

US EPA ARCHIVE DOCUMENT

FILED

1 UNITED STATES
2 ENVIRONMENTAL PROTECTION AGENCY
3 REGION IX
4 75 HAWTHORNE STREET
5 SAN FRANCISCO, CA 94105

2008 AUG 21 AM 10:45
U.S. EPA, REGION IX
REGIONAL HEARING CLERK

5 In the Matter of:) Docket No. TSCA-09-2008-0005
6 Exxon Mobil Corporation,)
7) CONSENT AGREEMENT
8 Respondent.) AND FINAL ORDER
) PURSUANT TO 40 C.F.R.
) §§ 22.13 and 22.18

9 I. CONSENT AGREEMENT

10 The United States Environmental Protection Agency, Region IX
11 ("EPA"), and Exxon Mobil Corporation ("Respondent") agree to
12 settle this matter and consent to the entry of this Consent
13 Agreement and Final Order ("CAFO"), which simultaneously
14 commences and concludes this matter in accordance with 40 C.F.R.
15 §§ 22.13(b) and 22.18(b).

16 A. AUTHORITY AND PARTIES

17 1. This is a civil administrative penalty action
18 instituted against Respondent pursuant to Section 16(a) of the
19 Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a), for
20 violation of Section 15 of TSCA, 15 U.S.C. § 2614, by failing to
21 comply with implementing regulations governing polychlorinated
22 biphenyls ("PCBs") at 40 C.F.R. Part 761.

23 2. Complainant is the Director of the Waste Management
24 Division, EPA Region IX, who has been duly delegated the
25 authority to bring this action and to sign a consent agreement
26 settling this action.

27 3. Respondent owns, operates, and controls three (3)
28

1 producing oil and gas platforms located off the coast of Santa
2 Barbara County, California.

3 B. APPLICABLE STATUTORY AND REGULATORY SECTIONS

4 4. Pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e),
5 EPA promulgated regulations governing PCBs at 40 C.F.R. Part 761.

6 5. "PCB" and "PCBs" means any chemical substance that is
7 limited to the biphenyl molecule that has been chlorinated to
8 varying degrees or any combination of substances which contains
9 such substances. 40 C.F.R. § 761.3.

10 6. "PCB Article" means any manufactured article, other
11 than a PCB container, that contains PCBs and whose surface(s) has
12 been in direct contact with PCBs. "PCB Article" includes
13 capacitors, transformers, electric motors, pumps, pipes and any
14 other manufactured item (1) which is formed to a specific shape
15 or design during manufacture, (2) which has end use function(s)
16 dependent in whole or in part upon its shape or design during end
17 use, and (3) which has either no change of chemical composition
18 during its end use or only those changes of composition which
19 have no commercial purpose separate from that of the PCB Article.
20 40 C.F.R. § 761.3.

21 7. "PCB Item" means any PCB Article, PCB Article
22 Container, PCB Container, PCB Equipment, or anything that
23 deliberately or unintentionally contains or has as a part of it
24 any PCB or PCBs. 40 C.F.R. § 761.3.

25 8. "PCB-contaminated electrical equipment" means any
26 electrical equipment including, but not limited to,

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1 transformers..., that contains PCBs at concentrations \geq 50 ppm
2 and $<$ 500 ppm in the contaminating fluid. 40 C.F.R. § 761.3.

3 9. "Person" means any individual, corporation,
4 partnership, or association; any State, or political subdivision
5 thereof; any interstate body; and any department, agency, or
6 instrumentality of the Federal Government. 40 C.F.R. § 761.3.

7 10. "Leak or leaking" means any instance in which a PCB
8 Article, PCB Container, or PCB Equipment has any PCBs on any
9 portion of its external surface. 40 C.F.R. § 761.3.

10 11. "Disposal" means intentionally or accidentally to
11 discard, throw away, or otherwise complete or terminate the
12 useful life of PCBs and PCB Items. Disposal includes spills,
13 leaks, and other uncontrolled discharges of PCBs as well as
14 actions related to containing, transporting, destroying,
15 degrading, decontaminating, or confining PCBs and PCB Items. 40
16 C.F.R. § 761.3.

17 12. Any person storing or disposing of PCB waste must do
18 so in accordance with subpart D of 40 C.F.R. Part 761. 40 C.F.R.
19 § 761.50(a).

20 13. Spills and other uncontrolled discharges of PCBs at
21 concentrations of \geq 50 ppm constitute the disposal of PCBs. 40
22 C.F.R. § 761.50(a)(4).

23 14. Persons participating in decontamination activities
24 shall wear or use protective clothing or equipment to protect
25 against dermal contact or inhalation of PCBs or materials
26 containing PCBs. 40 C.F.R. § 761.79(e)(2).

1 15. It shall be unlawful for any person to fail or refuse
2 to comply with... (C) any rule promulgated or order issued under
3 section 2604 or 2605 of [TSCA]. TSCA Section 15(1)(C), 15
4 U.S.C. § 2614(1)(C).

5 16. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), authorizes
6 the EPA Administrator to assess a civil penalty not to exceed
7 \$25,000 per day for each violation of Section 15 of TSCA, 15
8 U.S.C. § 2614. This statutory maximum civil penalty subsequently
9 has been raised to \$27,500 per day for each violation that
10 occurred on or before March 15, 2004 and \$32,500 per day for each
11 violation that occurred after March 15, 2004 pursuant to the
12 Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L.
13 101-410, as amended, and its implementing regulation, the Civil
14 Monetary Penalty Inflation Adjustment Rule codified at 40 C.F.R.
15 Part 19.

16 C. ALLEGATIONS

17 17. Respondent is a "person," as that term is defined at
18 40 C.F.R. § 761.3.

19 18. At all times relevant to this CAFO, Respondent
20 produced oil and gas from three (3) platforms, Platforms Hondo,
21 Harmony and Heritage, at its Santa Ynez Unit located off the
22 coast of Santa Barbara County, California in the Santa Barbara
23 Channel.

24 19. At all times relevant to this CAFO, Respondent owned
25 and/or operated two (2) transformers located on Platform Hondo
26 (hereinafter "Transformer A" and "Transformer B") that contained

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1 PCBs at concentrations \geq 50 ppm but $<$ 500 ppm.

2 20. At all times relevant to this CAFO, Transformer A and
3 Transformer B are "PCB-contaminated electrical equipment," as
4 that term is defined at 40 C.F.R. § 761.3.

5 21. At all times relevant to this CAFO, Transformer A and
6 Transformer B are "PCB Articles" and "PCB Items," as those terms
7 are defined at 40 C.F.R. § 761.3.

8 22. From on or about August 13, 2002 to on or about August
9 2, 2004, Transformer B "leaked," as that term is defined at 40
10 C.F.R. § 761.3, approximately 373 gallons of PCB-contaminated
11 fluid.

12 23. The leaking of PCB-contaminated fluid from Transformer
13 B constitutes "disposal" of PCBs, as that term is defined at 40
14 C.F.R. § 761.3 and 40 C.F.R. § 761.50(a)(4).

15 24. Respondent's disposal of PCBs from Transformer B from
16 on or about August 13, 2002 to on or about August 2, 2004 was not
17 in accordance with subpart D of 40 C.F.R. Part 761, as required
18 by 40 C.F.R. § 761.50(a).

19 25. Respondent's failure to dispose of PCB waste from
20 Transformer B in accordance with 40 C.F.R. Part 761, subpart D
21 constitutes a violation of 40 C.F.R. § 761.50(a) and Section
22 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C), lasting 722 days, each
23 day of which can be assessed a penalty of up to \$27,500 on or
24 before March 15, 2004 and up to \$32,500 after March 15, 2004.

25 26. From on or about February 25, 2005 to on or about
26 February 27, 2005, Transformer A "leaked," as that term is

1 defined at 40 C.F.R. § 761.3, approximately 16 gallons of PCB-
2 contaminated fluid.

3 27. The leaking of PCB-contaminated fluid from Transformer
4 A constitutes "disposal" of PCBs, as that term is defined at 40
5 C.F.R. § 761.3 and 40 C.F.R. § 761.50(a)(4).

6 28. Respondent's disposal of PCBs from Transformer A from
7 on or about February 25, 2005 to on or about February 27, 2005
8 was not in accordance with subpart D of 40 C.F.R. Part 761, as
9 required by 40 C.F.R. § 761.50(a).

10 29. Respondent's failure to dispose of PCB waste from
11 Transformer A in accordance with 40 C.F.R. Part 761, subpart D
12 constitutes a violation of 40 C.F.R. § 761.50(a) and Section
13 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C), lasting 3 days, each
14 day of which can be assessed a penalty of up to \$32,500.

15 30. On at least one occasion during the period from on or
16 about August 13, 2002 to on or about August 2, 2004, Respondent
17 failed to have its employees participating in decontamination
18 activities involving Transformer B wear or use protective
19 clothing or equipment to protect against dermal contact or
20 inhalation of PCBs or materials containing PCBs, as required by
21 40 C.F.R. § 761.79(e)(2).

22 31. Respondent's failure to have its employees
23 participating in decontamination activities involving Transformer
24 B wear or use protective clothing or equipment to protect against
25 dermal contact or inhalation of PCBs or materials containing PCBs
26 constitutes a violation of 40 C.F.R. § 761.79(e)(2) and Section

1 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C), for which a penalty of
2 up to \$27,500 can be assessed.

3 D. RESPONDENT'S ADMISSIONS

4 32. In accordance with 40 C.F.R. § 22.18(b)(2) and for the
5 purpose of this proceeding, Respondent (i) admits that EPA has
6 jurisdiction over the subject matter of this CAFO and over
7 Respondent; (ii) neither admits nor denies the specific factual
8 allegations contained in Section I.C of this CAFO; (iii) consents
9 to any and all conditions specified in this CAFO and to the
10 assessment of the civil administrative penalty under Section I.E
11 of this CAFO; (iv) waives any right to contest the allegations
12 contained in Section I.C of this CAFO; and (v) waives the right
13 to appeal the proposed Final Order contained in this CAFO.

14 E. CIVIL ADMINISTRATIVE PENALTY

15 33. Respondent agrees to the assessment of a penalty in
16 the amount of TWO MILLION, SIX HUNDRED AND FORTY-TWO THOUSAND,
17 ONE HUNDRED AND NINETY-EIGHT DOLLARS (\$2,642,198) as final
18 settlement of the civil claims against Respondent arising under
19 TSCA as alleged in Section I.C of this CAFO.

20 34. Respondent shall pay the assessed penalty above no
21 later than thirty (30) days from the effective date of this CAFO.
22 Payment shall be made in accordance with one of the payment
23 methods provided in the EPA payment instructions attached to this
24 CAFO as Attachment 1. Payment by check shall be accompanied by a
25 transmittal letter identifying the case name, the case docket
26 number, and this CAFO. Concurrent with delivery of the payment of

1 the penalty, Respondent shall send a copy of the payment
2 documents to:

3 Regional Hearing Clerk
4 Office of Regional Counsel (ORC-1)
5 U.S. Environmental Protection Agency, Region IX
6 75 Hawthorne Street
7 San Francisco, CA 94105

8 Christopher Rollins
9 Enforcement Office (WST-3)
10 Waste Management Division
11 U.S. Environmental Protection Agency, Region IX
12 75 Hawthorne Street
13 San Francisco, CA 94105

14 35. Payment of the above civil administrative penalty
15 shall not be used by Respondent or any other person as a tax
16 deduction from Respondent's federal, state, or local taxes.

17 36. If Respondent fails to pay the assessed civil
18 administrative penalty specified in Paragraph 33 by the deadline
19 specified in Paragraph 34, Respondent shall pay to EPA a
20 stipulated penalty of \$5,000 per day for each day the assessed
21 penalty is late, in addition to the assessed penalty. Stipulated
22 penalties shall be paid upon written request by EPA. In
23 addition, failure to pay the civil administrative penalty by the
24 deadline specified in Paragraph 34 may lead to any or all of the
25 following actions:

26 a. The debt being referred to a credit reporting agency, a
27 collection agency, or to the Department of Justice for
28 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,

1 and appropriateness of the assessed penalty and of this CAFO
2 shall not be subject to review.

3 b. The debt being collected by administrative offset
4 (i.e., the withholding of money payable by the United States
5 to, or held by the United States for, a person to satisfy
6 the debt the person owes the Government), which includes,
7 but is not limited to, referral to the Internal Revenue
8 Service for offset against income tax refunds. 40 C.F.R.
9 Part 13, Subparts C and H.

10 c. EPA may (i) suspend or revoke Respondent's licenses or
11 other privileges; or (ii) suspend or disqualify Respondent
12 from doing business with EPA or engaging in programs EPA
13 sponsors or funds. 40 C.F.R. § 13.17.

14 d. In accordance with the Debt Collection Act of 1982 and
15 40 C.F.R. Part 13 interest, penalties charges, and
16 administrative costs will be assessed against the
17 outstanding amount that Respondent owes to EPA for
18 Respondent's failure to pay the civil administrative penalty
19 by the deadline specified in Paragraph 34. Interest will be
20 assessed at an annual rate that is equal to the rate of
21 current value of funds to the United States Treasury (i.e.,
22 the Treasury tax and loan account rate) as prescribed and
23 published by the Secretary of the Treasury in the Federal
24 Register and the Treasury Fiscal Requirements Manual
25 Bulletins. 40 C.F.R. § 13.11(a)(1). Penalty charges will
26 be assessed monthly at a rate of 6% per annum. 40 C.F.R.

1 § 13.11(c). Administrative costs for handling and
2 collecting Respondent's overdue debt will be based on either
3 actual or average cost incurred, and will include both
4 direct and indirect costs. 40 C.F.R. § 13.11(b). In
5 addition, if this matter is referred to another department
6 or agency (e.g., the Department of Justice, the Internal
7 Revenue Service), that department or agency may assess its
8 own administrative costs, in addition to EPA's
9 administrative costs, for handling and collecting
10 Respondent's overdue debt.

11 F. RETENTION OF RIGHTS

12 37. In accordance with 40 C.F.R. § 22.18(c), this CAFO
13 only resolves Respondent's liability for federal civil penalties
14 for the violations and facts specifically alleged in Section I.C
15 of this CAFO. Nothing in this CAFO is intended to or shall be
16 construed to resolve (i) any civil liability for violations of
17 any provision of any federal, state, or local law, statute,
18 regulation, rule, ordinance, or permit not specifically alleged
19 in Section I.C of this CAFO; or (ii) any criminal liability. EPA
20 specifically reserves any and all authorities, rights, and
21 remedies available to it (including, but not limited to,
22 injunctive or other equitable relief or criminal sanctions) to
23 address any violation of this CAFO or any violation not
24 specifically alleged in Section I.C of this CAFO.

25 38. This CAFO does not exempt, relieve, modify, or affect
26 in any way Respondent's duty to comply with all applicable

1 federal, state, and local laws, regulations, rules, ordinances,
2 and permits.

3 G. ATTORNEYS' FEES AND COSTS

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

6 H. EFFECTIVE DATE

7 40. In accordance with 40 C.F.R. §§ 22.18(b)(3) and
8 22.31(b), this CAFO shall be effective on the date that the Final
9 Order contained in this CAFO, having been approved and issued by
10 either the Regional Judicial Officer or Regional Administrator,
11 is filed.


12 I. BINDING EFFECT

13 41. The undersigned representative of Complainant and the
14 undersigned representative of Respondent each certifies that he
15 or she is fully authorized to enter into the terms and conditions
16 of this CAFO and to bind the party he or she represents to this
17 CAFO.

18 42. The provisions of this CAFO shall apply to and be
19 binding upon Respondent and its officers, directors, employees,
20 agents, trustees, servants, authorized representatives,
21 successors, and assigns.

22 FOR RESPONDENT, EXXON MOBIL CORPORATION

23 8/8/08
24 DATE


25 Randy J. Cleveland
26 U.S. Production Manager
27 ExxonMobil Production Company,
28 a division of Exxon Mobil Corporation

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FOR COMPLAINANT, EPA REGION IX:

8/20/08
DATE

Jeff Scott
Jeff Scott
Director
Waste Management Division
U.S. ENVIRONMENTAL PROTECTION AGENCY,
REGION IX


US EPA ARCHIVE DOCUMENT

1
2 II. FINAL ORDER

3 Complainant and Respondent, having entered into the
4 foregoing Consent Agreement,

5 IT IS HEREBY ORDERED that this CAFO (Docket No. TSCA-09-
6 2008-0005) be entered and that Respondent shall pay a civil
7 administrative penalty in the amount of TWO MILLION, SIX HUNDRED
8 AND FORTY-TWO THOUSAND, ONE HUNDRED AND NINETY-EIGHT
9 DOLLARS (\$2,642,198) in accordance with the terms and conditions
10 set forth in the Consent Agreement and Attachment 1. This
11 Consent Agreement and Final Order shall become effective upon
12 filing.

13 08/21/08
14 DATE


15 STEVEN JAWGIEL
16 Regional Judicial Officer
17 U.S. Environmental Protection
18 Agency, Region IX

1
2 Attachment 1

3 **COLLECTION INFORMATION**

4 **CHECK PAYMENTS:**

5 **If payment is made by check, the check should be made payable to the "Treasurer, United**
6 **States of America"**

7 **US Environmental Protection Agency**
8 **Fines and Penalties**
9 **Cincinnati Finance Center**
10 **PO Box 979077**
11 **St. Louis, MO 63197-9000**

12 **WIRE TRANSFERS:**

13 **Wire transfers should be directed to the Federal Reserve Bank of New York**

14 **Federal Reserve Bank of New York**

15 **ABA = 021030004**

16 **Account = 68010727**

17 **SWIFT address = FRNYUS33**

18 **33 Liberty Street**

19 **New York NY 10045**

20 **Field Tag 4200 of the Fedwire message should read " D 68010727 Environmental**
21 **Protection Agency "**

22 **OVERNIGHT MAIL:**

23 **U.S. Bank**

24 **1005 Convention Plaza**

25 **Mail Station SL-MO-C2GL**

26 **St. Louis, MO 63101**

27 **Contact: Natalie Pearson, 314-418-4087**

28 **ACH (also known as REX or remittance express)**

Automated Clearinghouse (ACH) for receiving US currency

PNC Bank

808 17th Street, NW

Washington, DC 20074

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1 **Contact – Jesse White 301-887-6548**
2 **ABA = 051036706**
3 **Transaction Code 22 - checking**
4 **Environmental Protection Agency**
5 **Account 310006**
6 **CTX Format**

7 **ON LINE PAYMENT:**

8 **There is now an On Line Payment Option, available through the Dept. of Treasury.**
9 **This payment option can be accessed from the information below:**

10 **WWW.PAY.GOV**
11 **Enter sfo 1.1 in the search field**

12 **Open form and complete required fields.**

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