UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF	)	DOCKET No. IX-FY88-54
CHEVRON U.S.A. INC.	)	Class I Administrative Penalty Proceeding Under
Barbers Point Refinery, Honolulu, Hawaii	)	Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g)
Respondent	)	

RECOMMENDED DECISION

On October 6, 1988 the United States Environmental Protection Agency, Region 9, ("EPA") issued a complaint against Chevron U.S.A. Inc. ("Chevron") pursuant to Section 309(g) of the Clean Water Act ("the Act"), 33 U.S.C. § 1319(g). The Complaint alleged that Chevron violated Section 301(a) of the Act, 33 U.S.C. § 1311(a), by the unauthorized discharge of approximately 104,000 gallons of Jet-A fuel into Waiawa Stream and Middle Loch, Pearl Harbor, Hawaii from a rupture in a pipeline owned by Chevron which runs from Chevron's Barbers Point Refinery to Chevron's marketing facility at Pier 30 in Honolulu. EPA proposed to assess a Class I penalty of $10,000.00.

On November 3, 1988 Chevron filed a "Special Appearance and Request for Hearing" in which it took the position that EPA lacks subject matter jurisdiction to assess a civil penalty under Section 309(g) of the Act for the violation alleged in the administrative complaint. Subsequently Chevron and EPA each filed motions for summary determination with supporting briefs. Chevron argued that the administrative complaint should be dismissed with prejudice because an oil spill caused by the unanticipated rupture of a pipeline that is not subject to an NPDES permit may violate Section 311 of the Clean Water Act, 33 U.S.C. § 1521, but does not violate Section 301(a) of the Act, and Section 309(g) may not be used to enforce Section 311.

In a decision dated May 3, 1990, which is attached as Appendix

A and is incorporated herein by reference, I found that such an oil spill constitutes the "discharge of a pollutant" from a "point source" in violation of Section 301(a) of the Clean Water Act. I also noted that, while Chevron had conceded that a spill occurred, it was not clear from the administrative record whether Chevron had agreed to the facts of the spill as narrated in the report prepared by the federal on-scene coordinator. I therefore looked to the undisputed statements of fact contained in Chevron's motion and in paragraph II.2 of the Administrative Complaint,[1] and found that those statements taken together set out a violation of Section 301(a) of the Clean Water Act. I therefore denied Chevron's motion for summary determination and granted EPA's motion as to liability.

A hearing on the amount of penalty was scheduled for July 19, 1990. However, prior to hearing the parties entered into an agreement under which Chevron waived its right to a hearing on penalty and agreed to the full $10,000.00 penalty amount sought by EPA. Under the terms of the stipulation Chevron did not waive its right to seek judicial review of "the issues of the jurisdiction of the United States Environmental Protection Agency (EPA) to file this administrative action and that Chevron is liable for such penalty." The stipulation is attached as Appendix B.

Based on my May 3, 1990 Decision and Order on Motions for Summary Decision and on the stipulation as to penalty amount entered into by the parties, I recommend that a final order be issued assessing a civil penalty of $10,000.00 against Chevron U.S.A. Inc.

/s/
Steven W. Anderson
Presiding Officer

Dated: July 26, 1990

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[1]Chevron agreed at the first prehearing conference that "the events described in paragraph II.2 of the Complaint took place."