

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2012 MAY 22 AM 8:27

IN THE MATTER OF:)
)
BP America Production Company)
501 Westlake Park Boulevard)
Houston, TX 77079,)
)
Ford Gas Unit F FT-MV 1A Multi Well Site,)
)
Respondent.)

Docket No. CWA-08-2012-0014 FILED
EPA REGION VIII
MAY 22 2012

**COMBINED COMPLAINT AND
CONSENT AGREEMENT**

Complainant, United States Environmental Protection Agency, Region 8 ("Complainant" or "EPA"), and Respondent, BP America Production Company ("Respondent" or "BP"), 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. Complainant has jurisdiction over this matter pursuant to sections 309(g) of the Clean Water Act (Act), as amended by the Oil Pollution Act of 1990, which authorizes the EPA Administrator to make findings and to assess civil penalties for violations of sections 301, 302, 306, 307, 318, and 405 of the Act, 33 U.S.C. §§ 1311, 1312, 1316, 1317, 1318, 1328, or 1345, or any permit condition or limitation implementing any such sections of the Act in a permit issued by the Administrator under section 402 of the Act.

GENERAL ALLEGATIONS

3. BP America Production Company is a corporation organized under the laws of the State of Delaware and authorized to do business in the State of Colorado. BP has local offices in Durango and Denver, Colorado.

4. BP 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), and therefore subject to the requirements of the Act.

5. BP is the owner and/or operator of the Ford Gas Unit F FT-MV 1A Multi Well site (site) natural gas production operation located on non-Indian owned fee land in La Plata County, Colorado, within the exterior boundaries of the Southern Ute Indian Reservation.

6. On or about February 4, 2010, produced water was released from the site due to a failed gas eliminator valve in a produced water transportation pipeline. Over a four day period, an estimated 246,666 gallons (5,873 barrels) of produced water discharged overland approximately 333 feet south from the site into an unnamed intermittent stream; continued approximately 1.6 miles to Rock Creek, a perennial stream at the point of confluence with the unnamed stream; and travelled approximately four miles southeast to the Los Pinos River, an interstate water.

7. Respondent’s produced water release on February 4, 2010, constitutes a “discharge” as defined by section 502(16) of the Act, 33 U.S.C. § 1362(16).

8. Produced water is a “pollutant” as defined by section 502(6) of the Act, 33 U.S.C. § 1362(6).

9. The failed gas eliminator valve from which the produced water discharged is a “point source” as defined by section 502(14) of the Act, 33 U.S.C. § 1362(14).

10. Rock Creek and the Los Pinos River are “waters of the United States” within the meaning of 40 C.F.R. § 112.2 and, therefore, “navigable waters” as defined by section 502(7) of the Act, 33 U.S.C. § 1362(7).

11. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person into a navigable water, unless authorized by certain provisions of the Act, including sections 302, 306, 307, 318, 402, and 404 of the Act, 33 U.S.C. §§ 1312, 1316, 1317, 1328, 1342 and 1344.

12. BP notified EPA on February 12, 2010, of the possible violation of section 301 of the Act under EPA’s policy entitled “Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations” (April 11, 2000) (Audit Policy). BP provided EPA with a report dated May 26, 2010, and additional information on November 4, 2011, documenting the release and Respondent’s voluntary disclosure.

13. The Audit Policy provides, in part, that gravity-based penalties will be reduced by 75% for a violation that is voluntarily discovered, promptly disclosed and expeditiously corrected where the regulated entity meets all but the first of nine conditions, with the first condition being the discovery of the violation through an environmental audit or due diligence.

14. EPA determined after reviewing the incident and BP’s response that BP satisfied all but the first condition of the Audit Policy.

CONSENT AGREEMENT

15. BP admits the allegations contained in this Consent Agreement.

16. BP waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in this Consent Agreement.

17. This Consent Agreement, upon incorporation into a final order, applies to and is binding upon EPA, and upon BP, its successors and assigns. Any change in ownership or corporate status by BP, including, but not limited to, any transfer of assets or real or personal property, shall not alter BP's responsibilities under this agreement. This Consent Agreement contains all terms of the settlement agreed to by the parties.

18. Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), authorizes the assessment of a Class I civil penalty of up to \$16,000 per violation of section 301 of the Act, 33 U.S.C. § 1311, up to a maximum of \$37,500 for violations occurring after January 12, 2009. These amounts have been adjusted for inflation by 40 C.F.R. Part 19. For purposes of determining the amount of any civil penalty to be assessed, section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), requires EPA to take into account the following factors: the nature, circumstances, extent and gravity of the violation(s) and, with respect to the violator, ability to pay, any prior history of such violations, degree of culpability, economic benefit or savings gained from the violation, and such other factors that justice may require.

19. Based on the factors listed in paragraph 18, and having determined that the facts satisfy all but the first condition set forth in the Audit Policy warranting a 75% gravity reduction, EPA proposed a civil penalty of Seven Thousand Dollars (\$7,000.00) to settle this action.

20. BP consents, for the purpose of settlement, to the issuance of a final order in this matter and agrees to pay the civil penalty cited in paragraph 19 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 Mellon 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, referencing the name and docket number of this case, for this amount, payable to "**Environmental Protection Agency,**" to:

**US checks by regular
US postal service mail:**

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

**Federal Express, Airborne,
or other commercial carrier:**

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

Wire transfers:

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.

Copies of the check or wire transfer shall be simultaneously sent to:

Natasha Davis
U.S. EPA Region 8 (8ENF-W)
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 1st 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 31st 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 121st 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.

21. For settlement purposes only, in addition to paying the civil penalty discussed above, BP agrees to hire an engineering consultant to conduct a macroinvertebrate study for the Rock Creek watershed. The consultant will collect three samples at three sample locations to create a baseline study for the macroinvertebrate community. The three samples from each sample site will then be combined into one composite sample for analysis. During the benthic organism sample collection, the consultant will also collect basic field parameters of the stream at each sample site including: temperature, conductivity and pH. Several metrics describing the characteristics of the benthic macroinvertebrate community will be calculated for each sampling site. The consultant will draft a report to summarize the results of the macroinvertebrate analysis and the results will be compared and contrasted to the 2010 sample results. The report will also include the calculated metrics and maps showing the sample locations. A copy of the draft report will be provided to the Southern Ute Indian Tribe (SUIT) Water Quality Program to obtain and incorporate additional,

relevant macroinvertebrate sampling data collected by the SUIT. BP will provide EPA and the SUIT Water Quality Program copies of a final report highlighting the SUIT data and detailing the results and findings within sixty days of receiving the draft macroinvertebrate report from the SUIT.

PUBLIC NOTICE

22. As required by section 309(g)(4)(A) of the Act, 33 U.S.C. §1319(g)(4)(A), prior to assessing a civil penalty, EPA will provide the public notice of and reasonable opportunity to comment on the proposed issuance of such order and, if a hearing is held, to be heard and present evidence.

GENERAL PROVISIONS

23. Payment of the penalty in this manner does not relieve BP of its obligation to comply with the requirements of the Act. Payment of the penalty in this manner shall constitute consent by BP to the assessment of the proposed penalty and a waiver of BP's right to a hearing on this matter.

24. Failure by BP 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 BP's failure to perform pursuant to the terms of this Consent Agreement.

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

this Consent Agreement.


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 full civil settlement of the specific violations alleged in this Consent Agreement.


BP AMERICA PRODUCTION COMPANY
Respondent.

Date: May 15, 2012


Stephen Collins, Interim Operations Center Manager

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

Date: 5/18/12


Matthew Cohn, Director
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: 5/19/12


Arturo Palomares, Director
Water Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: 5-18-2012



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