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1 UNITED STATES  
2 ENVIRONMENTAL PROTECTION AGENCY  
3 REGION IX  
4 75 HAWTHORNE STREET  
5 SAN FRANCISCO, CA 94105

2008 AUG 21 AM 10:45  
REGIONAL HEARING CLERK

5 In the Matter of: ) Docket No. TSCA-09-2008-0005  
6 Exxon Mobil Corporation, )  
7 ) CONSENT AGREEMENT  
8 Respondent. ) AND FINAL ORDER  
9 ) PURSUANT TO 40 C.F.R.  
10 ) §§ 22.13 and 22.18

11 I. CONSENT AGREEMENT

12 The United States Environmental Protection Agency, Region IX  
13 ("EPA"), and Exxon Mobil Corporation ("Respondent") agree to  
14 settle this matter and consent to the entry of this Consent  
15 Agreement and Final Order ("CAFO"), which simultaneously  
16 commences and concludes this matter in accordance with 40 C.F.R.  
17 §§ 22.13(b) and 22.18(b).

18 A. AUTHORITY AND PARTIES

19 1. This is a civil administrative penalty action  
20 instituted against Respondent pursuant to Section 16(a) of the  
21 Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a), for  
22 violation of Section 15 of TSCA, 15 U.S.C. § 2614, by failing to  
23 comply with implementing regulations governing polychlorinated  
24 biphenyls ("PCBs) at 40 C.F.R. Part 761.

25 2. Complainant is the Director of the Waste Management  
26 Division, EPA Region IX, who has been duly delegated the  
27 authority to bring this action and to sign a consent agreement  
28 settling this action.

3. Respondent owns, operates, and controls three (3)

1 producing oil and gas platforms located off the coast of Santa  
2 Barbara County, California.

3 B. APPLICABLE STATUTORY AND REGULATORY SECTIONS

4 4. Pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e),  
5 EPA promulgated regulations governing PCBs at 40 C.F.R. Part 761.

6 5. "PCB" and "PCBs" means any chemical substance that is  
7 limited to the biphenyl molecule that has been chlorinated to  
8 varying degrees or any combination of substances which contains  
9 such substances. 40 C.F.R. § 761.3.

10 6. "PCB Article" means any manufactured article, other  
11 than a PCB container, that contains PCBs and whose surface(s) has  
12 been in direct contact with PCBs. "PCB Article" includes  
13 capacitors, transformers, electric motors, pumps, pipes and any  
14 other manufactured item (1) which is formed to a specific shape  
15 or design during manufacture, (2) which has end use function(s)  
16 dependent in whole or in part upon its shape or design during end  
17 use, and (3) which has either no change of chemical composition  
18 during its end use or only those changes of composition which  
19 have no commercial purpose separate from that of the PCB Article.  
20 40 C.F.R. § 761.3.

21 7. "PCB Item" means any PCB Article, PCB Article  
22 Container, PCB Container, PCB Equipment, or anything that  
23 deliberately or unintentionally contains or has as a part of it  
24 any PCB or PCBs. 40 C.F.R. § 761.3.

25 8. "PCB-contaminated electrical equipment" means any  
26 electrical equipment including, but not limited to,

1 transformers..., that contains PCBs at concentrations  $\geq$  50 ppm  
2 and < 500 ppm in the contaminating fluid. 40 C.F.R. § 761.3.

3 9. "Person" means any individual, corporation,  
4 partnership, or association; any State, or political subdivision  
5 thereof; any interstate body; and any department, agency, or  
6 instrumentality of the Federal Government. 40 C.F.R. § 761.3.

7 10. "Leak or leaking" means any instance in which a PCB  
8 Article, PCB Container, or PCB Equipment has any PCBs on any  
9 portion of its external surface. 40 C.F.R. § 761.3.

10 11. "Disposal" means intentionally or accidentally to  
11 discard, throw away, or otherwise complete or terminate the  
12 useful life of PCBs and PCB Items. Disposal includes spills,  
13 leaks, and other uncontrolled discharges of PCBs as well as  
14 actions related to containing, transporting, destroying,  
15 degrading, decontaminating, or confining PCBs and PCB Items. 40  
16 C.F.R. § 761.3.

17 12. Any person storing or disposing of PCB waste must do  
18 so in accordance with subpart D of 40 C.F.R. Part 761. 40 C.F.R.  
19 § 761.50(a).

20 13. Spills and other uncontrolled discharges of PCBs at  
21 concentrations of  $\geq$  50 ppm constitute the disposal of PCBs. 40  
22 C.F.R. § 761.50(a)(4).

23 14. Persons participating in decontamination activities  
24 shall wear or use protective clothing or equipment to protect  
25 against dermal contact or inhalation of PCBs or materials  
26 containing PCBs. 40 C.F.R. § 761.79(e)(2).

1 15. It shall be unlawful for any person to fail or refuse  
2 to comply with...(C)any rule promulgated or order issued under  
3 section 2604 or 2605 of [TSCA]. TSCA Section 15(1)(C), 15  
4 U.S.C. § 2614(1)(C).

5 16. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), authorizes  
6 the EPA Administrator to assess a civil penalty not to exceed  
7 \$25,000 per day for each violation of Section 15 of TSCA, 15  
8 U.S.C. § 2614. This statutory maximum civil penalty subsequently  
9 has been raised to \$27,500 per day for each violation that  
10 occurred on or before March 15, 2004 and \$32,500 per day for each  
11 violation that occurred after March 15, 2004 pursuant to the  
12 Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L.  
13 101-410, as amended, and its implementing regulation, the Civil  
14 Monetary Penalty Inflation Adjustment Rule codified at 40 C.F.R.  
15 Part 19.

16 C. ALLEGATIONS

17 17. Respondent is a "person," as that term is defined at  
18 40 C.F.R. § 761.3.

19 18. At all times relevant to this CAFO, Respondent  
20 produced oil and gas from three (3) platforms, Platforms Hondo,  
21 Harmony and Heritage, at its Santa Ynez Unit located off the  
22 coast of Santa Barbara County, California in the Santa Barbara  
23 Channel.

24 19. At all times relevant to this CAFO, Respondent owned  
25 and/or operated two (2) transformers located on Platform Hondo  
26 (hereinafter "Transformer A" and "Transformer B") that contained

1 PCBs at concentrations  $\geq$  50 ppm but  $<$  500 ppm.

2 20. At all times relevant to this CAFO, Transformer A and  
3 Transformer B are "PCB-contaminated electrical equipment," as  
4 that term is defined at 40 C.F.R.  $\S$  761.3.

5 21. At all times relevant to this CAFO, Transformer A and  
6 Transformer B are "PCB Articles" and "PCB Items," as those terms  
7 are defined at 40 C.F.R.  $\S$  761.3.

8 22. From on or about August 13, 2002 to on or about August  
9 2, 2004, Transformer B "leaked," as that term is defined at 40  
10 C.F.R.  $\S$  761.3, approximately 373 gallons of PCB-contaminated  
11 fluid.

12 23. The leaking of PCB-contaminated fluid from Transformer  
13 B constitutes "disposal" of PCBs, as that term is defined at 40  
14 C.F.R.  $\S$  761.3 and 40 C.F.R.  $\S$  761.50(a)(4).

15 24. Respondent's disposal of PCBs from Transformer B from  
16 on or about August 13, 2002 to on or about August 2, 2004 was not  
17 in accordance with subpart D of 40 C.F.R. Part 761, as required  
18 by 40 C.F.R.  $\S$  761.50(a).

19 25. Respondent's failure to dispose of PCB waste from  
20 Transformer B in accordance with 40 C.F.R. Part 761, subpart D  
21 constitutes a violation of 40 C.F.R.  $\S$  761.50(a) and Section  
22 15(1)(C) of TSCA, 15 U.S.C.  $\S$  2614(1)(C), lasting 722 days, each  
23 day of which can be assessed a penalty of up to \$27,500 on or  
24 before March 15, 2004 and up to \$32,500 after March 15, 2004.

25 26. From on or about February 25, 2005 to on or about  
26 February 27, 2005, Transformer A "leaked," as that term is

1 defined at 40 C.F.R. § 761.3, approximately 16 gallons of PCB-  
2 contaminated fluid.

3 27. The leaking of PCB-contaminated fluid from Transformer  
4 A constitutes "disposal" of PCBs, as that term is defined at 40  
5 C.F.R. § 761.3 and 40 C.F.R. § 761.50(a) (4).

6 28. Respondent's disposal of PCBs from Transformer A from  
7 on or about February 25, 2005 to on or about February 27, 2005  
8 was not in accordance with subpart D of 40 C.F.R. Part 761, as  
9 required by 40 C.F.R. § 761.50(a).

10 29. Respondent's failure to dispose of PCB waste from  
11 Transformer A in accordance with 40 C.F.R. Part 761, subpart D  
12 constitutes a violation of 40 C.F.R. § 761.50(a) and Section  
13 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C), lasting 3 days, each  
14 day of which can be assessed a penalty of up to \$32,500.

15 30. On at least one occasion during the period from on or  
16 about August 13, 2002 to on or about August 2, 2004, Respondent  
17 failed to have its employees participating in decontamination  
18 activities involving Transformer B wear or use protective  
19 clothing or equipment to protect against dermal contact or  
20 inhalation of PCBs or materials containing PCBs, as required by  
21 40 C.F.R. § 761.79(e) (2).

22 31. Respondent's failure to have its employees  
23 participating in decontamination activities involving Transformer  
24 B wear or use protective clothing or equipment to protect against  
25 dermal contact or inhalation of PCBs or materials containing PCBs  
26 constitutes a violation of 40 C.F.R. § 761.79(e) (2) and Section

1 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C), for which a penalty of  
2 up to \$27,500 can be assessed.

3 D. RESPONDENT'S ADMISSIONS

4 32. In accordance with 40 C.F.R. § 22.18(b)(2) and for the  
5 purpose of this proceeding, Respondent (i) admits that EPA has  
6 jurisdiction over the subject matter of this CAFO and over  
7 Respondent; (ii) neither admits nor denies the specific factual  
8 allegations contained in Section I.C of this CAFO; (iii) consents  
9 to any and all conditions specified in this CAFO and to the  
10 assessment of the civil administrative penalty under Section I.E  
11 of this CAFO; (iv) waives any right to contest the allegations  
12 contained in Section I.C of this CAFO; and (v) waives the right  
13 to appeal the proposed Final Order contained in this CAFO.

14 E. CIVIL ADMINISTRATIVE PENALTY

15 33. Respondent agrees to the assessment of a penalty in  
16 the amount of TWO MILLION, SIX HUNDRED AND FORTY-TWO THOUSAND,  
17 ONE HUNDRED AND NINETY-EIGHT DOLLARS (\$2,642,198) as final  
18 settlement of the civil claims against Respondent arising under  
19 TSCA as alleged in Section I.C of this CAFO.

20 34. Respondent shall pay the assessed penalty above no  
21 later than thirty (30) days from the effective date of this CAFO.  
22 Payment shall be made in accordance with one of the payment  
23 methods provided in the EPA payment instructions attached to this  
24 CAFO as Attachment 1. Payment by check shall be accompanied by a  
25 transmittal letter identifying the case name, the case docket  
26 number, and this CAFO. Concurrent with delivery of the payment of

1 the penalty, Respondent shall send a copy of the payment  
2 documents to:

3 Regional Hearing Clerk  
4 Office of Regional Counsel (ORC-1)  
5 U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

6 Christopher Rollins  
7 Enforcement Office (WST-3)  
8 Waste Management Division  
9 U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

10 35. Payment of the above civil administrative penalty  
11 shall not be used by Respondent or any other person as a tax  
12 deduction from Respondent's federal, state, or local taxes.

13 36. If Respondent fails to pay the assessed civil  
14 administrative penalty specified in Paragraph 33 by the deadline  
15 specified in Paragraph 34, Respondent shall pay to EPA a  
16 stipulated penalty of \$5,000 per day for each day the assessed  
17 penalty is late, in addition to the assessed penalty. Stipulated  
18 penalties shall be paid upon written request by EPA. In  
19 addition, failure to pay the civil administrative penalty by the  
20 deadline specified in Paragraph 34 may lead to any or all of the  
21 following actions:

22 a. The debt being referred to a credit reporting agency, a  
23 collection agency, or to the Department of Justice for  
24 filing of a collection action in the appropriate United  
25 States District Court. 40 C.F.R. §§ 13.13, 13.14, and  
26 13.33. In any such collection action, the validity, amount,

1 and appropriateness of the assessed penalty and of this CAFO  
2 shall not be subject to review.

3 b. The debt being collected by administrative offset  
4 (i.e., the withholding of money payable by the United States  
5 to, or held by the United States for, a person to satisfy  
6 the debt the person owes the Government), which includes,  
7 but is not limited to, referral to the Internal Revenue  
8 Service for offset against income tax refunds. 40 C.F.R.  
9 Part 13, Subparts C and H.

10 c. EPA may (i) suspend or revoke Respondent's licenses or  
11 other privileges; or (ii) suspend or disqualify Respondent  
12 from doing business with EPA or engaging in programs EPA  
13 sponsors or funds. 40 C.F.R. § 13.17.

14 d. In accordance with the Debt Collection Act of 1982 and  
15 40 C.F.R. Part 13 interest, penalties charges, and  
16 administrative costs will be assessed against the  
17 outstanding amount that Respondent owes to EPA for  
18 Respondent's failure to pay the civil administrative penalty  
19 by the deadline specified in Paragraph 34. Interest will be  
20 assessed at an annual rate that is equal to the rate of  
21 current value of funds to the United States Treasury (i.e.,  
22 the Treasury tax and loan account rate) as prescribed and  
23 published by the Secretary of the Treasury in the Federal  
24 Register and the Treasury Fiscal Requirements Manual  
25 Bulletins. 40 C.F.R. § 13.11(a)(1). Penalty charges will  
26 be assessed monthly at a rate of 6% per annum. 40 C.F.R.

1 § 13.11(c). Administrative costs for handling and  
2 collecting Respondent's overdue debt will be based on either  
3 actual or average cost incurred, and will include both  
4 direct and indirect costs. 40 C.F.R. § 13.11(b). In  
5 addition, if this matter is referred to another department  
6 or agency (e.g., the Department of Justice, the Internal  
7 Revenue Service), that department or agency may assess its  
8 own administrative costs, in addition to EPA's  
9 administrative costs, for handling and collecting  
10 Respondent's overdue debt.

11 F. RETENTION OF RIGHTS

12 37. In accordance with 40 C.F.R. § 22.18(c), this CAFO  
13 only resolves Respondent's liability for federal civil penalties  
14 for the violations and facts specifically alleged in Section I.C  
15 of this CAFO. Nothing in this CAFO is intended to or shall be  
16 construed to resolve (i) any civil liability for violations of  
17 any provision of any federal, state, or local law, statute,  
18 regulation, rule, ordinance, or permit not specifically alleged  
19 in Section I.C of this CAFO; or (ii) any criminal liability. EPA  
20 specifically reserves any and all authorities, rights, and  
21 remedies available to it (including, but not limited to,  
22 injunctive or other equitable relief or criminal sanctions) to  
23 address any violation of this CAFO or any violation not  
24 specifically alleged in Section I.C of this CAFO.

25 38. This CAFO does not exempt, relieve, modify, or affect  
26 in any way Respondent's duty to comply with all applicable

1 federal, state, and local laws, regulations, rules, ordinances,  
2 and permits.

3 G. ATTORNEYS' FEES AND COSTS

4 39. Each party shall bear its own attorneys' fees, costs,  
5 and disbursements incurred in this proceeding.

6 H. EFFECTIVE DATE

7 40. In accordance with 40 C.F.R. §§ 22.18(b)(3) and  
8 22.31(b), this CAFO shall be effective on the date that the Final  
9 Order contained in this CAFO, having been approved and issued by  
10 either the Regional Judicial Officer or Regional Administrator,  
11 is filed.

12 I. BINDING EFFECT

13 41. The undersigned representative of Complainant and the  
14 undersigned representative of Respondent each certifies that he  
15 or she is fully authorized to enter into the terms and conditions  
16 of this CAFO and to bind the party he or she represents to this  
17 CAFO.

18 42. The provisions of this CAFO shall apply to and be  
19 binding upon Respondent and its officers, directors, employees,  
20 agents, trustees, servants, authorized representatives,  
21 successors, and assigns.

22 FOR RESPONDENT, EXXON MOBIL CORPORATION

23 8/8/08  
24 DATE

  
\_\_\_\_\_  
Randy J. Cleveland

25 U.S. Production Manager  
26 ExxonMobil Production Company,  
a division of Exxon Mobil Corporation

27 In the Matter of Exxon Mobil Corporation  
28 Docket No. TSCA-09-2008-0005

1 FOR COMPLAINANT, EPA REGION IX:  
2

3 8/20/08  
4 DATE

Jeff Scott  
5 Jeff Scott  
6 Director  
7 Waste Management Division  
8 U.S. ENVIRONMENTAL PROTECTION AGENCY,  
9 REGION IX  
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27 In the Matter of Exxon Mobil Corporation  
28 Docket No. TSCA-09-2008-0005

1  
2 II. FINAL ORDER

3 Complainant and Respondent, having entered into the  
4 foregoing Consent Agreement,

5 IT IS HEREBY ORDERED that this CAFO (Docket No. TSCA-09-  
6 2008-0005) be entered and that Respondent shall pay a civil  
7 administrative penalty in the amount of TWO MILLION, SIX HUNDRED  
8 AND FORTY-TWO THOUSAND, ONE HUNDRED AND NINETY-EIGHT  
9 DOLLARS (\$2,642,198) in accordance with the terms and conditions  
10 set forth in the Consent Agreement and Attachment 1. This  
11 Consent Agreement and Final Order shall become effective upon  
12 filing.

13 08/21/08  
14 DATE

  
15 STEVEN JAWGIEL  
16 Regional Judicial Officer  
17 U.S. Environmental Protection  
18 Agency, Region IX

1  
2 Attachment 1

3 **COLLECTION INFORMATION**

4 **CHECK PAYMENTS:**

5 **If payment is made by check, the check should be made payable to the "Treasurer, United**  
6 **States of America"**

7 **US Environmental Protection Agency**  
8 **Fines and Penalties**  
9 **Cincinnati Finance Center**  
10 **PO Box 979077**  
11 **St. Louis, MO 63197-9000**

12 **WIRE TRANSFERS:**

13 **Wire transfers should be directed to the Federal Reserve Bank of New York**

14 **Federal Reserve Bank of New York**

15 **ABA = 021030004**

16 **Account = 68010727**

17 **SWIFT address = FRNYUS33**

18 **33 Liberty Street**

19 **New York NY 10045**

20 **Field Tag 4200 of the Fedwire message should read " D 68010727 Environmental**  
21 **Protection Agency "**

22 **OVERNIGHT MAIL:**

23 **U.S. Bank**

24 **1005 Convention Plaza**

25 **Mail Station SL-MO-C2GL**

26 **St. Louis, MO 63101**

27 **Contact: Natalie Pearson, 314-418-4087**

28 **ACH (also known as REX or remittance express)**

**Automated Clearinghouse (ACH) for receiving US currency**

**PNC Bank**

**808 17<sup>th</sup> Street, NW**

**Washington, DC 20074**

1 **Contact – Jesse White 301-887-6548**  
2 **ABA = 051036706**  
3 **Transaction Code 22 - checking**  
4 **Environmental Protection Agency**  
5 **Account 310006**  
6 **CTX Format**

7 **ON LINE PAYMENT:**

8 **There is now an On Line Payment Option, available through the Dept. of Treasury.**  
9 **This payment option can be accessed from the information below:**

10 **WWW.PAY.GOV**  
11 **Enter sfo 1.1 in the search field**

12 **Open form and complete required fields.**

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**CERTIFICATE OF SERVICE**

I hereby certify that on the date below, the original copy of the foregoing Complaint, Consent Agreement and Final Order (TSCA-09-2008-0005), was filed with the Regional Hearing Clerk, Region IX, and that copies were sent by certified mail, return receipt requested, to:

Mr. Christopher W. Armstrong, Esquire  
Exxon Mobil Law Department  
P.O. Box 2180  
800 Bell Street, (CORP-EMB-1805D)  
Houston, TX 77252

Certified Mail No. 7000 0520 0025 3713 7929

8/21/08  
Date

Danielle E. Carr  
Danielle Carr  
Regional Hearing Clerk  
Office of Regional Counsel, Region IX