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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

FILED  
EPA REGION VIII  
AUG 29 2011  
MEMPHIS, TN

IN THE MATTER OF )  
 )  
Devon Energy Production Company )  
1200 Smith Street )  
Houston, TX 77002 )  
Respondent. )

**COMPLAINT AND CONSENT AGREEMENT**

**DOCKET NO. : CWA-08-2011-0023**

Complainant, United States Environmental Protection Agency, Region 8 (EPA or Complainant), and Devon Energy Production Company (Respondent) by their undersigned representatives, hereby consent and agree as follows:

**A. PRELIMINARY MATTERS**

1. This Complaint and Settlement Agreement (CASA) is issued to Respondent for violating section 311(b)(3), 33 U.S.C. §1321(b)(3) of the Clean Water Act (CWA) as amended by the Oil Pollution Act of 1990, and the implementing regulations at 40 C.F.R. part 112.
2. The Administrator has properly delegated this authority to the undersigned EPA officials.
3. Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii) authorizes EPA to bring an action under, for civil administrative penalties against any person that has violated, or is in violation of, a requirement or prohibition of the CWA or its implementing regulations.
4. This proceeding is governed by 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) set forth at 40 C.F.R. part 22.
5. This CASA is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and executed pursuant to 40

C.F.R. § 22.18(b)(2) and (3) of the Consolidated Rules.

6. Respondent admits the jurisdictional allegations in this CASA and neither admits nor denies the specific factual allegations contained herein.

7. Respondent waives its rights to a hearing before any tribunal and to contest any issue of law or fact set forth in this CASA.

8. This CASA, upon incorporation into a final order, applies to and is binding upon Complainant and Respondent, and Respondent's officers, directors, employees, agents, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this agreement.

9. This CASA contains all terms of the settlement agreed to by the parties.

**B. ALLEGED VIOLATION**

10. Respondent is a person within the meaning of Section 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7).

11. Respondent is the "owner and/or operator" of the House Creek Sussex Unit (HCSU) North Facility located in Campbell County, Wyoming, within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), which is classified as an "onshore facility" in accordance with Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10).

12. Section 311(b)(3) of the Act prohibits the discharge of oil into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.

13. For purposes of Section 311(b)(3) and (b)(4) of the Act, 33 U.S.C. §1321(b)(3) and (b)(4), discharges of oil into or upon the navigable waters of the United States in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States are defined in 40 C.F.R. §110.3 to include discharges of oil that (1) violate applicable water quality standards and/or (2) cause a film or a sheen upon or discoloration of the surface of the water or adjoining shorelines and/or cause a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.

14. On November 16, 2008, Respondent discharged approximately 5,166 gallons of crude oil and produced water, defined as "oil" in Section 311(a)(1) of the Act, 33 U.S.C. §1321(a)(1), and 40 C.F.R. §112.2, from a 4-inch, steel, trunk line pipe that traveled approximately 36 feet and into the Belle Fourche River in Campbell County, Wyoming.

15. Complainant issued Respondent a Request for Information dated March 30, 2010.

16. In its Response to Complainant's Request for Information, dated April 29, 2010, Respondent provided the following information regarding the discharge location and flow:

a. the stream was roughly three feet deep, and typically carried between 30,000 and 36,000 bbls./day of produced water;

b. the discharge caused a film/sheen/dicoloration on the Belle Fourche River; and

c. the discharge caused sludge and emulsion to be deposited along the river channel.

17. The Belle Fourche River is a water body subject to the jurisdiction of Section 311 of the Act as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. §110.1.

18. Respondent's November 16th, 2008 discharge of oil from its facility caused (1) a violation of applicable State water quality standards and (2) a sheen upon or discoloration of the

surface of the Belle Fourche River and a sludge or emulsion to be deposited beneath the surface of the Belle Fourche River, and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R. §110.3, in violation of Section 311(b)(3) of the Act.

**C. CIVIL PENALTY**

19. As alleged in the preceding Paragraph, and pursuant to Section 311(b)(6)(B)(ii) of the Act and 40 C.F.R. § 19.4, the Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500.

20. Respondent herein certifies to EPA that Respondent is in compliance with each of the relevant provisions of the CWA that formed the basis of the Complaint.

21. Based on the foregoing alleged violations and pursuant to the authority of section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. §1321(b)(6)(B)(i), and 40 C.F.R. § 19.4, Complainant proposes the assessment of administrative penalties against the Respondent in the amount of fifty four thousand three hundred dollars (\$54,300).

22. Complainant proposes this penalty amount after considering the applicable statutory penalty factors in section 311(b)(8) of the Act, 33 U.S.C. §1321(b)(8): the seriousness of the violation; 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.

23. Respondent, by signing this CASA, consents to the issuance of a final order and consents for the purposes of settlement to the payment of the civil penalty in the amount of fifty four thousand three hundred dollars (\$54,300).

24. **Payment is due within 30 calendar days from the date written on the Final Order**, issued by the Regional Judicial Officer. If the due date falls on a weekend or legal federal holiday, then the due date becomes the next business day. The date the payment is made is considered to be the date processed by the Bank described below. Payments received by 11:00 AM, EST are processed on the same day; those received after 11:00 AM are processed on the next business day.

25. The payment in paragraph 21 shall be made by remitting a cashier's or certified check, including the name and docket number of this case, referencing "Oil Spill Liability Trust Fund-311," for the amount, **payable to the "Environmental Protection Agency,"** to:

**CHECK PAYMENTS:**

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

**OVERNIGHT MAIL:**

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

Contact: Natalie Pearson  
Tel: 314-418-4087

**WIRE TRANSFERS:** Wire transfers should be directed to the Federal Reserve Bank of New York.

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York NY 10045

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

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

Automated Clearinghouse (ACH) for receiving US currency

PNC Bank

808 17th Street, NW

Washington, DC 20074

Contact – Jesse White 301-887-6548

ABA = 051036706

Transaction Code 22 - checking

Environmental Protection Agency

Account 310006

CTX Format

**ON LINE PAYMENT:**

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

WWW.PAY.GOV

Enter sfo 1.1 in the search field

Open form and complete required fields.

A copy of the check, or wire transfer, shall be sent simultaneously to:

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

and Tina Artemis  
Regional Hearing Clerk  
Office of Regional Counsel  
1595 Wynkoop St.  
Denver, CO 80202-1129

26. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 31<sup>st</sup> day from the date of the Final Order, and each subsequent thirty 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 121<sup>st</sup> day from the date the final consent order is signed). Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.

27. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.
28. Payment of the penalty in this manner does not relieve Respondent of its obligations to comply with the requirements of the statute and regulations. Payment of the penalty in this manner shall constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing on this matter.

**D. PUBLIC NOTICE**

29. Pursuant to Section 311(b)(6)(C) of the Act, 33 U.S.C. §1321(b)(6)(C), the Complainant is providing public notice of and reasonable opportunity to comment on the proposed issuance of a final order assessing administrative penalties. If a hearing is held on this matter, members of the public who submitted timely comments on this proceeding have the right under Section 311(b)(6)(C) of the Act to be heard and present evidence at the hearing.

**E. TERMS AND CONDITIONS**

30. Failure by Respondent to comply with any of the terms of this CASA shall constitute a breach of the CASA and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.
31. Nothing in this CASA 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 CASA.
32. Each undersigned representative of the parties to this CASA certifies that he or she is fully authorized by the party represented to bind the parties to the terms and conditions of this

CASA and to execute and legally bind that party to this CASA.

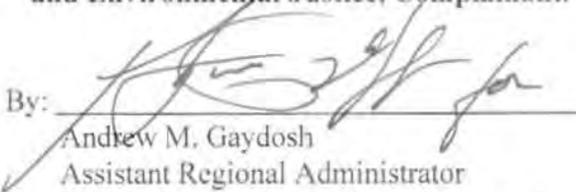
33. The parties agree to submit this CASA to the Regional Judicial Officer, with a request that it be incorporated into a final order.

34. This CASA, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete, full and final settlement of the violations alleged in this CASA.

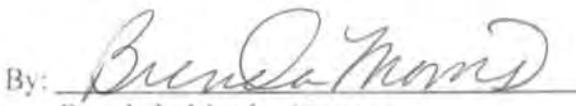
35. Each party shall bear its own costs and attorneys fees in connection with all issues associated with this CASA.

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8, Office of Enforcement, Compliance  
and Environmental Justice, Complainant.**

Date: 8/26/2011

By:   
Andrew M. Gaydosh  
Assistant Regional Administrator  
Office of Enforcement, Compliance and  
Environmental Justice

Date: 8/29/11

By:   
Brenda L. Morris, Attorney  
Legal Enforcement Program

**DEVON ENERGY PRODUCTION COMPANY,  
Respondent.**

Date: 8/24/11

By:   
D. D. DeCaro  
Print Name