

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

FILED

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U.S. EPA REGION IX
REGIONAL HEARING CLERK

IN THE MATTER OF:) **Docket No.**
) EPCRA-09-2011-0072
)
Kaiser Aluminum Alexco, LLC) **CONSENT AGREEMENT**
6520 West Allison Road)
Chandler, AZ 85226)
) **AND**
) **FINAL ORDER**
) **PURSUANT TO 40 CFR**
Respondent.) **SECTIONS 22.13 and 22.18**

CONSENT AGREEMENT

A. **PRELIMINARY STATEMENT**

1. This is a civil administrative enforcement action initiated pursuant to Section 325 of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 CFR Part 22. Complainant is the United States Environmental Protection Agency, Region IX ("EPA"). Respondent is Kaiser Aluminum Alexco, LLC, a foreign corporation organized under the laws of the state of Delaware.
2. This CA/FO, pursuant to 40 CFR §§ 22.13(b) and 22.18(b), simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent violated Section 312 of EPCRA, 42 U.S.C. § 11022, and the implementing regulations.

1 B. STATUTORY AND REGULATORY FRAMEWORK

2 3. Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 CFR § 370.25, require the owner or
3 operator of a facility that is required to prepare or have available a material safety data
4 sheet (“MSDS”) for a hazardous chemical under Occupational Safety and Health Act of
5 1970 (“OSHA”), 29 U.S.C. § 651 *et seq.*, and to submit an annual emergency and
6 hazardous chemical inventory form (“Inventory Form”) if hazardous chemicals are
7 present at the facility during the preceding calendar year in quantities above the threshold
8 levels established in 40 CFR § 370.20(b). The Inventory Form must be submitted by
9 March 1 of each year to the State Emergency Response Commission (“SERC”) or the
10 Tribal Emergency Response Commission (“TERC”), and the Local Emergency Planning
11 Committee (“LEPC”), and the fire department(s) having jurisdiction over the facility.
12

13 C. GENERAL ALLEGATIONS

14 4. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), authorizes EPA to assess civil penalties
15 for any violation of Section 312 of EPCRA, 42 U.S.C. § 11022.

16 5. The Administrator of EPA has delegated enforcement authority under EPCRA to the
17 Regional Administrators by EPA delegation 22-3-A, dated May 11, 1994. The Regional
18 Administrator, EPA Region IX, in turn, has delegated the authority to enforce
19 EPCRA §§ 302, 303, 304, 311, 312, 322, and 323 to the Director of the Superfund
20 Division with delegation R9 1290.18.

21 6. Respondent owns and operates a facility located at 6520 West Allison Road, Chandler,
22 Arizona 85226 (the “Facility”).

- 1 7. On or before December 30, 2010, Respondent produced, used, or distributed: nitrogen,
2 CAS Number 7727-37-9, oxygen CAS Number 7782-44-7 and hydraulic oil ISO 68 and
3 ISO 100), hazardous chemicals as defined at the Facilities in quantities equal to or
4 exceeding the threshold planning quantities (TPQs).
- 5 8. During the calendar year from 2009, a maximum amount of 20,319 of nitrogen, 10,000
6 pounds of oxygen and 70,257 pounds of hydraulic oil were present at the Facility.
- 7 9. In a letter dated January 3, 2011, Respondent voluntarily disclosed to EPA that it had not
8 submitted Inventory Forms for nitrogen, oxygen and lubricating oils for the calendar year
9 2009, as required by Section 312 of EPCRA, 42 U.S.C. § 11022.
- 10 10. The Facility is located within the boundaries of the Gila River Indian Community and
11 must submit their annual inventory to the Gila River Indian Community Chemical Tribal
12 Emergency Response Commission/Local Emergency Planning Committee (GRIC
13 CTERC) and local Gila River Indian Community Fire Department.
- 14 11. The Arizona SERC has provided access to the State On-Line Reporting System to the
15 GRIC CTERC for the purpose of managing inventory reporting data for facilities located
16 on GRIC Tribal Land through a MOA.
- 17 12. On January 3, 2011, Respondent submitted an Inventory Form containing information on
18 chemicals used at the Facility during calendar year 2009 to the GRIC TERC via the AZ
19 SERC On-Line reporting format.
- 20

1
2 D. ALLEGED VIOLATIONS

3 COUNT I

4 (Failure to Timely Submit Annual Chemical Inventory Forms)

5 13. Paragraphs 1 through 12 above are incorporated herein by this reference as if they were
6 set forth here in their entirety.

7 14. The Facility is a "facility" as defined by Section 329(4) of EPCRA, 42 U.S.C.
8 § 11049(4).

9 15. At all times relevant to this CA/FO, Respondent has been a "person" as defined by
10 Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

11 16. Respondent is required to prepare or have available an MSDS under 29 CFR
12 § 1910.1200(g) because it is engaged in a business where chemicals are either used or
13 distributed, or are produced for use or distribution.

14 17. Nitrogen, oxygen and hydraulic oil are "hazardous chemicals" as defined under
15 Occupational Safety and Health Act of 1970 ("OSHA"), 29 U.S.C. § 651 *et seq.*

16 18. During the calendar year 2009 Respondent used nitrogen, oxygen and hydraulic oil at the
17 Facility in quantities above the applicable thresholds established in 40 CFR § 370.20(b).

18 19. Respondent's failure to submit Inventory Forms containing information on hazardous
19 chemicals present at the Facility during the calendar year 2009 to the GRIC CTERC, and
20 GRIC Fire Department on or before March 1 of 2010 is a violation of Section 312 of
21 EPCRA, 42 U.S.C. § 11022.

1 E. CIVIL PENALTY

2 20. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), as adjusted by the Debt
3 Collection Improvement Act of 1996, *see* 40 CFR Part 19, authorizes a civil penalty of up
4 to \$27,500 per day for each day a violation of EPCRA occurs after January 30, 1997. For
5 violations that occur on or after March 15, 2004, a civil administrative penalty of \$32,500
6 per day is authorized. For violations that occur on or after January 12, 2009, a civil
7 administrative penalty of \$37,500 per day is authorized.

8 21. Under EPA's Final Policy Statement on *Incentives for Self-Policing: Discovery,*
9 *Disclosures, Correction and Prevention of Violations*, 65 Fed. Reg. 19618, ("Audit
10 Policy"), effective May 11, 2000, EPA has the discretion to eliminate or substantially
11 reduce the gravity component of a penalty if it determines that a respondent has satisfied
12 the nine conditions set forth in the Audit Policy.

13 22. The nine conditions a respondent must satisfy under the Audit Policy are: (1) systematic
14 discovery of the violation through an environmental audit or a compliance management
15 system; (2) voluntary discovery; (3) prompt disclosure; (4) discovery and disclosure
16 independent of government or third party plaintiff; (5) correction and remediation; (6)
17 prevention of recurrence; (7) no repeat violations; (8) other violations excluded; and (9)
18 cooperation.

19 23. Under the "Expanded Options for Discovery of violations" as described in the *Small*
20 *Business Compliance Policy of May 11, 2000*, a disclosure may include a violation
21 discovered via "any means."

22 24. Regulated entities deemed by EPA to have satisfied the nine conditions in the Audit
23 Policy will not face any gravity-based civil penalties. If the regulated entity meets all but

1 the first condition (Systematic Discovery), EPA will reduce the gravity-based penalties
2 by 75%. EPA reserves the right to collect any economic benefit realized as a result of the
3 violation disclosed.

4 25. EPA has concluded that Respondent has, as described herein, satisfied the nine conditions
5 outlined in the Audit Policy and therefore will not face gravity-based civil penalties.

6 26. Systematic Discovery of the Violation Through an Environmental Audit or a Compliance
7 Management System or (per the *Small Business Compliance Policy of May 11 2000*)
8 “any means”. Respondent discovered the violations on December 10, 2010, during an
9 internal environmental audit of the Facility.

10 27. Voluntary Discovery. Respondent’s discovery of the violations was voluntary and did
11 not result from any legally mandated monitoring or sampling requirement prescribed by
12 statute, regulation, permit, judicial or administrative order, or consent agreement.

13 28. Prompt Disclosure. Respondent disclosed violations to EPA within 21 days after it
14 discovered the violations had, or may have, occurred, advised that the process of
15 verifying its EPCRA Section 312 reporting thresholds for the prior three years was
16 ongoing and advised that there may be additional violations discovered. The initial
17 violations were discovered on December 10, 2010, and were reported to the EPA 24 days
18 later in a letter dated January 3, 2011.

19 29. Discovery and Disclosure Independent of Government or Third Party Plaintiff.
20 Respondent discovered and disclosed the violations to EPA prior to any federal, state, or
21 local agency inspection or investigation, notice of citizen suit, the filing of a third-party
22 complaint, the reporting of the violations by a “whistle-blower,” or imminent discovery
23 by a regulatory agency.

1 30. Correction and Remediation. Respondent provided the chemical hazard information and
2 submitted the Inventory Forms for the calendar year 2009 to the GRIC CTERCTERC and
3 the GRIC fire department on January 3, 2011. The disclosed violation did not cause any
4 environmental or human harm.

5 31. Prevent Recurrence. Respondent has told EPA that it plans to take the following steps to
6 prevent a recurrence of any violation of Section 312 of EPCRA, 42 U.S.C. § 11022:
7 Respondent has implemented a procedure for reviewing EPCRA § 312 violations
8 annually whereby the relevant recording thresholds and requirements will be assessed
9 and fulfilled in advance of the March 1st, reporting date. Respondent will also continue
10 its internal audit procedures and monitor compliance.

11 32. No Repeat Violations. Respondent has not had any other occurrence of these specific
12 violations at the Facility within the past three years or at any other facility owned or
13 operated by Respondent within the past five years.

14 33. Other Violations Excluded. The violations did not result in serious actual harm, present
15 an imminent and substantial endangerment to public health or the environment, or violate
16 the specific terms of any judicial or administrative order or consent agreement.

17 34. Cooperation. Respondent has fully cooperated with EPA in determining the applicability
18 of the Audit Policy.

19 35. In signing this CA/FO, Respondent certifies under penalty of law that the information
20 submitted to EPA in the letter dated January 3, 2011, disclosing violations of
21 EPCRA Section 312, 42 U.S.C. § 11022, and the information in paragraphs 27 – 35 of
22 this CA/FO are based upon true, accurate, and complete information that the signatory

1 can verify personally, or regarding which the signatory has inquired of the person or
2 persons directly responsible for gathering the information.

3 36. EPA has determined that the violations resulted in an insignificant amount of economic
4 benefit.

5 37. For the reasons set forth above, all penalties based on the gravity of the violations and the
6 savings of economic costs related to the failure to timely submit the Inventory Forms are
7 waived.

8
9 **F. ADMISSIONS AND WAIVERS**

10 38. For purposes of this proceeding, Respondent admits the jurisdictional allegations above,
11 and agrees that the EPA Administrator and Region IX Administrator have jurisdiction
12 and authority over the subject matter of the action commenced in this CA/FO and over
13 Respondent pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, and 40 CFR §§ 22.4
14 and 22.34. Respondent consents to and agrees not to contest EPA's jurisdiction and
15 authority to enter into and issue this CA/FO and to enforce its terms. Further,
16 Respondent will not contest EPA's jurisdiction and authority to compel compliance with
17 this CA/FO in any enforcement proceedings, either administrative or judicial, or to
18 impose sanctions for violations of this CA/FO.

19 39. Respondent admits any allegations of fact or law set forth in Section C and D of this
20 CA/FO. Respondent hereby waives any rights it may have to contest the allegations set
21 forth in this CA/FO and waives any rights it may have to a hearing on any issue relating
22 to the factual allegations or legal conclusions set forth in this CA/FO, including without
23 limitation a hearing pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045. Respondent

1 hereby consents to the issuance of this CA/FO without adjudication and waives any rights
2 it may have to appeal the Final Order attached to this Consent Agreement and made part
3 of this CA/FO.

4
5 **G. PARTIES BOUND**

6 40. This CA/FO shall apply to and be binding upon Respondent and its agents, successors,
7 and assigns and upon all persons acting under or for Respondent. This CA/FO shall
8 constitute full settlement of the violations alleged herein.

9 41. No change in ownership or corporate, partnership, or legal status relating to the Facility
10 will in any way alter Respondent's obligations and responsibilities under this CA/FO.

11 42. The undersigned representative of Respondent hereby certifies that he or she is fully
12 authorized by Respondent to enter into this CA/FO, to execute it, and to legally bind
13 Respondent to it.

14
15 **H. PAYMENT OF CIVIL PENALTY**

16 43. Because EPA has concluded that Respondent has, as described herein, satisfied the nine
17 conditions set forth in the Audit Policy, Complainant has not sought gravity-based
18 penalties for the violations alleged.

19 44. Based on Complainant's determination that any economic benefit derived from the
20 violations was insignificant, Complainant has not sought to collect any economic benefit
21 penalty for the violations alleged.

22 45. Complainant and Respondent hereby consent to the assessment of a civil penalty in the
23 amount of **ZERO DOLLARS (\$0)** in settlement of the violations set forth in Section D

1 above. This CA/FO constitutes a settlement of the civil and administrative penalty claims
2 of the United States for the violations of Section 312 of EPCRA specifically alleged in
3 Section D above.

4 46. The effect of the settlement described above is conditional upon the accuracy of
5 Respondent's representations to EPA as memorialized in paragraphs 27- 35 of this
6 CA/FO and Respondent's self-disclosure dated January 3, 2011.

7
8 I. RESERVATION OF RIGHTS

9 47. EPA expressly reserves all rights and defenses that it may have.

10 48. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights, and
11 remedies, both legal and equitable, including without limitation, the right to require
12 Respondent to perform tasks in addition to those required by this CA/FO and the right to
13 assess penalties under Section 325 of EPCRA, 42 U.S.C. § 11045, or take other
14 appropriate action, in the event that Respondent fails to comply with any of the
15 requirements of this CA/FO.

16 49. This CA/FO shall not be construed as a covenant not to sue, a release, waiver, or
17 limitation of any rights, remedies, powers, or authorities, civil or criminal that EPA has
18 under EPCRA or any other statutory, regulatory, or common law enforcement authority
19 of the United States, except as otherwise set forth herein.

20 50. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise
21 preclude EPA from taking additional enforcement actions should EPA determine that
22 such actions are warranted, except as they relate to Respondent's liability for federal civil
23 penalties for the specific alleged violations set forth in Section D of this CA/FO.

1 51. This CA/FO is not intended to be, nor shall it be construed as, a permit. This CA/FO
2 does not relieve Respondent of any obligation to obtain and comply with any local, state,
3 tribal, or federal permits.

4 52. Notwithstanding compliance with the terms of this CA/FO, Respondent is not released
5 from liability, if any, for the costs of any response actions taken by EPA. EPA reserves
6 its right to seek reimbursement from Respondent for any response costs incurred by the
7 United States that may result or arise from the alleged counts set forth in Section D.
8

9 J. OTHER CLAIMS

10 53. Nothing in this CA/FO shall constitute or be construed as a release from any other claim,
11 cause of action, or demand in law or equity by or against any person, firm, partnership,
12 entity, or corporation for any liability it may have arising out of or relating in any way to
13 the generation, storage, treatment, handling, transportation, release, or disposal of any
14 hazardous constituents, hazardous substances, hazardous wastes, pollutants, or
15 contaminants found at, taken to, or taken from the Facility.
16

17 K. MISCELLANEOUS

18 54. This CA/FO may be amended or modified only by written agreement executed by both
19 EPA and Respondent.

20 55. The headings in this CA/FO are for convenience of reference only and shall not affect
21 interpretation of this CA/FO.

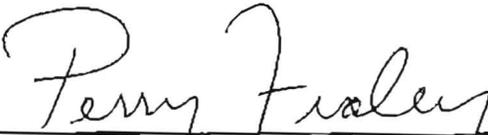
22 56. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this
23 proceeding.

1 57. In accordance with 40 CFR §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective on
2 the date that the Final Order contained in this CA/FO, having been approved and issued
3 by either the Regional Judicial Officer or Regional Administrator, is filed.
4

5
6 **IT IS SO AGREED,**

7
8
9 9/6/2011

Date



Perry Fraley, General Manager
Kaiser Aluminum Alexco, LLC

10
11 09-12-2011

Date



for Jane Diamond
Director
Superfund Division
United States Environmental Protection Agency,
Region IX

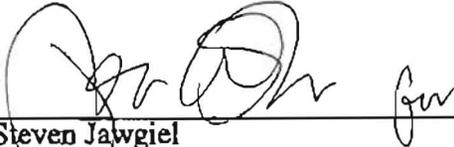
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FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (EPA Docket No. EPCRA-09-2011-002) be entered and that Respondent pay a civil penalty in the amount of **ZERO DOLLARS (\$0).**

Date

9.13.11


Steven Jawgiel
Regional Judicial Officer
United States Environmental Protection Agency,
Region IX

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Expedited Settlement Agreement against **Kaiser Aluminum Alexco, LLP (Docket #: EPCRA-09-2011-0012)** was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

A copy was mailed via CERTIFIED MAIL to:

Perry Praley
General Manager
Kaiser Aluminum Alexco, LLP
6520 West Alliso Road
Chandler, AZ 85034

CERTIFIED MAIL NUMBER: 7000-1670-0009-3120-5559

An additional copy was hand-delivered to the following U.S. EPA case attorney:

Michael Hingerty, Esq.
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105



Bryan K. Goodwin
Regional Hearing Clerk
U.S. EPA, Region IX

9/13/11
Date



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

CERTIFIED MAIL NO.: 7000 1670 0009 3120 5559
RETURN RECEIPT REQUESTED
In Reply Refer to:
Kaiser Aluminum Alexco, LLC, Chandler, AZ

SEP 13 2011

Perry Fraley
General Manager
Kaiser Aluminum Alexco, LLC
6520 West Allison Road
Chandler, AZ 85034

Re: In the Matter of Kaiser Aluminum Alexco, LLC, Chandler, AZ.

Dear Mr. Fraley:

Please find enclosed the fully executed Consent Agreement and Final Order (CA/FO) negotiated between the United States Environmental Protection Agency, Region IX (EPA), and Kaiser Aluminum Alexco, LLC.

This CA/FO simultaneously commences and concludes the above-referenced proceeding concerning the outstanding Emergency Planning and Community Right-to-Know Act (EPCRA) compliance matters between Kaiser Aluminum Alexco, LLC and EPA as alleged in the CA/FO.

If you have any questions regarding the EPCRA requirements governing operations at Kaiser Aluminum Alexco, LLC, or which concern the proceedings terminated by the enclosed documents, please contact Michael Hingerty at (415) 972-3927.

Sincerely,

A handwritten signature in black ink, appearing to read "Jane Diamond".

Jane Diamond
Director
Superfund Division

Enclosures