

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2016 AUG 18 PM 3: 51

IN THE MATTER OF:)	COMBINED COMPLAINT AND
)	CONSENT AGREEMENT
Baytex Energy USA LLC)	FILED CLERK REGION VIII HEARING CLERK
520-3 rd Ave. S.W., Suite 2800)	Docket No. CWA-08-2016-0013
Calgary, AB T2P0R3)	
Respondent)	Proceeding to Assess Civil Penalty
)	Under Section 311(b)(6) of the
)	Clean Water Act
)	

Complainant, United States Environmental Protection Agency, Region 8 (EPA), and Respondent, Baytex Energy USA LLC (Baytex), by their undersigned representatives, hereby consent and agree as follows:

I. STATUTORY AUTHORITY

1. This Combined Complaint and Consent Agreement (Agreement) is entered into pursuant to section 311(b)(6) of the Clean Water Act (Act), 33 U.S.C. § 1321(b)(6), and 40 C.F.R. § 22.13(b). Section 311(b)(6) of the Act, 33 U.S.C. § 1321(b)(6), authorizes the Administrator of the United States Environmental Protection Agency to assess civil penalties for violations of section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), which authority has been properly delegated to the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, Region 8. The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22, governs such proceedings. 40 C.F.R. § 22.13(b) provides that a proceeding subject to the Consolidated Rules may be simultaneously commenced and concluded by the issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3).

II. PARTIES BOUND

2. This Agreement shall apply to and be binding upon EPA and shall be binding upon the Respondent, its officers, directors, agents, successors, and assigns. Any change in the ownership or legal status of Baytex or the organization, structure or status of Baytex, including, but not limited to, any transfer of assets or real or personal property, shall not alter its responsibilities under this Agreement.

III. STATEMENT OF PARTIES

3. For purposes of this settlement only, Respondent stipulates to the EPA's jurisdiction and venue over the matters contained in this Agreement; however, Respondent neither admits nor denies the specific factual allegations contained herein.

4. Respondent waives its right to a hearing before any tribunal to contest any issue of law or fact set forth in this Agreement, and waives its right to appeal the Final Order.

5. The signatories to this Agreement certify that they are authorized to execute and legally bind the parties they represent to this Agreement.

6. This Agreement contains all terms of the settlement agreed to by the parties.

7. Complainant and Respondent agree that settlement of this matter is in the public interest, and that execution of this Agreement and issuance of a final order without further litigation and without adjudication of any issue of fact or law will avoid prolonged and complicated litigation between the parties and is the most appropriate means of resolving this matter.

IV. STATUTORY AND REGULATORY FRAMEWORK

8. The objective of the Act is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. 33 U.S.C. § 1251(a).

9. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), in pertinent part, prohibits

the discharge of any oil or hazardous substances into or upon the navigable waters of the United States or their adjoining shorelines in such quantities as may be harmful as determined by the President.

10. The term “discharge” is defined in section 311(a)(2) of the Act, 33 U.S.C. § 1321(a)(2), to include, in pertinent part, “any spilling, leaking, pumping, pouring, emitting, emptying or dumping”

11. The term “oil” is defined in section 311(a)(1) of the Act, in pertinent part, as “oil of any kind or in any form, including, but not limited to, petroleum” 33 U.S.C. § 1321(a)(1).

12. The term “navigable waters” is defined in section 502(7) of the Act as “waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7).

13. The term “waters of the United States,” as defined in 40 C.F.R. § 110.1, includes, *inter alia*: “(a) All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide; (b) Interstate waters, including interstate wetlands; . . . ; (e) Tributaries of waters identified in paragraphs (a) through (d) of this section, including adjacent wetlands; and (f) Wetlands adjacent to waters identified in paragraphs (a) through (e) of this section”

14. In accordance with section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4), the President, through a delegation to EPA, has determined, by regulation, those quantities of oil the discharge of which may be harmful to the public health or welfare or the environment of the United States. Exec. Order No. 11735, 38 Fed. Reg. 21243 (Aug. 3, 1973), and Executive Order 12777, 56 Fed. Reg. 54757 (October 22, 1991). 40 C.F.R. § 110.3 defines discharges of oil in such quantities as may be harmful to include discharges of oil that: “(a) Violate applicable water quality standards; or (b) Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the

water or upon adjoining shorelines.”

15. The term “sheen” is defined in 40 C.F.R. § 110.1 as an “iridescent appearance on the surface of the water.”

16. The term “sludge” is defined in 40 C.F.R. § 110.1 as “an aggregate of oil or oil and other matter of any kind in any form other than dredged spoil having a combined specific gravity equivalent to or greater than water.”

17. Pursuant to section 311(b)(6)(A) of the Act, 33 U.S.C. § 1321(b)(6)(A), any owner, operator, or person in charge of any vessel, onshore facility, or offshore facility from which oil is discharged in violation of section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), may be assessed a class I or class II civil penalty.

18. The term “owner or operator” is defined in section 311(a)(6) of the Act in pertinent part as “in the case of an onshore facility, . . . any person owning or operating such onshore facility” 33 U.S.C. § 1321(a)(6).

19. According to section 311(a)(7) of the Act, “‘person’ includes an individual, firm, corporation, association, and a partnership.” 33 U.S.C. § 1321(a)(7).

20. The term “onshore facility” is defined in section 311(a)(10) of the Act as “any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land.” 33 U.S.C. § 1321(a)(10).

V. GENERAL ALLEGATIONS

21. At all relevant times, Respondent was a corporation organized under the laws of Colorado operating under the name “Baytex Energy USA Ltd. As the result of a merger occurring on July 15, 2014, Respondent became Baytex Energy USA LLC, a limited liability company organized under the laws of Colorado. Respondent’s principal office is currently

located at 520-3rd Ave., S.W., Suite 2800, Calgary, AB T2P0R3.

22. At all relevant times, Respondent was authorized to conduct, and conducted, business in Wyoming.

23. Respondent is and was at all times relevant to the Agreement a “person” within the meaning of section 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7).

24. At all relevant times, Respondent owned and operated the True Grit 32-18 #1 well site and associated tank battery (Facility) located approximately 40 miles north of Gillette, Wyoming in the SW¼NE¼ of Section 18, T57N, R72W, in Campbell County, Wyoming, Latitude: 44.9346000 Longitude: -105.5681000.

25. The Facility was at all relevant times an “onshore facility” within the meaning of section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10).

26. Sawmill Draw is at least a seasonal creek flowing 2-3 months of the year or more, and a tributary of Homestead Draw.

27. Homestead Draw is at least a seasonal creek flowing 2-3 months of the year or more, and a tributary of Olmstead Creek.

28. Olmstead Creek is a perennially-flowing stream and a tributary of the Little Powder River.

29. The Little Powder River is a perennially-flowing interstate river and a tributary of the Powder River.

30. The Powder River is a perennially-flowing interstate river that flows into the Yellowstone River approximately 50 miles downriver from Miles City, Montana, which is located in the eastern part of the state.

31. The United States Army Corps of Engineers has designated the portion of the Yellowstone River from Emigrant, Montana, located in the western part of the state, downstream

to its confluence with the Missouri River in North Dakota, as a navigable water under section 10 of the Rivers and Harbors Act.

32. Sawmill Draw is and was at all relevant times a “water of the United States” within the meaning of 40 C.F.R. § 110.1, and a “navigable water” within the meaning of section 502(7) of the Act, 33 U.S.C. § 1362(7).

33. Homestead Draw is and was at all relevant times a “water of the United States” within the meaning of 40 C.F.R. § 110.1, and a “navigable water” within the meaning of section 502(7) of the Act, 33 U.S.C. § 1362(7).

34. Olmstead Creek is and was at all relevant times a “water of the United States” within the meaning of 40 C.F.R. § 110.1, and a “navigable water” within the meaning of section 502(7) of the Act, 33 U.S.C. § 1362(7).

VI. SPECIFIC ALLEGATIONS

35. On or about September 9, 2013, oil was observed flowing from a crude oil storage tank at the Facility toward the Sawmill Reservoir located in Sawmill Draw. Upon being notified of the discharge, Respondent mobilized response resources to begin cleaning up the discharge.

36. On September 10, 2013, Respondent filed a Report of Undesirable Event with the Wyoming office of the Bureau of Land Management (“BLM”); however, Respondent did not report the spill to the National Response Center until advised to do so by the BLM.

37. Oil discharged from the Facility flowed into Sawmill Draw, through the Sawmill Reservoir into Homestead Draw, and onto their adjoining shorelines. Approximately 82 barrels of oil were discharged from the Facility.

38. The oil that flowed into Sawmill Draw and Homestead Draw caused a film or iridescent appearance upon or discoloration of the surface of those waterbodies and/or their adjoining shorelines and/or caused an aggregate of oil or oil and other matter, or emulsion, to be

deposited beneath the surface of those waterbodies and/or upon their adjoining shorelines from on or about September 9, 2013, until on or about September 30, 2013.

39. Five oiled birds were found dead in the vicinity of the Facility, and a number of live muskrats, turtles, and northern leopard frogs were found covered in oil in the same area.

40. On September 18, 2013, the EPA issued a Unilateral Administrative Order (“UAO”) (Docket No. CWA-08-2013-0029) to Respondent, requiring the company to perform a removal action in connection with the discharge. On December 22, 2014, the EPA sent Respondent a notice of completion of the removal action at the Site under the UAO.

VII. VIOLATION OF SECTION 311(B)(3)

41. Paragraphs 1 through 40 of this Agreement are re-alleged and incorporated herein by reference.

42. The discharge of crude oil referenced in Paragraphs 35-38 was at all relevant times a “discharge” within the meaning of section 311(a)(2) of the Act, 33 U.S.C. § 1321(a)(2).

43. The discharged crude oil referenced in Paragraphs 35-38 was at all relevant times “oil” within the meaning of section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1).

44. The oil that was discharged into Sawmill Draw and Homestead Draw and upon their adjoining shorelines as a result of the crude oil leak referenced in Paragraphs 35-38 was discharged in “quantities as may be harmful” within the meaning of section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), and 40 C.F.R. § 110.3.

45. Pursuant to section 311(b)(6)(A) of the Act, “[a]ny owner, operator, or person in charge of any . . . onshore facility . . . from which oil . . . is discharged in violation of [section 311(b)(3)] may be assessed a class I or class II civil penalty by the . . . Administrator.” 33 U.S.C. § 1321(b)(6)(A). Pursuant to section 311(b)(6)(B)(ii) of the Act, and EPA’s Civil Monetary Penalty Inflation Adjustment Rule, the amount of a class II civil penalty may not exceed \$16,000

per day for each day during which the violation continues, except that the maximum amount of any class II civil penalty shall not exceed \$177,500, for violations occurring from January 12, 2009 through December 6, 2013. 33 U.S.C. § 1321(b)(6)(B)(ii); 40 C.F.R. § 19.4; 78 Fed. Reg. 66643.

VIII. PAYMENT OF CIVIL PENALTY

46. Respondent consents and agrees to pay a civil penalty in the amount of seventy-five thousand dollars (\$75,000) in the manner described in this Section.

47. Payment shall be made in a single payment of \$75,000 and is due within 30 calendar days from the date written on the Final Order, issued by the Regional Judicial Officer, which approves this Agreement and incorporates it by reference, and orders Respondent to comply with its terms. If the due date falls on a weekend or legal federal holiday, the due date is the next business day. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.

48. The payment shall be made by any of the methods set forth in Appendix 1 to this Agreement.

49. At the same time that payment is made, notice that payment has been made shall be provided to:

Donna K. Inman
Environmental Scientist
Technical Enforcement Program (8ENF-UFO)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

and

Missy Haniewicz
Regional Hearing Clerk (8TMS-IO)
U.S. EPA Region 8
1595 Wynkoop Street

If payment is made by cashiers or certified check, the notice shall include a copy of the check. If payment is made in any other manner, the notice shall include documentation demonstrating that the payment was made.

50. If payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received (i.e., on the 1st late day, 30 days of interest accrues).

51. In addition, a handling charge of fifteen dollars (\$15) shall be assessed on the 31st day from the date of the Final Order, and each subsequent 30-day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (i.e., the 121st day from the date the Final Order is signed). Payments are first applied to handling charges, 6% penalty interest, late interest, and any balance is then applied to the outstanding principal amount. Further, Respondent shall be subject to the fees, costs, and nonpayment penalty set forth in section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H).

52. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

53. The civil penalty set forth in paragraph 46 of this Agreement was determined by the EPA after taking into account all factors identified in section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8), i.e., the seriousness of the violation or violations, the economic benefit to the violator, if any, resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic

impact of the penalty on the violator, and any other matters as justice may require.

IX. PUBLIC NOTICE

54. As required by section 311(6)(C)(i) of the Act, 33 U.S.C. § 1321(6)(C)(i), and 40 C.F.R. § 22.45, the EPA will provide public notice and a reasonable opportunity to comment on the penalty that Respondent has agreed to pay in this matter. The EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that the Agreement is inappropriate, improper, or inadequate.

55. If comments received during the public comment period do not require modification of, or withdrawal by the EPA from, this Agreement, the parties agree to submit this Agreement to the Regional Judicial Officer for Region 8 following the close of the public comment period specified in 40 C.F.R. § 22.45, with a request that it be incorporated into a final order.

X. OTHER TERMS AND CONDITIONS

56. Failure by Respondent to comply with any of the terms of this Agreement shall constitute a breach of the agreement and may result in referral of the matter to the United States Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

57. Nothing in this Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Agreement.

58. This Agreement, upon incorporation into a final order issued by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete, full and final resolution of Respondent's liability for Federal civil penalties under section 311(b)(6) of the Act, 33 U.S.C.

§ 1321(b)(6), for the alleged violations contained in this Agreement.

59. This Agreement shall not in any case affect the EPA’s right to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law whether or not alleged in this Agreement. This Agreement shall not affect Respondent’s right to assert any defense in any action by the EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

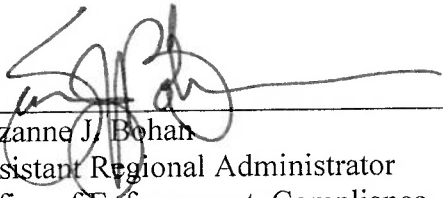
60. Nothing in this Agreement shall relieve Respondent of the duty to comply with the Act and any regulation, order, or permit issued pursuant to the Act.

61. Each party shall bear its own costs and attorneys’ fees in connection with all issues associated with this Agreement.

In the Matter of Baytex Energy USA, LLC.
Docket No. CWA-08-2016-0013

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8**
Complainant

8/18/2016
Date


Suzanne J. Bohan
Assistant Regional Administrator
Office of Enforcement, Compliance,
and Environmental Justice

In the Matter of Baytex Energy USA LLC.
Docket No. CWA-08-2016-0013

BAYTEX ENERGY USA LLC
Respondent

August 16, 2016
Date



James Bowzer, Chief Executive Officer
Printed Name & Title

Suite 2800, 520 3rd Avenue SW
Address

Calgary, Alberta
Address (cont'd)

Combined Complaint and Consent Agreement - Appendix 1

The following are acceptable payment methods for the civil penalty required to be paid pursuant to the Agreement.

1. If payment is being made by cashier's or certified check, submit the check, including the name and docket number of this case, payable to "Oil Spill Liability Trust Fund – 311," to:

If remitted by regular U.S. Mail:

U.S. Environmental Protection Agency
P.O. Box 979077
St. Louis, MO 63197-9000

If remitted via signed receipt confirmation (e.g., FedEx, UPS, USPS Certified, etc.):

US Bank
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Checks from foreign banks with no U.S. branches must be sent to:

Cincinnati Finance
U.S. EPA, MS-NWD
26 W. ML King Drive
Cincinnati, OH 45268-0001

Contact: Craig Steffen
513-487-2091
Steffen.craig@epa.gov

2. Wire Transfers:

Wire transfers must indicate the name and docket number of this case and be sent directly to the Federal Reserve Bank in New York City using the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 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.

3. If remitted through the Automated Clearing House (ACH) for receiving U.S. currency:

ACH payments must indicate the name and docket number of this case and be made through the U.S. Treasury using the following information:

U.S. Treasury REX / Cashlink ACH Receiver

ABA: 051036706

Account Number: 310006, Environmental Protection Agency

CTX Format Transaction Code 22 -- checking

Physical location of U.S. Treasury facility:

5700 Rivertech Court

Riverdale, Maryland 20737

Contacts: REX (Remittance Express): 866-234-5681

4. On-line Payment:

Payers can use their credit or debit cards (Visa, MasterCard, American Express & Discover) as well as checking account information to make payments.

If making payment on-line: No user name, password, or account number is necessary for this option. Online payment can be accessed via WWW.PAY.GOV, entering SFO 1.1 in the form search box on the top left side of the screen, opening the form, and following the directions on the screen. Select your type of payment from the "Type of Payment" drop down menu. Based on your selection, the corresponding line will open and no longer be shaded gray. Enter the docket number and any other corresponding information into the field.