



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
1445 ROSS AVENUE, SUITE 1200  
DALLAS TX 75202-2733

**CERTIFIED MAIL RETURN RECEIPT REQUESTED #7010 2780 0001 3624 9136**

Michael A. Peters, Esq.  
Ryan, Whaley, Coldiron, Shandy, PLLC  
900 Robinson Renaissance  
119 N. Robinson  
Oklahoma City, OK 73102

**RE: In the Matter of Oxbow Calcining LLC:  
Kremlin, OK, EPCRA-06-2012-0510;  
Baton Rouge, LA, EPCRA-06-2012-0511; and  
Port Arthur, TX, EPCRA-06-2012-0512**

Dear Mr. Peters:

Enclosed is a copy of the fully executed Consent Agreement and Final Order (CAFO) for the three (3) above referenced facilities that have been filed with the Regional Hearing Clerk. As set forth in Section IV. of the CAFO's, and agreed to by both parties, Oxbow Calcining LLC, has thirty (30) days from the filing date to submit its payment of **\$66,666, for each** of the above facilities/cases, made payable to the Treasurer, United States of America, EPA - Region 6, as outlined in Section IV. of the CAFO's. To ensure proper credit is applied to the appropriate facility/case, please place the respective docket number, referenced above, on your check or method of payment. Also, please forward a photocopy of each check or method of payment and transmittal letter to the EPA personnel listed in Section IV. of the CAFO's. Once our Cincinnati Finance Office acknowledges receipt of payment, we shall consider these cases closed.

If you have any questions regarding this matter, please contact Morton E. Wakeland, Jr., of my staff, at 214.665.8116. Your cooperation in expediting the settlement of this case is most appreciated.

Sincerely yours,

A handwritten signature in black ink, appearing to read "CE Edlund", with a long horizontal flourish extending to the right.

Carl E. Edlund, P.E.

Director

Multimedia Planning and  
Permitting Division

Enclosures (3)

FILED  
2013 MAY -1 10 41 AM  
EPA REGION 6 OFFICE  
DALLAS TEXAS

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS**

**IN THE MATTER OF:** §  
§  
§  
**OXBOW CALCINING LLC** § **DOCKET NO. EPCRA-06-2012-0512**  
**PORT ARTHUR, TEXAS** §  
§  
**RESPONDENT** §  
§

**CONSENT AGREEMENT AND FINAL ORDER**

The Director, Multimedia Planning and Permitting Division, United States Environmental Protection Agency (EPA), Region 6 (Complainant), and Oxbow Calcining 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. PRELIMINARY STATEMENT**

1. This proceeding for the assessment of civil penalties pursuant to Section 325(c) of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045(c), is simultaneously commenced and concluded by the issuance of this CAFO against Respondent pursuant to 40 CFR §§ 22.13(b) and 22.18(b)(2) and (3).

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

3. 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 this CAFO.

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

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

6. 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.

7. Respondent agrees that the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

8. Respondent hereby certifies, and EPA confirms, that as of the date of the execution of this CAFO, Respondent has corrected the violation(s) alleged in this CAFO and the subject facility is now, to the best of their knowledge, in compliance with all applicable requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 CFR Part 372.

## **II. STATUTORY AND REGULATORY BACKGROUND**

9. Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 CFR §§ 372.22 and 372.30 require the owner or operator of a facility that: (a) has ten or more full-time employees; (b) that is an establishment with a primary Standard Industrial Classification (SIC) major group or industry code listed in 40 CFR § 372.23(a), or a primary North American Industry Classification System (NAICS) subsector or industry code listed in 40 CFR §§ 372.23(b) or (c); and (c) “manufactured, processed, or otherwise used” a toxic chemical listed under Subsection 313(c) of EPCRA and 40

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CFR § 372.65, in excess of the threshold quantity established under Subsection 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 CFR §§ 372.25, 372.27, or 372.28 during the calendar year, to complete and submit a toxic chemical release inventory Form R to the Administrator of EPA and to the State in which the subject facility is located by July 1, for the preceding calendar year, for each toxic chemical known by the owner or operator to be “manufactured, processed, or otherwise used” in quantities exceeding the established threshold quantity during that preceding calendar year.

10. According to Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 CFR § 372.25, the threshold amount for reporting under Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 CFR § 372.30, is 25,000 pounds for any toxic chemical “manufactured or processed,” and 10,000 pounds for any toxic chemical “otherwise used” for the applicable calendar year. Alternative reporting thresholds are set forth in 40 CFR §§ 372.27 and 372.28.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

#### **A. PRELIMINARY ALLEGATIONS**

11. Respondent is a corporation incorporated under the laws of the State of Delaware and authorized to do business in the State of Texas.

12. Respondent is a “person” as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

13. Respondent owns and operates a petroleum coke calcining business at 3901 Coke Dock Road, Port Arthur, Texas 77640 (the “Facility”), which is a “facility” as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 CFR § 372.3.

14. The Facility has ten (10) or more "full-time employees" as that term is defined by 40 CFR § 372.3.

15. The Facility is in NAICS subsector or industry code 324199 (All Other Petroleum and Coal Products Manufacturing).

16. Benzo(g,h,i)perylene, mercury, polycyclic aromatic compounds and vanadium compounds are "toxic chemicals" within the meaning of 40 CFR §§ 372.3 and 372.65.

17. During calendar years 2005, 2006, 2007, 2008, and 2009, the toxic chemicals identified in Paragraph 16 were "manufactured, processed, or otherwise used" as those terms are defined by 40 CFR § 372.3, at the Facility.

## **B. VIOLATIONS**

### **Counts 1-4 – Failure to Timely File Form R's for Calendar Year 2005**

18. During calendar year 2005, Respondent manufactured, processed or otherwise used benzo(g,h,i)perylene, mercury, polycyclic aromatic compounds and vanadium compounds, at the Facility, in excess of the applicable threshold quantities.

19. Respondent failed to file Form R's with EPA and the State of Texas for benzo(g,h,i)perylene, mercury, polycyclic aromatic compounds and vanadium compounds by July 1, 2006 for the 2005 calendar year.

20. Therefore, Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 CFR § 372.30 by failing to submit complete and accurate Form R's for benzo(g,h,i)perylene, mercury, polycyclic aromatic compounds and vanadium compounds for calendar year 2005, to EPA and to the State of Texas by July 1, 2006.

**Counts 5-6 – Failure to Timely File Form R's for Calendar Year 2006**

21. During calendar year 2006, Respondent manufactured, processed or otherwise used mercury and vanadium compounds at the Facility in excess of the applicable threshold quantities.

22. Respondent failed to file Form R's with EPA and the State of Texas for mercury and vanadium compounds by July 1, 2007 for the 2006 calendar year.

23. Therefore, Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 CFR § 372.30 by failing to submit complete and accurate Form R's for mercury and vanadium compounds for calendar year 2006, to EPA and to the State of Texas by July 1, 2007.

**Counts 7-8 – Failure to Timely File Form R's for Calendar Year 2007**

24. During calendar year 2007, Respondent manufactured, processed or otherwise used mercury and vanadium compounds at the Facility in excess of the applicable threshold quantities.

25. Respondent failed to file Form R's with EPA and the State of Texas for mercury and vanadium compounds by July 1, 2008 for the 2007 calendar year.

26. Therefore, Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 CFR § 372.30 by failing to submit complete and accurate Form R's for mercury and vanadium compounds for calendar year 2007, to EPA and to the State of Texas by July 1, 2008.

**Counts 9-10 – Failure to Timely File Form R's for Calendar Year 2008**

27. During calendar year 2008, Respondent manufactured, processed or otherwise used mercury and vanadium compounds at the Facility in excess of the applicable threshold quantities.

28. Respondent failed to file Form R's with EPA and the State of Texas for mercury and

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vanadium compounds by July 1, 2009 for the 2008 calendar year.

29. Therefore, Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 CFR § 372.30 by failing to submit complete and accurate Form R's for mercury and vanadium compounds for calendar year 2008, to EPA and to the State of Texas by July 1, 2009.

#### **Counts 11-13 – Failure to Timely File Form R's for Calendar Year 2009**

30. During calendar year 2009, Respondent manufactured, processed or otherwise used benzo(g,h,i)perylene, mercury and polycyclic aromatic compounds at the Facility in excess of the applicable threshold quantities.

31. Respondent failed to file Form R's with EPA and the State of Texas for benzo(g,h,i)perylene, mercury and polycyclic aromatic compounds by July 1, 2010 for the 2009 calendar year.

32. Therefore, Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 CFR § 372.30 by failing to submit complete and accurate Form R's for benzo(g,h,i)perylene, mercury and polycyclic aromatic compounds for calendar year 2009, to EPA and to the State of Texas by July 1, 2010.

### **IV. TERMS OF SETTLEMENT**

#### **A. CIVIL PENALTY**

33. For the reasons set forth above, Respondent has agreed to pay a civil penalty which has been determined in accordance with Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), which authorizes EPA to assess a civil penalty of up to Thirty-Seven Thousand Five Hundred Dollars

In the Matter of Oxbow Calcining L.L.C., Port Arthur, TX., Docket No. EPCRA 06-2012-0512

(\$37,500) per day for each violation of EPCRA.<sup>1</sup> Upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of 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, it is **ORDERED** that Respondent be assessed a civil penalty of **SIXTY-SIX THOUSAND SIX HUNDRED SIXTY-SIX DOLLARS AND NO CENTS (\$66,666.00)**.

34. Within thirty (30) days of the effective date of this CAFO, 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:

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<sup>1</sup> The amount of penalty that can be assessed under Section 325(e) of EPCRA, 42 U.S.C. § 11045(e) was increased by the Civil Monetary Penalty Inflation Adjustment Rule codified at 40 CFR Part 19 to \$27,500 per day, for violations occurring between January 30, 1997 and March 15, 2004, and \$32,500 per day for violations which occurred between March 15, 2004 and January 12, 2009, and up to \$37,500 per day for violations which occurred after January 12, 2009.



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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 06-2012-0512 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:

Morton E. Wakeland, Jr., Ph.D.  
EPCRA 313 Enforcement Coordinator  
Toxics Section (6PD-T)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733; and

Lorena Vaughn  
Regional Hearing Clerk (6RC-D)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

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

35. 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 to be paid to the United States Treasurer pursuant to this CAFO.

36. If Respondent fails to submit payment within thirty (30) days of the effective date of this CAFO, 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.

37. Pursuant to 31 U.S.C. § 3717 and 40 CFR § 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 thirty (30) days after the effective date of the CAFO 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 CFR § 13.11(a). Moreover, the costs of EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 CFR § 13.11(b).

38. 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. 40 CFR § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 CFR § 901.9(d). Other penalties for failure to make a payment may also apply.

39. This CAFO 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, April 21, 2001; for the purpose of demonstrating a history of "prior such violations."

#### **B. RETENTION OF ENFORCEMENT RIGHTS**

40. The 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 which are not set forth herein.

41. 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 CFR Part 372.

42. 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

In the Matter of Oxbow Calcining I.L.C, Port Arthur, TX., Docket No. EPCRA 06-2012-0512

Respondent's Facility. Except as to those violations addressed herein, 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.

**C. COSTS**

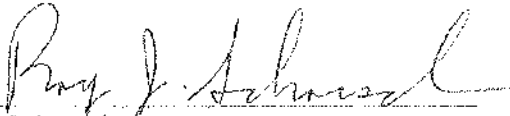
43. Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 CFR Part 17.

In the Matter of Oxbow Calcining LLC, Port Arthur, TX., Docket No. EPCRA 06-2012-0512

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

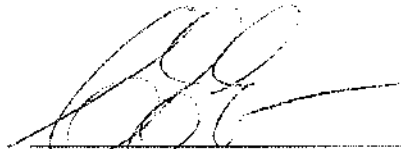
**FOR RESPONDENT:**

Date: 3/30/12

  
\_\_\_\_\_  
Roy Schorch  
Vice President of Operations  
Oxbow Calcining LLC  
Woodlands, Texas

**FOR THE COMPLAINANT:**

Date: 4/22/12

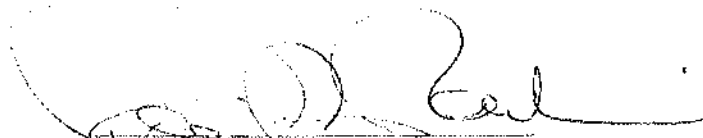
  
\_\_\_\_\_  
Carl E. Edlund, P.E.  
Director  
Multimedia Planning and  
Permitting Division  
U.S. EPA Region 6

**V. 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 CFR Part 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. 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 CFR § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated

5-1-12



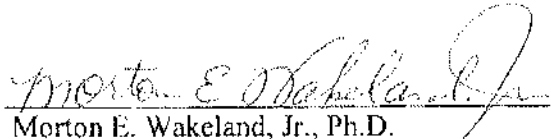
Patrick A. Rankin  
Regional Judicial Officer  
U.S. EPA Region 6

**CERTIFICATE OF SERVICE**

I hereby certify that on the 1st day of May, 2012, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and a true and correct copy of the CAFO was delivered to the following individual(s) by the method indicated below:

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED # 7010 2780 0001 3624 9136**

Michael A. Peters, ESQ  
Ryan Whaley Coldiron Shandy PLLC  
900 Robinson Renaissance  
119 N. Robinson  
Oklahoma City, Oklahoma 73102  
COUNSEL FOR RESPONDENT

  
Morton E. Wakeland, Jr., Ph.D.  
EPCRA 313 Enforcement and TRI Program  
Coordinator  
U.S. EPA Region 6  
Dallas, TX 75202