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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

19 UNITED STATES OF AMERICA,

20 and

21 THE STATE OF MISSISSIPPI,

22 Plaintiffs,

23 v.

24 CHEVRON U.S.A. INC.,

25 Defendant.
 26
 27
 28

Civ. No. _____

COMPLAINT

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1 Plaintiff, the United States of America (“United States”), by the authority of the Attorney
2 General, through its undersigned attorneys, and at the request of the Administrator of the United
3 States Environmental Protection Agency (“EPA”), and Plaintiff, the State of Mississippi, acting
4 through the Mississippi Commission on Environmental Quality and the Mississippi Department
5 of Environmental Quality (collectively, “the MDEQ”), hereby file this Complaint and allege the
6 following:

7 **I. PRELIMINARY STATEMENT**

8 1. This is a civil action for penalties and injunctive relief brought pursuant to Section
9 113(b)(2) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(b)(2); Section 325 of the Emergency
10 Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11045; and Section
11 109(c) of the Comprehensive Environmental Response, Compensation and Liability Act
12 (“CERCLA”), 42 U.S.C. § 9609(c), against Defendant, Chevron U.S.A. Inc. (“Defendant” or
13 “Chevron”).

14 2. The United States alleges violations of Section 112(r)(7) of the CAA, 42 U.S.C.
15 § 7412(r)(7), at four petroleum refineries owned and/or operated by Chevron in Richmond,
16 California (“Richmond Refinery”), El Segundo, California (“El Segundo Refinery”), North Salt
17 Lake City, Utah (“Salt Lake City Refinery”), and Pascagoula, Mississippi (“Pascagoula
18 Refinery”), and at an additional petroleum refinery formerly owned and/or operated by Chevron
19 in Kapolei, Hawaii (“Kapolei Refinery”). (The refineries listed in the previous sentence are
20 collectively referred to hereinafter as “the Refineries.”) The MDEQ alleges CAA Section
21 112(r)(7) violations at the Pascagoula Refinery, pursuant to the MDEQ’s authority under
22 Mississippi Air and Water Pollution Control Law, Miss. Code Ann. § 49-17-1, *et seq.*

23 3. The United States alleges violations of Section 112(r)(1) of the CAA, 42 U.S.C.
24 § 7412(r)(1), at the Richmond Refinery and the Pascagoula Refinery.

25 4. The United States alleges violations of the emergency release notification
26 requirements of Section 103 of CERCLA, 42 U.S.C. § 9603, at the Richmond Refinery.
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1 5. The United States alleges violations of Section 304 of EPCRA, 42 U.S.C.
2 § 11004, at the Richmond Refinery.

3 **II. JURISDICTION, VENUE, INTRADISTRICT ASSIGNMENT, AND NOTICE**

4 6. Jurisdiction: This court has jurisdiction over the subject matter of this action
5 pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Section 109(c) of CERCLA, 42
6 U.S.C. § 9609(c); Section 325(b)(3) of EPCRA, 42 U.S.C. § 11045(b)(3); and 28 U.S.C. §§ 1331,
7 1345 and 1355. This court has supplemental jurisdiction over the claims brought by the MDEQ
8 pursuant to 28 U.S.C. § 1367 and Miss. Code Ann. §§ 49-17-17 and 49-17-29.

9 7. Venue: Venue is proper in this judicial district pursuant to Section 113(b) of the
10 CAA, 42 U.S.C. § 7413(b); Section 113(b) of CERCLA, 42 U.S.C. § 9613(b); Section 325(c)(4)
11 of EPCRA, 42 U.S.C. § 11045(c)(4); and 28 U.S.C. §§ 1391(b), 1391(c), 1391(d), and 1395(a),
12 because Defendant's headquarters is located in this judicial district and some of the violations
13 alleged occurred at Defendant's facilities located within this judicial district.

14 8. Intradistrict Assignment: The Richmond Refinery is located in the City of
15 Richmond, Contra Costa County. Defendant Chevron's corporate headquarters is located in San
16 Ramon, Contra Costa County. Civil Local Rule 3-2(d) for the Northern District of California
17 provides for assignment to the San Francisco Division or the Oakland Division.

18 9. Notice to States: The United States has notified the States of California, Hawaii,
19 Mississippi, and Utah of the commencement of this action pursuant to Section 113(b) of the CAA,
20 42 U.S.C. § 7413(b).

21 **III. PARTIES**

22 10. Plaintiffs are the United States of America, acting at the request of the EPA, an
23 agency of the United States; and the MDEQ (collectively referred to as "Plaintiffs").

24 11. Defendant Chevron is a corporation that has its headquarters in San Ramon,
25 California, and does business in this judicial district.

1 12. Defendant is a "person" within the meaning of Section 302(e) of the CAA, 42
2 U.S.C. § 7602(e); Section 101(21) of CERCLA, 42 U.S.C. § 9601(21); and Section 329(7) of
3 EPCRA, 42 U.S.C. § 11049(7).

4 13. Defendant is an owner and/or operator of the Richmond Refinery, El Segundo
5 Refinery, Salt Lake City Refinery, and Pascagoula Refinery, and Defendant was until
6 approximately November 1, 2016, an owner and/or operator of the Kapolei Refinery, within the
7 meaning of Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9).

8 **IV. STATUTORY AND REGULATORY FRAMEWORK**

9 **A. Clean Air Act (CAA)**

10 14. In 1990, Congress added Section 112(r) to the Clean Air Act, *see* Pub. L. 101-549
11 (Nov. 15, 1990) (42 U.S.C. § 9412), in response to a 1984 catastrophic release of an extremely
12 hazardous substance in Bhopal, India that killed more than 3,400 people, caused over 200,000 to
13 suffer injuries, and caused damage to crops and livestock. S. Rep. No. 101-228 (Dec. 20, 1989),
14 *reprinted in* 1990 U.S.C.C.A.N. 3385, 3519.

15 15. Congress' intent in enacting Section 112(r) of the CAA, 42 U.S.C. § 7412(r), was
16 to prevent and minimize the consequences of accidental releases of substances that may cause
17 death, injury, or property damage. S. Rep. No. 101-228 (Dec. 20, 1989), *reprinted in* 1990
18 U.S.C.C.A.N. 3385, 3528-29.

19 16. Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), includes a "General Duty
20 Clause" that places the responsibility to design and maintain a safe facility on the owner or
21 operator of the facility.

22 17. The General Duty Clause applies to owners and operators of stationary sources
23 that produce, process, handle, or store specific hazardous substances. In pertinent part, Section
24 112(r)(1) provides:

25 It shall be the objective of the regulations and programs authorized under this
26 subsection to prevent the accidental release and to minimize the consequences of
27 any such release of any substance listed pursuant to paragraph (3) or any other
28 extremely hazardous substance. The owners and operators of stationary sources
producing, processing, handling or storing such substances have a general duty in

1 the same manner and to the same extent as Section 654 of Title 29 [29 U.S.C.
2 § 654] to identify hazards which may result from such releases using appropriate
3 hazard assessment techniques, to design and maintain a safe facility taking such
4 steps as are necessary to prevent releases, and to minimize the consequences of
5 accidental releases which do occur.

6 42 U.S.C. § 7412(r)(1) (hereinafter “General Duty Clause”).

7 18. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), authorizes EPA to
8 promulgate release prevention, detection, and correction requirements to prevent accidental
9 releases of “regulated substances,” and requires a prompt emergency response to any such
10 releases in order to protect human health and the environment. On June 20, 1996 (61 Fed. Reg.
11 31668), EPA promulgated regulations to implement Section 112(r)(7), codified at 40 C.F.R. Part
12 68 and known as the Risk Management Program regulations (“RMP Regulations”), which apply
13 to the owners and operators of stationary sources that have more than a threshold quantity of a
14 regulated substance in a “process.” *See* 40 C.F.R. § 68.10.

15 19. Section 112(r)(2)(B) of the CAA, 42 U.S.C. § 7412(r)(2)(B), defines “regulated
16 substance” as a substance listed by EPA under Section 112(r)(3) of the CAA, 42 U.S.C.
17 § 7412(r)(3); the listed substances are those “which, in the case of an accidental release, are
18 known to cause or may reasonably be anticipated to cause death, injury, or serious adverse
19 effects to human health or the environment,” *id.* Pursuant to Section 112(r)(3), 42 U.S.C.
20 § 7412(r)(3), EPA promulgated a list of “regulated substances.” *See* 40 C.F.R. § 68.130.

21 20. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), defines a “stationary
22 source” as any buildings, structures, equipment, installations or substance emitting stationary
23 activities which belong to the same industrial group, are located on one or more contiguous
24 properties, are under the control of the same person, and from which an accidental release may
25 occur.

26 21. Section 112(r)(2)(A), 42 U.S.C. § 7412(r)(2)(A), defines “accidental release” as
27 an unanticipated emission of a regulated substance or other extremely hazardous substance into
28 the ambient air from a stationary source.

1 22. 40 C.F.R. § 68.3 defines “owner or operator” as “any person who owns, leases,
2 operates, controls, or supervises a stationary source.”

3 23. 40 C.F.R. § 68.3 defines “process” to mean “any activity involving a regulated
4 substance including any use, storage, manufacturing, handling, or on-site movement of such
5 substances, or any combination of these activities.” “Covered process” means “a process that
6 has a regulated substance present in more than a threshold quantity as determined under [40
7 C.F.R.] § 68.115.”

8 24. The regulations at 40 C.F.R. Part 68 separate covered processes into three
9 categories, designated as Program 1, Program 2, and Program 3, and set forth specific
10 requirements for owners and operators of stationary sources with processes that fall within the
11 respective programs.

12 25. Pursuant to 40 C.F.R. § 68.10(d), a covered process is subject to Program 3
13 requirements if it does not meet one or more of the Program 1 eligibility requirements set forth in
14 40 C.F.R. § 68.10(b) and it is either (1) listed in one of the specific North American Industry
15 Classification System codes found in 40 C.F.R. § 68.10(d)(1); or (2) is subject to the United
16 States Occupational Safety and Health Administration (“OSHA”) process safety management
17 standard set forth in 29 C.F.R. § 1910.119.

18 26. Pursuant to 40 C.F.R. §§ 68.12(a) & (d), the owner or operator of a stationary
19 source with a process subject to Program 3 prevention requirements must undertake certain tasks,
20 including but not limited to:

21 a. Submitting a Risk Management Plan, as provided in 40 C.F.R. §§ 68.150 –
22 68.185;

23 b. Establishing and implementing a management system, as provided in 40
24 C.F.R. § 68.15;

25 c. Conducting a hazard assessment to assess a worst-case release scenario, as
26 provided in 40 C.F.R. §§ 68.20-68.42;

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1 d. Implementing the Program 3 prevention requirements provided in 40 C.F.R.
2 §§ 68.65-68.87, including safety information, hazard analysis, operating procedures, training,
3 mechanical integrity, management of change, pre-startup review, compliance audits, incident
4 investigation, employee participation, hot work permits, and rules governing contractors;

5 e. Establishing and implementing an emergency response program as provided
6 in 40 C.F.R. §§ 68.90-68.95; and

7 f. Submitting as part of its RMP Plan the data on prevention program
8 elements for Program 3 processes as provided in 40 C.F.R. § 68.175.

9 27. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), the United States
10 may commence a civil action against any person that is the owner or operator of a covered
11 source, to obtain civil penalties and a permanent or temporary injunction, whenever such person
12 violated or is violating any requirement or prohibition of the CAA, including the requirements of
13 Section 112(r)(1), 42 U.S.C. § 7412(r)(1); and Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and its
14 implementing regulations, including 40 C.F.R. Part 68.

15 28. Section 113(b) of the CAA, 42 U.S.C. § 7413(b), as modified by the Debt
16 Collection Improvements Act of 1996, 31 U.S.C. § 3701, and as implemented by the Civil
17 Monetary Penalties Inflation Rule, 40 C.F.R. Part 19, establishes maximum civil penalties for
18 violations of the CAA. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 40
19 C.F.R. § 19.4, Defendant is liable for an assessment of civil penalties of up to \$37,500 per day,
20 per violation, for each violation of Section 112(r)(1) and for each violation of Section 112(r)(7)
21 of the CAA that occurred after January 12, 2009 but no later than November 2, 2015, and
22 \$97,229 per day, per violation, for each violation that occurred after November 2, 2015.

23 **B. Mississippi Regulations Promulgated Pursuant to CAA § 112(r)(7) Delegated**
24 **Program**

25 29. Section 112(l) of the CAA and 40 C.F.R. Part 63, Subpart E authorize EPA to
26 approve state rules and programs to be implemented and enforced in place of certain CAA
27 requirements, including the Risk Management Program set forth at 40 C.F.R. Part 68. EPA
28

1 promulgated 40 C.F.R. Part 63, Subpart E on November 26, 1993 (58 Fed. Reg. 62262) and
2 subsequently amended these regulations on September 14, 2000 (65 Fed. Reg. 55810).

3 30. On May 22, 1998, the State of Mississippi incorporated by reference the federal
4 RMP Regulations. The State of Mississippi is, accordingly, a state that has been delegated
5 concurrent authority, together with EPA, to enforce the RMP Regulations; these RMP
6 Regulations are codified in the Mississippi Air and Water Pollution Control Law, Miss. Code
7 Ann. § 49-17-1, *et seq.* The implementing regulations are set forth in 11 Miss. Admin. Code Pt.
8 2, R. 8.2.

9 **C. Emergency Planning and Community Right-to-Know Act (EPCRA) and**
10 **Comprehensive Environmental Response, Compensation and Liability Act**
(CERCLA)

11 31. Section 304 of EPCRA, 42 U.S.C. § 11004, and the regulations set forth at 40
12 C.F.R. § 355.40 require the owner or operator of a facility at which a hazardous chemical is
13 produced, used, or stored to notify certain government authorities when there is a release equal to
14 or greater than the reportable quantity of any EPCRA extremely hazardous substance or of any
15 hazardous substance listed under CERCLA.

16 32. Specifically, Section 304(b) of EPCRA requires that the owner and operator
17 immediately notify the State Emergency Response Commission (“SERC”) of any State likely to
18 be affected by the release, and the emergency coordinator for the Local Emergency Planning
19 Committee (“LEPC”) for any area likely to be affected by the release.

20 33. Section 103(a) of CERCLA states that “[a]ny person in charge of . . . an onshore
21 facility shall, as soon as he has knowledge of any release . . . of a hazardous substance . . . in
22 quantities equal to or greater than those determined pursuant to [Section 102 of CERCLA],
23 immediately notify the National Response Center.” 42 U.S.C. § 9603(a).

24 34. Section 109(c) of CERCLA provides:

25 The President may bring an action in the United States district court for the
26 appropriate district to assess and collect a penalty of not more than \$25,000 per
27 day for each day during which the violation (or failure or refusal) continues in the
28 case of . . . (1) A violation of the notice requirements of section 9603(a) or
9603(b) of this title In the case of a second or subsequent violation (or failure

1 or refusal), the amount of such penalty may be not more than \$75,000 for each
2 day during which the violation (or failure or refusal) continues.

3 42 U.S.C. § 9609(c).

4 35. Section 325(b)(3) of EPCRA, 42 U.S.C. § 11045(b)(3), and Section 109 of
5 CERCLA, 42 U.S.C. § 9609, as modified by the Debt Collection Improvements Act of 1996, 31
6 U.S.C. § 3701, and as implemented by the Civil Monetary Penalties Inflation Rule, 40 C.F.R.
7 Part 19, establish maximum civil penalties for violations of the reporting requirements of Section
8 304 of EPCRA and Section 103 of CERCLA. Pursuant to these authorities, Defendant is liable
9 for an assessment of civil penalties of up to \$37,500 per day, per violation, for each violation of
10 Section 304 of EPCRA, 42 U.S.C. § 11004, and for each violation of Section 103(a) of
11 CERCLA, 42 U.S.C. § 9603(a), that occurred after January 12, 2009 but not later than November
12 2, 2015.

13 **V. DEFENDANT'S FACILITIES**

14 36. At all times relevant to this action, Defendant has been and continues to be the
15 “owner” and/or “operator” of the following facilities within the meaning of Section 112(a)(9) of
16 the CAA, 42 U.S.C. § 7412(a)(9):

17 Richmond Refinery
18 841 Chevron Way
19 Richmond, California

20 El Segundo Refinery
21 324 West El Segundo Blvd.
22 El Segundo, California

23 Pascagoula Refinery
24 250 Industrial Road
25 Pascagoula, Mississippi

26 Salt Lake City Refinery
27 2351 North 1100 West
28 Salt Lake City, Utah

1 37. At all times relevant to this action up to and until approximately November 1,
2 2016, Defendant was the owner and/or operator of the following facility within the meaning of
3 Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9):

4 Kapolei Refinery
5 91-480 Malakole
6 Kapolei, Hawaii

7 38. At all times relevant to this action, each of the Refineries was a “stationary
8 source” within the meaning of Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).
9 Upon information and belief, the facilities listed in Paragraph 36 comprise the entirety of the
10 refinery facilities currently owned and/or operated by Defendant in the United States.

11 39. At all times relevant to this action, each of the Refineries was subject to the
12 General Duty Clause of Section 112(r)(1) because each is a “stationary source” that produced,
13 processed, handled, and/or stored one or more regulated substances listed under Section
14 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3).

15 40. At all times relevant to this action, each of the Refineries produced, processed,
16 handled, and/or stored one or more regulated substances listed under Section 112(r)(3) of the
17 CAA, 42 U.S.C. § 7412(r)(3), above the thresholds set forth in 40 C.F.R. § 68.10, and used these
18 substances in a “process” as defined by 40 C.F.R. § 68.3.

19 41. The Refineries, and/or certain processes within each of the Refineries, are each
20 subject to RMP Regulations applicable to “Program 3” facilities within the meaning of 40 C.F.R.
21 §§ 68.10(d) and 68.12(d).

22 42. The Richmond Refinery is a “facility” within the meaning of Section 101(9) of
23 CERCLA, 42 U.S.C. § 9601(9), and therefore also a “facility” within the meaning of Section 304
24 of EPCRA, 42 U.S.C. § 11004.

25 43. At all times relevant to this action, Defendant has been and continues to be the
26 “person in charge” of the Richmond Refinery within the meaning of Section 103(a) of CERCLA,
27 42 U.S.C. § 9603(a), and its implementing regulations found at 40 C.F.R. § 302.6.
28

1 Refinery in June 2013. The MDEQ also participated in the September 2014 inspection of the
2 Pascagoula Refinery.

3 51. On January 13, 2013, a pressure detonation occurred in the air pollution control
4 device associated with the Fluid Catalytic Cracking (“FCC”) Unit at the El Segundo Refinery,
5 which caused an emergency shutdown of the El Segundo Refinery and significant flaring,
6 leading to the release of one or more regulated substances listed in 40 C.F.R. § 68.130, Table 1
7 (regulated toxic substances) and/or Table 3 (regulated flammable substances).

8 52. On November 15, 2013, an explosion and fire occurred at the Plant 80 Reformate
9 Splitter Unit located at the Pascagoula Refinery during the lighting of the F-8007 fired heater.
10 That explosion and fire led to the death of an employee at the Pascagoula Refinery. The
11 explosion involved a release of reformate, a flammable mixture containing 1-butene, pentane,
12 isopentane, ethane, propane, isobutane, 2-methylpropene, hydrogen, and methane, all of which
13 are regulated flammable substances listed in 40 C.F.R. § 68.130, Table 3. Flame heights reached
14 as high as 150 feet.

15 53. Based on the investigation described in Paragraph 50, EPA issued twenty-four
16 (24) Potential Findings against the El Segundo Refinery; thirty (30) Potential Findings against
17 the Kapolei Refinery; five (5) Notices of Potential Violations against the Pascagoula Refinery;
18 and eleven (11) Notice of Inspection Findings and two (2) Areas of Concern against the Salt
19 Lake City Refinery.

20 **FIRST CLAIM FOR RELIEF**

21 **Failure to Comply with the Requirements of the General Duty Clause**
22 **of Section 112(r)(1) of the CAA at the Richmond Refinery**

23 54. Paragraphs 1 through 53 are incorporated herein by reference.

24 55. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), Defendant is
25 required “to identify hazards which may result from [accidental] releases [of regulated
26 substances] using appropriate hazard assessment techniques, to design and maintain a safe
27 facility taking such steps as are necessary to prevent releases, and to minimize the consequences
28 of accidental releases which do occur.”

1 56. The following process units within the Richmond Refinery, as described in
2 Chevron’s Risk Management Plan for the Richmond Refinery, are collectively referred to below
3 as the “Richmond GDC Units”: the Diesel Hydro Treater (referred to in the Risk Management
4 Plan, and hereinafter referred to in this Complaint, by the abbreviation “DHT”), the TKN
5 Hydrocracker Unit/Isomax Plant (“TKN/ISO”), the Pen Hex Isomerization Unit (“PenHex Iso”),
6 and the Heavy Neutral Hydrocracker (“HNC”).

7 57. At the Richmond Refinery, Chevron has promulgated a set of management
8 directives known as “Refinery Instructions.” At all times relevant to this Complaint, Refinery
9 Instructions were Chevron’s primary method of setting and communicating expectations for the
10 process safety program elements at a refinery.

11 58. As identified in the inspections of August 9, 2012 through June 2013, and, upon
12 information and belief, continuing for a period of time thereafter, Defendant failed to design and
13 maintain a safe facility at the Richmond GDC Units by taking such steps as necessary to prevent
14 accidental releases of regulated substances, including but not limited to the following failures:

15 a. Failure to adequately develop and implement operating instructions and
16 procedures at the DHT and the TKN/ISO;

17 b. Failure to adequately implement management of change process at the
18 TKN/ISO and the PenHex Iso; and

19 c. Failure to adequately implement positive materials identification and
20 verification of the materials being used in piping at the HNC, which failure resulted in loss of
21 containment and a fire at Furnace F-1550 at the Richmond Refinery on November 2, 2011.

22 59. Feasible means existed by which Defendant could have addressed the issues set
23 forth in Paragraph 58 above, and maintained a safe facility at the Richmond GDC Units. Such
24 feasible means are described in the Richmond Refinery’s own relevant Refinery Instructions.

25 60. Each instance of a failure by Defendant to design or maintain a safe facility at the
26 Richmond GDC Units constitutes a violation of the General Duty Clause of Section 112(r)(1) of
27 the CAA, 42 U.S.C. § 7412(r)(1).
28

1 f. Failure to establish and implement adequate procedures to ensure
2 mechanical integrity, as required by 40 C.F.R. § 68.73;

3 g. Failure to establish and implement adequate management of change
4 procedures, as required by 40 C.F.R. § 68.75;

5 h. Failure to properly document an appropriate response to each of the
6 findings of compliance audits, as required by 40 C.F.R. § 68.79(d);

7 i. Failure to ensure that findings and recommendations of incident
8 investigations had been adequately addressed and implemented, as required by 40 C.F.R. §
9 68.81(e); and

10 j. Failure to establish and implement an adequate emergency response
11 program, in violation of 40 C.F.R. § 68.95(a).

12 65. Each instance of a failure by Defendant at the Richmond Refinery's 4 Crude Unit
13 to comply with the RMP Regulations, 40 C.F.R. Part 68, as set forth in Paragraph 64.a.-64.j.
14 above, constitutes a violation of Section 112(r)(7) of the CAA.

15 66. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 40 C.F.R.
16 § 19.4, Defendant is liable for injunctive relief and assessment of civil penalties of up to \$37,500
17 per day, per violation, for each violation of Section 112(r)(7) of the CAA at the Richmond
18 Refinery that occurred after January 12, 2009 but no later than November 2, 2015, and \$97,229
19 per day, per violation, for each such violation that occurred after November 2, 2015.

20 **THIRD CLAIM FOR RELIEF**

21 **Failure to Make a Timely Notification of Release of a Hazardous Substance at the**
22 **Richmond Refinery as Required by Section 103 of CERCLA**

23 67. Paragraphs 1 through 53 are hereby incorporated by reference.

24 68. Hydrogen sulfide is a listed hazardous substance with a reportable quantity of 100
25 pounds. 40 C.F.R. § 302.4.

26 69. The release of hydrogen sulfide from the Richmond Refinery on August 2, 2012,
27 as described in Paragraph 45, was above the reportable quantity.

28

1 U.S.C. § 7412(r), and the RMP Regulations promulgated thereunder at 40 C.F.R. Part 68, and
2 specifically those regulations applicable to Program 3 processes. Defendant's Risk
3 Management Plan for the El Segundo Refinery identifies and describes the #4 Crude Unit and
4 the FCC Gas Recovery Section within the FCC as Program 3 processes. Defendant's Risk
5 Management Plan for the El Segundo Refinery incorrectly claims that the FCC Fractionation
6 Section and the FCC Gas Stripping Section are Program 1, even though they are interconnected
7 with the FCC Gas Recovery Section.

8 84. As identified in the inspection of November 4 through 8, 2013, and, upon
9 information and belief, continuing for a period of time thereafter, Defendant failed to timely and
10 adequately comply with the following RMP Regulations for the specified processes at the El
11 Segundo Refinery:

12 a. Failure to establish and implement an appropriate Management System to
13 oversee implementation of a Risk Management Program at the El Segundo Refinery, as required
14 by 40 C.F.R. §§ 68.12-15;

15 b. Failure to correctly identify that the FCC Fractionation Section and the
16 FCC Gas Stripping Section, since they are interconnected with an admitted Program 3 process,
17 *i.e.*, the FCC Gas Recovery Section, are Program 3 processes, as required by 40 C.F.R.
18 § 68.12(d);

19 c. Failure to ensure the accuracy of process safety information at the FCC
20 Processes and the #4 Crude Unit, as required by 40 C.F.R. § 68.65;

21 d. Failure to conduct adequate process hazard analysis at the FCC Processes,
22 as required by 40 C.F.R. § 68.67;

23 e. Failure to establish and implement adequate operating procedures at the
24 FCC Processes, as required by 40 C.F.R. § 68.69;

25 f. Failure to establish and implement adequate employee training at the FCC
26 Processes, as required by 40 C.F.R. § 68.71;

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1 g. Failure to establish and implement adequate procedures to ensure
2 mechanical integrity at the FCC Processes and the #4 Crude Unit, as required by 40 C.F.R.
3 § 68.73;

4 h. Failure to establish and implement adequate management of change
5 procedures at the FCC Processes, as required by 40 C.F.R. § 68.75;

6 i. Failure to establish and implement adequate pre-startup procedures at the
7 FCC Processes, as required by 40 C.F.R. § 68.77;

8 j. Failure to establish and implement an adequate contractor management
9 system at the FCC Processes, as required by 40 C.F.R. § 68.87;

10 k. Failure to make timely submissions of accurate refinery location data at
11 the El Segundo Refinery, as required by 40 C.F.R. § 68.150;

12 l. Failure to provide information required for each Program 3 process, as
13 required by 40 C.F.R. § 68.175; and

14 m. Failure to make required corrections to new accident history in the Risk
15 Management Plan within six (6) months of a reportable accidental release at the FCC Processes,
16 as required by 40 C.F.R. § 68.195(a).

17 85. Each instance of a failure by Defendant at the El Segundo Refinery to comply
18 with the RMP Regulations, 40 C.F.R. Part 68, as set forth in Paragraph 84.a.-84.m. above,
19 constitutes a violation of Section 112(r)(7) of the CAA.

20 86. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 40 C.F.R.
21 § 19.4, Defendant is liable for injunctive relief and assessment of civil penalties of up to \$37,500
22 per day, per violation, for each violation of Section 112(r)(7) of the CAA at the El Segundo
23 Refinery that occurred after January 12, 2009 but no later than November 2, 2015, and \$97,229
24 per day, per violation, for each such violation that occurred after November 2, 2015.

25 **SIXTH CLAIM FOR RELIEF**

26 **Failure to Adequately Implement a Risk Management Program as**
27 **Required by Applicable RMP Regulations, 40 C.F.R. Part 68, at the Kapolei**
28 **Refinery**

1 87. Paragraphs 1 through 53 are incorporated herein by reference.

2 88. During the time Defendant owned and/or operated the Kapolei Refinery, seven (7)
3 processes at the Kapolei Refinery, including among them the Crude Unit, the Fluidized Catalytic
4 Crack, and the Alkylation Unit, as described in the Risk Management Plan for the Kapolei
5 Refinery, were subject to the requirements of Section 112(r) of the Clean Air Act, 42 U.S.C.
6 § 7412(r), and the RMP Regulations promulgated thereunder at 40 C.F.R. Part 68, and
7 specifically those regulations applicable to Program 3 processes, as admitted in Defendant's Risk
8 Management Plan.

9 89. As identified in the inspection of April 14 through 17, 2014, and, upon
10 information and belief, continuing for a period of time thereafter during Defendant's ownership
11 and/or operation of the Kapolei Refinery, Defendant failed to timely and adequately comply with
12 the following RMP Regulations for the specified processes at the Kapolei Refinery:

13 a. Failure to establish and implement an appropriate Management System to
14 oversee implementation of a Risk Management Program at the Kapolei Refinery, as required by
15 40 C.F.R. §§ 68.12-15;

16 b. Failure to ensure the accuracy of process safety information at the
17 Fluidized Catalytic Crack, as required by 40 C.F.R. § 68.65;

18 c. Failure to promptly document an appropriate response to each of the
19 findings of the process hazard analysis at the Fluidized Catalytic Crack, as required by 40 C.F.R.
20 § 68.67;

21 d. Failure to establish and implement adequate operating procedures at the
22 Fluidized Catalytic Crack, as required by 40 C.F.R. § 68.69;

23 e. Failure to establish and implement adequate procedures to ensure
24 mechanical integrity at the Kapolei Refinery, as required by 40 C.F.R. § 68.73;

25 f. Failure to establish and implement adequate management of change
26 procedures at the Fluidized Catalytic Crack and the Alkylation Unit, as required by 40 C.F.R.
27 § 68.75;
28

1 g. Failure to establish and implement adequate pre-startup procedures at the
2 Fluidized Catalytic Crack, as required by 40 C.F.R. § 68.77;

3 h. Failure to adequately conduct compliance audits and to promptly
4 document an appropriate response to each of the findings of the compliance audits at the Kapolei
5 Refinery, as required by 40 C.F.R. § 68.79; and

6 i. Failure to establish and implement an adequate emergency response
7 program at the Kapolei Refinery, in violation of 40 C.F.R. § 68.95(a).

8 90. Each instance of a failure by Defendant at the Kapolei Refinery to comply with
9 the RMP Regulations, 40 C.F.R. Part 68, as set forth in Paragraph 89.a.-89.i. above, constitutes a
10 violation of Section 112(r)(7) of the CAA.

11 91. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 40 C.F.R.
12 § 19.4, Defendant is liable for assessment of civil penalties of up to \$37,500 per day, per
13 violation, for each violation of Section 112(r)(7) of the CAA that occurred at the Kapolei
14 Refinery after January 12, 2009 but no later than November 2, 2015, and \$97,229 per day, per
15 violation, for each such violation that occurred after November 2, 2015.

16 **SEVENTH CLAIM FOR RELIEF**

17 **Failure to Comply with the Requirements of the General Duty Clause**
18 **of Section 112(r)(1) of the CAA at the Pascagoula Refinery**

19 92. Paragraphs 1 through 53 are incorporated herein by reference.

20 93. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), Defendant is
21 required “to identify hazards which may result from [accidental] releases [of regulated
22 substances] using appropriate hazard assessment techniques, to design and maintain a safe
23 facility taking such steps as are necessary to prevent releases, and to minimize the consequences
24 of accidental releases which do occur.”

25 94. As identified in the inspection of September 8 through 11, 2014, and, upon
26 information and belief, continuing for a period of time thereafter, Defendant failed to adequately
27 identify, through the use of appropriate hazard assessment techniques, hazards at the Pascagoula
28 Refinery that may result from accidental releases of regulated substances, including but not

1 limited to the hazards associated with the use of fired heaters, such as fire and explosion, and
2 more specifically, the hazard presented by the accumulation of combustibles within the fired
3 heater firebox (also known as “bogging”), and did not address prior known instances of bogging
4 for the F-8007 fired heater.

5 95. Feasible means existed by which Defendant could have eliminated or reduced
6 each hazard listed in Paragraph 94 above, including but not limited to: by conducting an
7 appropriate hazard assessment; by follow-up evaluation of bogging incidents that occurred prior
8 to the November 15, 2013, explosion at the Pascagoula Refinery, which explosion resulted from
9 a bogging incident; and by following recognized and generally accepted good engineering
10 practices.

11 96. As identified in the inspection of September 8 through 11, 2014, and, upon
12 information and belief, continuing for a period of time thereafter, Defendant failed to design and
13 maintain a safe facility at the Pascagoula Refinery by taking such steps as necessary to prevent
14 accidental releases of regulated substances, including but not limited to the following failures:
15 failure to establish and implement adequate standard operating procedures for the fired heater
16 start-up process, including adequate warnings; failure to follow Chevron’s own employee
17 training guidelines for operators who work in the vicinity of fired heaters; and failure to establish
18 and implement adequate emergency response procedures, and specifically the failure to include
19 the risk of bogging incidents in its emergency response planning.

20 97. Feasible means existed by which Defendant could have addressed the issues set
21 forth in Paragraph 96 above, and could have designed and maintained a safe facility at the
22 Pascagoula Refinery.

23 98. Each instance of a failure by Defendant to adequately identify hazards at the
24 Pascagoula Refinery, and each instance of a failure by Defendant to design and/or maintain a
25 safe facility at the Pascagoula Refinery, constitutes a violation of the General Duty Clause of
26 Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

1 threshold quantity of a regulated substance in a process. The Risk Management Plan submitted
2 by the Salt Lake City Refinery identifies and describes several such processes.

3 109. As identified in EPA's inspection on June 24 through 27, 2013, and upon
4 information and belief, continuing for a period of time thereafter, Defendant failed to timely and
5 adequately comply with the following RMP Regulations for the relevant processes at the Salt
6 Lake City Refinery:

7 a. Failure to establish and implement an appropriate Management System to
8 oversee implementation of a Risk Management Program at the Salt Lake City Refinery, as
9 required by 40 C.F.R. §§ 68.12-15;

10 b. Failure to conduct adequate process hazard analysis, as required by 40
11 C.F.R. § 68.67, including but not limited to the failure to timely resolve and document process
12 hazard analysis recommendations and findings (40 C.F.R. § 68.67(e));

13 c. Failure to establish and implement adequate operating procedures, as
14 required by 40 C.F.R. § 68.69;

15 d. Failure to implement and/or document adequate employee training, as
16 required by 40 C.F.R. § 68.71;

17 e. Failure to establish and implement adequate procedures to ensure
18 mechanical integrity, and failure to document persons responsible for inspection and testing of
19 process equipment, as required by 40 C.F.R. § 68.73; and

20 f. Failure to establish and implement adequate management of change
21 procedures, as required by 40 C.F.R. § 68.75.

22 110. Each instance of a failure by Defendant at the Salt Lake City Refinery to comply
23 with the RMP Regulations, 40 C.F.R. Part 68, as set forth in Paragraph 109.a.-109.f. above,
24 constitutes a violation of Section 112(r)(7) of the CAA.

25 111. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 40 C.F.R.
26 § 19.4, Defendant is liable for injunctive relief and assessment of civil penalties of up to \$37,500
27 per day, per violation, for each violation of Section 112(r)(7) of the CAA that occurred at the
28

1 Salt Lake City Refinery after January 12, 2009 but no later than November 2, 2015, and \$97,229
2 per day, per violation, for each such violation that occurred after November 2, 2015.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff, the United States of America, respectfully requests that this Court

- 5 A. Order Defendant to immediately comply with the Clean Air Act statutory and regulatory
6 requirements cited in this Complaint, pursuant to Section 113(b) of the CAA, 42 U.S.C.
7 § 7413(b);
- 8 B. Assess civil penalties against Defendant not to exceed \$37,500 per day, per violation, for
9 each violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), and the RMP
10 Regulations promulgated under Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7),
11 and codified at 40 C.F.R. Part 68, occurring on or before November 2, 2015, and not to
12 exceed \$97,229 per day, per violation, for each violation occurring after November 2,
13 2015;
- 14 C. Assess a CERCLA civil penalty against Defendant not to exceed \$37,500 for its failure to
15 timely notify the National Response Center on August 2, 2012, of a release of a
16 hazardous substance at the Richmond Refinery;
- 17 D. Assess an EPCRA civil penalty against Defendant not to exceed \$37,500 for its failure to
18 timely notify the LEPC on August 2, 2012, of a release of a hazardous substance at the
19 Richmond Refinery, and a civil penalty against Defendant not to exceed \$37,500 for its
20 failure to timely notify the SERC on August 2, 2012, of a release of a hazardous
21 substance at the Richmond Refinery;
- 22 E. Impose such injunctive relief on Defendant as may be appropriate to mitigate the effects
23 of Defendant's violations, and prevent any future violations of same;
- 24 F. Award the United States its costs and expenses incurred in this action; and
- 25 G. Grant such other relief and further relief as this Court may deem appropriate.

26 Plaintiff, the MDEQ, joins in subparagraphs A., E., and G. of the United States' prayer
27 for relief insofar as those subparagraphs concern the RMP violations alleged at the Pascagoula
28

1 Refinery (Eighth Claim for Relief). The MDEQ also respectfully requests that this Court assess
2 civil penalties against Defendant not to exceed \$25,000 per day, per violation, for each violation
3 of 11 Miss. Admin. Code Pt. 2, R. 8.2; and respectfully requests that this Court award the MDEQ
4 its costs and expenses incurred in this action.

5 Dated: Oct. 24, 2018

Respectfully submitted,

6
7 /s/ Jeffrey H. Wood /

JEFFREY H. WOOD

8 Acting Assistant Attorney General
9 Environment and Natural Resources Section

10 /s/ Deborah A. Gitin

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/s/ Michelle Lo /

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