

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CALIFORNIA 94105

2012 DEC -6 PM 3: 54

US EPA - REGION IX
HEARING CLERK

IN THE MATTER OF:)	
)	DOCKET NO. CAA-09-2013-0001
)	
VINTAGE PRODUCTION CALIFORNIA LLC)	
)	
RESPONDENT)	
)	
_____)	

CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX ("EPA Region IX") and Vintage Production California, LLC ("Respondent") agree to the entry of this Consent Agreement and its incorporation into a Final Order pursuant to 40 C.F.R. §§ 22.13 and 22.18.

A. AUTHORITY AND PARTIES

1. This is a civil administrative action brought under section 113(a)(1)(B) and (d)(1)(A) of the Clean Air Act (the "Act"), as amended, 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.
2. Complainant is the Director of the Air Division of EPA Region IX. The Administrator of EPA has delegated to the Regional Administrator of EPA Region IX the authority to issue complaints, and the Regional Administrator, in turn, has re-delegated that authority to the Complainant.
3. Respondent is a Delaware limited liability company and a subsidiary of OXY USA Inc. and a "person" as defined in section 302(e) of the Act, 42 U.S.C. § 7602(e). Respondent operates a thermally enhanced oil recovery operation in the Kern Front Oil Field, which is located north of Bakersfield, California, ("the Facility"). Equipment operated by Respondent at the Facility emits air pollutants regulated under the Clean Air Act and its implementing regulations.

B. STATUTORY AND REGULATORY BACKGROUND

4. The Clean Air Act is designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1).

Prevention of Significant Deterioration

5. Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration of air quality in those areas designated as either attainment or unclassifiable for purposes of meeting the NAAQS standards. These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources, and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision making process. 42 U.S.C. § 7470. These provisions are referred to herein as the "PSD program."

6. Section 165(a) of the Act, 42 U.S.C. § 7475(a), among other things, prohibits the construction and operation of a "major emitting facility" in an area designated as attainment or unclassifiable unless a permit has been issued that comports with the requirements of Section 165 and the facility employs the best available control technology ("BACT") for each pollutant subject to regulation under the Act that is emitted from the facility. The portion of the San Joaquin Valley in which Vintage is located is attainment or unclassifiable for all pollutants other than PM-2.5 and ozone.

7. Section 169(1) of the Act, 42 U.S.C. § 7479(1), defines a "major emitting facility" as "any other source with the potential to emit two hundred and fifty tons per year or more of any air pollutant."

8. Sections 110(a) and 161 of the Act, 42 U.S.C. §§ 7410(a) and 7471, require each state to adopt a state implementation plan ("SIP") that contains emission limitations and such other measures as may be necessary to prevent significant deterioration of air quality in areas designated as attainment or unclassifiable.

Applicability under the General Prevention of Significant Deterioration Regulations

9. On June 19, 1978, the Administrator of EPA promulgated regulations to implement the Act's PSD requirements, 40 C.F.R. §52.21, "Prevention of Significant Deterioration of Air Quality" (43 Fed. Reg. 26402).

10. In pertinent part, the PSD regulations define a “**major stationary source**” as any source that emits or has the potential to emit 250 tons per year (“tpy”) or more of a regulated NSR pollutant. 40 C.F.R. §52.21(b)(1)(i)(b).

11. In pertinent part, the PSD regulations define “**major modification**” as “any physical change in or change in the method of operation of a major stationary source that would result in: a significant emissions increase (as defined in paragraph (b)(40) of this section) of a regulated NSR pollutant (as defined in paragraph (b)(50) of this section); and a significant net emissions increase of that pollutant from the major stationary source.” 40 C.F.R. §52.21 (b)(2)(i).

12. In pertinent part, the PSD regulations define “**significant emissions increase**” as, for a regulated NSR pollutant, an increase in emissions that is significant (as defined in paragraph (b)(23)) for that pollutant. 40 C.F.R. §52.21(b)(40).

13. In pertinent part, the PSD regulations define “**significant**” at specified levels for listed pollutants, and at zero for any pollutant not listed. 40 C.F.R. §52.21(b)(23)(i) and (ii).

14. If a major modification at an existing major stationary source triggers PSD applicability, the PSD regulations require application of best available control technology (“BACT”), analysis of source impacts, air quality modeling and analysis, and meaningful public participation in the permitting process. 40 C.F.R. §52.21(j)-(r); *see also*, 40 C.F.R. §52.21(b)(12).

15. EPA incorporated the federal PSD regulations, 40 C.F.R. §52.21, by reference into the California SIP. 40 C.F.R. §52.270(a)(1-3); *see also*, 43 Fed. Reg. 26410 (June 19, 1978); 68 Fed. Reg. 74484 (Dec. 24, 2003). As a result of this incorporation, and in the absence of a delegation of authority from EPA to the local air pollution regulatory agency, the San Joaquin Valley Unified Air Pollution Control District (“San Joaquin Valley Unified APCD”), at the time that the violations alleged in this action began, EPA was responsible for implementation of the PSD program in the San Joaquin Valley. On October 26, 2012, the Federal Register published a notice granting EPA’s final approval to San Joaquin Valley Unified APCD’s Rule 2410, “Prevention of Significant Deterioration.” This final action will transfer PSD implementation authority from EPA to the District effective November 25, 2012.

Applicability under the PSD and Title V Tailoring Rule

16. On June 3, 2010, EPA promulgated revisions to the PSD regulations as they apply to GHGs in the “Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule” (“Tailoring Rule”), 75 Fed. Reg. 31513-31608. The Tailoring Rule establishes the applicability criteria that determine which stationary sources and modification projects become

subject to PSD requirements for GHG emissions. *See id.* The Tailoring Rule also revised EPA's regulations for determining applicability of the title V operating permit program. *See id.*

17. In the preamble to the Tailoring Rule, EPA explained that the Agency was establishing "a two-part applicability process . . . for determining if a net increase has occurred in PSD applicability determinations for modifications." 75 Fed. Reg. 31531. EPA also explained that the Agency would determine PSD applicability by considering both the mass emissions of GHGs as well as the mass emissions multiplied by the gases' global warming potential ("GWP"), which is expressed as CO₂ equivalent emissions ("CO₂e." *See*, 75 Fed. Reg. 31518, 31523,-23, 31530-31; *see also*, 40 C.F.R. §52.21(b)(49)(iii) (defining "CO₂ equivalent emissions").

18. In pertinent part, the Tailoring Rule defines "GHGs" as: "the air pollutant defined in §86.1818-12(a) of this chapter as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride." 40 C.F.R. §52.21(b)(49)(i).

19. In pertinent part, the Tailoring Rule revisions to the PSD regulations define "**regulated NSR pollutant**" as "any pollutant that otherwise is subject to regulation under the Act as defined in paragraph (b)(49) of this section." 40 C.F.R. §52.21(b)(50)(iv).

20. In pertinent part, the Tailoring Rule revisions to the PSD regulations define "**subject to regulation**" under the Act as including the pollutant GHGs after July 1, 2011 at an existing stationary source that is not otherwise a major stationary source and that emits or has the potential to emit 100,000 tpy CO₂e, when that source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO₂e or more. 40 C.F.R. §52.21(b)(49)(v)(b).

21. In pertinent part, the Tailoring Rule revisions to the PSD regulations define "**emissions increase**" as used in paragraphs (b)(49)(iv) through (v) as meaning that both a significant emissions increase and a significant net emissions increase occur. 40 C.F.R. §52.21(b)(49)(iii). In addition, the Tailoring Rule revisions to the PSD regulations provide that an "**emission increase**" of the pollutant GHGs must be based on tpy CO₂e and must be calculated assuming the pollutant GHGs is a regulated NSR pollutant and "significant" is defined as 75,000 tpy CO₂e. *Id.*

Enforcement Authority

22. In pertinent part, the PSD regulations provide: "[A]ny owner or operator of a source or modification subject to this section who commences construction after the effective date of these regulations without applying for and receiving approval hereunder, shall be subject to

appropriate enforcement action.” 40 C.F.R. §52.21(r)(1); *see also*, 40 C.F.R. §§52.21(b)(8), (9) and (11).

23. Clean Air Act sections 113(a)(1)(B) and (d)(1)(A) provide that EPA may issue civil administrative penalty orders for SIP violations, including violations of any requirement or prohibition of a SIP. 40 U.S.C. §§7413(a)(1)(B) and (d)(1)(A).

24. A person who violates the Act is liable for a civil penalty of up to \$37,500 per day for violations occurring after January 12, 2009, as provided for in the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701. *See*, 40 C.F.R. Part 19; 69 Fed. Reg. 7126 (Feb. 13, 2004); 73 Fed. Reg. 239 (Dec. 11, 2008).

C. STIPULATED FACTS AND ALLEGED VIOLATIONS

25. Respondent’s Facility consists of steam generators, oil production wells, and associated ancillary equipment. Respondent’s steam generators produce steam that is piped through the oil field and injected into the oil reservoir. The steam heats the oil reservoir, increasing pressure and reducing viscosity, making the oil easier to pump and recover.

26. In December 2011, Respondent commenced construction and installation of three steam generators, each with a capacity of 85 million Btu per hour (“MMBtu/hr”) (“2011 Steam Generator Project”). From mid-May 2012 to mid-July 2012, Respondent temporarily operated one of the three steam generators. Respondent has never operated the other two steam generators. The potential to emit CO₂ and CO_{2e} from the three steam generators exceeds 75,000 tpy.

27. Prior to the 2011 Steam Generator Project, Respondent’s operations at the Facility consisted of 11 steam generators used to extract oil from approximately 650 oil production wells.

28. Prior to the 2011 Steam Generator Project, the Facility’s emissions for which EPA has promulgated NAAQS did not exceed the applicable major source thresholds.

29. At the time Respondent commenced construction of the 2011 Steam Generator Project, the Facility was an existing stationary source emitting GHGs in excess of both the major stationary source thresholds specified in 40 C.F.R. §52.21(b) and 40 C.F.R. §52.21(b)(49)(v)(b).

30. The 2011 Steam Generator Project was a physical modification that will result in a GHG emission increase that equals or exceeds both the significance level of 0 tpy specified in 40 C.F.R. §52.21(b)(23)(ii) and the 75,000 tpy CO_{2e} level specified in 40 C.F.R. §52.21(b)(49)(iii).

31. Prior to commencing construction of the 2011 Steam Generator Project, Respondent obtained an authority to construct permit from the San Joaquin Valley Unified APCD that regulated the Project's non-GHG emissions, but did not obtain a PSD permit regulating GHG emissions.

32. In September 2012, Respondent submitted an application for a PSD permit to EPA and to the San Joaquin Valley Unified APCD requesting authorization for construction, installation and operation of the three units constructed as part of the 2011 Steam Generator Project, as well as additional equipment. It is anticipated that the District will issue a PSD permit for the Project within four to six months of a finding that the Respondent's application is complete.

33. Respondent's failure to obtain a PSD permit prior to commencing construction and operation of the 2011 Steam Generator Project constitutes a violation of the Act and subjects Respondent to enforcement pursuant to Clean Air Act sections 113 and 165 and 40 C.F.R. §52.21(r)(1).

34. Pursuant to section 113(a)(1) of the Act, 42 U.S.C. §7413(a)(1), EPA notified Respondent and the State of California of the violations of the California SIP alleged in this complaint on or about November 2, 2012, more than 30 days prior to the filing of this action.

D. TERMS OF AGREEMENT

The EPA and Respondent, by their undersigned representatives, hereby consent and agree as follows:

35. In accordance with 40 C.F.R. §22.18(b)(2) and for the purpose of this proceeding, Respondent (i) admits that EPA has jurisdiction over the subject matter of this Consent Agreement and its incorporation into a Final Order and over Respondent; (ii) neither admits nor denies the specific factual allegations and the other allegations contained in Section I.C of this Consent Agreement; (iii) consents to any and all conditions specified in this Consent Agreement, including the assessment of the civil administrative penalty under Section I.E of this Consent Agreement; (iv) waives any right to contest the allegations contained in this Consent Agreement; and (v) waives the right to appeal the Final Order incorporating this Consent Agreement.

36. Respondent will pay to the United States a civil penalty, pursuant to the terms of Section E of this Consent Agreement.

37. Within one year of the Effective Date of this Agreement, Respondent shall obtain a PSD permit for the Facility.

38. Within ten (10) calendar days of its receipt of such permit, Respondent shall notify the EPA and provide a copy the permit. Notification pursuant to this paragraph shall be made electronically to Joseph Lapka, EPA Region 9 at this address: lapka.joseph@epa.gov

39. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and is, truthful, accurate, and complete for each such submission, response and statement. Respondent realizes that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

40. Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the Respondent may have with respect to any issue of fact or law set forth in this Consent Agreement or the Final Order, including, but not limited to, any right of judicial review of the CAA section 113(a) Consent Agreement or Final Order under section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1).

E. CIVIL ADMINISTRATIVE PENALTY

41. Pursuant to an analysis of the facts and circumstances of this case with the statutory factors described in section 113(d)(e) of the CAA, 42 U.S.C. §7413(d)(e), EPA has determined that an appropriate civil penalty to settle this action is the amount of Thirty-four Thousand Dollars (\$34,000).

42. Respondent hereby consents to the assessment of a civil penalty in the amount Thirty-four Thousand Dollars (\$34,000) for the purposes of settlement of federal civil penalties for the civil violations alleged in Section I.C of this Consent Agreement. Respondent shall pay this penalty within 30 days of the effective date of this Consent Agreement. Payment shall be made by cashier's or certified check payable to the "Treasurer, United States of America," and shall be sent by certified mail, return receipt requested, to the following address:

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

43. The payment shall be accompanied by a transmittal letter identifying the case name, the case docket number, and this Consent Agreement. Concurrent with delivery of the payment of the penalty, Respondent shall send a copy of the check and transmittal letter to the following addresses:

Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Joseph Lapka
Air Division (AIR-5)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

44. Payment of the above civil administrative penalty shall not be used by Respondent or any other person as a tax deduction from Respondent's federal, state, or local taxes.
45. Failure to pay the civil administrative penalty within 30 days of the effective date of this Consent Agreement, may lead to any or all of the following actions:
- a. The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this Consent Agreement shall not be subject to review.
 - b. The debt being collected by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.
 - c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds. 40 C.F.R. § 13.17.
 - d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13, the EPA is required to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling any delinquent claim. Interest, at the statutory judgment rate provided for in 31 U.S.C. §3717, will therefore begin to accrue on the civil penalty agreed to herein on the date a copy of this Consent Agreement

and attached Final Order is mailed to Respondent. However, the EPA will not seek to recover interest on any portion of the civil penalty that is timely paid. Interest, penalties charges, and administrative costs will be assessed against any outstanding amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty within the deadline specified in paragraph 42 of the Consent Agreement. Interest will be assessed at an annual rate that is equal to the rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c). Administrative costs for handling and collecting Respondent's overdue debt will be based on either actual or average cost incurred, and will include both direct and indirect costs. 40 C.F.R. § 13.11(b). In addition, if this matter is referred to another department or agency (e.g., the Department of Justice, the Internal Revenue Service), that department or agency may assess its own administrative costs, in addition to EPA's administrative costs, for handling and collecting Respondent's overdue debt.

F. EFFECT OF SETTLEMENT

46. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Consent Agreement and accompanying Final Order only resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged in Section I.C of this Consent Agreement.
47. This Consent Agreement and accompanying Final Order does not exempt, relieve, modify, or affect in any way Respondent's duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.
48. This Consent Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, with respect to the subject matter hereof.
49. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of both parties, and approval of a Regional Judicial Officer.

Respondent acknowledges that its facility identified in paragraph 3 requires a PSD permit for GHG emissions for the 2011 Steam Generator Project. If Respondent fails to obtain a PSD permit within the time prescribed in paragraph 37, or otherwise fails to comply with any provision contained in this Consent Agreement, the EPA may take, and Respondent waives any rights it may possess to challenge the authority of the EPA to take, any civil action available in law or in equity to enforce the requirements of the Clean Air Act, including to compel compliance with this Consent Agreement and attached Final Order or to seek an additional penalty for such noncompliance.

50. The EPA reserves the right to revoke this Consent Agreement if and to the extent that the EPA finds, after signing this Consent Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, and the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent oral notice of its intent to revoke, which shall not be effective until received by Respondent in writing.

51. Respondent and Complainant agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a Final Order. Upon filing, the EPA will transmit a copy of the filed Consent Agreement to the Respondent. This Consent Agreement and the accompanying Final Order shall become effective pursuant to Section H of this Consent Agreement.

G. ATTORNEYS' FEES AND COSTS

52. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

H. EFFECTIVE DATE

53. In accordance with 40 C.F.R. §§22.18(b)(3) and 22.31(b), this Consent Agreement shall be effective on the date that the accompanying Final Order, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

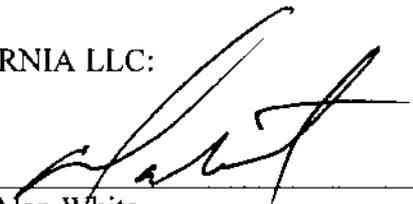
I. BINDING EFFECT

54. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and to bind the party he or she represents to this Consent Agreement.

55. The provisions of this Consent Agreement shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

FOR VINTAGE PRODUCTION CALIFORNIA LLC:

11/26/2012
DATE


By: Alan White
Title: President and General Manager

Address: 9600 Ming Avenue
Bakersfield, CA 93311

FOR COMPLAINANT EPA REGION IX:

12-3-2012
DATE



Deborah Jordan
Director
Air Division
United States Environmental
Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order in the matter of Vintage Productions California, LLC. (Docket #: CAA-09-2013-0001) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

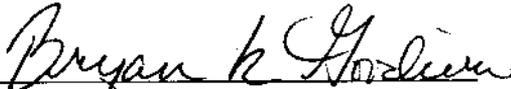
A copy was mailed via CERTIFIED MAIL to:

Richard W. Oringderff
Vintage Production California, LLC.
9600 Ming Avenue, Ste. 300
Bakersfield, CA 93311

CERTIFIED MAIL NUMBER: 7011 0110 0001 9032 4765

And additional copy was hand-delivered to the following U.S. EPA case attorney:

Kara Christenson, Esq.
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105


Bryan K. Goodwin
Regional Hearing Clerk
U.S. EPA, Region IX

12/6/12
Date



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

CERTIFIED MAIL NO. 7011 0110 0001 9032 4765
RETURN RECEIPT REQUESTED

IN REPLY: AIR-5
Docket No. CAA-09-2013-0001

DEC 06 2012

Richard W. Oringderff
Vintage Production California, LLC.
9600 Ming Avenue, Suite 300
Bakersfield, CA 93311

Dear Mr. Oringderff:

Enclosed is your copy of the Consent Agreement and Final Order ("CAFO") filed pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. 7401-7671q. If you have any questions concerning the CAFO, please contact Joseph Lapka of my staff at (415) 947-4226 or have your attorney contact Kara Christenson of our Office of Regional Counsel at (415) 972-3881.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah Jordan".

Deborah Jordan
Director, Air Division

Enclosure

cc: Jim Ryden, California Air Resources Board
Seyed Sadredin, San Joaquin Valley Air Pollution Control District
R. Michael Viayra, Jr., Senior Counsel, Vintage Production

