

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

999 18TH STREET- SUITE 300
DENVER, CO 80202-2466
Phone 800-227-8917
<http://www.epa.gov/region08>

2006 DEC -1 AM 11:52

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CWA-08-2007-0001

IN THE MATTER OF:)

CHEVRON USA, INC.)

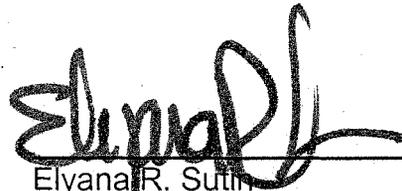
6001 Bollinger Canyon Road)
San Ramon, CA 94583)

RESPONDENT)

FINAL ORDER

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

12.01.06
DATE


Elyana R. Sutin
Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

999 18TH STREET- SUITE 300

DENVER, CO 80202-2466

Phone 800-227-8917

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2006 OCT 10 AM 10:41

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10.10.06

DATE



Elyana R. Sutin
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

Docket No.:

FILED
EPA REGION 8
HEARING CLERK

OCT - 5 2006

IN THE MATTER OF)
)
Chevron U.S.A. Inc.) **COMPLAINT AND**
) **SETTLEMENT AGREEMENT**
6001 Bollinger Canyon Road)
San Ramon, CA 94583)
Respondent.)

Complainant, United States Environmental Protection Agency, Region 8 ("EPA") or ("Complainant"), and Chevron U.S.A. Inc. (hereinafter "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 sections 311(b)(6)(A), 33 U.S.C. §1321(b)(6)(A), and 311(j)(1)(C), 33 U.S.C. §1321(j)(1)(C) of the Clean Water Act ("CWA" or "the Act") and the implementing regulations at 40 CFR part 112.
2. The undersigned Environmental Protection Agency ("EPA"), Region 8 officials have been properly delegated the authority to issue this CASA under the authority vested in the Administrator of EPA by section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. §1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990.
3. This section authorizes EPA to bring an action under section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. §1321(b)(6)(B)(ii), for civil administrative penalties against Respondent who 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 CFR 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 CFR §22.13(b), and executed pursuant to 40 CFR §22.18(b)(2) and (3) of the Consolidated Rules of Practice.

6. Respondent admits the jurisdictional allegations in this CASA and neither admits nor denies the specific factual allegations contained herein. Respondent does not admit and specifically retains the right to controvert any of the factual or legal statements or determinations made herein relative to the jurisdictional allegations in any judicial or administrative proceeding except in an action to enforce this CASA and the Final Order.

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

9. Complainant asserts that settlement of this matter is in the public interest, and Complainant and Respondent agree that entry of this CASA and Final Order without further litigation and without adjudication of any issue of fact or law, is the most appropriate means of resolving this matter.

10. This CASA, upon incorporation into a Final Order, applies to and is binding upon EPA and upon 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.

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

B. ALLEGED VIOLATIONS

1. Respondent is a corporation organized under the laws of Pennsylvania, and authorized to do business in Colorado and Wyoming.

2. Respondent is a "person" within the meaning of sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§1321(a)(7) and 1362(5).

3. The Respondent owns and operates the following oil and/or gas production and exploration facilities at issue in this CASA:

- a. Wilson Creek facility, Rio Blanco County, Colorado;
- b. La Barge Field facility, Lincoln and Sublette Counties, Wyoming; and
- c. Hiawatha Oil and Gas Field facility, Moffat County, Colorado; hereinafter, ("the facilities" and "these facilities").

4. Respondent is, an "owner and operator" of each of the facilities referenced in the paragraph above, within the meaning of section 311(a)(6) of the Act, 33 U.S.C. §1321(a)(6), and 40 CFR §112.2.

5. At each of its facilities, the pipelines, injection wells, production wells, tanks, batteries, water injection plants, gas plant, and other realty and fixtures owned and operated by Respondent constitute an "onshore facility" within the meaning of section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10).

6. These facilities are “non-transportation related” “production” onshore facilities as those terms are defined at of 40 CFR §112.2.

7. At each of these facilities, Respondent is engaged in drilling, producing, gathering, storing, processing, refining, transferring, using or consuming crude oil, a mixture of oil and produced water, and/or gas, which are “oils” as defined at §311(a)(1) of the Act, 33 U.S.C. §1321(a)(1).

8. Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil ... from vessels and from onshore and offshore facilities, and to contain such discharges"

9. EPA promulgated the oil pollution prevention regulations, set forth at 40 CFR part 112.

40 CFR § 112.1(b) states that the requirements of part 112 apply:

to owners or operators of non-transportation related onshore and offshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil or oil products, and which, due to their location, could reasonably be expected to discharge oil in harmful quantities, as defined in part 110 of this chapter, into or upon the navigable waters of the United States or adjoining shorelines”

10. The Respondent’s non-transportation production onshore facilities are subject to the oil pollution prevention requirements of 40 CFR part 112, pursuant to section 311(j) of the Act, 33 U.S.C. §1321(j), and its implementing regulations.

11. 40 CFR § 112.3 requires that owners or operators of onshore production facilities to prepare and implement a Spill Prevention, Control, and Countermeasure (“SPCC”) plan in

writing, and in accordance with applicable sections of part 112, including, but not limited to, sections 112.7, 112.9, and 112.10.

12. On or about May 18, 2002, an oil spill of approximately 50 barrels of oil and produced water (NRC# 605062) flowed over the secondary containment berm at the Wilson Creek facility, entered a road ditch and flowed into an un-named drainage area and flowed into a tributary of Wilson Creek and Wilson Creek.

13. The tributary to Wilson Creek and Wilson Creek are “navigable waters” and “waters of the United States” within the meaning of section 502(7) of the Act, 33 U.S.C. §1362(7) and 40 CFR §110.1.

14. On or about November 10, 2003, an oil spill of approximately 318 barrels of oil and produced water (NRC# 704873) flowed over the secondary containment berm at the Wilson Creek facility, entered an unnamed naturally occurring drainage ditch which flowed in a northerly direction approximately 4000 feet into Wilson Creek.

15. Wilson Creek is a “navigable water” and “water of the United States” within the meaning of section 502(7) of the Act, 33 U.S.C. §1362(7) and 40 CFR §110.1.

16. On or about April 4, 2002, an oil spill of approximately 3 barrels of oil and produced water (NRC # 598579) released from a leaking flow line at the La Barge facility in Sublette County, and flowed southeast through an adjacent unnamed naturally occurring drainage ditch which carries storm water runoff and connects to the Green River.

17. The unnamed naturally occurring drainage ditch and the Green River are “navigable waters” and “waters of the United States” within the meaning of section 502(7) of the Act, 33 U.S.C. §1362(7) and 40 CFR §110.1.

18. On or about June 16, 2002, an oil spill of approximately 3.5 barrels of oil and produced water (NRC # 611496) released from a leaking stuffing box at the Hiawatha facility and traveled across the ground surface to an unnamed natural drainage ditch which is approximately 1.75 miles from Vermilion Creek.

19. The unnamed naturally drainage ditch and the Vermilion Creek are “navigable waters” and “waters of the United States” within the meaning of section 502(7) of the Act, 33 U.S.C. §1362(7) and 40 CFR §110.1.

20. The Wilson Creek facility has a total fuel storage capacity of approximately 546,517 gallons.

21. The La Barge Field facility has a total fuel storage capacity of approximately 752,517 gallons.

22. The Hiawatha Oil and Gas Field facility has a total fuel storage capacity of approximately 681,954 gallons.

23. The Respondent’s facilities are facilities, which, due to their locations, could reasonably be expected to discharge oil in harmful quantities, as defined in part 110 of this chapter, into or upon the navigable waters of the United States or adjoining shorelines.

24. Section 311(b)(6)(A) of the Act, 33 U.S.C. §1321(b)(6)(A), states in pertinent part that any owner, operator, or person in charge of any vessel, onshore facility or offshore facility (ii) who fails or refuses to comply with any regulation issued under subsection (j) of this section to which that owner, operator, or person in charge is subject, may be assessed a class I or class II civil penalty by ... the Administrator.

25. Section 311(b)(3), 33 U.S.C. §1321(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.

26. For purposes of sections 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 or adjoining shorelines of the United States, in such quantities that have been determined may be harmful to the public health or welfare or the environment of the United States are defined in 40 CFR §110.3 to include discharges of oil that violate applicable water quality standards or 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 the adjoining shorelines.

27. Section 311(b)(3) of the Act, 33 U.S.C. §1321(b)(3), provides that "the discharge of oil or hazardous substances (i) into or upon the navigable waters of the United States...is prohibited."

28. The Respondent failed to prepare and to implement an adequate SPCC plan in writing and in accordance with the regulations at 40 CFR §§ 112.7, 112.9, and 112.10 as required by 40 CFR §112.3 for its Wilson Creek, La Barge Field, and Hiawatha Oil and Gas Field facilities.

29. Respondent's failure to prepare and to implement an adequate SPCC plan in writing and in accordance with the regulations at 40 CFR §§ 112.7, 112.9, and 112.10 constitutes three violations of 40 CFR §112.3 and sections 311(b)(6)(A), 33 U.S.C. § 1321(b)(6)(A), and 311(j)(1)(C), 33 U.S.C. § 1321(j)(1)(C) of the Act.

30. Respondent's release of approximately 50 barrels of the mixture of oil and produced water on May 18, 2002, into navigable waters of the United States constitutes a violation of section 311(b)(3) of the Act, 33 U.S.C. §1321(b)(3).

31. Respondent's release of approximately 318 barrels of the mixture of oil and produced water on November 10, 2003, into navigable waters of the United States constitutes a violation of section 311(b)(3) of the Act, 33 U.S.C. §1321(b)(3).

32. Respondent's release of approximately 3 barrels of the mixture of oil and produced water on April 4, 2002, into navigable waters of the United States constitutes a violation of section 311(b)(3) of the Act, 33 U.S.C. §1321(b)(3).

33. Respondent's release of approximately 3.5 barrels of the mixture of oil and produced water on June 16, 2002, into navigable waters of the United States constitutes a violation of section 311(b)(3) of the Act, 33 U.S.C. §1321(b)(3).

C. CIVIL PENALTY

1. As alleged in the preceding Paragraphs, and pursuant to section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. §1321(b)(6)(B)(ii), and 40 CFR §19.4, the Respondents are liable for civil penalties of up to \$11,000 per day for each day during which the violation continues, up to a maximum total of \$157,500 for all violations.

2. Based on the foregoing Allegations and pursuant to the authority of section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. §1321(b)(6)(B)(ii), and 40 CFR § 19.4, Complainant proposes the assessment of administrative penalties against the Respondent in the amount of eighty-one thousand two hundred and twenty six dollars (\$81,226).

3. 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.

4. Respondent consents to the issuance of a Consent Order and consents for the purposes of settlement to the payment of the civil penalty in the amount of eighty-one thousand two hundred and twenty six dollars (\$81,226).

5. Respondent consents and agrees to pay a civil penalty in the amount of eighty-one thousand two hundred and twenty six dollars (\$81,226), in the manner described below in this paragraph:

a. **Payment is due within 30 calendar days from the date written on the Final Consent Order**, issued by the Regional Judicial Officer, that adopts this Consent Agreement. 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.

b. The payment 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:

US checks by regular US postal service mail

U.S. Environmental Protection Agency
P.O. Box 371099M
Pittsburgh, PA 15251

Federal Express, Airborne, or other commercial carrier:

Mellon Client Service Center
ATTN: Shift Supervisor
Lockbox 371099M Account 9109125
500 Ross Street
Pittsburgh, PA 15251-0001

Wire Transfers

Mellon Bank
ABA 043000261
Account 9109125
22 Morrow Drive
Pittsburgh PA 15235

A copy of the check shall be sent simultaneously to:

Jane Nakad
Technical Enforcement Program (8ENF-T)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

c. In the event payment is not received by the specified due date, interest accrues from the date of the final consent 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).

d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 31st day from the date of the final consent 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 121st 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.

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

D. TERMS AND CONDITIONS

1. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the consent agreement 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.

2. Nothing in this Consent 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 Consent Agreement.

3. 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.
4. The parties agree to submit this CASA to the Regional Judicial Officer, with a request that it be incorporated into a Final Order.
5. 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.
6. 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: 10/04/2006

By: Carol Rushin
Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Date: 10/4/06

By: Brenda Morris
Brenda L. Morris, Attorney
Legal Enforcement Program

In The Matter Of Chevron U.S.A. Inc.
(Continued from page 12)

CHEVRON U.S.A. INC.
Respondent.

Date: 9/30/06

By: Scott Davis
(Signature of Authorized Agent)

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMPLAINT AND SETTLEMENT AGREEMENT/FINAL ORDER** in the matter **CHEVRON USA, INC., DOCKET NO.: CWA-08-2007-0001**; the **COMPLAINT AND SETTLEMENT AGREEMENT** was filed with the Regional Hearing Clerk on October 5, 2006; the **FINAL ORDER** was filed December 1, 2006.

Further, the undersigned certifies that a true and correct copy of the documents were delivered to Brenda Morris, Enforcement Attorney, U. S. EPA – Region 8, 999 18th Street, Suite 300, Denver, CO 80202-2466. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on December 1, 2006 to:

Brian E. Wall, Counsel
Environmental Practice Group
Law Department
Chevron U.S.A. Inc.
6001 Bollinger Canyon Road, T-3256
San Ramon, CA 94583

Regular Mail to:

U. S. Coast Guard
Commander
Finance Center (OGR)
1430 A Kristina Way
Chesapeake, VA 23326

Telefaxed to:

U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268
513-487-2063

December 1, 2006


Tina Artemis
Regional Hearing Clerk