

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

2010 SEP 29 AM 9:04

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CAA-08-2010-0020

IN THE MATTER OF:)	
)	
ENCANA OIL & GAS (USA), INC.)	
(Ft. Lupton Gas Processing Plant))	FINAL ORDER
16157 Weld County Road 22)	
Ft. Lupton, CO 80621)	
)	
RESPONDENT)	

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.

SO ORDERED THIS 29th DAY OF September, 2010.



Elyana R. Sutin
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2010 SEP 29 AM 9:01

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)
)
Encana Oil & Gas (USA) Inc.)
(Fort Lupton Gas Processing Plant))
16157 Weld County Road 22)
Fort Lupton, CO 80621)
)
Respondent)
)

**CONSOLIDATED COMPLAINT AND
CONSENT AGREEMENT**

DOCKET NO. : CAA-08-2010-0020

COMPLAINT

This civil administrative enforcement action is issued pursuant to section 113(a)(3)(B) of the Clean Air Act (CAA), 42 U.S.C. § 7413(a)(3)(B), for violations of the implementing regulations associated with the "Prevention of Accidental Releases" requirements of 42 U.S.C. § 7412r. 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*" (Rules of Practice), 40 C.F.R. part 22, and this COMPLAINT AND CONSENT AGREEMENT is authorized by the rules. 40 C.F.R. § 22.13(b). The undersigned EPA officials have been properly delegated the authority to issue this action.

STATUTORY AND REGULATORY FRAMEWORK

1. The regulations promulgated by EPA pursuant to authority under the CAA, implementing the "Risk Management Program" requirements, are set forth in part 68 of Title 40 of the Code of Federal Regulations (C.F.R.).

2. Under 40 C.F.R. § 68.3, the following definitions apply:
 - “Stationary source” means “any buildings, structures, equipment, installations or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control) and from which an accidental release may occur.”
 - “Regulated substance” means “any substance listed pursuant to section 112(r)(3) of the Clean Air Act as amended, in § 68.130.” Threshold quantities for the regulated substances are included in § 68.130.
3. Pursuant to section 112(r)(7) of the Clean Air Act, 42 U.S.C. § 7412(r)(7), the owner or operator of a stationary source at which a regulated substance is present in more than a threshold quantity is required to prepare and implement a risk management plan (RMP) to detect and prevent or minimize accidental releases of such substances from the stationary source.
4. Pursuant to section 302(e) of the CAA, 42 U.S.C. § 7602(e), the term “person” includes, in relevant part, “an individual, corporation, or partnership.” Respondent is a “person” as defined by section 302(e) of the CAA, 42 U.S.C. § 7602(e), and thus subject to regulation.

FINDINGS OF VIOLATION

5. On September 15, 2009, two authorized representatives of EPA conducted an inspection of Respondent’s Fort Lupton Gas Processing Plant facility, with the consent of Respondent, to determine compliance with the section 112r of the CAA and its implementing regulations.

Count 1

6. Respondent or a subsidiary has owned the facility at least since April 1, 2002.
7. In accordance with 40 C.F.R. § 68.10(a)(3), an owner or operator of a stationary source shall comply with the requirements of 40 C.F.R part 68 no later than the date on which a regulated substance is first present above threshold quantity in a process. A regulated substance has been present above threshold quantity at least since April 1, 2002.
8. Mechanical integrity inspection and testing on process equipment based on a API recognized program commenced on or around April 19, 2006.
9. Respondent failed to conduct inspection and testing on process equipment prior to April 19, 2006
10. EPA therefore alleges violations of the requirements under 40 C.F.R. § 68.73(d)(1).

Count 2

11. On June 20, 2006 Respondent's inspector issued a report in connection with a mechanical integrity inspection on Pressure Vessel 404 (T-404).
12. In accordance with 40 C.F.R. § 68.73(d)(2), inspections and testing procedures shall follow recognized and generally accepted good engineering practices.
13. Inspection procedures performed on Pressure Vessel 404 (T-404) did not follow recognized and generally accepted good engineering practices for existing equipment with minimal documentation.
14. EPA therefore alleges a violation of 40 C.F.R. § 68.73(d)(2).

Count 3

15. Respondent concluded a Process Hazard Analysis (PHA) in January of 2007.

16. 40 C.F.R. § 68.67(e) requires the Respondent to “establish a system to promptly address the team’s [PHA] findings and recommendations; assure that the recommendations are resolved in a timely manner and that the resolution is documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; communicate the actions to operating, maintenance and other employees whose work assignments are in the process and work may be affected by the recommendations or actions.”

17. During the inspection, EPA inspectors observed that action items from the January 2007 PHA had no written schedule for when action items are to be completed. Further investigation revealed that 105 action items from the 2007 PHA did not have documented resolutions.

18. EPA therefore alleges a violation of 40 C.F.R. § 68.67(e).

CONSENT AGREEMENT

19. Respondent admits the jurisdictional allegations and neither admits nor denies the factual and legal allegations stated above.

20. Respondent waives his/her right to a hearing before any tribunal to contest any issue of law or fact set forth in this Complaint and Consent Agreement.

21. This Complaint and Consent Agreement, upon incorporation into a final order, applies to and is binding upon EPA and upon Respondent and Respondent's 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. This Complaint and Consent Agreement contains all terms of the settlement agreed to by the parties.

22. Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), and 40 C.F.R. part 19 authorize the assessment of a civil penalty of up to \$37,500 per day of violation for each violation of the implementing regulations associated with the “Prevention of Accidental Releases” requirements of 42 U.S.C. § 7412r. For purposes of determining the amount of any civil penalty to be assessed, Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), requires EPA to take into account, in addition to such other factors as justice may require, the size of the business, the economic impact of the penalty on the business, the violator’s full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

23. Based on the factors listed in paragraph 22, EPA has determined that an appropriate civil penalty to settle this action is Eighty-Three Thousand Nine Hundred Dollars (\$83,900).

24. Respondent 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 the foregoing paragraph as follows:

- a. Payment is to be made of **Eighty-Three Thousand Nine Hundred Dollars (\$83,900)** due within 30 calendar days from the date written on the Final Order, issued by the Regional Judicial Officer, which adopts this Complaint and Consent Agreement. If the due date falls on a weekend or legal Federal holiday, the due date is the next business day. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.

- b. The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America," (or be paid by one of the other methods listed below) and sent as follows:

Regular Mail:

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

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:
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"

Overnight Mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact Natalie Pearson
314-418-4087

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22-checking
Environmental Protection Agency
Account 310006
CTX Format

On Line Payment:

This payment option can be accessed from the information below:
www.pay.gov
Enter sf01.1 in the search field
Open form and complete required fields

A copy of the check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent to both:

Greg Bazley, 8ENF-AT
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

and

Tina Artemis, 8RC
Regional Hearing Clerk
U.S. EPA Region 8
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 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. (That is, on the 1st late day, 30 days of interest accrues.)
- d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 61st day from the date of the Final 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 (that is, the 121st day from the date the Final Order is signed). Payments are first applied to handling charges, 6% penalty interest, and late interest; then any balance is 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.

25. Nothing in this Complaint and Consent Agreement shall relieve Respondent of the duty to comply with the CAA and its implementing regulations.

26. Failure by Respondent to comply with any term of this Complaint and 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 such other relief as may be appropriate.

27. Nothing in this Complaint and 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 Complaint and Consent Agreement.

28. If the undersigned is a representative of the Respondent, he/she certifies that he/she is fully authorized to enter into the terms and conditions of this Complaint and Consent Agreement and to bind the parties he/she represents to the terms and conditions of this Complaint and Consent Agreement.

29. The parties agree to submit this Complaint and Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.

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

31. This Complaint and 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 all matters and potential violations of section 112r of the CAA and its implementing regulations arising from the September 15, 2009 inspection of Respondent's

facility, whether or not alleged by EPA, and the specific violations alleged in the complaint portion of this Complaint and Consent Agreement.

United States Environmental Protection Agency, Region 8
Office of Enforcement, Compliance, and
Environmental Justice,
Complainant.

Date: 9-28-2010

By: Sharon L. Kerch
for Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

Encana Oil & Gas (USA) Inc.,
Respondent.

Date: 9-23-10

By: Eric Root
Eric Root
Attorney-in-Fact

**DETERMINATION OF THE GRAVITY COMPONENT
for Fort Lupton Gas Plant (EnCana)**

On September 15, 2009 an EPA RMP inspection was conducted at the Fort Lupton Gas Processing Plant in Fort Lupton, Colorado. Three violations were discovered and applied to the Combined Enforcement Policy for Clean Air Act section 112(r)(7) and 40 C.F.R. part 68, Chemical Accident Prevention Provisions. The following is an overview of the proposed penalty amounts, with each individual violation explained later in this document:

VIOLATION	PENALTY
1) Inspections were not performed on process equipment from date on which regulated substance is first present above threshold. [68.73(d)(1)] and [68.10(a)(3)]	\$63,454.50
2) Inspection and testing procedures did not follow recognized and generally accepted good engineering practices [68.73(d)(2)]	\$28,202.00
3) Owner/operator did not promptly address the PHA team's findings and recommendations. [68.67(e)]	\$28,202.00
TOTALS	\$119,858.50

Adjusted Penalty after cooperation (30%)	\$83,900.95
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1) **VIOLATION 1: *Inspections and testing.*** Inspections and tests shall be performed on process equipment [68.73(d)(1)]; *Applicability.* An owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process shall comply with requirements of this part by the latest of the following dates:

- (1) June 21, 1999;
- (2) Three years after the date on with a regulated substance is first listed under Section 68.130; or
- (3) **The date on which the regulated substance is first present above a threshold quantity in a process.** [68.10(a)(3)]

EnCana established ownership the Fort Lupton Gas Processing Plant on April 3, 2002, as a result of a merger between Pan Canadian Energy and Alberta Energy. Appropriate testing was not performed on process equipment for over 4 years (April 19, 2006- this date is based on the earliest date found in the "baseline" testing spread sheet from EnCana).

a) Seriousness of the Violation

Table I
Part 68 Penalty Assessment Matrix for violations which occurred
after June 22, 1999

		Type of Facility		
		Program 1	Program 2	Program 3
Extent of Deviation	Major	\$30,000 to \$15,001	\$60,000 to \$25,001	Not less than \$25,001
	Moderate	\$15,000 to \$6,001	\$25,000 to \$12,101	\$50,000 to \$12,101
	Minor	\$6,000 to \$2,000	\$12,000 to \$5,000	\$12,000 to \$5,000

i) Extent of Deviation: **Moderate** (Program 3)

Moderate: Cumulatively, the violations have a significant effect on the ability of the facility to prevent or respond to releases through the development and implementation of the RMP.

Considerations:

Extent of Deviation could have been categorized as Major. However, Moderate was selected in favor of the Respondent. Major was not selected due to the fact that the Fort Lupton facility eventually brought in a third party to conduct inspections on process equipment. Also, due to the rural location of the facility, the worst case scenario showed to have no effect on residential population. Moderate was selected as the appropriate penalty category because testing was not performed in accordance with deadlines in the regulations at 40 C.F.R. [68.10(a)(3)]

Penalty	\$14,101
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ii) Adjustments:

Minor Impact: no upward adjustment for potential environmental consequences (based on worst-case release)

Note: Upward adjustments up to 50% are allowable for a Major Impact in terms of potential environmental consequences of the worst-case release

Adjusted Penalty	\$14,101 (no upward adjustment)
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b) Duration of Violation

Table III	
Duration of Violation	
Months	Penalty
0-12	\$500/month
13-24	\$1,000/month
25-36	\$1,500/month
37+	\$2,000/month

- i) Duration: 46 months [10/2002 (6 months after EnCana Ownership) – 04/2006 (Hawkeye Inspection)].

Calculation: \$6,000 (12 months*\$500) + \$12,000 (12 months*\$1,000) + \$18,000 (12*\$1,500) + \$14,000 (7 months*\$2,000) = \$50,000

Applied Penalty	\$50,000
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- ii) Adjustments:
Where the duration of violation figure (as determined in Table III) exceeds the seriousness of the violation component, the litigation team may, but need not, reduce the duration figure down to an amount equal to the seriousness component.

Adjusted Penalty	\$14,101
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c) Size of Violator

The size of the violator is determined from an individual's or company's net worth. In the case of a company with more than one facility, the size of the violator is determined based on the company's entire operation, not just the violating facility.

EnCana's net worth is approximately \$50 billion based on information provided by an EnCana news release on July 23, 2009: "With an enterprise value of approximately \$50 billion, EnCana is a leading North American unconventional natural gas and integrated oil company."

Table IVa Size of Violator Component	
Net Worth	Size Adjustment
Under \$1,000,000	\$0
\$1,000,000 – \$5,000,000	\$10,000
\$5,000,001 – \$20,000,000	\$20,000
\$20,000,001 – \$40,000,000	\$35,000
\$40,000,001 – \$70,000,000	\$50,000
\$70,000,001 – \$100,000,000	\$70,000
Over \$100,000,001	\$70,000 + \$25,000 for every additional \$30,000,000

- i) Size of Violator (based on Table IVa) = \$41+ million (unreasonable)

Calculation in notes

- ii) Adjustments:

As in the case of the duration of violation component, where the size of the violator figure (as determined in Table IVa) represents over 50% of the total penalty, the litigation team may, but need not, **reduce the size of the violator figure to an amount equal to the rest of the penalty without the size of the violator figure included.**

Adjusted Penalty	\$28,202 (14,101+\$14,101)
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- d) **Total Penalty Amount (Before Final Adjustments to the Gravity Component)**

Seriousness of Violation	\$14,101
Duration of Violation	\$14,101
Size of Violator	\$28,202
Total Penalty	\$56,404

- e) **Final Adjustments to the Gravity Component**

- i) Degree of Negligence

Considerations:

- The violator's familiarity with the particular requirement

- The degree of the violator’s control over the events constituting the violation
- The level of sophistication within the industry in dealing with compliance issues

Upward adjustment: 50% of seriousness of violation (Table Ia)

Degree of Negligence Adjustment (50% of seriousness of violation Ia)	+\$7,050.50
Adjustment factored into total penalty	\$63,454.50

ii) Degree of Cooperation (To Be Determined After Show-Cause)

Mitigation based on this factor is limited to no more than 30% of the gravity component.

Considerations:

- Cooperation during the EPA’s pre-filing investigation of the source’s compliance status;
- Willingness of the violator to settle within 30 days- The gravity component may be mitigated in the event that the violator agrees to, and does in fact, resolve the matter within 30 days. The Region may, but need not, extend this period by an additional 30 days if additional time is needed to negotiate the terms of a Supplemental Environmental Project.

Total Adjusted Penalty (30% mitigation)	\$44,418.15
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2) **VIOLATION 2:** Inspection and testing procedures shall follow recognized and generally accepted good engineering practices. [68.73(d)(2)]

Inspections performed on process equipment in 2006 at the Fort Lupton facility were not in accordance with generally accepted good engineering practices. Thickness testing was performed but those results were not used to determine if the vessel was fit for service. Applicable standards, not followed, include:

- API 510 Pressure Vessel Inspection Code: In-Service Inspection, Rating, Repair, and Alteration section 7.7 Evaluation of Existing Equipment With Minimal Documentation.
- API 579-1/ASME FFS-1 2007 Fitness-For-Service

a) Seriousness of the Violation

Table I
Part 68 Penalty Assessment Matrix for violations which occurred
after June 22, 1999

		Type of Facility		
		Program 1	Program 2	Program 3
Extent of Deviation	Major	\$30,000 to \$15,001	\$60,000 to \$25,001	Not less than \$25,001
	Moderate	\$15,000 to \$6,001	\$25,000 to \$12,101	\$50,000 to \$12,101
	Minor	\$6,000 to \$2,000	\$12,000 to \$5,000	\$12,000 to \$5,000

- i) Extent of Deviation: **Moderate** (Program 3)
Moderate: Cumulatively, the violations have a significant effect on the ability of the facility to prevent or respond to releases through the development and implementation of the RMP.

Considerations:

Extent of Deviation could have been categorized as Major however, Moderate was selected in favor of the respondent. Major was not selected due to the fact that the Fort Lupton facility did conduct inspections of process equipment in 2006. Moderate was selected because testing and inspections did not follow recognized and generally accepted good engineering practices. The testing that was conducted did not ensure safe operation of the process equipment.

Penalty	\$14,101
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- ii) Adjustments:
Minor Impact: no upward adjustment for potential environmental consequences (based on worst-case release)

Note: Upward adjustments up to 50% are allowable for a Major Impact in terms of potential environmental consequences of the worst-case release

Minimum Adjusted Penalty	\$14,101 (no upward adjustment)
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b) Duration of Violation

Table III Duration of Violation	
Months	Penalty
0-12	\$500/month
13-24	\$1,000/month
25-36	\$1,500/month
37+	\$2,000/month

i) Duration: 36 months [07/2006–07/2009].

Calculation: \$6,000 (12 months*\$500) + \$12,000 (12 months*\$1,000) + \$18,000 (12*\$1,500) = \$36,000

Applied Penalty	\$36,000
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ii) Adjustments:

Where the duration of violation figure (as determined in Table III) exceeds the seriousness of the violation component, the litigation team may, but need not, reduce the duration figure down to an amount equal to the seriousness component.

Adjusted Penalty	\$14,101
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c) **Size of Violator**

Size of the violator was accounted for in Violation 1.

d) **Total Penalty Amount (Before Final Adjustments to the Gravity Component)**

Seriousness of Violation	\$14,101
Duration of Violation	\$14,101
Size of Violator	--
Total Penalty	\$28,202

e) **Final Adjustments to the Gravity Component**

i) Degree of Cooperation (To Be Determined After Show-Cause)

Mitigation based on this factor is limited to no more than 30% of the gravity component.

Considerations:

- Cooperation during the EPA's pre-filing investigation of the source's compliance status;
- Willingness of the violator to settle within 30 days- The gravity

component may be mitigated in the event that the violator agrees to, and does in fact, resolve the matter within 30 days. The Region may, but need not, extend this period by an additional 30 days if additional time is needed to negotiate the terms of a Supplemental Environmental Project.

Total Adjusted Penalty (30% mitigation)	\$19,741.40
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- 3) **VIOLATION 3:** The owner or operator shall establish a system to promptly address the Process Hazard Analysis (PHA) team’s findings and recommendations; assured that recommendations are resolved in a timely manner and documented; documented what actions are to be taken; completed actions as soon as possible; developed a written schedule of when these actions are to be completed; and communicated the actions to operating, maintenance, and other employees whose work assignments are in the process and who may be affected by the recommendations. [68.67(e)]

The Fort Lupton Gas Plant conducted a Process Hazard Analysis (PHA) in 2007. No written schedule for when these items are to be completed was available for review. Many action items have not been attended to in a timely manner.

a) Seriousness of the Violation

Table I
Part 68 Penalty Assessment Matrix for violations which occurred
after June 22, 1999

		Type of Facility		
		Program 1	Program 2	Program 3
Extent of Deviation	Major	\$30,000 to \$15,001	\$60,000 to \$25,001	Not less than \$25,001
	Moderate	\$15,000 to \$6,001	\$25,000 to \$12,101	\$50,000 to \$12,101
	Minor	\$6,000 to \$2,000	\$12,000 to \$5,000	\$12,000 to \$5,000

i) Extent of Deviation: **Moderate** (Program 3)

Moderate: Cumulatively, the violations have a significant effect on the ability of the facility to prevent or respond to releases through the development and implementation of the RMP.

Considerations:

Extent of Deviation could have been categorized as Major however, Moderate was selected in favor of the respondent. Major was not selected due to the fact that the Fort Lupton facility did conduct a PHA. Moderate was selected because there was no written schedule of when action items are to be complete. Also, many action items have been left open and have not been addressed.

Penalty	\$14,101
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ii) Adjustments:

Minor Impact: no upward adjustment for potential environmental consequences (based on worst-case release)

Note: Upward adjustments up to 50% are allowable for a Major Impact in terms of potential environmental consequences of the worst-case release

Minimum Adjusted Penalty	\$14,101 (no upward adjustment)
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b) Duration of Violation

Table III Duration of Violation	
Months	Penalty
0-12	\$500/month
13-24	\$1,000/month
25-36	\$1,500/month
37+	\$2,000/month

- i) Duration: 26 months [07/12/2007 (6 months after PHA was conducted) – 09/15/2009].

Calculation: \$6,000 (12 months*\$500) + \$12,000 (12 months*\$1,000) + \$3,000 (2 months*\$1,500) = \$21,000

Applied Penalty	\$21,000
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- ii) Adjustments:

Where the duration of violation figure (as determined in Table III) exceeds the seriousness of the violation component, the litigation team may, but need not, reduce the duration figure down to an amount equal to the seriousness component.

Adjusted Penalty	\$14,101
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c) **Size of Violator**

Size of Violator accounted for in violation 1.

d) **Total Penalty Amount (Before Final Adjustments to the Gravity Component)**

Seriousness of Violation	\$14,101
Duration of Violation	\$14,101
Size of Violator	--
Total Penalty	\$28,202

e) **Final Adjustments to the Gravity Component**

- i) Degree of Cooperation (To Be Determined After Show-Cause)

Mitigation based on this factor is limited to no more than 30% of the gravity component.

Considerations:

- Cooperation during the EPA's pre-filing investigation of the source's compliance status;
- Willingness of the violator to settle within 30 days- The gravity component may be mitigated in the event that the violator agrees to, and does in fact, resolve the matter within 30 days. The Region may, but need not, extend this period by an additional 30 days if additional time is needed to negotiate the terms of a Supplemental Environmental Project.

Total Adjusted Penalty (30% mitigation)	\$19,741.40
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See total penalty for all three violations on page 1.

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSOLIDATED COMPLAINT, CONSENT AGREEMENT/FINAL ORDER** in the matter of **ENCANA OIL & GAS (USA), INC.; DOCKET NO.: CAA-08-2010-0020** was filed with the Regional Hearing Clerk on September 29, 2010.

Further, the undersigned certifies that a true and correct copy of the documents were delivered to, David Rochlin, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on September 29, 2010, to:

Matthew Baskind, Attorney
Encana Oil & Gas (USA), Inc.
370 17th Street, Suite 1700
Denver, CO 80202

E-mailed to:

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

September 29, 2010



Tina Artemis
Paralegal/Regional Hearing Clerk

