

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

ConocoPhillips Company  
2555 Willow Road  
Arroyo Grande, California 93420

ID No. CAT 080 010.796

Respondent.

Docket HWCA 20113629

CONSENT ORDER

Health and Safety Code  
Section 25187

The State Department of Toxic Substances Control (Department) and ConocoPhillips Company (Respondent) enter into this Consent Order and agree as follows:

1. Respondent generates and stores hazardous waste at ConocoPhillips Company, 2555 Willow Road, Arroyo Grande, California (Site).

2. The Department inspected the Site on April 21 and 22, 2009. On April 21 & 22, 2009, the Department conducted an inspection of waste piles located on the Respondent's refinery property. Initial laboratory results of waste pile samples collected during this inspection showed levels above the Soluble Threshold Limit Concentration (STLC) for Vanadium (24mg/l) at concentrations of 30, 77, and 150 mg/l. Additional samples of these waste piles collected in subsequent waste pile sampling events confirmed the presence of Vanadium above STLC levels.

3: The Department alleges the following violations:

On October 6, <sup>2010</sup>~~2011~~ the Department of Toxic Substances Control (DTSC) issued a Summary of Violations (SOV) to Respondent for violations of the California Health and Safety Code. DTSC alleges that Respondent violated California Health and Safety Code Section 25201 (a) (1), in that on or about April 21 & 22, 2009, Respondent illegally stored hazardous waste in waste piles without a permit or other grant of authorization from the Department for longer than the ninety-day storage limit.

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4. A dispute exists regarding the alleged violations and some of the factual assertions herein.

5. The parties wish to avoid the expense of litigation and to ensure prompt compliance.

6. Jurisdiction exists pursuant to Health and Safety Code section 25187.

7. Respondent waives any right to a hearing in this matter.

8. This Consent Order shall constitute full settlement of the violations alleged above, but does not limit the Department from taking appropriate enforcement action concerning other violations.

9. Admissions. By entering into this Consent Order, the Respondent does not admit to any finding of fact or conclusion of law set forth in this Consent Order or any fault or liability under applicable laws.

#### SCHEDULE FOR COMPLIANCE

10. Respondent shall comply with the following:

10.1. Respondent shall conduct corrective action to address the release of hazardous waste at or from the Site under DTSC oversight. Respondent shall conduct corrective action in accordance with the Scope of Work attached hereto as Attachment 1, and the applicable local, State, and federal statutes, regulations, ordinances, rules, and guidance documents.

10.2. Submittals: All submittals from Respondent pursuant to this Consent Order shall be sent simultaneously to:

Mr. Martin Herrmann – Project Coordinator  
Brownfields and Environmental Restoration Program  
Department of Toxic Substances Control  
8800 Cal Center Drive  
Sacramento, CA 95826

Mr. Ignacio Dominguez  
Supervising Hazardous Substances Scientist  
Enforcement and Emergency Response Program  
Department of Toxic Substances Control  
1515 Tollhouse Road  
Clovis, CA 93611

Mr. Roger Briggs, Executive Officer  
Regional Water Quality Control Board

Central Coast Region  
895 Aerovista Place, Suite 101  
San Luis Obispo, CA 93401  
San Luis Obispo County  
Air Pollution Control District  
3433 Roberto Court  
San Luis Obispo, CA 93401

Respondent shall provide DTSC's Project Coordinator one hard copy and one digital "Portable Document Format" (pdf) copy of all documents, including but not limited to, work plans, reports, and correspondence. Submittals specifically exempted from this copy requirement include all progress reports and correspondence of less than 15 pages, of which one copy is required.

10.3. Communications: All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondent in writing by a Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

10.4. Department Review and Approval: If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Consent Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

10.5. Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

10.6. Endangerment during Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Consent Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation for such period of time as needed to abate the endangerment. Any deadline in this Consent Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order.

10.7. Liability: Nothing in this Consent Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as

provided in this Consent Order. Notwithstanding compliance with the terms of this Consent Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

10.8. Site Access: Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives may enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Consent Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order.

10.9. Sampling, Data, and Document Availability: Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Consent Order. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Consent Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Consent Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Consent Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Consent Order.

10.10. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties specified in paragraph 13.3, in carrying out activities pursuant to this Consent Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Consent Order.

10.11. Incorporation of Plans and Reports: All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Consent Order are incorporated in this Consent Order upon approval by the Department.

10.12. Extension Requests: If Respondent is unable to perform any activity or submit any document within the time required under this Consent Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

10.13. Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

10.14. Project Coordinators: Within 14 days of the effective date of this Consent Order, DTSC and Respondent shall each designate a Project Coordinator and shall notify each other in writing of the Project Coordinator selected. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Order and for designating a person to act in his/her absence. All communications between DTSC and Respondent, and all notices, documents and correspondence concerning the activities performed pursuant to this Consent Order shall be directed through the Project Coordinators. Each party may change its Project Coordinator with at least seven days prior written notice.

10.15. Respondent's Consultant and Contractor: All work performed pursuant to this Consent Order shall be under the direction and supervision of a professional engineer or professional geologist, licensed in California, with expertise in hazardous waste corrective action. Respondent's Project Coordinator, contractor, or consultant shall have the technical expertise sufficient to fulfill his or her responsibilities. Within 14 days of the effective date of this Consent Order, Respondent shall notify DTSC's Project Coordinator in writing of the name, title, and qualifications of the professional engineer or professional geologist and of any contractors or consultants and their personnel to be used in carrying out the work under this Consent Order in conformance with applicable State law, including but not limited to, Business and Professions Code sections 6735 and 7835.

#### REIMBURSEMENT OF DTSC'S COSTS

11. Respondent shall pay DTSC's costs incurred in the implementation of this Consent Order.

11.1. An estimate of DTSC's costs is attached as Exhibit A showing the amount of \$46,096. It is understood by the parties that this amount is only a cost estimate for the activities shown on Exhibit A and it may differ from the actual costs incurred by DTSC in overseeing these activities or in implementing this Consent Order. DTSC will provide additional cost estimates to Respondent as the work progresses under the Consent Order.

11.2. Respondent shall make an advance payment to DTSC for oversight costs associated with implementation of this Consent Order in the amount of

\$23,048 within 30 days of the effective date of this Consent Order. If the advance payment exceeds DTSC's costs, DTSC will refund the balance within 120 days after the execution of the Acknowledgment of Satisfaction pursuant to Section 13.7 of this Consent Order.

11.3. DTSC will provide Respondent with a billing statement at least quarterly, which will include the name(s) of the employee(s), identification of the activities, the amount of time spent on each activity, and the hourly rate charged. If Respondent does not pay an invoice within 60 days of the date of the billing statement, the amount is subject to interest as provided by Health and Safety Code section 25360.1.

11.4. DTSC will retain all cost records associated with the work performed under this Consent Order as required by State law. DTSC will make all documents that support the DTSC's cost determination available for inspection upon request, as provided by the Public Records Act.

11.5. Any dispute concerning DTSC's costs incurred pursuant to this Consent Order is subject to the dispute resolution procedures as established pursuant to Health and Safety Code section 25269.2. DTSC reserves its right to recover unpaid costs under applicable State and federal laws.

11.6. All payments shall be made within 30 days of the date of the billing statement by check payable to the Department of Toxic Substances Control and shall be sent to:

Department of Toxic Substances Control  
Accounting Office  
1001 I Street, 21<sup>st</sup> floor  
P. O. Box 806  
Sacramento, California 95812-0806

All checks shall reference the name of the Facility, the Respondent's name and address, the site code (601425), and the docket number (Docket HWCA 20113629) of this Consent Order. Copies of all checks and letters transmitting such checks shall be sent simultaneously to DTSC's Project Coordinator.

#### OTHER PAYMENTS

12. Within 30 days of the effective date of this Consent Order, Respondent shall pay the Department a total of \$40,000, consisting of \$15,000 as and for a penalty and \$25,000, as and for investigative administrative costs. Respondent's checks shall be made payable to Department of Toxic Substances Control, and shall be delivered together with the attached Payment Voucher to:

Department of Toxic Substances Control  
Accounting Office  
1001 I Street, 21st floor  
P. O. Box 806  
Sacramento, California 95812-0806

A photocopy of the check shall be sent:

To: Mr. Martin Herrmann – Project Coordinator  
Brownfields and Environmental Restoration Program  
Department of Toxic Substances Control  
8800 Cal Center Drive  
Sacramento, CA 95826

To: Mr. Ignacio Dominguez  
Supervising Hazardous Substances Scientist  
Enforcement and Emergency Response Program  
Department of Toxic Substances Control  
1515 Tollhouse Road  
Clovis, CA 93611

To: Mr. Richard Driscoll, Senior Staff Counsel  
Office of Legal Counsel  
Department of Toxic Substances Control  
1001 I Street, 23rd floor  
P. O. Box 806  
Sacramento, California 95812-0806

If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

OTHER PROVISIONS

13.1. Additional Enforcement Actions: By agreeing to this Consent Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Consent Order.

13.2. Penalties for Noncompliance: Failure to comply with the terms of this Consent Order may subject Respondent to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

13.3. Parties Bound: This Consent Order shall apply to and be binding upon Respondent and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

13.4. Effective Date: The effective date of this Consent Order is the date it is signed by the Department.

13.5. Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

13.6. Compliance with Waste Discharge Requirements: Respondent shall comply with all applicable waste discharge requirements issued by the State Water Resources Control Board or a California regional water quality control board.

13.7. Acknowledgement of Satisfaction: The provisions of this Consent Order shall be deemed satisfied upon the execution of an "Acknowledgment of

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Satisfaction" (Acknowledgement) document. DTSC shall prepare the Acknowledgement that will specify that the Respondent has satisfactorily completed the terms of this Consent Order.

SIGNATORIES

Dated: 12/1/11

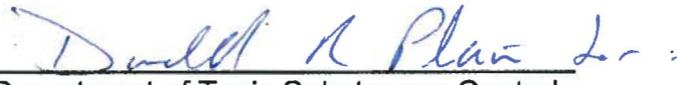
ConocoPhillips Company

By: 

Print Name Tim J. Seidel

Title Site Manager

Dated: 12/12/11



Department of Toxic Substances Control  
Ignacio Dominguez, Unit Chief  
Clovis Compliance Unit  
Enforcement and Emergency Response Program