



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

DEC 20 2016

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Laura L. Whiting, Esq.  
Gardere Wynne Sewell LLP  
3000 Thanksgiving Tower  
1601 Elm Street  
Dallas, Texas 75201

Re: Occidental Chemical Corporation (OxyChem) – New Johnsonville, TN  
Consent Agreement and Final Order  
Docket No. EPCRA-04-2017-2000(b)

Dear Ms. Whiting:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

To ensure proper processing, the Respondent's Name and Docket Number for this case, identified above and in the CAFO, should be noted on any cashier's or certified check submitted in payment of the penalty.

Also, enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts your client on notice of its potential duty to disclose to the Securities and Exchange Commission any environmental enforcement actions taken by the U. S. Environmental Protection Agency Region 4. Where used in the document "SEC" refers to the Securities and Exchange Commission.

Should you or your client have any questions concerning this matter or OxyChem's compliance status in the future, please contact Ms. Lucia Mendez at (404) 562-9637

Sincerely,

A handwritten signature in blue ink, appearing to read "Anthony G. Toney", with a long horizontal flourish extending to the right.

Anthony G. Toney  
Chief  
Chemical Safety and Enforcement Branch

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF: )  
 )  
Occidental Chemical Corporation )  
 )  
Respondent. )  
\_\_\_\_\_ )

Docket Number: EPCRA-04-2017-2000(b)

HEARING CLERK

2016 DEC 20 PM 4: 54

RECEIVED  
OFFICE OF REGIONAL  
COUNSEL

**CONSENT AGREEMENT AND FINAL ORDER**

**I. Nature of the Action**

1. This is a civil penalty proceeding pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609 and Section 325 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045 and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is Occidental Chemical Corporation.

2. The authority to take action under Section 109 of CERCLA, 42 U.S.C. § 9609 and Section 325 of EPCRA, 42 U.S.C. § 11045, is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under CERCLA and under EPCRA to the Regional Administrators by EPA Delegations 14-31 and 22-3-A, both dated May 11, 1994. The Regional Administrator, Region 4, has redelegated to the Director, Air, Pesticides and Toxics Management Division, the authority under CERCLA by EPA Region 4 Delegation 14-31 dated March 8, 1999, and updated August 6, 2004, and the authority under EPCRA by EPA Region 4 Delegation 22-3-A, dated November 8, 1994. Pursuant to these delegations, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18(b) and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

**II. Preliminary Statements**

4. Respondent, Occidental Chemical Corporation, is a corporation doing business in the State of Tennessee.

5. Respondent is a “person” and is the “owner or operator” of a “facility” as those terms are defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7) and Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), Section 101 (20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A), and Section 101(9) of CERCLA, 42 U.S.C. § 9601(9) and by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), respectively.

6. Respondent’s facility is located at 1900 DuPont Road, New Johnsonville, Tennessee 37134.

### **III. EPA’s Allegations of Violations**

#### **Violations of Section 103(a) of CERCLA**

7. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), required the Administrator of EPA to publish a list of substances designated as hazardous substances which, when released into the environment, may present substantial danger to public health or welfare or the environment and to promulgate regulations establishing the quantity of any hazardous substance the release of which was required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a). EPA has published and amended such a list, including the corresponding reportable quantities (RQ) for those substances. This list which is codified at 40 C.F.R. Part 302, was initially published on April 4, 1985 (50 Fed. Reg. 13474) and is periodically amended.

8. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and the regulations found at 40 C.F.R. § 302.6, require a person in charge of a facility or vessel to immediately notify the National Response Center (NRC), 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 RQ.

9. Respondent was in charge of the facility during the relevant periods described below.

10. Chlorine is a “hazardous substance” as that term is defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), with an RQ of 10 pounds, as specified in 40 C.F.R. § 302.4.

11. On June 27, 2014, a release of chlorine above the RQ occurred at the facility.

12. EPA alleges that Respondent violated the notification requirements of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and the applicable CERCLA regulations, 40 C.F.R. § 302.6, by failing to immediately notify the NRC as soon as Respondent had knowledge of the release of chlorine in an amount equal to or greater than its RQ at Respondent’s facility and is therefore subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

13. Pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and 40 C.F.R. Part 19, EPA may assess a penalty not to exceed \$37,500 for each violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), that occurred after January 12, 2009. Each day a violation of

Section 103 continues constitutes a separate violation. Civil penalties under Section 109 of CERCLA, 42 U.S.C. § 9609, may be assessed by Administrative Order.

Violations of Section 304(a) EPCRA

14. Section 304(a) of EPCRA, 42 U.S.C. §11004(a) and the regulations found at 40 C.F.R. § 355, Subpart C, require the owner or operator of a facility at which a hazardous chemical is produced, used or stored, to immediately provide notice to the State Emergency Response Commission (SERC) and Local Emergency Planning Committee (LEPC) as described in Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), when there has been a release of an EPCRA extremely hazardous substance, or a CERCLA hazardous substance in an amount equal to or greater than the RQ from a facility. Section 304(a) does not apply to any release which results in exposure to persons solely within the site or sites on which a facility is located.

15. Respondent was the owner or operator of the facility during the relevant periods described herein.

16. At all times relevant to this matter, the facility produced, used, or stored a "hazardous chemical" as defined under Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and under 29 C.F.R. § 1910.1200(c).

17. Chlorine is an "extremely hazardous substance" as that term is defined by Section 329(3) of EPCRA, 42 U.S.C. § 11049(3), with an RQ of 10 pounds, as specified in 40 C.F.R. § 355.33 Appendices A & B.

18. On June 27, 2014, a release of chlorine above the RQ occurred at the facility. EPA alleges that the releases resulted in the potential for exposure to persons beyond the site or sites on which the facility is located.

19. EPA alleges that Respondent violated the notification requirements of Section 304(a) of EPCRA, 42 U.S.C. §11004(a), and the applicable EPCRA regulations of 40 C.F.R. § 355, Subpart C, by failing to immediately notify the SERC and LEPC as soon as Respondent had knowledge of the release of chlorine in an amount equal to or greater than the RQ at Respondent's facility, and is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. §11045.

20. Pursuant to Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), and 40 C.F.R. Part 19, EPA may assess a penalty of not more than **\$37,500** for each violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a) that occurred after January 12, 2009. Civil penalties under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), may be assessed by Administrative Order.

**IV. Consent Agreement**

21. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out above but neither admits nor denies the factual allegations set out above.

22. Respondent waives any right to contest the allegations and its right to appeal the proposed final order accompanying the Consent Agreement.

23. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.

24. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of CERCLA and EPCRA.

25. Respondent has agreed to undertake and complete a Supplemental Environmental Project (SEP) in accordance with Section VI of this CAFO.

26. Compliance with this CAFO shall resolve the allegations of violations contained herein. In accordance with 40 C.F.R. § 22.18(c), compliance with this CAFO only resolves Respondent's liability for federal civil penalties for the allegations in Section III of this CAFO and does not affect the right of the EPA or U.S. to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. This CAFO does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of EPCRA, CERCLA or other applicable laws and regulations.

27. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of CERCLA and EPCRA.

#### V. Final Order

28. Respondent shall pay a civil penalty of **FOUR THOUSAND, THREE HUNDRED FIFTEEN DOLLARS (\$4,315)** for the CERCLA violation which shall be paid within thirty (30) days of the effective date of this CAFO.

29. Respondent shall pay the CERCLA civil penalty by forwarding a cashier's or certified check, payable to "EPA Hazardous Substance Superfund" to one of the following addresses:

BY MAIL

U.S. Environmental Protection Agency  
Superfund Payments  
Cincinnati Finance Center  
P.O. Box 979076  
St. Louis, Missouri 63197-9000

BY OVERNIGHT

U.S. Environmental Protection Agency  
Government Lockbox 979076  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, Missouri 63101  
(314) 425-1819

**BY ELECTRONIC TRANSFER\***  
Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Beneficiary: US Environmental Protection Agency

\*Note: Foreign banks **must** use a United States Bank to send a wire transfer to the U. S. EPA.

The check shall reference on its face the name and the Docket Number of the CAFO.

30. Respondent shall pay a civil penalty of **FOUR THOUSAND, THREE HUNDRED FOURTEEN DOLLARS (\$4,314)** for the EPCRA violations which shall be paid within thirty (30) days of the effective date of this CAFO.

31. Respondent shall pay the EPCRA penalty by forwarding a cashier's or certified check payable to "Treasurer, United States of America," to one of the following addresses:

**BY MAIL**

U.S. Environmental Protection Agency  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

**BY OVERNIGHT**

U.S. Environmental Protection Agency  
Government Lockbox 979077  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, Missouri 63101  
(314) 425-1819

**BY ELECTRONIC TRANSFER\***  
Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Beneficiary: US Environmental Protection Agency

\*Note: Foreign banks **must** use a United States Bank to send a wire transfer to the U. S. EPA.

The check shall reference on its face the name and the Docket Number of the CAFO.

32. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk  
U.S. EPA, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Eddie Chow  
U.S.EPA, Region 4  
Chemical Management and Emergency Planning Section  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Saundi Wilson  
U.S. EPA, Region 4  
Office of Regional Counsel  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

33. For the purposes of state and federal income taxes, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.

#### **VI. Supplemental Environmental Project**

34. Respondent shall complete a SEP in the category of an Emergency Planning and Preparedness project designed to protect the environment and the people that could be harmed by chemical accidents by providing assistance (such as, response equipment or training) to responsible state or local emergency response or planning entities as follows (hereinafter referred to as the SEP):

- a. Respondent must purchase and donate the following to the recipient selected by the Respondent as identified below:

Recipient: Humphreys County LEPC

<u>Quantity</u>	<u>Description</u>
9	OPTIMAX II – 14” x 100ft (30m) Section Part# 044101
2	OPTIMAX II – 14” x 50ft (15m) Section Part# 044051
2	TOW BRIDLE – OPTIMAX II WITH BULLET FLOAT Part# 0540440F
4	ANCHOR KIT -23 lb Part# 0510000
1	TRAILER ENCLOSED 26ft WITH YELLOW SAFETY STROBE LIGHT AND HUMPREYS COUNTY LEPC SIGNAGE Part# 2TRAIEN026

- b. Respondent's total expenditure for purchase of the above equipment shall not be less than **THIRTY-FIVE THOUSAND, FIFTY-FOUR DOLLARS (\$35,054)**.
- c. Respondent must complete the purchase and donation of the above equipment within 60 days of the effective date of this CAFO.

35. This CAFO shall not be construed to constitute the EPA's endorsement of any product, equipment, technology or service purchased and donated by Respondent in connection with the SEP.

36. With regard to the SEP, Respondent certifies the truth and accuracy of each of the following:

- a. That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is **\$35,054**;
- b. That, as of the effective date of this CAFO, Respondent is not required to perform or develop the SEP by any federal, state or local law, regulation, permit, order or agreement and is not required to perform or develop the SEP by agreement, grant or as injunctive relief awarded in any other action in any forum;
- c. That the SEP is not a project the Respondent was planning or intending to construct, perform or implement other than in settlement of the claim resolved in this CAFO;
- d. That Respondent has not received and will not receive credit for the SEP in any other enforcement action of any kind;
- e. That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;
- f. That for federal income tax purposes, Respondent agrees it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP;
- g. That Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP; and
- h. That Respondent has inquired of Humphreys County LEPC whether it is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by Humphreys County LEPC that it is not a party to such a transaction.



37. Respondent agrees that any public statement, oral or written, in print film or other media made by Respondent making any reference to the SEP under this CAFO from the effective date of this CAFO 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 violation of Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA)”.

38. Respondent shall complete and submit a SEP Completion Report for the SEP under this CAFO as follows:

- a. The SEP Completion Report shall include the following:
  - i. An affidavit from an authorized company official, certifying that the SEP has been completed or explaining in detail any failure to complete, and
  - ii. Copies of appropriate documentation, including invoices and receipts, showing that Respondent’s total expenditure for the SEP was no less than the minimum total expenditure required above.
- b. The SEP Completion Report shall be submitted to the EPA within seventy-five (75) days of the effective date of this CAFO to the following:

Eddie Chow  
U.S.EPA, Region 4  
Chemical Management and Emergency Planning Section  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

39. Upon request, Respondent shall send EPA any additional documentation requested by EPA.

40. Respondent agrees that in order to receive credit for the SEP, Respondent must fully and timely complete the SEP in accordance with and as indicated in this CAFO. In the event that Respondent fails to comply with any of the terms or provisions of the CAFO relating to the performance of the SEP, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- a. If Respondent fails to spend the minimum amount of **THIRTY-FIVE THOUSAND, FIFTY-FOUR DOLLARS (\$35,054)**, Respondent shall pay to the United States, a stipulated penalty of the difference between the minimum amount noted above and the actual SEP expenditure.

- b. If Respondent fails to timely submit the SEP Completion Report as required by this CAFO, Respondent shall pay to the United States a stipulated penalty of \$100 for each calendar day that the report is late.
- c. The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this CAFO.

41. The determination as to whether Respondent has fully and timely completed the SEP shall be in the sole discretion of the EPA.

42. Respondent shall pay any stipulated penalties that accrue under this CAFO within 15 calendar days of the receipt by Respondent of written demand from the EPA for such penalties. Such penalties shall be paid in accordance with the procedures set forth in the written demand from the EPA.

### **VII. Other Provisions**

43. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the effective date of this CAFO if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

44. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

45. This CAFO shall be binding upon the Respondent, its successors, and assigns.

46. The following individual is authorized to receive service for EPA in this proceeding:

Robert W. Bookman  
U.S. EPA, Region 4  
Chemical Management and Emergency Planning Section  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
(404) 562-9169

47. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

**VIII. Effective Date**

48. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

Occidental Chemical Corporation

By: Wade Allen (Signed) Date: 10/24/16

Name: WADE ALLEMAN (Typed or Printed)

Title: SR VP MANUFACTURING (Typed or Printed)

U.S. Environmental Protection Agency

By: Jeanne M. Gettle Date: 12/9/16

for Jeanne M. Gettle  
Acting Director  
Air, Pesticides and Toxics Management Division

APPROVED AND SO ORDERED this 20<sup>th</sup> day of December, 2016

Tanya Floyd

Tanya Floyd  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true and correct copy of the foregoing

Consent Agreement and Final Order: In the Matter of Occidental Chemical Corporation, Docket

Number: EPCRA-04-2017-2000(b), on the parties listed below in the manner indicated:


Robert W. Bookman (Via EPA's internal mail)  
U.S. EPA, Region 4  
Chemical Management and Emergency Planning Section  
61 Forsyth Street  
Atlanta, GA 30303

Lucia Mendez (Via EPA's internal mail)  
U.S. EPA, Region 4  
Office of Regional Counsel  
61 Forsyth Street  
Atlanta, GA 30303

Robert Caplan (Via EPA's internal mail)  
Senior Attorney  
U.S. EPA, Region 4  
Office of Regional Counsel  
61 Forsyth Street  
Atlanta, GA 30303

Laura L. Whiting, Esq. (Via Certified Mail - Return Receipt Requested)  
Gardere Wynne Sewell LLP  
3000 Thanksgiving Tower  
1601 Elm Street  
Dallas, Texas 75201

Date: 12-20-16



Patricia A. Bullock, Regional Hearing Clerk  
United States Environmental  
Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, GA 30303  
(404) 562-9511