

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

MM-05-2011-0013

CWA-05-2011-0009

In the Matter of:)	Docket Nos. EPCRA-05-2011-0028
)	
Advanced Fiber Technology, Inc.)	Proceeding to Assess a Civil Penalty Under
Bucyrus, Ohio)	Section 325(c)(1) and (c)(2) of the Emergency
)	Planning and Community Right-to-Know
Respondent.)	Act of 1986, 42 U.S.C. § 11045 (c)(1) and
)	(c)(2), and a Class II Civil Penalty under
)	Section 311(b)(6) of the Clean Water Act,
)	33 U.S.C. § 1321(b)(6)
)	

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Consent Agreement and Final Order
Preliminary Statement

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

1. This is an administrative action commenced and concluded under Section 325(c)(1) and (c)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c)(1) and (c)(2), Section 311 (b)(6) of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6), as amended by the Oil Pollution Act of 1990, and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is, by lawful delegation, the Director of the Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is Advanced Fiber Technology, Inc., an Ohio corporation doing business in the State of Ohio.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations and alleged violations in this CAFO.

8. Respondent waives all rights to a hearing under Section 325(b)(2) of EPCRA, 42 U.S.C. § 11045(b)(2), Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), and 40 C.F.R. § 22.15(c).

9. Respondent also waives all rights to appeal any Final Order in this matter under Section 325(f) of EPCRA, 42 U.S.C. § 11045(f), and Section 311(b)(6)(G)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(G)(ii), and consents to the issuance of the Final Order without further adjudication.

Statutory and Regulatory Background - EPCRA

10. Section 311 of EPCRA, 42 U.S.C. § 11021, and its implementing regulations at 40 C.F.R. Part 370, require the owner or operator of a facility, which is required by the Occupational Safety and Health Act (OSHA) to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical, to submit to the state emergency response commission (SERC), the community emergency coordinator for the local emergency planning committee (LEPC), and the fire department with jurisdiction over the facility, an MSDS for each such hazardous chemical present at the facility at any one time in an amount equal to or greater than 10,000 pounds, or the threshold planning quantity (TPQ), whichever is lower, or to submit a list

of such chemicals. The owner or operator must submit the required MSDS or list within three months after the owner or operator is first required to have the MSDS available or after the hazardous chemical requiring an MSDS first becomes present at the facility in an amount exceeding the threshold level.

11. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370, require the owner or operator of a facility, which is required by OSHA to prepare or have available an MSDS for a hazardous chemical, to submit to the SERC, the community coordinator for the LEPC, and the fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter, an emergency and hazardous chemical inventory form (i.e. Tier I or Tier II forms as described in 40 C.F.R. Part 370). The form must contain the information required by Section 312(d) of EPCRA, covering all hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds, or greater than the TPQ designated by U.S. EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

12. Sections 311 and 312(a) of EPCRA, 42 U.S.C. §§ 11021 and 11022(a), assist state and local committees in planning for emergencies and make information on chemical presence and hazards available to the public. A delay in reporting could result in harm to human health and the environment.

13. Under 29 C.F.R. § 1910.1200(b)(1), all employers are required to provide information to their employees about the hazardous chemicals to which they are exposed including, but not limited to, MSDS.

14. Under 29 C.F.R. § 1910.1200(d)(3), chemicals listed in 29 C.F.R. Part 1910, Subpart Z are hazardous chemicals.

15. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19, authorizes U.S. EPA to assess civil penalties up to \$32,500 per day for violations of Section 312 of EPCRA, 42 U.S.C. § 11022, that occurred after March 15, 2004 through January 12, 2009; and up to \$37,500 per day of violation for violations that occurred after January 12, 2009.

16. Section 325(c)(2) of EPCRA, 42 U.S.C. § 11045(c)(2), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19, authorizes U.S. EPA to assess civil penalties up to \$11,000 per day for violations of Section 311 of EPCRA, 42 U.S.C. § 11021, that occurred after January 31, 1997 through January 12, 2009 and up to \$16,000 per day of violation for violations that occurred after January 12, 2009.

Statutory and Regulatory Background - CWA

17. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.

18. Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges."

19. The regulation at 40 C.F.R. § 110.3 specifies the quantity of oil that may be harmful to the public health or welfare or environment of the United States. The quantity of oil includes

discharges of oil that cause a film or a sheen upon or discoloration of the surface of the water or adjoining shorelines.

20. Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. §1321(b)(6)(B)(ii), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19, authorizes U.S. EPA to assess a civil penalty of up to \$16,000 per day of violation up to a total of \$177,500 for Class II violations of the CWA that occurred after January 12, 2009.

Factual Allegations - EPCRA

21. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

22. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 100 Crossroads Blvd., Bucyrus, Ohio (the Facility).

23. At all times relevant to this CAFO, Respondent was an employer at the Facility.

24. Respondent’s Facility consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

25. Respondent’s Facility is a “facility” as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

26. The MSDS for ammonium sulfate includes threshold limit values (TLVs) established by the American Conference of Governmental Industrial Hygienists (ACGIH), which means that ammonium sulfate is considered as being “hazardous” within the meaning of 29 C.F.R. § 1910.1200(d)(3)(ii).

27. Ammonium sulfate (CAS #7783-20-2) is a “hazardous chemical” within the

meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

28. Ammonium sulfate (CAS #7783-20-2) has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. § 370.20(b)(4).

29. The MSDS for monoammonium phosphate includes TLVs established by the ACGIH, which means that monoammonium phosphate is considered as being “hazardous” within the meaning of 29 C.F.R. § 1910.1200(d)(3)(ii).

30. Monoammonium phosphate (CAS #7722-76-1) is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

31. Monoammonium phosphate (CAS #7722-76-1) has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. § 370.20(b)(4).

32. Limestone is listed as a toxic and hazardous substance under OSHA regulations at 29 C.F.R. Part 1910, Subpart Z, and 29 C.F.R. § 1910.1000, Table Z-1.

33. Limestone (CAS #1317-65-3) is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

34. Limestone (CAS #1317-65-3) has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. § 370.20(b)(4).

35. The MSDS for 5 mol borax includes TLVs established by the ACGIH, which means that 5 mol borax is considered as being “hazardous” within the meaning of 29 C.F.R. § 1910.1200(d)(3)(ii).

36. 5 mol borax (CAS #12179-04-3) is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

37. 5 mol borax (CAS #12179-04-3) has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. § 370.20(b)(4).

38. The MSDS for boric acid includes TLVs established by the ACGIH, which means that boric acid is considered as being “hazardous” within the meaning of 29 C.F.R. § 1910.1200(d)(3)(ii).

39. Boric acid (CAS #10043-35-3) is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

40. Boric acid (CAS #10043-35-3) has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. § 370.20(b)(4).

41. The MSDS for zinc sulfate has identified this chemical as having acute and chronic health hazards, which means that zinc sulfate is considered as being “hazardous” within the meaning of 29 C.F.R. § 1910.1200(d)(3)(ii).

42. Zinc sulfate (CAS #7733-02-0) is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

43. Zinc sulfate (CAS #7733-02-0) has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. § 370.20(b)(4).

44. The MSDS for mineral oil includes TLVs and permissible exposure limits which means that mineral oil is considered “hazardous” within the meaning of 29 C.F.R. § 1910.1200(d)(3)(ii).

45. Mineral oil (CAS #64742-65-0) is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

46. Mineral oil (CAS #64742-65-0) has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. § 370.20(b)(4).

47. As of December 31, 2006, ammonium sulfate, monoammonium phosphate, 5 mol borax, boric acid, limestone, zinc sulfate, and mineral oil were present at the Facility at any one

time in an amount equal to or greater than the minimum threshold level.

48. During at least one period of time in calendar year 2006, ammonium sulfate, monoammonium phosphate, 5 mol borax, boric acid, limestone, zinc sulfate, and mineral oil were present at the Facility in an amount equal to or greater than the minimum threshold level.

49. During at least one period of time in calendar year 2007, ammonium sulfate, monoammonium phosphate, limestone, 5 mol borax, boric acid, zinc sulfate, and mineral oil were present at the Facility in an amount equal to or greater than the minimum threshold level.

50. During at least one period of time in calendar year 2008, ammonium sulfate, monoammonium phosphate, 5 mol borax, boric acid, limestone, zinc sulfate, and mineral oil were present at the Facility in an amount equal to or greater than the minimum threshold level.

51. During at least one period of time in calendar year 2009, ammonium sulfate, monoammonium phosphate, 5 mol borax, boric acid, limestone, zinc sulfate, and mineral oil were present at the Facility in an amount equal to or greater than the minimum threshold level.

52. OSHA requires Respondent to prepare, or have available, an MSDS for ammonium sulfate, monoammonium phosphate, 5 mol borax, boric acid, limestone, zinc sulfate, and mineral oil.

53. Section 311 of EPCRA, 42 U.S.C. § 11021, required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the Facility on or before March 30, 2007, an MSDS for ammonium sulfate, monoammonium phosphate, 5 mol borax, boric acid, limestone, zinc sulfate, and mineral oil or a list which included ammonium sulfate, monoammonium phosphate, 5 mol borax, boric acid, limestone, zinc sulfate, and mineral oil.

54. Section 312 of EPCRA, 42 U.S.C. § 11022, required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the Facility, a completed emergency

and hazardous chemical inventory form which included ammonium sulfate, monoammonium phosphate, 5 mol borax, boric acid, limestone, zinc sulfate, and mineral oil on or before March 1, 2007, for calendar year 2006.

55. Section 312 of EPCRA, 42 U.S.C. § 11022, required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the Facility, a completed emergency and hazardous chemical inventory form which included ammonium sulfate, monoammonium phosphate, 5 mol borax, boric acid, limestone, zinc sulfate, and mineral oil on or before March 1, 2008, for calendar year 2007.

56. Section 312 of EPCRA, 42 U.S.C. § 11022, required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the Facility, a completed emergency and hazardous chemical inventory form which included ammonium sulfate, monoammonium phosphate, 5 mol borax, boric acid, limestone, zinc sulfate, and mineral oil on or before March 1, 2009, for calendar year 2008.

57. Section 312 of EPCRA, 42 U.S.C. § 11022, required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the Facility, a completed emergency and hazardous chemical inventory form which included ammonium sulfate, monoammonium phosphate, 5 mol borax, boric acid, limestone, zinc sulfate, and mineral oil on or before March 1, 2010, for calendar year 2009.

58. On February 17, 2009, there was a fire at Respondent's Facility.

59. At all times relevant to this CAFO, the Ohio SERC was the SERC for the State of Ohio under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

60. At all times relevant to this CAFO, the Crawford County Emergency Management Agency was the LEPC for Crawford County, Ohio under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

61. At all times relevant to this CAFO, the Bucyrus City Fire Department was the fire department with jurisdiction over the Facility.

Factual Allegations - CWA

62. Respondent is a “person” as that term is defined under Sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7) and 1362(5).

63. Respondent is engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing or consuming oil or oil products at the Facility.

64. The Facility is an “onshore facility” within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10).

65. Respondent is an “owner or operator” within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6).

66. The Facility is a non-transportation-related on-shore facility which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States or its adjoining shoreline.

67. Grass Run Creek, which discharges into the Sandusky River, is a navigable water of the United States as defined in Section 502(7) of the CWA, and 40 C.F.R. § 110.1.

Alleged Violations

Count 1

68. Complainant incorporates paragraphs 1 through 16, and 21 through 61 of this CAFO, as if set forth in this paragraph.

69. As of April 5, 2010, Respondent had not submitted to the Ohio SERC an MSDS for ammonium sulfate, or a list of hazardous chemicals which included ammonium sulfate.

70. Each day Respondent failed to submit to the Ohio SERC an MSDS for ammonium sulfate, or a list of hazardous chemicals which included ammonium sulfate, by March 30, 2007, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 2

71. Complainant incorporates paragraphs 1 through 16, and 21 through 61 of this CAFO, as if set forth in this paragraph.

72. As of April 5, 2010, Respondent had not submitted to the LEPC an MSDS for ammonium sulfate, or a list of hazardous chemicals which included ammonium sulfate.

73. Each day Respondent failed to submit to the LEPC an MSDS for ammonium sulfate, or a list of hazardous chemicals which included ammonium sulfate, by March 30, 2007, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 3

74. Complainant incorporates paragraphs 1 through 16, and 21 through 61 of this CAFO, as if set forth in this paragraph.

75. As of April 5, 2010, Respondent had not submitted to the Bucyrus City Fire Department an MSDS for ammonium sulfate, or a list of hazardous chemicals which included ammonium sulfate.

76. Each day Respondent failed to submit to the Bucyrus City Fire Department an MSDS for ammonium sulfate, or a list of hazardous chemicals which included ammonium sulfate, by March 30, 2007, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 4

77. Complainant incorporates paragraphs 1 through 16, and 21 through 61 of this CAFO, as if set forth in this paragraph.

78. As of April 5, 2010, Respondent had not submitted to the SERC an MSDS for monoammonium phosphate, or a list of hazardous chemicals which included monoammonium phosphate.

79. Each day Respondent failed to submit to the SERC an MSDS for monoammonium phosphate, or a list of hazardous chemicals which included monoammonium phosphate, by March 30, 2007, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 5

80. Complainant incorporates paragraphs 1 through 16, and 21 through 61 of this CAFO, as if set forth in this paragraph.

81. As of April 5, 2010, Respondent had not submitted to the LEPC an MSDS for monoammonium phosphate, or a list of hazardous chemicals which included monoammonium phosphate.

82. Each day Respondent failed to submit to the LEPC an MSDS for monoammonium phosphate, or a list of hazardous chemicals which included monoammonium phosphate, by March 30, 2007, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 6

83. Complainant incorporates paragraphs 1 through 16, and 21 through 61 of this CAFO, as if set forth in this paragraph.

84. As of April 5, 2010, Respondent had not submitted to the Bucyrus City Fire Department an MSDS for monoammonium phosphate, or a list of hazardous chemicals which

included monoammonium phosphate.

85. Each day Respondent failed to submit to the Bucyrus City Fire Department an MSDS for monoammonium phosphate, or a list of hazardous chemicals which included monoammonium phosphate, by March 30, 2007, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 7

86. Complainant incorporates paragraphs 1 through 16, and 21 through 61 of this CAFO, as if set forth in this paragraph.

87. As of April 5, 2010, Respondent had not submitted to the SERC an MSDS for 5 mol borax, or a list of hazardous chemicals which included 5 mol borax.

88. Each day Respondent failed to submit to the SERC an MSDS for 5 mol borax, or a list of hazardous chemicals which included 5 mol borax, by March 30, 2007, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 8

89. Complainant incorporates paragraphs 1 through 16, and 21 through 61 of this CAFO, as if set forth in this paragraph.

90. As of April 5, 2010, Respondent had not submitted to the LEPC an MSDS for 5 mol borax, or a list of hazardous chemicals which included 5 mol borax.

91. Each day Respondent failed to submit to the LEPC an MSDS for 5 mol borax, or a list of hazardous chemicals which included 5 mol borax, by March 30, 2007, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 9

92. Complainant incorporates paragraphs 1 through 16, and 21 through 61 of this

CAFO, of this CAFO as if set forth in this paragraph.

93. As of April 5, 2010, Respondent had not submitted to the Bucyrus City Fire Department an MSDS for 5 mol borax, or a list of hazardous chemicals which included 5 mol borax.

94. Each day Respondent failed to submit to the Bucyrus City Fire Department an MSDS for 5 mol borax, or a list of hazardous chemicals which included 5 mol borax, by March 30, 2007, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 10

95. Complainant incorporates paragraphs 1 through 16, and 21 through 61 of this CAFO, as if set forth in this paragraph.

96. As of April 5, 2010, Respondent had not submitted to the SERC an MSDS for boric acid, or a list of hazardous chemicals which included boric acid.

97. Each day Respondent failed to submit to the SERC an MSDS for boric acid, or a list of hazardous chemicals which included for boric acid, by March 30, 2007, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 11

98. Complainant incorporates paragraphs 1 through 16, and 21 through 61 of this CAFO, as if set forth in this paragraph.

99. As of April 5, 2010, Respondent had not submitted to the LEPC an MSDS for boric acid, or a list of hazardous chemicals which included boric acid.

100. Each day Respondent failed to submit to the LEPC an MSDS for boric acid, or a list of hazardous chemicals which included boric acid, by March 30, 2007, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 12

101. Complainant incorporates paragraphs 1 through 16, and 21 through 61 of this CAFO, as if set forth in this paragraph.

102. As of April 5, 2010, Respondent had not submitted to the Bucyrus City Fire Department an MSDS for boric acid, or a list of hazardous chemicals which included boric acid.

103. Each day Respondent failed to submit to the Bucyrus City Fire Department an MSDS for boric acid, or a list of hazardous chemicals which included boric acid, by March 30, 2007, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 13

104. Complainant incorporates paragraphs 1 through 16, and 21 through 61 of this CAFO, as if set forth in this paragraph.

105. As of April 5, 2010, Respondent had not submitted to the SERC an MSDS for limestone, or a list of hazardous chemicals which included limestone.

106. Each day Respondent failed to submit to the SERC an MSDS for limestone, or a list of hazardous chemicals which included limestone by March 30, 2007, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 14

107. Complainant incorporates paragraphs 1 through 16, and 21 through 61 of this CAFO, as if set forth in this paragraph.

108. As of April 5, 2010, Respondent had not submitted to the LEPC an MSDS for limestone, or a list of hazardous chemicals which included limestone.

109. Each day Respondent failed to submit to the LEPC an MSDS for limestone, or a list of hazardous chemicals which included limestone, by March 30, 2007, constitutes a separate

violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 15

110. Complainant incorporates paragraphs 1 through 16, and 21 through 61 of this CAFO, as if set forth in this paragraph.

111. As of April 5, 2010, Respondent had not submitted to the Bucyrus City Fire Department an MSDS for limestone, or a list of hazardous chemicals which included limestone.

112. Each day Respondent failed to submit to the Bucyrus City Fire Department an MSDS for limestone, or a list of hazardous chemicals which included limestone, by March 30, 2007, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 16

113. Complainant incorporates paragraphs 1 through 16, and 21 through 61 of this CAFO, as if set forth in this paragraph.

114. As of April 5, 2010, Respondent had not submitted to the SERC an MSDS for zinc sulfate, or a list of hazardous chemicals which included zinc sulfate.

115. Each day Respondent failed to submit to the SERC an MSDS for zinc sulfate, or a list of hazardous chemicals which included zinc sulfate, by March 30, 2007, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 17

116. Complainant incorporates paragraphs 1 through 16, and 21 through 61 of this CAFO, as if set forth in this paragraph.

117. As of April 5, 2010, Respondent had not submitted to the LEPC an MSDS for zinc sulfate, or a list of hazardous chemicals which included zinc sulfate.

118. Each day Respondent failed to submit to the LEPC an MSDS for zinc sulfate, or a

list of hazardous chemicals which included zinc sulfate, by March 30, 2007, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 18

119. Complainant incorporates paragraphs 1 through 16, and 21 through 61 of this CAFO, as if set forth in this paragraph.

120. As of April 5, 2010, Respondent had not submitted to the Bucyrus City Fire Department an MSDS for zinc sulfate, or a list of hazardous chemicals which included zinc sulfate.

121. Each day Respondent failed to submit to the Bucyrus City Fire Department an MSDS for zinc sulfate, or a list of hazardous chemicals which included zinc sulfate, by March 30, 2007, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 19

122. Complainant incorporates paragraphs 1 through 16, and 21 through 61 of this CAFO, as if set forth in this paragraph.

123. As of April 5, 2010, Respondent had not submitted to the SERC an MSDS for mineral oil, or a list of hazardous chemicals which included mineral oil.

124. Each day Respondent failed to submit to the SERC an MSDS for mineral oil, or a list of hazardous chemicals which included mineral oil, by March 30, 2007, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 20

125. Complainant incorporates paragraphs 1 through 16, and 21 through 61 of this CAFO, as if set forth in this paragraph.

126. As of April 5, 2010, Respondent had not submitted to the LEPC an MSDS for

mineral oil, or a list of hazardous chemicals which included mineral oil.

127. Each day Respondent failed to submit to the LEPC an MSDS for mineral oil, or a list of hazardous chemicals which included mineral oil, by March 30, 2007, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 21

128. Complainant incorporates paragraphs 1 through 16, and 21 through 61 of this CAFO, as if set forth in this paragraph.

129. As of April 5, 2010, Respondent had not submitted to the Bucyrus City Fire Department an MSDS for mineral oil, or a list of hazardous chemicals which included mineral oil.

130. Each day Respondent failed to submit to the Bucyrus City Fire Department an MSDS for mineral oil, or a list of hazardous chemicals which included mineral oil by March 30, 2007, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 22

131. Complainant incorporates paragraphs 1 through 16, and 21 through 61 of this CAFO, as if set forth in this paragraph.

132. As of April 5, 2010, Respondent had not submitted to the SERC, the LEPC, and the Bucyrus City Fire Department, a completed Emergency and Hazardous Chemical Inventory Form which included ammonium sulfate, monoammonium phosphate, 5 mol borax, boric acid, limestone, zinc sulfate, and mineral oil, for calendar year 2006.

133. Each day Respondent failed to submit to the SERC, the LEPC, and the Bucyrus, City Fire Department, a completed Emergency and Hazardous Chemical Inventory Form which included ammonium sulfate, monoammonium phosphate, 5 mol borax, boric acid, limestone,

zinc sulfate, and mineral oil, by March 1, 2007, for calendar year 2006 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 23

134. Complainant incorporates paragraphs 1 through 16, and 21 through 61 of this CAFO, as if set forth in this paragraph.

135. As of April 5, 2010, Respondent had not submitted to the SERC, the LEPC, and the Bucyrus City Fire Department, a completed Emergency and Hazardous Chemical Inventory Form which included ammonium sulfate, monoammonium phosphate, 5 mol borax, boric acid, limestone, zinc sulfate, and mineral oil, for calendar year 2007.

136. Each day Respondent failed to submit to the SERC, the LEPC, and the Bucyrus City Fire Department, a completed Emergency and Hazardous Chemical Inventory Form which included ammonium sulfate, monoammonium phosphate, 5 mol borax, boric acid, limestone, zinc sulfate, and mineral oil, by March 1, 2008, for calendar year 2007 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 24

137. Complainant incorporates paragraphs 1 through 16, and 21 through 61 of this CAFO, as if set forth in this paragraph.

138. As of April 5, 2010, Respondent had not submitted to the SERC, the LEPC, and the Bucyrus City Fire Department, a completed Emergency and Hazardous Chemical Inventory Form which included ammonium sulfate, monoammonium phosphate, 5 mol borax, boric acid, limestone, zinc sulfate, and mineral oil, for calendar year 2008.

139. Each day Respondent failed to submit to the SERC, the LEPC, and the Bucyrus City Fire Department, a completed Emergency and Hazardous Chemical Inventory Form which

included ammonium sulfate, monoammonium phosphate, 5 mol borax, boric acid, limestone, zinc sulfate, and mineral oil, by March 1, 2009, for calendar year 2008 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 25

140. Complainant incorporates paragraphs 1 through 16, and 21 through 61 of this CAFO, as if set forth in this paragraph.

141. Respondent submitted to the SERC, a completed Emergency and Hazardous Chemical Inventory Form which included ammonium sulfate, monoammonium phosphate, 5 mol borax, boric acid, limestone, zinc sulfate, and mineral oil, on April 7, 2010, for calendar year 2009.

142. Each day Respondent failed to submit to the SERC, a completed Emergency and Hazardous Chemical Inventory Form which included ammonium sulfate, monoammonium phosphate, 5 mol borax, boric acid, limestone, zinc sulfate, and mineral oil, by March 1, 2010, for calendar year 2009 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 26

143. Complainant incorporates paragraphs 1 through 16, and 21 through 61 of this CAFO, as if set forth in this paragraph.

144. Respondent submitted to the LEPC, a completed Emergency and Hazardous Chemical Inventory Form which included ammonium sulfate, monoammonium phosphate, 5 mol borax, boric acid, limestone, zinc sulfate, and mineral oil, on April 7, 2010, for calendar year 2009.

145. Each day Respondent failed to submit to the LEPC, a completed Emergency and

Hazardous Chemical Inventory Form which included ammonium sulfate, monoammonium phosphate, 5 mol borax, boric acid, limestone, zinc sulfate, and mineral oil, by March 1, 2010, for calendar year 2009 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 27

146. Complainant incorporates paragraphs 1 through 16, and 21 through 61 of this CAFO, of this CAFO as if set forth in this paragraph.

147. Respondent submitted to the Bucyrus City Fire Department, a completed Emergency and Hazardous Chemical Inventory Form which included ammonium sulfate, monoammonium phosphate, 5 mol borax, boric acid, limestone, zinc sulfate, and mineral oil, on April 7, 2010, for calendar year 2009.

148. Each day Respondent failed to submit to the Bucyrus City Fire Department, a completed Emergency and Hazardous Chemical Inventory Form which included ammonium sulfate, monoammonium phosphate, 5 mol borax, boric acid, limestone, zinc sulfate, and mineral oil, by March 1, 2010, for calendar year 2009 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 28

149. Complainant incorporates paragraphs 1 through 9, 17 through 20, and 62 through 67 of this CAFO, as if set forth in this paragraph.

150. On or about February 17, 2009, Respondent had a release of mineral oil from the Facility.

151. Respondent estimates that it released approximately 4,400 gallons of mineral oil, of which an undetermined amount reached Grass Run Creek and caused a sheen of oil on Grass Run Creek.

152. On or about February 18, 2009, Respondent reported the release to the National Response Center.

153. Respondent completed the removal of released liquids by March 13, 2009.

154. The discharge of mineral oil on February 17, 2009, from the Facility into or upon Grass Run Creek and its adjoining shorelines was in a quantity in excess of that allowed by 40 C.F.R. Part 110 and therefore was a violation of Section 311(b)(3) of the CWA.

Civil Penalty

155. Complainant has determined that an appropriate civil penalty to settle the violations alleged in this CAFO is \$52,174; with \$42,174 being assigned to the alleged EPCRA violations and \$10,000 being assigned to the alleged CWA violation.

156. In determining the EPCRA penalty amount, Complainant considered the nature, circumstances, extent, and gravity of the alleged violations, Respondent's agreement to perform a supplemental environmental project, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violations, and any other matters as justice may require. Complainant also considered U.S. EPA's "Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act," dated September 30, 1999 (the EPCRA/CERCLA Enforcement Response Policy).

157. In determining the CWA penalty amount, Complainant considered the seriousness

of the violation, the economic benefit to the violator, if any, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other matters as justice may require. Complainant also considered the U.S. EPA's "Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act," dated August 1998 (the CWA Penalty Policy).

158. Respondent agrees to make five payments, in accordance with the next section, to pay the civil penalties listed below, in four installments, with interest, as follows:

<u>Due Date</u>	<u>Amount Due</u>	<u>Principal</u>	<u>Interest</u>
30 days from Effective Date:	\$10,000.00	\$10,000.00	0
30 days from Effective Date:	\$3,044.00	\$3,044.00	0
120 days from Effective Date:	\$13,108.60	\$13,010.77	\$97.83
210 days from Effective Date:	\$13,108.60	\$13,043.30	\$65.30
300 days from Effective Date:	<u>\$13,108.60</u>	<u>\$13,075.93</u>	<u>\$32.69</u>
Totals	\$52,369.80	\$52,174.00	\$195.82

Payment of Civil Penalties

159. Respondent agrees to pay the \$42,174 EPCRA civil penalty by sending four cashier's checks or certified checks, in accordance with the due dates listed above, by U.S. Postal Service, payable to "Treasurer, United States of America." Payment should be sent to:

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

160. Respondent agrees to pay the \$10,000 CWA civil penalty by sending a cashier's check or certified check, by U.S. Postal Service, payable to "Environmental Protection Agency," noting on the check "OSTLF-311." Payment should be sent to:

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

161. All checks must note the following: the case name, the docket numbers of this CAFO, and the billing document number _____.

162. A transmittal letter, stating Respondent's name, the case name, Respondent's complete address, the docket numbers of this CAFO, and the billing document number must accompany each payment. Respondent shall send a copy of each check and transmittal letter to:

Regional Hearing Clerk, (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

James Entzminger, (SC-5J)
Chemical Emergency Preparedness
and Prevention Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604
ph: (312) 886-4062
entzminger.james@epa.gov

Ellen Riley, (SC-5J)
Chemical Emergency Preparedness
and Prevention Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604
ph: (312) 886-9497
riley.ellen@epa.gov

Terence Stanuch, (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604
ph: (312) 886-8044
stanuch.terry@epa.gov

163. If Respondent does not timely pay any installment payment as set forth above, the entire unpaid balance of the civil penalty shall become due and owing upon written notice by U.S. EPA to Respondent of the delinquency. U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

164. Pursuant to 31 C.F.R. § 901.9, Respondent shall pay the following on any amount overdue under this CAFO: (a) Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717; (b) Respondent shall pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due; and (c) U.S. EPA will assess a six percent (6%) per year penalty on any principal amount 90 days past due.

General Provisions

165. Complainant reserves the right, pursuant to 40 C.F.R. § 22.45(c)(4)(iii), to withdraw this Consent Agreement and proposed Final Order within 15 days of receipt of a Commenter's petition, submitted pursuant to 40 C.F.R. § 22.45(c)(4)(ii), requesting that the Regional Administrator set aside the Consent Agreement and proposed Final Order on the basis that material evidence was not considered.

166. The civil penalty specified in this CAFO is not deductible for federal tax purposes.

167. During settlement negotiations, Respondent spent approximately \$21,000 to install a pressure relief system for the spark detection/extinguishing system, and U.S. EPA has considered this project as a Supplemental Environmental Project (SEP). For federal income tax purposes, Respondent agrees to neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred, in performing this SEP.

168. This CAFO resolves Respondent's liability only for federal civil penalties for the violations alleged in the CAFO.

169. The Final Order does not constitute a waiver, suspension or modification of the requirements of Sections 311 and 312(a) of EPCRA, 42 U.S.C. §§ 11021 and 11022(a), and Section 311 of the CWA, 33 U.S.C. § 1321, or any regulations promulgated thereunder.

170. This CAFO does not affect the rights of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

171. This CAFO does not affect Respondent's responsibility to comply with EPCRA, the CWA, or any other applicable federal, state and local, laws and regulations.

172. Respondent certifies that it is complying with Sections 311 and 312(a) of EPCRA, 42 U.S.C. §§ 11021 and 11022(a); and Section 311 of the CWA, 33 U.S.C. § 1321.

173. This CAFO is a "final order" for purposes of U.S. EPA's EPCRA/CERCLA Enforcement Response Policy and CWA Penalty Policy.

174. The terms of this CAFO shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

175. Each party agrees to bear its own costs and attorney's fees in this action.

176. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

177. This CAFO constitutes the entire agreement between the parties.

Effective Date

178. This CAFO shall become effective immediately upon filing with the Regional Hearing Clerk, U.S. EPA, Region 5.

Advanced Fiber Technology, Inc., Respondent

15 SEPT 2011
Date

Doug Leuthold
Doug Leuthold
President
Advanced Fiber Technology, Inc.
Bucyrus, Ohio

U.S. Environmental Protection Agency, Complainant

9-19-11
Date

Richard C. Karl
Richard C. Karl
Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

In the Matter of: Advanced Fiber Technology, Inc., Bucyrus, Ohio

Docket No. _____

In the Matter of: Advanced Fiber Technology, Inc., Bucyrus, Ohio

Docket No. MM-05-2011-0013 EPCRA-05-2011-0028 CWA-05-2011-0009

Final Order

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order, and shall become effective immediately upon filing with the Regional Hearing Clerk, U.S. EPA, Region 5. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date

Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

In the Matter of: Advanced Fiber Technology, Inc., Bucyrus, Ohio

Docket No. MM-05-2011-0013 EPCRA-05-2011-0028 CWA-05-2011-0009

Certificate of Service

I, James Entzminger, certify that I filed the original and a copy of the Consent Agreement and Final Order (CAFO) with the Regional Hearing Clerk, U. S. Environmental Protection Agency, Region 5, delivered a copy of the CAFO by intra-office mail to the Regional Judicial Officer, U.S. Environmental Protection Agency, Region 5, and mailed the second original CAFO by first-class, postage prepaid, certified mail, return receipt requested, to Respondent by placing it in the custody of the United States Postal Service addressed as follows:

Doug Leuthold, President
Advanced Fiber Technology, Inc.
100 Crossroads Boulevard
Bucyrus, Ohio 44820

on the _____ day of _____, 2011

James Entzminger
U.S. Environmental Protection Agency
Region 5