

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6

07 JUL 10 11 2 00  
REGIONAL HEARING CLERK  
EPA REGION VI

In the Matter of	§	
	§	
TOTAL E&P USA, INC., a Delaware Corporation,	§	DOCKET NO. CWA-06-2007-1763
	§	
Respondent	§	CONSENT AGREEMENT AND
	§	FINAL ORDER
NPDES Permit Number GMG290072	§	Pursuant to 40 C.F.R. § 22.13(b)

I. PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the United States Environmental Protection Agency ("EPA") pursuant to Section 309(g) of the Clean Water Act (herein "the Act"), 33 U.S.C. § 1319(g). This CAFO is issued to simultaneously commence and conclude this proceeding to assess a Class I civil penalty in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), as described in the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits."

2. The Parties agree that settlement of the relevant matters without litigation will save time and resources, that it is in the public's interest, and that the entry of this CAFO is the most appropriate means of resolving such matters. Compliance with all the terms and conditions of this CAFO resolves only those violations alleged herein.

3. Respondent admits the jurisdictional allegations of this CAFO; however, Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in Section II (Findings of Fact and Conclusions of Law) of this CAFO.

4. Respondent expressly waives any right to contest the factual allegations or conclusions of law contained in this CAFO and waives its right to appeal the Final Order set forth herein.

5. Before the taking of any testimony, and without adjudication of any issue of law or fact, the Parties agree to the terms of this CAFO and to its issuance. Respondent consents to the assessment and payment of a civil penalty in the amount and by the method stated below.

## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

6. Respondent, TOTAL E&P USA, Inc., is a corporation which was incorporated under the laws of the State of Delaware, and as such, Respondent is a "person," as that term is defined at Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

7. At all times relevant to this CAFO, Respondent owned or operated offshore oil and gas production and/or exploration facilities, located in the Western Portion of the Gulf of Mexico in the Outer Continental Shelf (herein "the facilities"), and was therefore an "owner or operator" within the meaning of 40 C.F.R. § 122.2.

8. At all times relevant to this CAFO, the facilities were each a "point source" of a "discharge" of "pollutants" with its wastewater, including discharges of drilling fluids, drill cuttings, deck drainage, produced water, well treatment fluids, completion fluids, workover fluids, sanitary waste, domestic waste, and miscellaneous discharges to the receiving waters of the Gulf of Mexico, which are "waters of the United States" within the meaning of Section 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.

9. Because Respondent owned or operated facilities that were each a point source of discharges of pollutants to waters of the United States, Respondent and the facilities were subject to the Act and the National Pollutant Discharge Elimination System ("NPDES") program.

10. Under Section 301 of the Act, 33 U.S.C. § 1311, it is unlawful for any person to discharge any pollutant from a point source to waters of the United States, except with the authorization of, and in compliance with, an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

11. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. Any such discharge is subject to the specific terms and conditions prescribed in the applicable permit.

12. Pursuant to Section 402(a) of the Act, EPA issued the "Final NPDES General Permit for New and Existing Sources and New Discharges in the Offshore Subcategory of the Oil and Gas Extraction Category for the Western Portion of the Outer Continental Shelf of the Gulf of Mexico" (herein the "permit") on November 2, 1998, and modified it on April 19, 1999, and December 18, 2001. The latest permit modification was published on October 7, 2004, and became effective on November 6, 2004. The permit authorizes discharges from new sources, existing sources, and new discharges in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 C.F.R. Part 435, Subpart A) for facilities located in and discharging to Federal waters of the Gulf of Mexico seaward of the outer boundary of the territorial seas offshore of Louisiana and Texas, but only in accordance with the conditions of the permit. The permit does not authorize discharges from facilities located in, or discharging to, the territorial seas of Louisiana or Texas or from facilities defined as "coastal," "onshore," or "stripper" (see

40 C.F.R. Part 435, Subparts C, D, and E). The permit does, however, authorize the discharge of produced water to the Western portion of the Federal waters of the Gulf of Mexico from wells located in lease blocks in the territorial seas of Louisiana and Texas.

13. On December 16, 2002, Respondent received coverage under the permit for its facility identified as Mississippi Canyon 305 (145T), and was issued NPDES Permit Number GMG290072 for the relevant activities.

14. Certified Discharge Monitoring Reports ("DMRs") are required to be filed annually by Respondent with EPA in accordance with Part II.D. of the permit and signed and certified in accordance with Part II.D.10. of the permit.

15. During a DMR file review for the monitoring period from July 1, 2003, to June 30, 2004, the following violation was noted:

Respondent violated Part II.D.4. of the permit at Mississippi Canyon 305 (145T) by failing to submit monitoring results for the facility in the form of DMRs or inclusion on the No Discharge/No Activity List.

16. Each violation of the permit conditions described above was a violation of the regulations and Section 301 of the Act, 33 U.S.C. § 1311.

17. Under Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), Respondent is liable for a civil penalty in an amount not to exceed \$11,000 per day for each day during which a violation continues, up to a maximum of \$32,500.

18. The State of Texas was notified and given an opportunity to consult with EPA regarding the proposed assessment of an administrative penalty against Respondent as required by Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1).

19. EPA notified the public of the proposed CAFO via the internet and afforded the public 40 days to comment on the proposed penalty in accordance with 40 C.F.R. § 22.45. At the expiration of the notice period, EPA had received no comments from the public.

### III. TERMS OF SETTLEMENT

#### A. PENALTY PROVISIONS

20. Based on the foregoing Findings of Fact and Conclusions of Law, EPA Region 6, considering the relevant criteria pursuant to Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), and acting pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), hereby orders that Respondent shall pay to the United States a civil penalty in the amount of two thousand dollars (\$2,000) to settle the violations as alleged herein, in accordance with 40 C.F.R. § 22.18(c).

21. Payment shall be made within 30 days after the effective date of this CAFO by mailing a cashier's check or certified check, payable to "Treasurer of the United States," to the following address:

Regional Hearing Clerk  
U.S. EPA, Region 6  
P.O. Box 371099M  
Pittsburgh, PA 15251

The case name and docket number (In the Matter of TOTAL E&P USA, Inc., Docket No. CWA-06-2007-1763) should be clearly marked on the check to ensure credit for payment.

22. Respondent shall send simultaneous notice of payment, including a copy of the check, to each of the following:

- (a) Regional Hearing Clerk (6RC-D)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733
- (b) Chief, Compliance Monitoring Section (6EN-WC)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733
- (c) Chief, Water Legal Branch (6RC-EW)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

Respondent's adherence to these procedures will ensure proper credit when payment is received by EPA.

23. 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.

24. 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. See 40 C.F.R. § 13.11(b).

25. EPA will also assess a \$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 \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. See 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. See 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

26. Pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), 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, attorneys' 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 20 percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

27. Failure by Respondent to pay the penalty assessed according to the terms of this CAFO, in full, by its due date, may subject Respondent to a civil action to collect the assessed penalty and any accrued interest and penalties.

28. In the event a collection action is necessary, Respondent shall pay - in addition to any applicable penalty, fees, and interest described herein - all reasonable costs and expenses, including legal expenses and court costs, incurred by the United States for enforcement and collection proceedings for nonpayment of the amounts agreed hereunder, pursuant to

Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9). In any such collection action, the validity, amount, and appropriateness of the penalty, and the terms of this CAFO shall not be subject to review.

#### IV. GENERAL PROVISIONS

##### A. PARTIES BOUND

29. The provisions of this CAFO shall apply to and be binding upon the Parties to this action, their officers, directors, agents, employees, successors, and assigns. The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to execute and to legally bind that party to it.

##### B. MODIFICATION

30. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement of EPA and Respondent, and such modification or amendment being filed with the Regional Hearing Clerk.

##### C. RETENTION OF ENFORCEMENT RIGHTS

31. Issuance of this CAFO does not relieve Respondent from responsibility to comply with all requirements of the Act and the requirements of any permits issued thereunder, as described in Section 309(g)(7) of the Act, 33 U.S.C. § 1319(g)(7), nor does it constitute a waiver by EPA of its right to enforce compliance with the requirements of Respondent's permits or other requirements of the Act by actions pursuant to Section 309 of the Act, 33 U.S.C. § 1319. Further, EPA does not waive any rights or remedies available to the United States or EPA for



any violations by Respondent of Federal or State laws, regulations, or permitting conditions following the entry of this CAFO.

32. Notwithstanding any other provision of this CAFO, an enforcement action may be brought against Respondent pursuant to Section 504 of the Act, 33 U.S.C. § 1364.

D. RECORD PRESERVATION

33. Respondent shall preserve, during the pendency of this CAFO, all records and documents in its possession or in the possession of its divisions, employees, agents, contractors, or successors which in any way relate to this CAFO regardless of any document retention policy to the contrary.

E. COSTS

34. Each party agrees to bear its own costs and attorneys' fees in this matter, except to the extent that Respondent may be responsible for reasonable costs and expenses of enforcement and collection proceedings for failure to comply with the terms of this CAFO. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorneys' fees under the Equal Access to Justice Act (5 U.S.C. § 504), as amended by the Small Business Regulatory Enforcement Fairness Act (P.L.104-121), and any regulations promulgated pursuant to those Acts.

F. TERMINATION

35. Upon payment of the civil penalty specified herein in accordance with the provisions set forth in this CAFO, this CAFO shall be thereby satisfied and terminated without further proceedings.

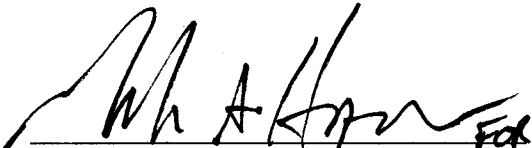
G. EFFECTIVE DATE

This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

The undersigned parties consent to the entry of this Consent Agreement and Final Order:

  
\_\_\_\_\_  
For TOTAL E&P USA, Inc.


5-24-2007  
Date:

  
\_\_\_\_\_  
John Blevins  
Director  
Compliance Assurance and  
Enforcement Division

6-29-7  
Date:

FINAL ORDER

Pursuant to 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 the Consent Agreement. 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 and the civil penalty payment instructions as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Issuance Date: July 3, 2007  
\_\_\_\_\_  
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 10<sup>th</sup> day of July, 2007, the original of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, U.S. EPA, Region 6 (6RC-D), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and that a true and correct copy was placed in the United States mail, by certified mail, return receipt requested, addressed to the following:

Mr. Rene Chappaz, President  
TOTAL E&P USA, Inc.  
800 Gessner, Suite 700  
Houston, TX 77024

Christopher Thiele  
Vinson & Elkins LLP  
2801 Via Fortuna, Suite 100  
Austin, TX 78746

Copy hand-delivered:

Ms. Yerusha Beaver (6RC-EW)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

  
\_\_\_\_\_