



For Immediate Release
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**Court finds “clear and convincing evidence” warrants post-judgment relief
for Port Arthur Steam Energy**
Ruling highlights Oxbow’s lack of proper pollution control at facility

BEAUMONT, Texas — The 172nd District Court of Jefferson County ruled in favor of Port Arthur Steam Energy, LLP (PASE) against Oxbow Calcining, LLC (Oxbow) when it issued a post-judgment turnover order mandating that Oxbow deliver flue gas energy generated by the operation of its calciner facility to PASE. The Court’s order was entered to allow PASE to satisfy its multi-million dollar judgment it obtained against Oxbow in 2015.

PASE, a green energy facility located in Port Arthur, Texas, sought post-judgment relief requiring Oxbow to deliver flue gas heat through the kilns that connect the two companies. PASE operates a steam generation plant. Oxbow is under contract to supply flue gas energy to PASE. In turn, PASE uses the flue gas to operate boilers that generate steam. PASE sells and delivers the steam to a nearby plant, Valero Port Arthur Refinery.

Over the course of three days, Judge Donald Floyd heard evidence presented by PASE and Oxbow in the post-judgment proceedings. Oxbow’s counsel argued certain environmental concerns involving sulphur dioxide (SO₂) emissions present in the flue gas prevented Oxbow from delivering the flue heat they were otherwise contractually obligated to provide to PASE.

In a 12-page order, the Court ruled in favor of PASE finding “clear and convincing evidence” warranting the full post-judgment relief sought. The [Court’s order](#) stated, “If Oxbow has or believes that it has an actual or potential pollution problem, Oxbow is required under the Judgment and Arbitration Award to address the problem. That has already been judicially determined. Shutting off the delivery of waste heat to PASE’s boilers and keeping PASE from operating, selling steam, and generating heat payments that may be offset to collect its judgment are not actions consistent with the terms of the Arbitration Award and Judgment, particularly when Oxbow continues to operate all of its kilns.”

The Court’s ruling further stated “... this Court is troubled that Oxbow’s avoidance of satisfaction of the judgment is being justified as necessary for Oxbow to avoid detection of the SO₂ pollution levels at the TCEQ monitor while Oxbow simply discharges the same pollution to another location.”

“This is a huge victory for PASE and the citizens of Jefferson County,” Zona Jones, one of the attorneys representing PASE, said. “The Court’s ruling will help pave the way for PASE to begin collecting its judgment against Oxbow and result in Oxbow having to take the appropriate measures to control its SO₂ emissions by installing proper pollution control devices at its facility.”

In 2011, PASE won an arbitration ruling against Oxbow wherein the panel determined that Oxbow “fostered a culture that repeatedly interrupted or reduced delivery of maximum flue gas energy to PASE” via the dedicated kilns. The arbitration panel ruled PASE could recover the \$3.4 million in damages through heat payments from future operations of the steam plant.

Following an appeal to the Texas Supreme Court, the arbitration award was confirmed in a 2015 judgment. After

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the judgment was entered, Oxbow reduced and ultimately stopped its delivery of flue gas to PASE from its three dedicated kilns. This kept PASE from collecting on its judgment and forced them out of operation. At the same time, Oxbow continued to operate all of its kilns, bypassing PASE and discharging all flue gas directly into the atmosphere through its own hot stacks.

The Court has appointed Pat Zummo of the Law Offices of Patrick Zummo (Houston & Beaumont) as a receiver to ensure Oxbow complies with the full requirements of the Post-Judgment Order.

According to the Court's ruling, Oxbow has ten business days from the date of the Order to resume delivery of flue gas to PASE from Oxbow's operation of the three dedicated kilns. Oxbow has filed a Notice of Appeal and an Emergency Motion for Stay Pending Appeal with the 9th Court of Appeals in Beaumont relating to the Order Granting Post-Judgment Turnover Relief signed by Judge Floyd.

PASE is represented by Loyd Neal & Jim Dunn of Dunn & Neal LLP in Houston along with Jones of [Harrison Davis Steakley Morrison Jones](#) (Beaumont and Waco).

Oxbow is represented by Michael S Goldberg & Kevin T Jacobs of Baker Botts LLP (Houston) along with Guy N Goodson & Toby F Nash of Germer PLLC (Beaumont).

About Harrison Davis Steakley Morrison Jones P.C.

Established in 1999 with law offices in Waco and Beaumont, Texas, Harrison Davis Steakley Morrison Jones P.C. is a nationally recognized law firm committed to getting justice for clients in Texas and throughout the United States. The firm practices in the areas of fire and explosion, catastrophic accidents, pharmaceutical litigation, motor vehicle accidents, defective medical devices, condemnation and premises liability.

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