

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

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REGIONAL HEARING OFFICE
EPA REGION VI

In the Matter of	§ Docket No. CWA-06-2006-2126
	§
Nexen Petroleum U.S.A. Inc., a Delaware corporation,	§ Proceeding to Assess a § Civil Penalty Under § 309(g) § of the Clean Water Act
Respondent	§
	§ ADMINISTRATIVE COMPLAINT
NPDES Permit Number GMG290056	§

I. Statutory Authority

This Complaint is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by Section 309(g) of the Clean Water Act (herein "the Act"), 33 U.S.C. § 1319(g). The Administrator of EPA has delegated the authority to issue this Complaint to the Regional Administrator of EPA Region 6, who has further delegated this authority to the Director of the Compliance Assurance and Enforcement Division of EPA Region 6 (herein "Complainant"). This Class II Administrative Complaint is issued in accordance with "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.

Based on the following Findings, Complainant finds that Respondent has violated the Act and the regulations promulgated under the Act and should be ordered to pay a civil penalty.

II. Findings of Fact and Conclusions of Law

1. Nexen Petroleum U.S.A. Inc. (herein "Respondent") is a corporation which was incorporated under the laws of the State of Delaware, and as such, Respondent is a "person," as that term is defined at Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

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Based on the following Findings, Complainant finds that Respondent has violated the Act and the regulations promulgated under the Act and should be ordered to pay a civil penalty.

II. Findings of Fact and Conclusions of Law

1. Nexen Petroleum U.S.A. Inc. (herein "Respondent") is a corporation which was incorporated under the laws of the State of Delaware, and as such, Respondent is a "person," as that term is defined at Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

2. At all times relevant, Respondent owned or operated offshore oil and gas production and/or exploration facilities, located in the Western Portion of the Gulf of Mexico in the Outer Continental Shelf (herein "the facilities"), and was therefore an "owner or operator" within the meaning of 40 C.F.R. § 122.2.

3. At all relevant times, the facility was a "point source" of a "discharge" of "pollutants" with its wastewater including discharges of Produced Sand (Part I.B.5.) to the receiving waters of the Gulf of Mexico, which are "waters of the United States" within the meaning of Section 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.

4. Because Respondent owned or operated a facility that is a point source of discharges of pollutants to waters of the United States, Respondent and the facility were subject to the Act and the National Pollutant Discharge Elimination System (NPDES) program.

5. Under Section 301 of the Act, 33 U.S.C. § 1311, it is unlawful for any person to discharge any pollutant from a point source to waters of the United States, except with the authorization of, and in compliance with, an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

6. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. Any such discharge is subject to the specific terms and conditions prescribed in the applicable permit.

7. Pursuant to Section 402(a) of the Act, EPA issued the “Final NPDES General Permit for New and Existing Sources and New Discharges in the Offshore Subcategory of the Oil and Gas Extraction Category for the Western Portion of the Outer Continental Shelf of the Gulf of Mexico,” [63 Fed. Reg. 58722 (November 2, 1998)] (GMG290000) (herein the “permit”), which was modified April 19, 1999 [64 Fed. Reg. 19156] and December 18, 2001 [66 Fed. Reg. 65209]. The general permit was modified again, as published October 7, 2004 [69 Fed. Reg. 194], which took effect on November 6, 2004, and is available on the Internet at <http://www.epa.gov/earth1r6/6en/w/offshore/permit11062004.pdf>. The permit authorizes discharge from new sources, existing sources, and new discharges in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 C.F.R. Part 435, Subpart A) to operators of lease blocks in the Oil and Gas Extraction Point Source Category which are located in Federal Waters of the Western Portion of the Gulf of Mexico (defined as seaward of the outer boundary of the territorial seas off Louisiana and Texas) to the Western Portion of the Federal Waters of the Gulf of Mexico, but only in accordance with the conditions of the permit. The permit does not authorize discharges from facilities located in, or discharging to, the territorial seas of Louisiana or Texas or from facilities defined as “coastal,” “onshore,” or “stripper” (see 40 C.F.R. Part 435, Subparts C, D, and E). The permit does, however, authorize the discharge of produced water to the Western portion of the Federal Waters of the Gulf of Mexico from wells located in lease blocks in the territorial seas of Louisiana and Texas.

8. On May 20, 2005, Nexen submitted a Voluntary Disclosure to EPA and then supplemented it on May 26, June 23, July 15 and July 27, 2005. Nexen sent these disclosures regarding allegations made by a former employee alleging violations of the NPDES Permit at two offshore oil and gas production platforms. As a result of the allegations, Nexen conducted compliance training. During this compliance training, Nexen discovered that it had been discharging produced sand during its cleaning process which is a violation of its permit. Since that time, operating practices and procedures have been reviewed and revised to ensure that the disclosed violations would not be repeated.

9. On January 11, 2007, EPA issued to Respondent a Notice of Determination, Docket Number CWA-06-2006-2126. Based upon our review of Nexen's Self-Disclosure and compliance history regarding the disclosed violations, EPA finds that Nexen has satisfied all nine conditions of the Audit Policy and qualifies for 100% mitigation of the gravity portion of the penalty regarding the disclosed violations. Therefore, EPA will not assess any gravity-based penalty for the disclosed violations. However, EPA will collect the economic benefit of forty six thousand six hundred and ninety dollars (\$46,690) which Nexen gained from its noncompliance. This will be addressed in a Consent Agreement and Final Order to be issued at a later date.

10. Under Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), Respondent is liable for a civil penalty in an amount not to exceed \$11,000 per day for each day during which a violation continues, up to a maximum of \$157,500.

11. EPA has notified the public of the filing of this Complaint and has afforded the public thirty (30) days in which to comment on the Complaint and on the penalty as required by Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A). At the expiration of the notice period, EPA will consider any comments filed by the public.

III. Penalty

12. Based on the foregoing Findings, and pursuant to the authority of Sections 309(g)(1) and (g)(2)(B) of the Act, 33 U.S.C. §§ 1319(g)(1) and (g)(2)(B), EPA Region 6 hereby assesses against Respondent a penalty of forty six thousand six hundred and ninety dollars (\$46,690).

13. The penalty amount has been based on a statutory factor, economic benefit, specified in Section 309(g)(3), 33 U.S.C. § 1319(g)(3).

IV. Failure to File an Answer

14. If Respondent wishes to deny or explain any material allegation listed in the above Findings or to contest the amount of the penalty assessed, Respondent must file an answer to this complaint within thirty (30) days after service of this complaint whether or not Respondent requests a hearing as discussed below.

15. The requirements for such an Answer are set forth at 40 C.F.R. § 22.15. Failure to file an Answer to this Complaint within thirty (30) days of service of the Complaint shall constitute an admission of all facts alleged in the Complaint and a waiver of the right to hearing.

Failure to deny or contest any individual material allegation contained in the Complaint will constitute an admission as to that finding or conclusion under 40 C.F.R. § 22.15(d).

16. If Respondent does not file an answer to this complaint within thirty (30) days after service of this complaint, a default order may be issued against Respondent pursuant to 40 C.F.R. § 22.17. A Default Order, if issued, would constitute a finding of liability, and could make the full amount of the penalty assessed in this Complaint due and payable by Respondent without further proceedings sixty (60) days after a final default order is issued.

17. Respondent must send its Answer to this Complaint, including any request for hearing, and all other pleadings to:

Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent shall also send a copy of its Answer to this Complaint to the following EPA attorney assigned to this case:

Ms. Ellen Chang-Vaughan (6RC-EW)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

18. The Answer must be signed by Respondent, Respondent's counsel, or other representative on behalf of Respondent and must contain all information required by 40 C.F.R. § 22.05 and § 22.15, including the name, address, and telephone number of Respondent and Respondent's counsel. All other pleadings must be similarly signed and filed.

V. Notice of Opportunity to Request a Hearing

19. Respondent may request a hearing to contest any material allegation contained in this Complaint, or to contest the appropriateness of the amount of the penalty, pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g). The procedures for hearings are set out at 40 C.F.R. Part 22, with supplemental Rules at 40 C.F.R. § 22.38.

20. Any request for hearing should be included in Respondent's Answer to this Complaint; however, as discussed above, Respondent must file an Answer meeting the requirements of 40 C.F.R. § 22.15 in order to preserve the right to a hearing or to pursue other relief.

21. Should a hearing be requested, members of the public who commented on the issuance of the Complaint during the public comment period will have a right to be heard and to present evidence at such hearing under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B).

VI. Settlement

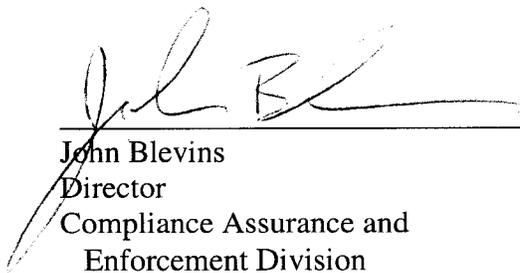
22. EPA encourages all parties against whom civil penalties are proposed to pursue the possibility of settlement through informal meetings with EPA. Regardless of whether a formal hearing is requested, Respondent may confer informally with EPA about the alleged violations or the amount of the penalty. Respondent may wish to appear at any informal conference or formal

hearing personally, by counsel or other representative, or both. To request an informal conference on the matters described in this Complaint, please contact Mr. Robert Houston, of my staff, at (214) 665-8565.

23. If this action is settled without a formal hearing and issuance of an opinion by the Presiding Officer pursuant to 40 C.F.R. § 22.27, this action will be concluded by issuance of a Consent Agreement and Final Order (CAFO) pursuant to 40 C.F.R. § 22.18(b). The issuance of a CAFO would waive Respondent's right to a hearing on any matter stipulated to therein or alleged in the Complaint. Any person who commented on this Complaint would be notified and given an additional thirty (30) days to petition EPA to set aside any such CAFO and to hold a hearing on the issues raised in the Complaint. Such a petition would be granted and a hearing held only if the evidence presented by the petitioner's comment was material and was not considered by EPA in the issuance of the CAFO.

24. Neither assessment nor payment of a penalty in resolution of this action will affect Respondent's continuing obligation to comply with all requirements of the Act, the applicable regulations and permits, and any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), including one relating to the violations alleged herein.

4/25/07
Date


John Blevins
Director
Compliance Assurance and
Enforcement Division

CERTIFICATE OF SERVICE

I certify that the foregoing Class II Administrative Complaint was sent to the following persons, in the manner specified, on the date below:

Original hand-delivered: Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Copy by certified mail,
return receipt requested: Mr. Gregg E. Radetsky
Vice President/General Counsel
Nexen Petroleum U.S.A. Inc.
12790 Merit Drive, Suite 800
Dallas, TX 75251-1270

Carbon copy first class mail: Scott Deatherage
Thompson & Knight LLP
1700 Pacific Ave.
Suite 3300
Dallas, TX 75201

Carbon copy hand-delivered: Ms. Ellen Chang-Vaughan (6RC-EW)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Dated:

Jackie Samuel

MAY 04 2007