

**ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS**

FILED

2019 OCT -7 PM 2:25

REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

**Chevron Phillips Chemical Company LP
Pasadena Plastics Complex**

Respondent

Pasadena, Texas

**CONSENT AGREEMENT AND FINAL
ORDER**

EPA DOCKET NO. CAA-06-2019-3353

CONSENT AGREEMENT AND FINAL ORDER

The Director, Enforcement and Compliance Assurance Division, United States Environmental Protection Agency, Region 6 ("EPA" or "Complainant"), and Chevron Phillips Chemical Company LP ("Respondent" or "Chevron Phillips"), in the above referenced action, have agreed to simultaneously commence and resolve this matter concerning the Chevron Phillips Pasadena Plastics Complex in Pasadena, Texas (the "Facility") through issuance of this Consent Agreement and Final Order ("CAFO").

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties pursuant to Section 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d), is simultaneously commenced and concluded by the issuance of this CAFO pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2), 22.18(b)(3), and 22.34.

2. This CAFO serves as notice pursuant to CAA § 113(d)(2)(A), 42 U.S.C. § 7413(d)(2)(A).

3. For purposes of this proceeding, Respondent admits the jurisdictional allegations of this CAFO; however, Respondent neither admits nor denies the specific factual allegations

and alleged violations contained in this CAFO.

4. Respondent waives any right to contest the allegations in the CAFO and its right to appeal the Final Order set forth herein and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

5. Respondent does not waive any rights or defenses which have been raised or could be raised in any subsequent proceeding(s) which has been brought or which could be brought against Respondent regarding the claims set forth in the CAFO.

6. Compliance with all the terms and conditions of this CAFO shall resolve Respondent's liability for Federal civil penalties for the violations alleged in the CAFO but shall not resolve Respondent's liability for civil penalties for any other violations.

7. Respondent consents to the issuance of this CAFO, and consents to the assessment and payment of the stated Federal civil monetary penalty in the amount and by the method set out in this CAFO.

8. Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, or claim-splitting for violations not alleged in this CAFO.

9. Except as provided in Paragraph 6, nothing in this CAFO shall be construed to prevent or limit EPA's civil, injunctive, and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under Federal, State, or local laws or regulations.

10. Respondent represents that the undersigned representative is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO, to execute this CAFO, and to legally bind the Respondent to the terms and conditions of this

CAFO.

11. Respondent agrees that the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

II. STATUTORY AND REGULATORY BACKGROUND

12. Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), provides that the objective of the regulations and programs authorized under Section 112(r) shall be to prevent the accidental release of regulated substances or other extremely hazardous substances and to minimize the consequences of any such release.

13. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), the Administrator is authorized to promulgate regulations dictating release prevention, detection, and correction requirements.

14. On June 20, 1996, the EPA promulgated a final rule known as the Chemical Accident Prevention Provisions, 40 C.F.R. § 68, which implements Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

15. Pursuant to 40 C.F.R. § 68.10(a), an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process ("Covered Process"), as determined under 40 C.F.R. § 68.115, shall comply with the requirements of 40 C.F.R. § 68 no later than the latest of the following dates: (1) June 21, 1999; (2) three years after the date on which a regulated substance is first listed under Section 68.130; or (3) the date on which a regulated substance is first present above a threshold quantity in a process.

16. Pursuant to 40 C.F.R. § 68.12(a), an owner or operator of a stationary source subject to Part 68 requirements must submit a Risk Management Plan ("RMP"), as provided in 40 C.F.R. § 68 Subpart G (§§ 68.150-68.185), that reflects all covered processes at the stationary

source.

17. 40 C.F.R. § 68 provides general requirements applicable to owners or operators of a stationary source subject to 40 C.F.R. § 68.

18. 40 C.F.R. § 68 also establishes requirements that apply to an owner or operator depending on whether the stationary source operates processes subject to one of three “Programs”—Program 1, Program 2, and Program 3—as these program levels are defined in 40 C.F.R. § 68.10.

19. Pursuant to 40 C.F.R. § 68.12(d), the owner or operator of a stationary source with a process subject to the “Program 3” requirements of the Part 68 regulations, as determined pursuant to 40 C.F.R. § 68.10(d), must comply with the chemical accident prevention requirements of 40 C.F.R. § 68, Subpart D (Program 3 Prevention Program, at 40 C.F.R. §§ 68.65-68.87).

20. Pursuant to Sections 113(a)(3) and 113(d)(1)(B) of the CAA, 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1)(B), whenever the Administrator finds that any person has violated or is violating a requirement of the CAA, including, but not limited to, a requirement or prohibition of any rule promulgated under the CAA, other than those requirements specified in Sections 113(a)(1), 113(a)(2) or 113(d)(1)(A) of the CAA [42 U.S.C. §§ 7413(a)(1), 7413(a)(2), or 7413(d)(1)(A)], the Administrator may issue an order assessing a civil administrative penalty.

21. Pursuant to Section 113(d)(1) of the CAA, 42 U.S.C. 7413(d)(1), and as adjusted by the Civil Penalty Inflation Adjustment Rule of February 6, 2019 (84 Fed. Reg. 2056, 2059), 40 C.F.R. § 19.4, the Administrator may assess a civil administrative penalty of up to \$47,357 per day of violation for a violation occurring after November 2, 2015, where penalties are assessed on or after January 15, 2019.

22. "Owner or operator" is defined in 40 C.F.R. § 68.3 as any person who owns, leases, operates, controls, or supervises a stationary source.

23. "Person" is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), as including an individual, corporation, partnership, association, state, municipality, political subdivision of a state, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

24. "Process" is defined in 40 C.F.R. § 68.3 as any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities. Any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

25. "Regulated substance" is defined in 40 C.F.R. § 68.3 as any substance listed pursuant to Section 112(r)(3) of the CAA as amended, in § 68.130.

26. "RMP" is defined in 40 C.F.R. § 68.3 as the risk management plan required under subpart G of 40 C.F.R. § 68.

27. "Stationary source" is defined in Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3 as 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.

28. "Threshold quantity" is defined in 40 C.F.R. § 68.3 as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, listed in 40 C.F.R. § 68.130 and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

29. Respondent is a “person” as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

30. At all times relevant to this CAFO, Respondent owned and operated the Facility, located at 1400 Jefferson Road, Pasadena, Texas.

31. At the Facility, Respondent produces, processes, stores, or handles more than the threshold quantities of propane, isobutane, and ethylene.

32. Propane is identified at 40 C.F.R. § 68.130 as a regulated flammable substance with a threshold quantity of 10,000 pounds.

33. Isobutane is identified at 40 C.F.R. § 68.130 as a regulated flammable substance with a threshold quantity of 10,000 pounds.

34. Ethylene is identified at 40 C.F.R. § 68.130 as a regulated flammable substance with a threshold quantity of 10,000 pounds.

35. Respondent’s Facility includes a “covered process” as that term is defined in 40 C.F.R. § 68.3.

36. Respondent is required to submit an RMP pursuant to 40 C.F.R. § 68.12(a).

37. Respondent’s RMP indicates that the facility’s processes are subject to Occupational Safety and Health Administration Process Safety Management standard, 29 C.F.R. § 1910.119.

38. Respondent’s facility processes are Program Level 3 covered processes.

39. Pursuant to 40 C.F.R. § 68.12(d), Respondent is required to implement the prevention requirements of 40 C.F.R. §§ 68.65 - 68.87 at its facility.

40. On August 20-23, 2018, EPA Region 6 personnel conducted an on-site inspection

of the Facility to determine compliance with Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.

41. During the inspection, EPA discovered a violation of the 40 C.F.R. § 68.73 mechanical integrity requirements, alleged below.

IV. VIOLATION

Inspection and Testing

42. 40 C.F.R. § 68.73 establishes requirements for maintaining the mechanical integrity of “process equipment” within a covered process.

43. Pursuant to 40 C.F.R. § 68.73(d), inspections and tests must be performed on process equipment.

44. 40 C.F.R. § 68.73(a)(2) defines process equipment to include piping systems.

45. During the inspection, Respondent’s employees informed EPA’s inspector that the Facility had not conducted inspections and testing on a number of piping segments in the covered process.

46. Respondent’s failure to inspect and test these piping segments constitutes a violation of 40 C.F.R. § 68.73(d).

V. CIVIL PENALTY AND TERMS OF SETTLEMENT

47. Pursuant to the authority granted in Sections 113(d) of the CAA, 42 U.S.C. § 7413(d), and taking into consideration 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, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and

other factors as justice may require, the parties agree that \$65,000 is an appropriate penalty to resolve this matter.

48. Within thirty (30) days of this fully executed CAFO, Respondent shall pay \$65,000 by cashier's check, certified check, or wire transfer made payable to "Treasurer, United States of America, EPA - Region 6." Payment shall be remitted in one of five (5) ways: regular U.S. Postal Service mail, to include certified mail; overnight mail; wire transfer; Automated Clearinghouse for receiving U.S. currency; or On-Line Payment. For regular U.S. Postal Service mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service, e.g., FedEx), the check(s) should be remitted to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

Contact: Warren Stroman
225-621-1554

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 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”

For Automated Clearinghouse (also known as REX or remittance express):

U.S. Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact – Jesse White (301) 887-6548

For On Line Payment:

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

**PLEASE
NOTE:**

The docket number “CAA 06-2019-3353” shall be clearly typed on the check to ensure proper credit. The payment shall also be accompanied by a transmittal letter and shall reference Respondent’s name and address, the case name, and docket number of the administrative Complaint and CAFO. Respondent’s adherence to this request will ensure proper credit is given when penalties are received for the Region. Respondent shall also send a simultaneous notice of such payment, including a copy of the money order, or check, and the transmittal letter to the following:

Samuel Tates
Chief (ECDAC)
Chemical Accident Enforcement Section
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500
Dallas, Texas 75270-2102

Lorena Vaughn
Region 6 Hearing Clerk (ORC)
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500
Dallas, Texas 75270-2102

49. Respondent agrees not to claim, or attempt to claim, a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

50. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b).

51. EPA will also assess a fifteen-dollar (\$15.00) administrative handling charge for administrative costs on unpaid penalties for the first thirty (30)-day period after the payment is due and an additional fifteen dollars (\$15.00) for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent (6%) per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

52. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), any person who fails to pay on a timely basis, a civil penalty ordered or assessed under this section shall be required to pay - in addition to such penalty and interest - the United States enforcement

expenses, including but not limited to, attorney's fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten (10%) percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

53. This CAFO shall not relieve the Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval of any equipment or technology installed by the Respondent in connection with any additional settlement terms undertaken pursuant to this CAFO. Nothing in this CAFO shall be construed to prohibit or prevent the federal, state, or local government from developing, implementing, and enforcing more stringent standards through rulemaking, the permit process, or as otherwise authorized or required.

54. This document constitutes a "Final Order" as that term is defined in the CAA Penalty Policy for the purpose of demonstrating a history of "prior such violations."

VI. RETENTION OF ENFORCEMENT RIGHTS

55. EPA does not waive any rights or remedies available to EPA for any violations by the Respondent of Federal or State laws, regulations, statutes, or permitting programs.

56. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the CAA.

57. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants,

contaminants, or regulated or other extremely hazardous substances at, on, or from the Respondent's facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil, injunctive, or criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws, regulations, or subparts thereof.

VII. COSTS


58. Each party shall bear its own costs and attorney's fees.

(Signatures on Following Page)

**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT
AGREEMENT AND FINAL ORDER:**

FOR THE RESPONDENT:


Date: 9/24/2019



Gary Piana
Plant Manager
Chevron Phillips Chemical Company LP

FOR THE COMPLAINANT:

Date: 10/4/19



Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division

FINAL ORDER

Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in this CAFO. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement as set forth in the Consent Agreement, including the assessment of civil penalties. In accordance with 40 C.F.R. Part 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated

10/7/19

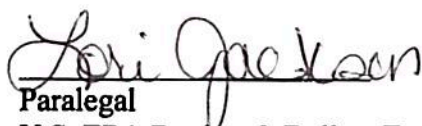


Thomas Rucki
Regional Judicial Officer
U.S. EPA, Region 6

CERTIFICATE OF SERVICE

I hereby certify that on the Th day of October, 2019, the original and one copy of the foregoing Consent Agreement and Final Order ("CAFO") was hand delivered to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270-2102, and a true and correct copy was delivered to the following individual(s) by the method indicated below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED and **ELECTRONIC COPY**


Paralegal
U.S. EPA Region 6, Dallas, Texas

Gary Piana 7001 0360 0003 6674 8414
Plant Manager
Chevron Phillips Chemical Company LP
1400 Jefferson Road
Pasadena, TX 77506

Lee Green 7009 2820 0001 8284 2962
Chevron Phillips Chemical Company LP
10001 Six Pines Dr
The Woodlands, TX 77380
Attorney for Respondent