



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

MAR 31 2011

CERTIFIED MAIL RETURN RECEIPT REQUESTED # 7010 2780 0001 3624 8863

Mr. Brain Brinkley,
Vice President
Newberry Tanks & Equipment, Inc.
205 North Walker Avenue
West Memphis, AR 72301

**RE: In the Matter of Newberry Tanks & Equipment, West Memphis, Arkansas,
EPA Docket #: EPCRA-06-2011-0505**

Dear Mr. Brinkley:

Enclosed is a copy of the fully executed Consent Agreement and Final Order (CAFO) which has been filed with the Regional Hearing Clerk. As set forth in Section IV. of the CAFO, and agreed to by both parties, Newberry Tanks & Equipment has thirty (30) days from the filing date to submit its payment of **\$4,000**, made payable to the Regional Hearing Clerk in Pittsburgh, Pennsylvania, as outlined in Section IV. of the CAFO. To ensure proper credit is applied to this case, please place the above referenced docket number on your check or method of payment. Also, please forward a photocopy of your check or method of payment and transmittal letter to the EPA personnel listed in Section IV. of the CAFO. Once our Cincinnati Finance Office acknowledges receipt of payment, we shall consider this case 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 "C. Edlund".

Carl E. Edlund, P.E.

Director

Multimedia Planning and
Permitting Division

Enclosure

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2011 MAR 31 AM 9:51
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

NEWBERRY TANKS & EQUIPMENT, INC.
WEST MEMPHIS, ARKANSAS

RESPONDENT

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DOCKET NO. EPCRA-06-2011-0505

CONSENT AGREEMENT AND FINAL ORDER

The Director, Multimedia Planning and Permitting Division, United States Environmental Protection Agency (EPA), Region 6 (Complainant), and Newberry Tanks & Equipment, Inc. (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 the Respondent pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

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

3. The 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 the CAFO.

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

5. The 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. The Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on behalf of the Respondent is duly authorized to bind the Respondent to the terms and conditions of this CAFO.

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

8. The Respondent hereby certifies that as of the date of the execution of this CAFO, ~~NEWBERRY TANKS & EQUIPMENT, INC.~~ ^{BB} ~~Advanced Composites Group, Inc.~~ has corrected the violation(s) alleged in this CAFO and is now, to the best of its knowledge, in compliance with all applicable requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

II. STATUTORY AND REGULATORY BACKGROUND

9. Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 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 C.F.R. § 372.23(a), or a primary North American Industry Classification System (NAICS) subsector or industry code listed in 40 C.F.R. §§ 372.23(b) or (c); and (c) “manufactured, processed, or otherwise used” a toxic chemical listed under

Subsection 313(c) of EPCRA and 40 C.F.R. § 372.65, in excess of the threshold quantity established under Subsection 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. §§ 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 C.F.R. § 372.25, the threshold amount for reporting under Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 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 C.F.R. §§ 372.27 and 372.28.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

11. The Respondent is a corporation incorporated under the laws of the State of Arkansas, and authorized to do business in the State of Arkansas.

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

13. The Respondent owns and operates the business at 205 North Walker Avenue, West Memphis, AR 72301.

14. Newberry Tanks & Equipment, Inc., identified in Paragraph 13, is a “facility”, as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3.

15. The Respondent's facility has ten (10) or more “full-time employees” that term is defined by 40 C.F.R. § 372.3.

16. The Respondent's facility is in NAICS subsector or industry code 332420 [metal tank (heavy gauge) manufacturing].

17. Styrene is a “toxic chemical” within the meaning of 40 C.F.R. §§ 372.3 and 372.65.

18. During calendar year 2009, the toxic chemical in paragraph 17 was “manufactured, processed, or otherwise used” as those terms are defined by 40 C.F.R. § 372.3, at the Respondent's facility.

19. On February 24, 2011, a desk audit was conducted by a duly authorized representative of EPA, Region 6, on the facility located at 205 North Walker Avenue, West Memphis, Arkansas 72301.

B. VIOLATIONS

Count 1 – Failure to File Form R for Calendar Year 2009

20. During calendar years 2009, the Respondent “processed” and/or “manufactured” the “toxic chemical” listed in paragraph 17, at the Respondent’s facility, in excess of the applicable threshold quantities.

21. The Respondent failed to file a Form R with EPA and the State of Arkansas for the “toxic chemical” listed in paragraph 17 by July 1, 2010, for the 2009 calendar year (252 days late as of March 10, 2011).

22. Therefore, the Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to submit complete and accurate Form R for styrene, for calendar year 2009, to EPA and to the State of Arkansas by July 1, 2010.

IV. TERMS OF SETTLEMENT

A. CIVIL PENALTY

23. For the reasons set forth above, the 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 (\$37,500) per day for each violation of EPCRA.¹ 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 the 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 **FOUR THOUSAND DOLLARS AND NO CENTS (\$4,000)**.

24. Within thirty (30) days of the effective date of this CAFO, the Respondent shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to

¹ amount of penalty that can be assessed under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) was increased by the Civil Monetary Penalty The Inflation Adjustment Rule codified at 40 C.F.R. 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.

In the Matter of Newberry Tanks & Equipment, Inc. Docket No. EPCRA 06-2011-0505

“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:

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 06-2011-0505 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 the 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 the Respondent's name and address, the case name, and docket number of the CAFO. The 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;

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

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

25. The 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 paid to the United States Treasurer.

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

27. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 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 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

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

29. This document 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

30. The EPA does not waive any rights or remedies available to EPA for any other violations by the Respondent of Federal or State laws, regulations, or permitting conditions.

31. Nothing in this CAFO shall relieve the Respondent of the duty to comply with all applicable provisions of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

32. 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 the Respondent's facility. Furthermore, 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

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

D. COMPLIANCE

34. Within thirty (30) days of the effective date of this CAFO, the Respondent shall have submitted the following Form R to EPA and to the State of Arkansas for Reporting Year 2009: styrene.

35. The Respondent shall submit the Form R, required by Paragraph 34, electronically through EPA's Central Data Exchange (CDX), utilizing the Toxic Release Inventory Program's TRI-MEweb software. Because the State of Arkansas is part of EPA's State Data Exchange (SDX), it is not necessary to submit a separate copy to the State of Arkansas. After the transmitted copy to EPA is certified, a copy will be automatically forwarded to ODEQ.

36. The Respondent shall also email a notification to Complainant that the necessary form(s) in Paragraph 34 has(have) been transmitted to EPA, and if necessary, to the state, and certified:

Morton E. Wakeland, Jr., Ph.D.
EPCRA 313 Enforcement and TRI Program Coordinator
U.S. EPA Region 6
wakeland.morton@epa.gov

E. STIPULATED PENALTIES

37. If the Respondent fails to timely submit a Form R or a revised Form R for a toxic chemical identified in Paragraph 34, the Respondent shall pay stipulated penalties in the following amounts for each day that each individual Form R is late:

<u>Period of Failure To Comply</u>	<u>Penalty Per Violation Per Day</u>
1 st through 15 th day	\$ 500
16 th through 30 th day	\$ 1,000
31 st day and beyond	\$ 2,500

Stipulated penalties shall not accrue for any alleged error in a Form R or revised Form R submitted by the Respondent under paragraph 34. Penalties shall accrue from the date of the noncompliance until the date the violations is corrected, as determined by EPA.

38. Respondent shall pay stipulated penalties no more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with

In the Matter of Newberry Tanks & Equipment, Inc. Docket No. EPCRA 06-2011-0505

the provisions of Paragraph 24 herein. Interest and late charges shall be paid as stated in Paragraphs 26 through 28 herein.

39. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of the Respondent's violation of this CAFO or of the statutes and regulations upon which this agreement is based, or for the Respondent's violation of any applicable provision of law.

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

FOR THE RESPONDENT:

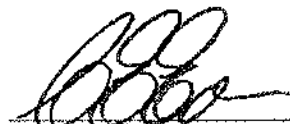
Date: 3/17/2011



Brian Brinkley,
Vice President
Newberry Tanks & Equipment, Inc.
205 North Walker Avenue
West Memphis, AR 72301

FOR THE COMPLAINANT:

Date: MAR 31 2011

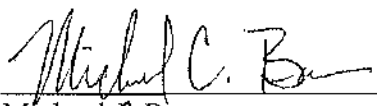


Carl E. Edlund, P.E.
Director
Multimedia Planning and
Permitting Division
U.S. EPA Region 6

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 C.F.R. 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. The 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 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated March 29, 2011



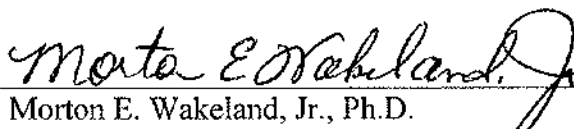
Michael C. Barra
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of March, 2011, 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 8856

Brain Brinkley,
Vice President
Newberry Tanks & Equipment, Inc.
205 North Walker Avenue
West Memphis, AR 72301


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