

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

_____)	
In the Matter of)	Docket No. CERCLA-02-2024-2009
)	
Oxy Vinyls, LP,)	CONSENT AGREEMENT AND
)	FINAL ORDER
Pedricktown, New Jersey)	
)	
Respondent.)	
_____)	

PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order (“CAFO”) is issued 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 of 1986 (“EPCRA”), as amended, 42 U.S.C. § 11045. The Complainant in this action is the Director of the Superfund and Emergency Management Division of the United States Environmental Protection Agency, Region 2 (“EPA”), who has been delegated the authority to institute this action. Respondent is Oxy Vinyls, LP (“Respondent”).
2. Pursuant to Section 22.13(b) of the revised Consolidated Rules of Practice, 40 Code of Federal Regulations (“C.F.R.”) § 22.13(b), where parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a CAFO pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).
3. It has been agreed by the parties that settling this matter by entering into this Consent Agreement, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), is an appropriate means of resolving specified claims against Respondent without litigation.

STATUTORY AND REGULATORY BACKGROUND

4. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires any person in charge of a facility, as defined under CERCLA, to immediately notify the National Response Center (“NRC”), as soon as he or she has knowledge of any release (other than a federally permitted release) of a hazardous substance from the facility in a quantity equal to or greater than the reportable quantity. The implementing regulations for CERCLA Section 103 requirements are found at 40 C.F.R. Part 302.

5. Section 304(a)(1) of EPCRA, 42 U.S.C. § 11004(a)(1), requires the owner or operator of a facility to immediately provide notice, as described in Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), if a release of an extremely hazardous substance occurs from a facility at which hazardous chemicals are produced, used, or stored and such release requires notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

6. Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), requires the owner or operator of a facility to give the notice required under 304(a) of EPCRA, 42 U.S.C. § 11004(a), immediately after the release, to the community emergency coordinator for the local emergency planning committee (“LEPC”) for any area likely to be affected by the release and to the state emergency response commission (“SERC”) of any state likely to be affected by a release.

7. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304 of EPCRA, 42 U.S.C. § 11004, provide a mechanism to alert federal, state, and local agencies that a response action may be necessary to prevent deaths or injuries to emergency responders, facility personnel, and the local community. A delay or failure to notify could seriously hamper the government's response to an emergency and pose serious threats to human health and the environment.

8. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), and Section 325(b)(2) of EPCRA, 42 U.S.C. § 11045(b)(2), provide for the assessment of penalties for violations of Section 103 of CERCLA and Section 304 of EPCRA, respectively.

FINDINGS OF FACT

9. At all times relevant to this Consent Agreement, Respondent was the owner and/or operator of a facility, located 76 Porcupine Road, Salem County, Pedricktown, New Jersey (the “Facility”).

10. At all times relevant to this Consent Agreement, the Facility consisted of buildings, equipment, structures, and other stationary items which were located on a single site or on contiguous or adjacent sites, and which were owned or operated by the same person (or by any person which controlled, is controlled by, or under common control with, such person).

11. At all times relevant to this Consent Agreement, Respondent produced, used, or stored vinyl chloride at the Facility.

12. At approximately 1:03 a.m. on May 30, 2023, a release of vinyl chloride to the environment occurred at the Facility (the “Release”). Respondent was aware of the Release when it occurred and was aware that the release likely involved more than one pound of vinyl chloride. The incident ended at 1:44 a.m. on May 30, 2023.

13. On May 30, 2023, at 8:11 a.m., Respondent reported the Release to the New Jersey Department of Environmental Protection (“NJDEP”), which was approximately 7 hours after the Release.

14. On May 30, 2023, at 8:17 a.m., Respondent reported the Release to the NRC, indicating an estimated quantity of one to five pounds of vinyl chloride released from the Facility into the atmosphere. Notification to the NRC was performed approximately 7 hours after the Release. The Reportable Quantity of vinyl chloride is 1 pound, it was later calculated by the Facility that the amount of the Release of vinyl chloride was 53.8 pounds.

15. On May 30, 2023, at 8:25 a.m., Respondent reported the Release to the Salem County Office of Emergency Management.

16. By letter dated July 17, 2023, EPA issued an information request letter to Respondent regarding the Release.

17. By letter dated August 16, 2023, Respondent submitted a response to EPA’s information request letter.

EPA CONCLUSIONS OF LAW

18. Respondent is, and at all times relevant to this Consent Agreement was, a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

19. At all times relevant to this Consent Agreement, Respondent was the owner and operator of the Facility, which is a “facility” as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

20. Vinyl chloride (CAS# 75-01-4) is a “hazardous substance” as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and as listed in 40 C.F.R. Part 302, Table 302.4. The reportable quantity for vinyl chloride is 1 pound, as set forth in 40 C.F.R. Part 302, Table 302.4.

21. Vinyl chloride is an “extremely hazardous substance” as defined in Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2), and listed in 40 C.F.R. Part 355, Appendices A and B.

22. The Release was a “release” as defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), and Section 329(8) of EPCRA, 42 U.S.C. § 11049(8). The Release was not a federally permitted release, as defined in Section 101(10) of CERCLA, 42 U.S.C. § 9601(10).

23. The Release was one for which notice was required under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a) and Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

24. The Release was one for which notice was required to be given to the New Jersey SERC and the Salem County LEPC under Section 304(b) of EPCRA.

25. At all times relevant to this Consent Agreement, NJDEP was the SERC for New Jersey under Section 301 (a) of EPCRA, 42 U.S.C. § 11001(a).

26. At all times relevant to this Consent Agreement, Salem County Office of Emergency Management was the community emergency coordinator for the LEPC for Salem County, New Jersey under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

27. Respondent failed to immediately notify the NRC upon knowledge that the Release exceeded the reportable quantity for vinyl chloride. Respondent violated the notification requirements of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and is therefore subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

28. Respondent failed to immediately notify the SERC that the Release exceeded the reportable quantity for vinyl chloride. Respondent violated the notification requirements of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), and is therefore subject to the assessment of penalties under Section 325(b)(2) of EPCRA, 42 U.S.C. § 11045(b)(2).

29. Respondent failed to immediately notify the LEPC that the Release exceeded the reportable quantity for vinyl chloride. Respondent violated the notification requirements of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), and is therefore subject to the assessment of penalties under Section 325(b)(2) of EPCRA, 42 U.S.C. § 11045(b)(2).

CONSENT AGREEMENT

30. Based upon the foregoing, and pursuant to Section 109 of CERCLA and the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits” (40 C.F.R. Part 22), Complainant and Respondent hereby agree on the following provisions.

31. For the purpose of this proceeding and in the interest of an expeditious resolution of this matter, pursuant to 40 C.F.R. § 22.18(b)(2), Respondent (a) admits the jurisdictional basis for this matter, (b) admits the Findings of Fact set forth above, (c) consents to the assessment of the civil penalty set forth below, (d) consents to the issuance of the attached Final Order, and (e) waives its right to contest the allegations and its right to appeal the attached Final Order.

32. Respondent neither admits nor denies the EPA Conclusions of Law set forth above.

33. Respondent agrees to pay a civil penalty in the amount of One Hundred Thirteen Thousand and One Hundred Eighty-Two Dollars (\$113,182) (“Assessed Penalty”) within thirty (30) days after the date the Final Order ratifying this Consent Agreement is filed with the Regional Hearing Clerk (“Filing Date”), as follows: a \$37,727 civil penalty for the CERCLA violation and a \$75,455 civil penalty for the EPCRA violations.

34. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>. The portion of the penalty for the CERCLA violation shall be made pursuant to the instructions for Superfund payments on the EPA website, and the portion of the penalty for the EPCRA violations shall be made pursuant to the instructions for civil penalty payments.

35. When making a payment, Respondent shall:

- a. Identify every payment with Respondent’s name and the docket number of this Consent Agreement, CERCLA-02-2024-2009
- b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following person(s):

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007
maples.karen@epa.gov

Kyle Ganow
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 17th Floor
New York, NY 10007
ganow.kyle@epa.gov

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to:
CINWD_AcctsReceivable@epa.gov

“Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent’s name.

36. Interest, Charges, and Penalties on Late Payments. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay the full amount of the Assessed Penalty per this Consent Agreement, EPA is authorized to recover, in addition to the amount of the unpaid Assessed Penalty, the following amounts.

- a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States the rate of interest is set at the IRS standard underpayment rate, any lower rate would fail to provide Respondent adequate incentive for timely payment.
- b. Handling Charges. Respondent will be assessed monthly a charge to cover EPA’s costs of processing and handling overdue debts. If Respondent fails to pay the Assessed Penalty in accordance with this Consent Agreement, EPA will assess a charge to cover the costs of handling any unpaid amounts for the first thirty (30) day period after the Filing Date. Additional handling charges will be assessed every thirty (30) days, or any portion thereof, until the unpaid portion of the Assessed Penalty as well as any accrued interest, penalties, and other charges are paid in full.
- c. Late Payment Penalty. A late payment penalty of six percent (6%) per annum, will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalty, interest, penalties, and other charges, that remain delinquent more than ninety (90) days. Any such amounts will accrue from the Filing Date.

37. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Consent Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following.

- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
- b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for,

a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.

- c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
- d. Refer this matter to the United States Department of Justice for litigation and collection, per 40 C.F.R. § 13.33.

38. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

39. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Consent Agreement shall not be deductible for purposes of federal taxes.

GENERAL PROVISIONS

40. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full settlement of Respondent's alleged violations of CERCLA and EPCRA set forth above in the Findings of Fact and EPA Conclusions of Law.

41. This Consent Agreement 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. Except for the alleged violations resolved herein, compliance with this Consent Agreement shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.

42. Respondent's full compliance with this Consent Agreement shall resolve Respondent's liability for federal civil penalties for the violation and facts described above in the Findings of Fact and EPA Conclusions of Law. This Consent Agreement shall not affect the right of the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

43. This Consent Agreement and any provision herein is not intended to be an admission of liability in any adjudicatory or administrative proceeding except in an action, suit, or proceeding to enforce this Consent Agreement or any of its terms and conditions.

44. Respondent explicitly waives any right to request a hearing as to the matters addressed herein and/or contest any allegations in this Consent Agreement and explicitly waives any right to appeal the attached Final Order.

45. Each party hereto shall bear its own costs and attorneys' fees in the action resolved by this Consent Agreement.

46. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the IRS annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- c. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Center at wise.milton@epa.gov, within 30 days after the Final Order ratifying this Consent Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and
- d. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days after the effective date, then Respondent, using the same email address identified in the preceding sub-Paragraph, shall further:
 - i. notify EPA's Cincinnati Finance Center of this fact, via email, within 30 days after the 30 days after the effective date of the CAFO; and
 - ii. provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's issuance and receipt of the TIN.

47. This Consent Agreement shall be binding on Respondent and its successors and assignees.

48. Each of the undersigned representatives to this Consent Agreement certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and conditions of the Consent Agreement and to bind that party to it.

49. Respondent consents to service upon Respondent by electronic means, including by email, sent to the electronic addresses provided by Respondent in the Acknowledgement of Consent to Electronic Service, which Respondent represents is its electronic address for purposes of service, of a copy of this Consent Agreement by any EPA employee, in lieu of service made by the EPA Region 2 Regional Hearing Clerk.

In the Matter of Oxy Vinyls, LP,
Docket Number CERCLA-02-2024-2009

For Respondent
Oxy Vinyls, LP



Signature

Date: 9/30/24

John Brenon

Name (Printed or Typed)

SVP Manufacturing

Title (Printed or Typed)

john_brenon@oxy.com

Email Address (Printed or Typed)

In the Matter of Oxy Vinyls, LP,
Docket Number CERCLA-02-2024-2009

For Complainant
U.S. Environmental Protection Agency, Region 2

Pat Evangelista, Director
Superfund and Emergency Management Division
U.S. Environmental Protection Agency, Region 2

Date: _____

In the Matter of Oxy Vinyls, LP,
Docket Number CERCLA-02-2024-2009

FINAL ORDER

As Regional Administrator of the EPA, Region 2, I ratify the foregoing Consent Agreement. The Consent Agreement, entered into by the Complainant and Respondent to this matter, is hereby approved, incorporated herein, and issued as a Final Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 2, New York, New York.

SO ORDERED.

Lisa F. Garcia
Regional Administrator
U.S. Environmental Protection Agency — Region 2
290 Broadway
New York, NY 10007-1866

Date: _____

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

_____)
In the Matter of)
Oxy Vinyls, LP,)
Pedricktown, New Jersey)
Respondent.)
_____)

Docket No. CERCLA-02-2024-2009

ACKNOWLEDGMENT OF CONSENT TO ELECTRONIC SERVICE

This is to acknowledge Respondent's consent to service by electronic means, including by email, of the fully executed Consent Agreement and Final Order to the electronic address below.

Oxy Vinyls, LP
c/o Thomas Taft, Plant Manager
thomas_taft@oxy.com

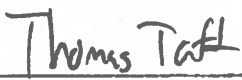
Respondent represents that the electronic address provided above is Respondent's email address for purposes of service.

For Respondent
Oxy Vinyls, LP



Signature

Date: 09/30/24



Name (Printed or Typed)



Title (Printed or Typed)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

_____)	
In the Matter of)	Docket No. CERCLA-02-2024-2009
)	
Oxy Vinyls, LP,)	
)	
Pedricktown, New Jersey)	
)	
Respondent.)	
_____)	

CERTIFICATE OF SERVICE

This is to certify that I have this day caused (or am causing) to be sent the foregoing fully executed Consent Agreement and Final Order electronically to the respective email addresses below:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866
Maples.Karen@epa.gov

Oxy Vinyls, LP
c/o Thomas Taft, Plant Manager
thomas_taft@oxy.com

Dated: _____
New York, New York
