.30(d), provide that each Form R for
23 activities involving a toxic chemical or toxic chemical category that occurred during a calendar
24 year must be submitted on or before July 1 of the next year.

25 **C. ALLEGED VIOLATIONS**

26 6. Respondent is a corporation and therefore fits within the definition of a "person," as
27 provided in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

1 7. At all times relevant to this matter, Respondent owned and operated a facility (the
2 "Facility") in the business of manufacturing extruded aluminum shapes for the aerospace
3 industry, located at 6520 W. Allison Road in Chandler, Arizona, that fits within the definition of
4 a "facility," as provided in Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

5 8. At all times relevant to this matter, the Facility had 10 or more "full-time employees,"
6 as that term is defined at 40 C.F.R. § 372.3.

7 9. At all times relevant to this matter, the Facility was in North American Industry
8 Classification System Code 331316.

9 10. During the calendar year 2007, Respondent "processed," as that term is defined in 40
10 C.F.R. § 372.3, approximately 230,212 pounds of copper, a toxic chemical listed under 40 C.F.R.
11 § 372.65, at the Facility. This quantity exceeded the 25,000 pound threshold for reporting
12 "processing" of that toxic chemical established under Section 313(f) of EPCRA, 42 U.S.C.
13 § 11023(f), and 40 C.F.R. § 372.25.

14 11. During the calendar year 2007, Respondent "processed," as that term is defined in 40
15 C.F.R. § 372.3, approximately 162 pounds of lead, a toxic chemical listed under 40 C.F.R.
16 § 372.65, at the Facility. This quantity exceeded the 100 pound threshold for reporting
17 "processing" of that toxic chemical of special concern established under Section 313(f) of
18 EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.28.

19 12. During the calendar year 2008, Respondent "processed," as that term is defined in 40
20 C.F.R. § 372.3, approximately 248,875 pounds of copper, a toxic chemical listed under 40 C.F.R.
21 § 372.65, at the Facility. This quantity exceeded the 25,000 pound threshold for reporting
22 "processing" of that toxic chemical established under Section 313(f) of EPCRA, 42 U.S.C.
23 § 11023(f), and 40 C.F.R. § 372.25.

24 13. During the calendar year 2008, Respondent "processed," as that term is defined in 40
25 C.F.R. § 372.3, approximately 176 pounds of lead, a toxic chemical listed under 40 C.F.R.
26 § 372.65, at the Facility. This quantity exceeded the 100 pound threshold for reporting
27 "processing" of that toxic chemical of special concern established under Section 313(f) of
28 EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.28.

1 14. During the calendar year 2009, Respondent "processed," as that term is defined in 40
2 C.F.R. § 372.3, approximately 144,461 pounds of copper, a toxic chemical listed under 40 C.F.R.
3 § 372.65, at the Facility. This quantity exceeded the 25,000 pound threshold for reporting
4 "processing" of that toxic chemical established under Section 313(f) of EPCRA, 42 U.S.C.
5 § 11023(f), and 40 C.F.R. § 372.25.

6 15. During the calendar year 2009, Respondent "processed," as that term is defined in 40
7 C.F.R. § 372.3, approximately 136 pounds of lead, a toxic chemical listed under 40 C.F.R.
8 § 372.65, at the Facility. This quantity exceeded the 100 pound threshold for reporting
9 "processing" of that toxic chemical of special concern established under Section 313(f) of
10 EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.28.

11 16. Respondent was required to submit a Form R for copper to EPA and the State of
12 Arizona for calendar year 2007 for the Facility on or before July 1, 2008.

13 17. Respondent was required to submit a Form R for lead to EPA and the State of
14 Arizona for calendar year 2007 for the Facility on or before July 1, 2008.

15 18. Respondent was required to submit a Form R for copper to EPA and the State of
16 Arizona for calendar year 2008 for the Facility on or before July 1, 2009.

17 19. Respondent was required to submit a Form R for lead to EPA and the State of
18 Arizona for calendar year 2008 for the Facility on or before July 1, 2009.

19 20. Respondent was required to submit a Form R for copper to EPA and the State of
20 Arizona for calendar year 2009 for the Facility on or before July 1, 2010.

21 21. Respondent was required to submit a Form R for lead to EPA and the State of
22 Arizona for calendar year 2009 for the Facility on or before July 1, 2010.

23 22. Respondent failed to timely submit the Form Rs required of it to EPA and the State
24 of Arizona for calendar years 2007, 2008, and 2009 for the Facility and thus violated Section 313
25 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

26 23. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and the Civil Monetary Penalty
27 Inflation Adjustment Rule, 40 C.F.R. Part 19, provide that any person who violates any
28 requirement of Section 313 shall be liable to the United States for a civil penalty in an amount

1 not to exceed (1) \$32,500 for each such violation that occurred after March 15, 2004 but on or
2 before January 12, 2009, and (2) \$37,500 for each such violation that occurred on or after
3 January 12, 2009. Under the Enforcement Response Policy for Section 313 of EPCRA, dated
4 August 10, 1992, and the Civil Monetary Penalty Inflation Adjustment Rule, the six violations
5 cited above would merit an unadjusted, gravity-based civil penalty of ONE HUNDRED AND
6 TWENTY-FIVE THOUSAND, FIVE HUNDRED DOLLARS (\$125,500) given the nature,
7 circumstances, and extent of the violations alleged.

8 D. RESPONDENT'S ADMISSIONS

9 24. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,
10 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over
11 Respondent; (ii) admits the specific factual allegations contained in Section I.C of this CAFO;
12 (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil
13 administrative penalty under Section I.E of this CAFO; (iv) waives any right to contest the
14 allegations contained in this CAFO; and (v) waives the right to appeal the proposed Final Order
15 contained in this CAFO.

16 E. AUDIT POLICY

17 25. EPA's final policy statement on *Incentives for Self-Policing: Discovery, Disclosure,*
18 *Correction and Prevention of Violations*, 65 Federal Register 19618 (April 11, 2000) (the "Audit
19 Policy") has several important goals, including encouraging greater compliance with the laws and
20 regulations which protect human health and the environment and reducing transaction costs
21 associated with violations of the laws EPA is charged with administering. If certain specified
22 criteria are met, reductions in gravity-based penalties of up to 100% are available under the Audit
23 Policy. These criteria are: (1) systematic discovery of the violation(s) through an environmental
24 audit or compliance management system; (2) voluntary disclosure; (3) prompt disclosure; (4)
25 discovery and disclosure independent of government or third party plaintiff; (5) correction and
26 remediation; (6) prevent recurrence; (7) no repeat violations; (8) other violations excluded; and
27 (9) cooperation.

28 26. Complainant has determined that Respondent has satisfied all of the criteria under the

1 Audit Policy and thus qualifies for the elimination of civil penalties in this matter. Accordingly,
2 the civil penalty assessed in this matter is ZERO DOLLARS (\$0).

3 27. Complainant's finding that Respondent has satisfied the criteria of the Audit Policy is
4 based upon documentation that Respondent has provided to establish that it satisfies these
5 criteria. Complainant and Respondent agree that, should any material fact upon which
6 Complainant relied in making its finding subsequently prove to be other than as represented by
7 Respondent, this CAFO may be voided in whole or in part.

8 F. CERTIFICATION OF COMPLIANCE

9 28. In executing this CAFO, Respondent certifies that (1) it has now fully completed and
10 submitted to EPA all of the required Toxic Chemical Release Inventory Forms in compliance
11 with Section 313 of EPCRA, 42 U.S.C. § 11023, and the regulations promulgated thereunder;
12 and (2) it has complied with all other EPCRA requirements at all facilities under its control.

13 G. RETENTION OF RIGHTS

14 29. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's
15 liabilities for federal civil penalties for the violations and facts specifically alleged in Section I.C
16 of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil
17 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,
18 ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal
19 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it
20 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address
21 any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

22 30. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's
23 duties to comply with all applicable federal, state, and local laws, regulations, rules, ordinances,
24 and permits.

25 H. ATTORNEYS' FEES AND COSTS

26 31. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in
27 this proceeding.

1 I. EFFECTIVE DATE

2 32. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be
3 effective on the date that the Final Order contained in this CAFO, having been approved and
4 issued by either the Regional Judicial Officer or Regional Administrator, is filed.

5 J. BINDING EFFECT

6 33. The undersigned representative of Complainant and the undersigned representative of
7 Respondent each certifies that he or she is fully authorized to enter into the terms and conditions
8 of this CAFO and to bind the party he or she represents to this CAFO.

9 34. The provisions of this CAFO shall apply to and be binding upon Respondent and its
10 officers, directors, employees, agents, trustees, servants, authorized representatives, successors,
11 and assigns.

12
13 FOR RESPONDENT KAISER ALUMINUM ALEXCO, LLC:

14
15 June 25, 2012
DATE

16 
JOHN M. DONNAN
Senior Vice President, General Counsel, and Secretary
Kaiser Aluminum Alexco, LLC
6520 W. Allison Road
Chandler, AZ 85226

17
18
19 FOR COMPLAINANT EPA:

20
21 August 28, 2012
DATE

22 
ENRIQUE MANZANILLA
Director, Communities and Ecosystems Division
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order in the matter of KAISER ALUMINUM ALEXCO, LLC. (Docket #: EPCRA-09-2012-0005) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

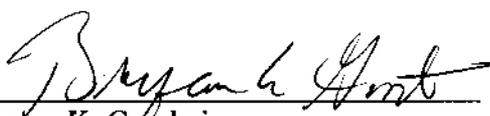
A copy was mailed via CERTIFIED MAIL to:

John M. Donnan
Senior Vice President, General Counsel & Secretary
Kaiser Aluminum Alexco, LLC
6250 W. Allison Road
Chandler, AZ 85226

CERTIFIED MAIL NUMBER: 7000 1670 0011 9907 4475

And additional copy was hand-delivered to the following U.S. EPA case attorney:

Ed Coral, Esq.
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105



Bryan K. Goodwin
Regional Hearing Clerk
U.S. EPA, Region IX

9/26/12
Date



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

Certified Mail No. 7000 1670 0011 9907 4475
Return Receipt Requested

Re: EPCRA-09-2012-0005

SEP 26 2012
John M. Donnan
Senior Vice President, General Counsel, & Secretary
Kaiser Aluminum Alexco, LLC
6250 W Allison Road
Chandler, AZ 85226

Dear Mr. Donnan:

Enclosed please find your copy of the fully executed Consent Agreement and Final Order, pursuant to 40 C.F.R. Sections 22.13 and 22.18, which contains the terms of the settlement reached with the EPA Region IX Toxic Chemical Release Inventory Program. Your completion of all actions enumerated in the Consent Agreement and Final Order will close this case.

If you have any questions, please contact Lily Lee at (415) 947-4187 or have your attorney contact Edgar P. Coral at (415) 972-3898.

Sincerely,

A handwritten signature in black ink, appearing to read "Enrique Manzanilla".

Enrique Manzanilla, Director
Communities and Ecosystems Division

Enclosure