

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2009 OCT -1 PM 3:41
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:
XTO Energy, Inc.
Cotton Valley Plant
810 Houston Street
Fort Worth, Texas 76102

§
§ COMPLAINT AND
§ CONSENT AGREEMENT AND
§ FINAL ORDER
§
§ Docket No. CERCLA-06-2009-2903

I. PRELIMINARY STATEMENT

1. The United States Environmental Protection Agency, Region 6 (EPA) and **XTO Energy, Inc. – Cotton Valley Plant, Fort Worth, Texas**, (Respondent) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(B)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules) 64 Fed. Reg. 40181, 40183 (July 23, 1999), to be codified at 40 C.F.R. §§ 22.13(b), 22.18(b)(2).

2. This Complaint and Consent Agreement and Final Order and (“Complaint and CAFO”) resolves an administrative action for the assessment of civil penalties instituted pursuant to Section 109 of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9609.

3. This Complaint and CAFO is a complete and final settlement of all civil and administrative claims and causes of action for the violations set forth in this Complaint and CAFO in connection with Respondent’s alleged failure to provide notice to the National Response Center in a timely manner, as specified under Section 103(a) of CERCLA.

4. Respondent hereby certifies that, as of the date of execution of this Complaint and CAFO, it believes that it is in compliance with all applicable requirements of Section 103 of CERCLA with respect to its **Cotton Valley, Louisiana** facility.

5. Respondent neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Complaint and CAFO.

6. Respondent consents to the issuance of this Complaint and CAFO and the assessment and payment of the stated civil penalty in the amount and by the method set out in this Complaint and CAFO. This Complaint and CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to CERCLA for the violations alleged.

7. Each party to this action shall bear its own costs and attorney fees. Except as specifically provided in this Complaint and 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.

8. This Order shall apply to and be binding upon EPA, Respondent, and Respondent's officers, directors, agents, employees, successors, and assigns. The signatories certify that they are fully authorized to enter into the terms and conditions of this Complaint and CAFO and to execute and to legally bind that party to it. No change in the ownership or corporate status of the Respondent shall alter its responsibilities under this Order.

9. For the purpose of settlement, the Respondent expressly waives its right to request a hearing on any issue of law or fact set forth herein and waives all defenses which have been raised or could have been raised to the claims set forth in this Complaint and CAFO.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

10. CERCLA 103(a) requires a person in charge of a facility or vessel, as soon as he or she has knowledge of a release of a hazardous substance from such facility or vessel in an amount equal to or greater than the reportable quantity (RQ), to immediately notify the National Response Center (NRC).

11. Respondent is **XTO Energy, Inc – Cotton Valley Plant**, whose principal place of business is located at **810 Houston Street (Corporate), Fort Worth, Tarrant County, Texas 76102**.

12. Respondent is a "person" as that term is defined by Section 101(12) of CERCLA, 42 U.S.C. Section 9601(21).

13. Respondent is the owner and/or operator of a "facility" as that term is defined by Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9).

14. On or about **September 18, 2008**, at **1500** hours, while Respondent was in charge of the facility in **Cotton Valley, Louisiana**, there was a release of **benzene** from the facility into the environment. This release into the environment was more than the RQ.

15. **Benzene** is a "hazardous substance" as defined at CERCLA Section 101(14), U.S.C. Section 9601(14). The RQ for **benzene** is **10** pounds, as set forth in 40 C.F.R. Section 302.

16. On **February 12, 2009**, EPA Region 6 conducted an investigation of the release by issuing a Request for Information pursuant to Section 104(e) of CERCLA.

17. Respondent provided an answer to that request on **February 19, 2009** ("answer").

18. The answer provided that Respondent had knowledge of the release on **September 18, 2008**, at **1500** hours.

19. Respondent reported the release to the NRC on **September 19, 2008**, at 1112 hours.

20. Therefore, Respondent violated the notification requirements of CERCLA Section 103(a), 42 U.S.C. Section 9603(a), 40 C.F.R. Section 302.6 by failing to provide notice to the NRC immediately after having knowledge that the release met or exceeded the reportable quantity (RQ).

III. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

21. Respondent shall undertake a supplemental environmental project (SEP), which the parties agree will secure significant environmental or public health protection and improvement.

- a. Respondent shall provide emergency response and/or computer equipment for response to hazardous materials incidents to the **Webster Parish Local Emergency Planning Committee (LEPC)**, to be determined by the Chairperson of the LEPC. The equipment to be provided, the value of which is to be **\$3,000.00 (THREE THOUSAND DOLLARS)**, will be based on specifications provided by the LEPC Chairperson. Respondent shall contact the Chairperson within 45 days from the Effective Date of this CAFO to receive specifications for this equipment. This delivery of the equipment to the Chairperson is to be made no later than 30 days from the delivery of specifications to Respondent, unless an extension is granted by the EPA.
- b. For the period of one year after receipt of this Order, executed by both parties, a representative of the Respondents will attend each scheduled meeting of the LEPC, beginning the month after the Effective Date of this Order. Respondent shall contact the Chairperson for meeting dates and times, and will provide, based on appropriateness and capabilities, technical assistance to the **Webster Parish LEPC** on emergency preparedness and planning.

Scope of Supplemental Environmental Project

22. Within 60 days after the provision in **paragraph (a)** of the SEP are fully completed, Respondent shall submit to EPA a SEP completion report. The report shall be sent to the Enforcement Coordinator at:

Misty Ward, Enforcement Officer
Prevention and Response Branch (6SF-PC)
U.S. EPA Region 6
1445 Ross Avenue
Dallas, Texas 75202

23. The Report shall include the following:

- an affidavit from an authorized company official, attesting that the SEP has been completed or explaining in detail any failure to complete it, and
- copies of appropriate documentation showing that the minimum amounts detailed above in

paragraph (a) were expended, including invoices and checks. Upon request, Respondent shall immediately send EPA any additional documentation requested by EPA.

24. Respondent certifies that, as of the date this CAFO is signed, it is not required to perform any part of the SEP by any federal, state, or local law, regulation, permit or order, or by any agreement or grant. Respondent further certifies that, as of this date, it has not received, and is not negotiating to receive, credit for any part of the SEP in any other enforcement action of any kind.

25. Any public statement, oral or written, issued by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of Section 109 of CERCLA."

26. If Respondent fails to timely and fully complete any part of the SEP, including failing to spend the minimum amount stated in **paragraph (a)** above for the SEP, Respondent shall pay a stipulated penalty of \$2,000.00 (TWO THOUSAND DOLLARS), upon notice by EPA, except as follows:

- if the SEPs were fully and timely completed, and Respondent expended at least 90 percent of the minimum amount required, Respondent shall not pay a stipulated penalty; and
- if the SEPs were not fully and timely completed, but Respondent expended at least 90 percent of the minimum amount required, Respondent shall not pay a stipulated penalty if it made a good faith effort to fully and timely complete the SEP.

27. For purposes of this paragraph, whether Respondent has fully and timely completed the SEP and whether Respondent made a good faith effort to do so shall be at the sole discretion of EPA.

28. If Respondent fails to timely submit a SEP Completion Report pursuant to paragraphs 23 and 24 above, Respondent shall pay a stipulated penalty of \$100 for each day the Completion Report is late.

29. For federal income tax purposes, (Defendant/Respondent) agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures in performing the SEP.

IV. PENALTY ORDER

30. Pursuant to the authority granted to the EPA Administrator in Section 109 of CERCLA, 42 U.S.C. 9309, which has been delegated to the Regional Administrators and further delegated to the Superfund Division Director, it is ordered that Respondent be assessed a civil penalty of **ONE THOUSAND FOUR HUNDRED ELEVEN DOLLARS (\$1,411.00)**.

31. This civil penalty is assessed upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part thereof, and upon consideration of the nature, circumstances, extent and gravity of the alleged violations, and with respect to the Respondent's culpability, history or prior CERCLA violations, performance of the SEP, and ability to continue in business.

32. Within thirty (30) days of Respondent's receipt of a copy of the fully executed Complaint and Consent Agreement and Final Order, Respondent shall pay the assessed civil penalty by cashier's check, money order, or certified check, made payable to "EPA Hazardous Substance Superfund," and remitted to:

U.S. EPA Region 6
Regional Hearing Clerk (RC-HO)
ATTN: Superfund Accounting
P.O. Box 371099M
Pittsburgh, PA 15251

33. The check shall reference Respondent's name and address, the case name and docket number of the administrative complaint, and the check shall be accompanied by a transmittal letter. A photocopy of the check and its accompanying transmittal letter shall be mailed to:

Ms. Lorena Vaughn (6RC-HO)
Regional Hearing Clerk
U.S. EPA Region 6
1445 Ross Avenue
Dallas, Texas 75202

Your adherence to this request will ensure credit is given when penalties are received in the Region.

34. If EPA does not receive payment of the penalty within thirty (30) days of the effective date of this Order, Respondent may be subject to the commencement of a civil action in Federal District Court to recover the total penalty, together with interest thereon at the applicable statutory rate.

35. If the payment is overdue, EPA will also impose a late-payment handling charge of \$15, with an additional delinquent notice charge of \$15 for each subsequent 30-day period. Finally, EPA will apply a 6 percent per annum penalty on any principal amount not paid within 90 days of the due date. If dispute resolution is invoked, for the purpose of interest calculation, interest will accrue on the final resolution amount from the date of the billing or notification.

V. STIPULATED PENALTIES

36. In addition to any other remedies or sanctions available to the United States, if Respondent fails to pay or fails to show proof of payment of the penalties specified, in the manner and upon the terms specified, Respondent may be liable for stipulated penalties as follows:

Period of Failure to Comply	Penalty per day per Violation
1st to 15th day	\$ 500.00
Over 15 days	\$ 1,000.00

37. The payment of stipulated penalties shall be made by mailing a cashier's check or certified check payable to the Treasurer of the United States, within (30) days of receipt of a demand letter for payment (the "due date") to the following address:

Regional Hearing Clerk (6RC-HO)
U.S. EPA, Region 6
P.O. Box 371099M
Pittsburgh, PA 15251

38. If EPA does not receive payment within 30 days of the due date, interest will accrue on the amount due from the due date at the current annual rate prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletin per annum through the date of payment. The due date is the date or dates specified in this Order for payment.

39. The stipulated penalties shall continue to accrue until the violation is corrected. Other penalties for failure to make a timely payment may also apply.

40. In addition to the stipulated penalties set forth above, EPA and the United States specifically reserve the right to seek other remedies or sanctions available to EPA or the United States by reason of Respondent's failure to comply with the requirements of this Order.

VI. MODIFICATIONS, EFFECTIVE DATE, TERMINATION

41. Except as provided for herein, there shall be no modification of this Order without written approval of all of the parties to this Order and the Regional Administrator of EPA, Region 6.

42. This Order shall become effective on the date upon which Respondent receives a fully executed copy of this Complaint and CAFO.


43. This Order shall terminate when all actions required to be taken by this Complaint and CAFO have been completed.

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

XTO Energy, Inc.

RESPONDENT

Date 9/25/09

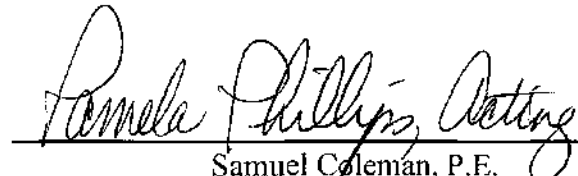


Authorized Representative

United States Environmental Protection Agency, Region 6

COMPLAINANT

Date 9/30/09

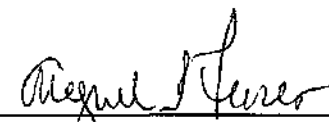


Samuel Coleman, P.E.
Director, Superfund Division

This Complaint and Consent Agreement and Final Order is hereby adopted and issued pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609 and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22.

It is so Ordered. This Order shall become effective upon filing with the Region 6 Hearing Clerk.

Date 10/1/09



for Lawrence E. Starfield
Acting Regional Administrator