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REGIONAL HEARING CLERK  
EPA REGION VI

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS

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IN THE MATTER OF:

N.E.O. FABRICATION, L.L.C.  
MIAMI, OKLAHOMA 74354

RESPONDENT

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§  
§  
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§

EPA DOCKET NUMBER  
EPCRA-06-2023-0511

CONSENT AGREEMENT  
AND FINAL ORDER

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**CONSENT AGREEMENT**

The Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant), and N.E.O. Fabrication, L.L.C. (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 C.F.R. §§ 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. Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth herein and waives all defenses which have been raised or could have been raised to the claims set forth in this CAFO.

3. Compliance with all the terms and conditions of this CAFO shall resolve federal civil liability for only those violations which are set forth herein.

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

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

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

7. Respondent hereby certifies that as of the date of the execution of this CAFO, Respondent has corrected the violations 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**

8. Section 313 of EPCRA, 42 U.S.C. § 11023, 40 C.F.R. §§ 372.22 and 372.30 require the owner or operator of a facility with: (a) ten or more full-time employees; (b) a Standard Industrial Classification (SIC) major group or industry code listed in 40 C.F.R. § 372.23(a), for

which the corresponding North American Industry Classification System (NAICS) subsector or industry codes are listed in 40 C.F.R. §§ 372.23(b) or (c); and (c) a toxic chemical listed under Subsection 313(c) of EPCRA and 40 C.F.R. § 372.65, that manufactured, processed, or otherwise used the chemical 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, for each toxic chemical known by the owner or operator to be “manufactured, processed, or otherwise used” in quantities exceeding the established threshold quantity, to the Administrator of EPA and to the State in which the facility is located by July 1, for the preceding calendar year.

9. Pursuant to Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), the owner or operator of a facility shall complete a toxic chemical release form for each toxic chemical listed under Section 313(c) of EPCRA, 42 U.S.C. § 11023(c) that was manufactured, processed, or otherwise used in quantities exceeding the toxic chemical threshold quantity established by 313(f) of EPCRA, 42 U.S.C. § 11023(f), during the preceding calendar year at such facility. Such form shall be submitted to the Administrator and to an official or officials of the State designated by the Governor on or before July 1, 1988, and annually thereafter on July 1 and shall contain data reflecting releases during the preceding calendar year.

10. Pursuant 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.

11. 40 C.F.R. § 372.30(a) requires that for each toxic chemical known by the owner or operator to be manufactured (including imported), processed, or otherwise used in excess of an applicable threshold quantity in 40 C.F.R. §§ 372.25, 372.27, or 372.28 at its covered facility described in 40 C.F.R. § 372.22 for a calendar year, the owner or operator must submit to EPA and to the State in which the facility is located a completed EPA Form R (EPA Form 9350-1), or EPA Form A (EPA Form 9350-2), and, for the dioxin and dioxin-like compounds category, EPA Form R Schedule 1 (EPA Form 9350-3) in accordance with the instructions referred to in subpart E of this part.

12. Pursuant to Section 313(g)(1)(C)(iii) of EPCRA, 42 U.S.C. § 11023(g)(1)(C)(iii), and 40 C.F.R. § 372.85(b)(16), the Form R shall include information relative to waste treatment, including the type of waste stream containing the reported chemical, the treatment method applied to the waste stream, and an estimate of the efficiency of the treatment.

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

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

13. Respondent is a corporation organized under the laws of the State of Oklahoma and authorized to do business in the State of Oklahoma.

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

15. Respondent owns and operates the facility located at 604 Henley Street, Miami, Oklahoma 74354.

16. Respondent's Miami, Oklahoma facility identified in Paragraph 15 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.

17. At the time of the violation(s), Respondent's facility had ten (10) or more "full-time employees" as that term is defined by 40 C.F.R. § 372.3.

18. Respondent's facility is in primary NAICS code 322999 (All Other Miscellaneous Fabricated Metal Product Manufacturing) and is within subsector code 322 (Fabricated Metals), which is listed in 40 C.F.R. § 372.23(b).

19. **Copper, copper compounds, manganese, manganese compounds, nickel, and nickel compounds** are "toxic chemicals" within the meaning of 40 C.F.R. §§ 372.3 and 372.65.

20. On July 1, 2021, Respondent submitted an initial TRI Form R report for the facility and therein reported Respondent *manufactured, processed, or otherwise used* the TRI chemicals identified in Paragraph 19, at Respondent's facility, in excess of the applicable threshold quantities for reporting during the 2020 calendar year.

21. On or about November 12, 2021, an off-site investigation was initiated to determine compliance of Respondent's facility with Section 313 of EPCRA. During the off-site investigation, EPA alleged the facility had failed to timely report **copper, copper compounds, manganese, manganese compounds, nickel, and nickel compounds** for the 2016, 2017, 2018, and 2019 reporting years, on or before the applicable due dates of July 3, 2017 (July 1, 2017 fell on Saturday), July 2, 2018 (July 1, 2018 fell on Sunday); July 1, 2019; and July 1, 2020; respectively.

22. Respondent subsequently submitted TRI Form R reports for the 2016, 2017, 2018, and

2019 reporting years to EPA on February 11, 2022, February 11, 2022, December 17, 2021, and December 17, 2021, respectively, and therein noted the toxic chemicals in Paragraph 19 were “manufactured, processed, or otherwise used,” as those terms are defined by Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. §372.3, at Respondent’s facility.

23. On or about May 20, 2022, the EPA sent Respondent a Notice of Potential Violations and Opportunity to Confer (NOPVOC) letter. On or about June 14, 2022, Respondent agreed to participate in negotiations regarding the alleged violations of Section 313 of EPCRA.

24. Following such negotiations, it was determined Respondent’s facility had incorrectly reported the toxic chemical nickel compounds for calendar years 2016, 2017, 2018, 2019, and 2020, reporting jointly “nickel and nickel compounds” despite only meeting the reporting threshold for the metal, nickel. Following further review, it was subsequently determined Respondent’s facility had similarly incorrectly reported the toxic chemicals copper compounds and manganese compounds for calendar years 2016, 2017, 2018, 2019, and 2020.

## B. VIOLATIONS

25. Complainant hereby restates and incorporates by reference Paragraphs 1 through 24.

26. During calendar years 2016, 2017, 2018, 2019, and 2020 Respondent *manufactured, processed, or otherwise used* the TRI chemicals copper, manganese, and nickel at Respondent’s facility, in excess of the applicable threshold quantities for reporting.

27. Respondent violated EPCRA Section 313(g)(1), 42 U.S.C. § 11023(g)(1), and 40 C.F.R. § 372.30(d) by failing to timely submit TRI reporting forms for **copper, manganese, and nickel** for calendar years 2016, 2017, 2018, and 2019, before July 3, 2017 (July 1, 2017 fell on

Saturday), July 2, 2018 (July 1, 2018 fell on Sunday); July 1, 2019; and July 1, 2020; respectively.

28. Respondent violated EPCRA Section 313(g)(1), 42 U.S.C. § 11023(g)(1), and 40 C.F.R. § 372.30(a) by reporting copper compounds, manganese compounds, and nickel compounds (rather than only the constituent metal) for calendar years 2016, 2017, 2018, 2019, and 2020.

#### IV. TERMS OF SETTLEMENT

##### A. CIVIL PENALTY

29. 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 Sixty-two Thousand, Six Hundred Eighty-nine Dollars (\$62,689) per day per 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's 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

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<sup>1</sup> The statutory maximum penalty level under Section 325(c) of EPCRA, 42 USC 11045(c) has been adjusted over time as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101-410), as amended by the Debt Collection Improvement Act of 1996, and most recently, by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (28 U.S.C. § 2461 note; Pub. L. 114-74, Section 701). EPA implements these adjustments through rulemaking which are codified in 40 CFR Part 19. Part 19 was most recently updated in the *Civil Monetary Penalty Inflation Adjustment*, 87 Fed. Reg. 1676 (January 12, 2022), which provided that the Administrator may assess a civil penalty of up to \$62,689 per violation per day of violation occurring after November 2, 2015 and where penalties are assessed on or after January 12, 2022.

assessed a civil penalty of **Sixty-Eight Thousand Two Hundred Ninety-Two Dollars and No Cents (\$68,292)**.

30. The penalty shall be made in four (4) consecutive quarterly installments according to the following penalty payment schedule (Interest is set at 1.0%):

December 1, 2022	\$17,179
March 1, 2023	\$17,179
June 1, 2023	\$17,179
September 1, 2023	\$17,179
Total Payments + Interest	\$ 68,716

31. After the effective date of this CAFO, Respondent shall pay the first assessed civil penalty installment by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Subsequent civil penalty installments shall follow the above schedule. Payments shall be remitted in one of three (3) ways: regular U.S. Postal Service mail (including certified mail), overnight mail, or wire transfer.

For U.S. Postal Service 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



*N.E.O. Fabrication, L.L.C. – Miami, Oklahoma 74354*  
Docket No. EPCRA 06-2023-0511

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”

In addition to the above methods of payments:

Payments may also be made electronically. For information on electronic payments, please visit  
<https://www.epa.gov/financial/makepayment>

The above web site may also be referenced for making payments via debit, credit card, or  
checking account (credit card payments are only accepted for amounts less than or equal to  
\$24,999.99).

**PLEASE NOTE: Docket number CAFO EPCRA 06-2023-0511 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:

Nathan Taylor  
Lead EPA Attorney  
U.S. EPA Region 6  
Office of Regional Counsel (ORC)  
1201 Elm Street, Suite 500  
Dallas, TX 75270-2102  
[taylor.nathan@epa.gov](mailto:taylor.nathan@epa.gov)

Morton E. Wakeland, Jr., Ph.D.  
EPCRA 313 Enforcement Coordinator  
U.S. EPA, Region 6  
Toxic Enforcement Section (ECDST)  
1201 Elm Street, Suite 500  
Dallas, TX 75270-2102  
[wakeland.morton@epa.gov](mailto:wakeland.morton@epa.gov)

Lorena Vaughn  
Regional Hearing Clerk  
U.S. EPA, Region 6  
1201 Elm Street, Suite 500  
Dallas, TX 75270-2102  
[vaughn.loreana@epa.gov](mailto:vaughn.loreana@epa.gov)

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

32. 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 pursuant to this CAFO.

33. If Respondent fails to submit the installment payments in accordance with Paragraph 30, Respondent may be subject to a civil action to collect the penalty in full, in an appropriate district court of the United States pursuant to Section 325(f) of EPCRA, 42 U.S.C. § 11045(f).

34. 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)

35. 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 (6%) 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.

36. This Consent Agreement and Order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

37. 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:

1996, 1997, and 2001) for the purpose of demonstrating a history of “prior such violations.”

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

38. EPA does not waive any rights or remedies available to EPA for any violations by Respondent of Federal or State laws, regulations, or permitting conditions which are not set forth herein.

39. 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 C.F.R. Part 372.

40. 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 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 Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

### **C. COSTS**

41. 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 C.F.R. Part 17.

### **D. EFFECTIVE DATE**

42. This CAFO becomes effective upon filing with the Regional Hearing Clerk.

*N.E.O. Fabrication, L.L.C. – Miami, Oklahoma 74354*  
Docket No. EPCRA 06-2023-0511

43. The EPA and Respondent agree to the use of electronic signatures for this matter. The EPA and Respondent further agree to electronic service of this Consent Agreement and Final Order, pursuant to 40 C.F.R. § 22.6, by email to the following addresses:

To EPA: [taylor.nathan@epa.gov](mailto:taylor.nathan@epa.gov) and [wakeland.morton@epa.gov](mailto:wakeland.morton@epa.gov)

To Respondent: [mpeters@ryanwhaley.com](mailto:mpeters@ryanwhaley.com) and [james@neorolloffs.com](mailto:james@neorolloffs.com)

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

Date: \_\_\_\_\_

**James  
Allemann** Digitally signed by James  
Allemann  
Date: 2022.10.06  
11:29:50 -05'00'

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James Allemann  
Co-Owner  
N.E.O. Fabrication, LLC  
604 Henley Street  
Miami, OK 74354

**FOR THE COMPLAINANT:**

Date: \_\_\_\_\_

**STEVEN  
THOMPSON** Digitally signed by  
STEVEN THOMPSON  
Date: 2022.10.14  
14:14:45 -05'00'

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Cheryl T. Seager  
Director  
Enforcement and Compliance Assurance  
Division  
U.S. EPA Region 6  
Dallas, TX 75270-2102

**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. 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.

Date: \_\_\_\_\_

**THOMAS  
RUCKI**

Digitally signed by THOMAS RUCKI  
DN: c=US, o=U.S. Government,  
ou=Environmental Protection  
Agency, cn=THOMAS RUCKI,  
0.9.2342.19200300.100.1.1=6800100  
3655804  
Date: 2022.10.19 20:31:46 -04'00'

Thomas Rucki  
Regional Judicial Officer  
U.S. EPA Region 6  
Dallas, Texas 75270-2102

*N.E.O. Fabrication, L.L.C. – Miami, Oklahoma 74354*  
Docket No. EPCRA 06-2023-0511

**CERTIFICATE OF SERVICE**

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order was delivered electronically to the Regional Hearing Clerk, U.S. EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270-2102, and that a true and correct copy was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

*taylor.nathan@epa.gov.*  
*wakeland.morton@epa.gov.*  
and  
*vaughn.lorena@epa.gov*

Copy via Email to Respondent:

*mpeters@ryanwhaley.com.*  
and  
*james@neorolloffs.com*

NATHAN  
TAYLOR

Digitally signed by NATHAN TAYLOR  
DN: cn=NATHAN TAYLOR, o=U.S. Government, ou=Environmental  
Protection Agency, email=NATHAN.TAYLOR,  
c=US, postalCode=75201, serial=1146821035645494  
Date: 2022.10.26 14:46:49 -0500

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Nathan Taylor  
Assistant Regional Counsel  
Region 6, U.S. EPA