

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
BEFORE THE ADMINISTRATOR

IN THE MATTER OF:	§	EPA DOCKET NO.: CAA-06-2010-3310
XPLOR ENERGY OPERATING COMPANY	§	COMPLAINT AND
Boothville, Plaquemines Parish, Louisiana	§	CONSENT AGREEMENT AND
	§	FINAL ORDER
	§	

COMPLAINT AND CONSENT AGREEMENT AND FINAL ORDER

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant), and Xplor Energy Operating Company (Respondent) in the above referenced proceeding, hereby agree to resolve this matter through the issuance of this Complaint and Consent Agreement and Final Order (“Complaint” and “CAFO”).

I. PRELIMINARY STATEMENT

1. This proceeding is for the assessment of civil penalties pursuant to Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d). This proceeding is instituted by the issuance of a Complaint and Notice of Opportunity for Hearing (“Complaint”) incorporated herein, and is simultaneously concluded by the issuance of this CAFO against Respondent pursuant to 40 C.F.R. §§ 22.13(b) and 22.34.

2. The Complaint alleges that Respondent violated regulations promulgated pursuant to the Act at its Main Pass Block 35 Central Facility, a natural gas production facility located seven (7) miles north of Boothville, Plaquemines Parish, Louisiana (the Facility).

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

4. Respondent consents to the issuance of this CAFO hereinafter recited and consents to the assessment and payment of the stated civil penalty in the amount and by the method set out in this CAFO.

5. By signature on this Complaint and CAFO, 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.

6. Compliance with all the terms and conditions of this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations and facts alleged in the Complaint and CAFO.

7. Nothing in this CAFO shall be construed to prevent or limit EPA's civil and 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 or regulations.

8. Respondent hereby certifies that as of the date of its execution of this CAFO, the Facility has corrected the violations alleged in the Complaint, and is now, to the best of its knowledge, in compliance with all the requirements of the Act.

9. Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on behalf of the Respondent is duly authorized to bind the Respondent to the terms and conditions of this CAFO.

10. Respondent agrees that the provisions of this CAFO shall be binding on its officers,

directors, employees, agents, servants, authorized representatives, successors, and assigns, including, but not limited to, subsequent purchasers.

11. Pursuant to Section 113(a)(1)(B) of the Act, 42 U.S.C. § 7413(a)(1)(B), the Administrator of EPA may issue an administrative penalty order in accordance with subsection (d) of this section when the Administrator finds that any person has violated requirements of the Act.

12. Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), also authorizes EPA to bring an administrative penalty action where the first alleged date of violation occurred more than twelve (12) months prior to the initiation of the action, if the Administrator and the United States Attorney General jointly determine that a matter is appropriate for administrative action.

13. The U.S. Department of Justice and EPA have jointly determined that an administrative action is appropriate for the violations alleged herein and have, therefore, waived the limit on the age of the violations, pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

14. The Respondent is a corporation authorized to do business in the State of Louisiana.

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

16. At all relevant times, Respondent owned and operated the natural gas production facility identified in Paragraph 2 above.

17. Section 502(d)(1) of the Act, 42 U.S.C. § 7661a(d)(1), requires each State to develop and submit to EPA an operating permit program which meets the requirements of Title V.

On October 12, 1995, EPA granted full approval to the Louisiana Title V operating permits program. 40 C.F.R. Part 70, Appendix A. Major stationary sources of air pollution and other sources covered by Title V are required to obtain an operating permit that includes emission limitations and such other conditions necessary to assure compliance with all applicable requirements of the Act. 42 U.S.C. §§ 7661a(a) and 7661c(a).

18. The Title V operating permit program does not generally impose new substantive air quality control requirements (which are referred to as “applicable requirements”), but does require permits to contain monitoring, recordkeeping, reporting, and other requirements to assure compliance by sources with existing applicable requirements. 57 *Fed. Reg.* 32250, 32251 (July 21, 1992).

19. Under 40 C.F.R. § 70.1(b), “all sources subject to [Title V must] have a permit to operate that assures compliance by the source with all applicable requirements.” Applicable requirements are defined in 40 C.F.R. § 70.2 to include “(1) any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the [Clean Air] Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in [40 C.F.R. Part 52].”

20. Pursuant to 42 U.S.C. § 7661a(a) as set out in 40 C.F.R. § 70.6(b), all terms and conditions in a Title V permit, including any provisions designed to limit a source’s potential to emit, are enforceable by the Administrator and citizens under the Act.

21. Violations of Title V are federally enforceable under Section 113 of the Act, 42 U.S.C. § 7413.

22. On or about September 6, 2007, a Title V Permit (Permit No. 2240-00197-V5) for the facility was issued to Main Pass Block 35 Central Facility – Main Pass Block 35 Field, Xplor Energy Operating Company.

23. General Condition II of the Respondent's Title V Permit states that "[t]he permittee is subject to all applicable provisions of the Louisiana Air Quality Regulations. Violation of the terms and conditions of the permit constitutes a violation of these regulations."

24. Table 1 of the Respondent's Title V Permit states that the entire Facility is subject to LAC 33:III.2113.

25. LAC 33:III.2113, which is part of the Louisiana SIP, provides the following:

"Best practical housekeeping and maintenance practices must be maintained at the highest possible standards to reduce the quantity of organic compounds emissions. Emission of organic compounds must be reduced wherever feasible."

26. LAC 33:III.111 of the Louisiana SIP defines "air contaminants" as "particulate matter, dust fumes, gas, mist, smoke, or vapor, or any combination thereof produced by process other than natural."

27. A "volatile organic compound" or VOC is an "air contaminant" as that term is defined by LAC 33:III.111 of the Louisiana SIP.

28. A Clean Air Act Inspection was conducted by EPA on February 11, 2008, at the facility identified in paragraph 2 above.

29. On or about February 11, 2008, during the inspection, the inspector noted that one stock tank (No. 310) was damaged and was leaking VOCs.

30. On or about February 11, 2008, during the inspection, one unidentified oily tank hatch was detected to be leaking VOCs.

31. On or about February 11, 2008, during the inspection, one compressor engine (No. 6) was detected to be leaking VOCs.

III. VIOLATION

32. Therefore, the Respondent violated LAC 33:III.2113 of the Louisiana SIP, and General Condition II of the Respondent's Title V Permit (Permit No. 2240-00197-V5), and Section 502(a) of the Act, 42 U.S.C. § 7661a(a), by failing to properly maintain best practical housekeeping and maintenance practices at the highest possible standards to reduce the quantity of organic compounds emissions from the tanks (mentioned in paragraphs 29 and 30 above) and from the compressor engine (mentioned in paragraph 31 above) at the Facility.

IV. CIVIL PENALTY AND TERMS OF SETTLEMENT

33. For the reasons set forth above, Respondent has agreed to pay a civil penalty which has been determined in accordance with Section 113(d) of the Clean Air Act (Act), 42 U.S.C. § 7413(d), which authorizes EPA to assess a civil penalty of up to Twenty-Five Thousand Dollars (\$25,000) per day for each violation of the Act that occurs before January 30, 1997¹. Upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of 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

1. The Civil Penalty Inflation Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701 authorizes the United States to commence an action to assess civil penalties of not more than \$ 27,500 per day for each violation that occurs January 30, 1997 through March 15, 2004; \$ 32, 500 per day for each violation that occurs March 15, 2004 through January 12, 2009; and up to \$ 37,500 per day for each violation occurring after January 12, 2009.

penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and other factors as justice may require, it is ORDERED that Respondent be assessed a civil penalty of Twenty Seven Thousand Six Hundred Twenty Five Dollars (\$27,625.00).

34. Within thirty (30) days of the effective date of this Complaint and CAFO, Respondent shall pay the assessed civil penalty by cashier's, 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; or Automated Clearinghouse for receiving US 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

Finance Center Phone Contacts:
Craig Steffen (513-487-2091) or Eric Volek (513-487-2105)

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), 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

Phone Contact: 314-418-1028

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

Finance Center Phone Contact: John Schmid (202-874-7026)
REX (Remittance Express): 1-866-234-5681

For On Line Payment:

<https://www.pay.gov/paygov/>
Enter sfo 1.1 in search field
Open form and complete required fields.

PLEASE NOTE: Docket number CAA-06-2010-3310 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 transmittal letter to the following:

Mr. Jim Yang (6EN-AT)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733;

and

Region 6 Hearing Clerk (6RC-D)
U.S. EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

35. 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.

36. 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).

37. 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 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.

38. Pursuant to Section 113(d)(5) of the Act, 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, 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 10 percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

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

V. RETENTION OF ENFORCEMENT RIGHTS

40. EPA does not waive any rights or remedies available to EPA for any violations by the Respondent of any other Federal laws, regulations, statutes, or permitting programs not the subject of this action.

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

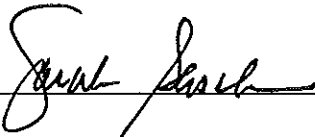
VI. COSTS

42. Each party shall bear its own costs and attorneys fees.

IT IS SO AGREED:

FOR THE RESPONDENT:

Date: 1/20/2012



Sarah Gasch
Chief Financial Officer
Xplor Energy Operating Company

FOR THE COMPLAINANT:

Date: _____

John Blevins
Director
Compliance Assurance and
Enforcement Division

FINAL ORDER

Pursuant to Section 113(d) of the Clean Air Act (Act), 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. In accordance with 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk

Dated _____

Pat Rankin
Regional Judicial Officer
U.S. EPA Region 6

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of _____, 2011, the original and one copy of the foregoing Complaint and Consent Agreement and Final Order (“Complaint and CAFO”) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and a true and correct copy was delivered to the following individual(s) by the method indicated below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED #

Tracy Hester, Esquire
Bracewell & Giuliani LLP
711 Louisiana St., Suite 2300
Houston, TX 77002-2770

CERTIFIED MAIL - RETURN RECEIPT REQUESTED #

Sarah Gasch
Chief Financial Officer
Xplor Energy Operating Company
180 State Street, Suite 200
Southlake, TX 76092

or

Capitol Corporate Services, Inc.
Registered Agent for: Xplor Energy Operating Company
8550 United Plaza Building II, Ste. 305
Baton Rouge, LA 70809

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