

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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EPA REGION VIII  
HONOLULU OFFICE

IN THE MATTER OF: )  
)  
ConocoPhillips Company )  
600 N. Dairy Ashford Street )  
Houston, TX 77079-1100 )  
)  
Respondent. )  
)  
\_\_\_\_\_ )

Docket No.  
**COMBINED COMPLAINT AND  
CONSENT AGREEMENT**  
**DOCKET NO. : SDWA-08-2012-0042**

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

**AUTHORITY**

1. This proceeding is subject to EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. Part 22. This Combined Complaint and Consent Agreement (Consent Agreement) 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).
2. This Consent Agreement is authorized by Congress in section 1423(c) of the Public Health Service Act, commonly known as the Safe Drinking Water Act (the Act). 42 U.S.C. § 300h-2(c).
3. Pursuant to section 1422 of the Act, 42 U.S.C. § 300h-1, and 40 C.F.R. Part 147 subpart G, section 147.300, EPA administers the Underground Injection Control (UIC) program for Class II wells on Indian lands within the State of Colorado. The effective date of the program is April 2, 1984. Class II underground injection wells under the jurisdiction of the EPA are

authorized to operate either under an EPA-issued permit or under a rule.

4. ConocoPhillips is authorized to operate the Cinder Gulch 3 well by EPA permit # CO20616-03703 (permit).

### **GENERAL ALLEGATIONS**

5. ConocoPhillips is a corporation organized under the laws of the State of Delaware and authorized to do business in the State of Colorado. ConocoPhillips has local offices in Farmington, New Mexico and Denver, Colorado.

6. ConocoPhillips is a "person" within the meaning of section 1401 of the Act, 42 U.S.C. § 300f(12), and therefore subject to the requirements of the Act.

7. ConocoPhillips owns and/or operates the active, permitted Cinder Gulch 3 salt water disposal well.

8. The Cinder Gulch 3 well is a "Class II Injection Well" as defined by 40 C.F.R. §§ 144.80 and 146.5.

9. The Cinder Gulch 3 well is located in the Basin Fruitland Oilfield in Township 32 North, Range 12 West, Section 11, La Plata County, Colorado, on Indian lands within the exterior boundaries of the Southern Ute Indian Reservation.

10. ConocoPhillips as owner and/or operator of the Cinder Gulch 3 well is subject to applicable UIC Class II program requirements located at 40 C.F.R. Parts 124, 144 and 146.

11. 40 C.F.R. §146.23(b)(3) and the permit at part II require mechanical integrity testing of active permitted wells at least once every five years. Mechanical integrity is demonstrated when a well is subjected to and passes a mechanical integrity test (MIT) by pressurizing the annulus of each well for a specified amount of time with no significant leak.

12. The Cinder Gulch 3 well was tested for mechanical integrity on November 29, 2004.
13. An MIT test was required for the Cinder Gulch 3 well on or before November 29, 2009 in accordance with 40 C.F.R. §146.23(b)(3) and the permit.
14. EPA notified ConocoPhillips of the outstanding MIT test for the Cinder Gulch 3 well on September 14, 2011.
15. ConocoPhillips on September 26, 2011, provided the EPA with copies of the MIT test conducted for the Cinder Gulch 3 well on February 17, 2011.
16. ConocoPhillips' failure to perform an MIT test for the Cinder Gulch 3 well on or before November 29, 2009, constitutes a violation of the regulations, the permit and the Act for the period November 29, 2009 through February 16, 2011.

#### **CONSENT AGREEMENT**

17. ConocoPhillips admits the jurisdictional allegations of the Consent Agreement and neither admits nor denies the specific factual allegations of the Consent Agreement.
18. ConocoPhillips waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in this Consent Agreement.
19. This Consent Agreement, upon incorporation into a Final Order, applies to and is binding upon the EPA, and upon ConocoPhillips, its successors and assigns. Any change in ownership or corporate status by ConocoPhillips including, but not limited to, any transfer of assets or real or personal property, shall not alter ConocoPhillips's responsibilities under this agreement. This Consent Agreement contains all terms of the settlement agreed to by the parties.

20. For an administrative proceeding, the Act authorizes a civil penalty assessment up to \$7,500 per day for each violation of the Act, up to a maximum of \$177,500.

42 U.S.C. § 300h-2(c)(1). The Act requires the EPA to take into account appropriate factors in assessing a civil penalty, including the seriousness of the violations, the economic benefit resulting from the violations, any history of such violations, any good-faith efforts to comply with the requirements, the economic impact on the violator, and such other matters as justice may require. Taking such factors into account, the EPA proposes the assessment of a civil penalty of \$9,370 for the violation alleged in paragraph 16.

21. ConocoPhillips consents and agrees to pay the civil penalty cited in paragraph 20 above as follows:

- a. Payment is due within thirty (30) calendar days from the date written on the Final 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 U.S. Bank, the address for which is given below. Payment must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.
- b. Payment shall be made by cashier's or certified check, including the name and docket number of this case, for this amount, payable to "Treasurer, United States of America," as follows:

**If sent by regular U.S. mail:** U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

**If sent by any commercial  
Overnight carrier:** U.S. Bank  
Government Lockbox 979077  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101

**If sent by wire transfer:**

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 "

**On Line Payment:**

WWW.PAY.GOV  
Enter sfo 1.1 in the search field  
Open form and complete required fields.

A copy of the check (or notification of wire transfer or on line payment) shall be simultaneously sent to:

Sarah Roberts  
U.S. EPA Region 8 (8ENF-UFO)  
1595 Wynkoop Street  
Denver, CO 80202-1129

Tina Artemis, Regional Hearing Clerk  
U.S. EPA Region 8 (8RC)  
1595 Wynkoop Street  
Denver, CO 80202-1129

- c. In the event payment is not received by the specified due date, interest accrues from the date of the Final Order, not the payment 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 the payment is received in full (i.e., on the 1<sup>st</sup> late day, 30 days of interest accrues).
- d. In addition to the accrual of interest specified in (c) above, a handling charge of fifteen dollars (\$15.00) shall be assessed on the 31<sup>st</sup> day from the date of the Final Order, and each subsequent 30-day period that the penalty, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if the penalty payment is not received within ninety (90) days of the due date (i.e., the 121<sup>st</sup> day from the date the Final 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.

### **PUBLIC NOTICE**

22. As required by the Act, prior to the final assessment of a civil penalty, the EPA will provide public notice of the proposed penalty, and reasonable opportunity for the public to comment on the matter, and present evidence in the event a hearing is held. 42 U.S.C. § 300h-2 (c)(3)(B).

### **GENERAL PROVISIONS**

23. Nothing in this Consent Agreement shall relieve ConocoPhillips of the duty to comply with the Act or its implementing regulations.

24. Failure by ConocoPhillips 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.

25. 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 ConocoPhillips 's failure to perform pursuant to the terms of this Consent Agreement.

26. The undersigned representative of ConocoPhillips certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and to bind ConocoPhillips to its terms and conditions.

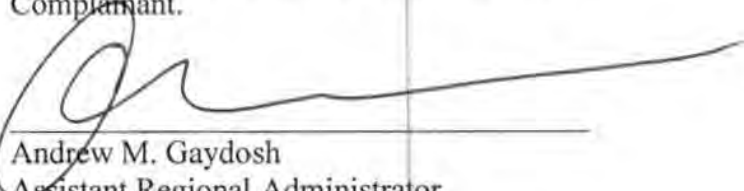
27. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a Final Order.

28. Each party shall bear its own costs and attorney fees in connection with this matter.


29. This Consent Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and final resolution of the United States' claim for civil penalties for the specific violations alleged in this Consent Agreement.

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8**  
Complainant.

Date: 8.13.12

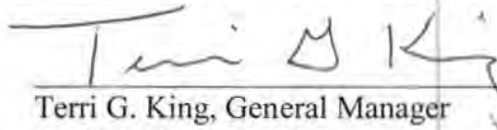
  
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Andrew M. Gaydosh  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice  
United States Environmental Protection Agency

Date: 8.15.12

  
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Amy Swanson, Enforcement Attorney  
U.S. EPA, Region 8  
1595 Wynkoop Street (8ENF-L)  
Denver, CO 80202-1149  
Colorado Atty. Reg. No. 26488  
Telephone: 303/312-6906  
Facsimile: 303/312-6953

**CONOCOPHILLIPS COMPANY**  
Respondent.

Date: July 25, 2012



Terri G. King, General Manager  
San Juan Business Unit  
ConocoPhillips Company  
3401 East 30<sup>th</sup> Street  
Farmington, NM 97402  
Telephone: (505) 326-9737  
Facsimile: (505) 326-9880



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 8  
1595 Wynkoop Street, Denver, CO 80202-1129**

**PUBLIC NOTICE OF PROPOSED EXPEDITED SETTLEMENT AGREEMENT AND  
OPPORTUNITY TO COMMENT**

**Action:** The EPA is providing notice of the opportunity to comment on a proposed expedited settlement agreement. The agreement relates to alleged violations of a Clean Water Act (CWA) storm water permit at the Center for Scouting, at 1931 42<sup>nd</sup> Street South, Fargo, North Dakota, which is being constructed by Smithco, Inc. (Smithco). The corporate address of Smithco is 2501 13<sup>th</sup> Avenue Southwest, Suite #208, Fargo, ND 58103.

**Summary:** The EPA is authorized by section 309(g)(2) of the CWA, 33 U.S.C. § 1319(g)(2), to issue an order assessing a civil administrative penalty for violations of certain CWA requirements, after providing (1) an opportunity for the person to be assessed the penalty (the respondent) to request a hearing to contest the penalty, and (2) notification to the public of its rights to submit written comments and to participate in any hearing. The deadline for the public to submit comments is forty days after issuance of this notice.

The EPA and Smithco have agreed to enter into an expedited settlement agreement to resolve the EPA's claims that Smithco violated the requirements listed below. Smithco has agreed to pay a civil penalty of \$5,450.00 to resolve its civil penalty liability for these claims. Pursuant to section 309(g)(4) of the CWA and 40 C.F.R. § 22.45, the EPA hereby notifies the public of the opportunity to comment on this proposed penalty assessment.

EPA Docket Number for proposed expedited settlement: CWA-08-2012-0023.

Alleged violations: (1) Discharging storm water pollutants in violation of a permit, (2) Failing to maintain a complete storm water pollution prevention plan, (3) failing to conduct required self-inspections, and (4) failing to maintain best management practices to minimize discharges of sediment and other pollutants into waters of the United States.

**PUBLIC COMMENTS**

Written comments on the expedited settlement agreement are encouraged and will be accepted at the address listed below for a period of forty (40) days after the publication of this notice. Written comments submitted by the public as well as information submitted by respondent will be available for public review, subject to the provisions of law restricting the disclosure of confidential information. Any person submitting written comments has a right to participate in a hearing, if one is held. The complaint is available for review between 9:00 a.m. and 4:00 p.m. at the address listed below and on the internet at:  
<http://yosemite.epa.gov/oa/rhc/epaadmin.nsf>.

Please submit written comments to:

Tina Artemis (8RC)  
Regional Hearing Clerk  
U.S. EPA, Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129  
Telephone: (303) 312-6765

**FOR FURTHER INFORMATION:** Persons wishing to receive a copy of the expedited settlement agreement or other documents in this proceeding (such as the regulations in 40 C.F.R. part 22, which establish procedures for the hearing), or to comment upon the proposed penalty assessment or upon any other aspect of the matter, should contact the Regional Hearing Clerk identified above.