



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2015 MAR -2 PM 1:21

1595 WYNKOOP STREET  
DENVER, CO 80202-1129  
Phone 800-227-8917  
<http://www.epa.gov/region08>

FILED  
EPA REGION VIII  
HEARING CLERK

DOCKET NO.: EPCRA-08-2015-0002

IN THE MATTER OF:	)	
	)	
<b>WESTERN OPERATING COMPANY, INC.</b>	)	<b>FINAL ORDER</b>
<b>WIGGINS GAS PLANT</b>	)	
8993 North I-76 Frontage Road	)	
Ft. Morgan, CO 80701	)	
	)	
<b>RESPONDENT</b>	)	

Pursuant to 40 C.F.R. § 22.13, of EPA’s Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 2nd DAY OF March, 2015.

Elyana R. Sutin  
Regional Judicial Officer

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2015 MAR -2 PM 1:21

IN THE MATTER OF: )

Western Operating Company Inc. )  
Wiggins Gas Plant )  
8993 North I-76 Frontage Road )  
Fort Morgan, Colorado 80701 )

Respondent )

FILED  
EPA REGION VIII  
HEARING CLERK  
**COMBINED COMPLAINT AND  
CONSENT AGREEMENT**

**DOCKET NO. : EPCRA-08-2015-0002**

Complainant, the United States Environmental Protection Agency, Region 8 (EPA or Complainant), and Respondent, Western Operating Company Inc., (Respondent) (together, the Parties), hereby consent and agree as follows:

1. This Combined Complaint and Consent Agreement (CCCA) is entered into by the Parties pursuant to section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11045, also known as the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA) for alleged violations of the implementing regulations associated with the "Emergency and Hazardous Chemical Inventory Forms" requirements of section 312 of EPCRA, 42 U.S.C. § 11022. This proceeding is subject to the EPA's *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits* (Rules of Practice), 40 C.F.R. part 22.
2. The undersigned EPA official has been properly delegated the authority to enter into this CCCA.
3. 40 C.F.R. § 22.13(b) provides that where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a CCCA.
4. The parties agree that the settling of this action and refraining from the adjudication of any issue of fact or law, with regard to the issues herein, is in their interest and in the public interest.

5. Respondent consents to the terms of this CCCA, including the assessment of the civil penalty specified below.

#### JURISDICTION AND WAIVER OF RIGHT TO HEARING

6. Solely for the purposes of this CCCA, Respondent consents to the EPA's jurisdiction, and waives all objections and defenses it may have to the EPA's jurisdiction.

7. Respondent does not admit to liability with respect to any of the allegations contained in this CCCA.

8. Respondent waives any and all claims for relief, and otherwise available rights to judicial or administrative review or other remedies which the Respondent may have against the EPA with respect to the terms and conditions set forth in this CCCA, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.

#### STATUTORY AND REGULATORY FRAMEWORK

9. 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 subject to the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard (OSHA Standard), 29 C.F.R. § 1910.1200(b), to prepare and submit an Emergency and Hazardous Chemical Inventory Form (Tier I or Tier II, as described in 40 C.F.R. part 370) to the local emergency planning committee (LEPC), the state emergency response commission (SERC), and the fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter on March 1. The form must contain the information required by section 312(d) of EPCRA, 42 U.S.C. § 11022(d), covering all hazardous chemicals required by OSHA to have a SDS that are present at the facility at any one time during the preceding year in amounts equal to or exceeding threshold quantities.

10. Under section 329(4) of EPCRA, 42 U.S.C. § 11049(4), "facility" means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or

adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled, or under common control with, such person).

11. Under section 329(7) of EPCRA, 42 U.S.C. § 11049(7), "person" means, *inter alia*, a corporation.

12. The OSHA Standard, 29 C.F.R. § 1910.1200(b), requires employers to provide information to their employees about extremely hazardous chemicals and hazardous chemicals to which they are exposed by means of, *inter alia*, a SDS. The OSHA Standard applies to any chemical which is known to be present in the workplace in such a manner that employees may be exposed under normal conditions of use or in a foreseeable emergency.

13. The following chemicals or chemical mixtures are defined as hazardous chemicals under the OSHA standard: condensate, coolant, ethylene glycol, gas engine oil, methanol, natural gas liquids, propane, and slop oil.

14. The OSHA Standard requires a SDS to be prepared, or available, for the chemicals listed in paragraph 13.

#### SPECIFIC ALLEGATIONS

15. Respondent is a corporation under the laws of the state of Colorado.

16. Respondent owns and operates a facility located at 8993 North I-76 Frontage Road, Fort Morgan, Colorado 80701 (the Facility).

17. On April 7, 2014, an authorized representative of the EPA conducted an inspection (EPA inspection) of the Facility, with the consent of the Respondent, to determine compliance with EPCRA. During the EPA inspection, the EPA representatives observed alleged violations of EPCRA section 312.

18. During 2011, 2012, and 2013, Respondent stored above a threshold quantity of the following chemicals or chemical mixtures at the Facility: condensate, coolant, ethylene glycol, gas engine oil, methanol, natural gas liquids, propane, and slop oil.

19. Respondent did not timely submit an Emergency and Hazardous Chemical Inventory Form for the chemicals listed in paragraph 18 to the LEPC, SERC, and fire department with jurisdiction over the Facility, for calendar years 2011, 2012, and 2013, in violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

#### PENALTY

20. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c), as amended, and 40 C.F.R. § 372.18, authorize EPA to assess a civil penalty of up to \$37,500 for each day of violation of EPCRA. For purposes of determining the amount of any civil penalty to be assessed, the EPA is required to consider, in addition to such other factors as justice may require, to the extent known, the nature, circumstances, extent and gravity of the violations alleged, any of Respondent's history of prior violations of EPCRA, or lack thereof, and degree of culpability, and any voluntary disclosure, or lack thereof.

21. Respondent consents and agrees to pay a civil penalty in the amount of twenty thousand and nine hundred dollars (\$20,900) (Penalty).

22. Attachment A (Collection Information) to this CCCA, provides terms for payment of the Penalty including the assessment of fees and interest charges for late payments.

#### COMPLIANCE

23. Respondent agrees, by signing this CCCA, that all Hazardous Chemical Inventory Forms have been submitted to the LEPC, SERC, and fire department with jurisdiction over the Facility, in accordance with section 312 of EPCRA, 42 U.S.C. § 11022.

24. Once the Respondent receives a copy of the Final Order and pays in full the Penalty, the EPA agrees not to take any further civil or administrative enforcement action (including any civil or administrative penalty action) against, the Respondent for the violations alleged in this CCCA.

## OTHER TERMS

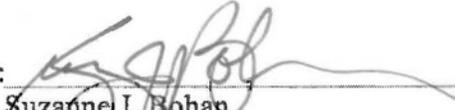
25. This CCCA contains all terms of the settlement agreed to by the parties.
26. This CCCA, upon incorporation into a final order, applies to and is binding upon EPA, Respondent, and Respondent's successors or assigns.
27. Nothing in the CCCA shall relieve Respondent of the duty to comply with EPCRA and its implementing regulations.
28. Failure of Respondent to comply with any terms of this CCCA shall constitute a breach and may result in referral of the matter to the U.S. Department of Justice for enforcement of this agreement and such other relief as may be appropriate.
29. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement.
30. Nothing in the CCCA shall be construed as a waiver by the United States of its authority to seek costs or any appropriate penalty associated with any action instituted as a result of Respondent's failure to perform pursuant to the terms of this CCCA.
31. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into and legally bind Respondent to the terms and conditions of the CCCA.
32. The parties agree to submit this CCCA to the Regional Judicial Officer, with a request that it be incorporated into a final order.
33. Each party shall bear its own costs and attorney fees in connection with this administrative matter.
34. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

35. This CCCA, upon incorporation into a final order by the Regional Judicial Officer and full payment of the penalty agreed to in paragraph 21 herein, shall resolved Respondent's liability for civil penalties for the violations alleged in this CCCA.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8,  
Office of Enforcement, Compliance and  
Environmental Justice

Complainant

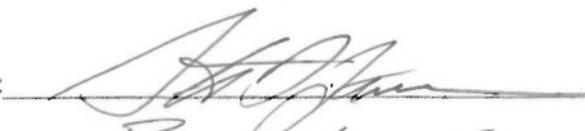
Date: 2/27/15

By:   
Suzanne J. Bohan  
~~Acting~~ Assistant Regional Administrator  
Office of Enforcement, Compliance and  
Environmental Justice

Western Operating Company Inc.

Respondent

Date: 2-13-15

By:   
President

## COLLECTION INFORMATION

Payment shall be due on or before 30 calendar days after the date of the Final Order issued by the Regional Judicial Officer who adopts this agreement. If the due date falls on a weekend or legal Federal holiday, then the due date is the next business day. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.

In the event payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (That is, on the 1st late day, 30 days of interest accrues.)

In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 61st day from the date of the Final Order, and each subsequent thirty-day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (that is, the 121st day from the date the Final Order is signed). Payments are first applied to handling charges, 6% penalty interest, and late interest; then any balance is applied to the outstanding principal amount.

The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America," (or be paid by one of the other methods listed below) and sent as follows:

### **CHECK PAYMENTS- U.S. Postal Service:**

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

Contact: Craig Steffen, 513-487-2091

### **OVERNIGHT MAIL (Federal Express, Airborne, or other commercial carrier):**

US Bank  
Cincinnati Finance Center Box 979077  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

**WIRE TRANSFERS (FEDWIRE):**

Wire transfers should be directed to the Federal Reserve Bank of New York

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 "

**ON LINE PAYMENT:**

There is now an On Line Payment Option, available through the Dept. of Treasury. This payment option can be accessed from the information below:

WWW.PAY.GOV

Enter sfo 1.1 in the "Search Public Forms" field

Open form and complete required fields then click "Submit Data".

**AUTOMATED CLEARINGHOUSE (VENDOR EXPRESS)**

Automated clearinghouse payments can be made through the US Treasury using the following information:

US Treasury REX/Cashlink ACH Receiver

ABA: 051036706

Account Number: 310006, Environmental Protection Agency

CTX Format Transaction Code 22 – checking

Physical location of US Treasury Facility:

5700 Rivertech Court

Riverdale, MD 20737

US Treasury Contact Information:

John Schmid: 202-874-7026

Remittance Express (REX): 1-866-234-5681

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **WESTERN OPERATING COMPANY, INC., WIGGINS GAS PLANT; DOCKET NO.: EPCRA-08-2015-0002** was filed with the Regional Hearing Clerk on March 2, 2015.

Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Marc Weiner, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were resent and placed in the United States mail certified/return receipt on March 2, 2015 to:

Kevin J. O'Toole  
Bookhardt & O'Toole  
999 Eighteenth Street, Suite 2500  
Denver, CO 80202

And emailed to:

Kim White  
U. S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive (MS-0002)  
Cincinnati, Ohio 45268

March 2, 2015



Tina Artemis  
Paralegal/Regional Hearing Clerk

