

OSHA Corporate Wide Settlement Agreements Chevron U.S.A. Inc. and the Chevron Richmond California Refinery

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- * Standard Number: 1910.132(a)
- * Information Date: 03/06/1991
- * Company: Chevron U.S.A. Inc. and the Chevron Richmond California Refinery

UNITED STATES OF AMERICA

OCCUPATIONAL SAFETY AND HEALTH REVIEW

COMMISSION

)
SECRETARY OF LABOR,)
) REGION 9
Complainant,)
) OSHRC Docket NO. 89-3125
v.)
)
CHEVRON U.S.A. INC. and the)
CHEVRON RICHMOND CALIFORNIA REFINERY)
and their successors)
)
Respondent.)

)
OIL, CHEMICAL & ATOMIC WORKERS,)
INTERNATIONAL UNION AFL-CIO,)
MARTINEZ LOCAL 1-5,)
)
Authorized Employee)
Representative.)
_____)

SETTLEMENT AGREEMENT

I.

The Complainant, Secretary of Labor, (hereafter referred to as the Secretary) and the Respondent, Chevron U.S.A. Inc. and the Richmond Refinery, (hereafter referred to as Chevron) have reached a full and complete settlement of the above-captioned matter presently pending before the Occupational Safety and Health Review Commission. The parties hereby agree as follows:

II.

(a) The Occupational Safety and Health Review Commission ("the Commission") has jurisdiction of this matter pursuant to Section 10(c) of the Occupational Safety and Health Act of 1970. 84 Stat. 1590; 29 U.S.C. Section 651, et seq. ("the Act").

(b) Respondent, Chevron is a corporation with its principal place of business located in San Francisco, California. At all times material to this proceeding Chevron has been engaged in the business of oil and gas production and refining in the oil and gas industry. During the course of Chevron's business, its employees perform various tasks in the oil and gas production and refining process. During the course of Chevron's business, it uses material and equipment which it receives from places located outside California. Chevron, as a result of these aforesaid activities, is an employer engaged in a business affecting "commerce" as defined in sections 3(3) and 3(5) of the Act, has "employees" as defined by Section 3(6) of the Act, and is subject to the requirements of the Act.

(c) As a result of an inspection of Chevron's Richmond California Refinery, citations alleging violations of the Act were issued to Chevron on September 26, 1989 pursuant to Section 8 and 9 of the Act. Notifications of proposed penalties in connection with the alleged violations were also issued to Chevron on September 26, 1989.

(d) Chevron contested each of the citations and the related notification of proposed penalty, and filed a timely notice of contest with the Secretary of Labor, which was transmitted to the Commission pursuant to Section 10(c) of the Act.

III

(a) The Secretary agrees to amend the two 29 CFR 1910.132(a) citations (Citation 1, Item 3 and Citation 2) to state one single citation. The citation is amended to characterize the alleged violations as a violation of Section 17 of the Act. The proposed penalties for the section 29 CFR 1910.132(a) violations are amended to an aggregate of \$275,000. The citations are amended further to allege as follows:

29 CFR 1910.132(a): Protective equipment was not used when necessary whenever hazards capable of causing injury and impairment were encountered.

(1) Richmond Refinery: Unit operators were working in the vicinity of various flammable hydrocarbons without the appropriate flame resistant and/or retardant clothing as needed depending on the level of exposure.

(b) The Secretary agrees, to withdraw Citation 1, Items 1 and 2 and the proposed penalties and to amend Citation 1, Items 4 and 5 to not serious, with no proposed penalties.

IV

Chevron agrees to the following provisions:

(a) Chevron agrees to withdraw its notice of contest to the above-described citations and notification of proposed penalty as amended herein as appropriate to facilitate settlement. Chevron further agrees to pay the U. S. Department of Labor \$275,000 in full financial settlement of the citations and to perform the abatement outlined below. The payment shall be made by check payable to "OSHA-Labor", within 30 days from the entry of a final order in this matter by the Commission. Abatement obligations shall be enforceable upon entry of a final order by the Commission.

(b) Chevron hereby agrees to do the following with regard to abatement:

1) Flame Resistant Clothing: Chevron agrees to implement a flame resistant clothing policy at each of Chevron's refineries as outlined below. (Attached as Exhibit A hereto is a list of all Chevron Refineries subject to this agreement.) Flame resistant clothing, such as "Nomex" coveralls or their equivalent, will be provided to and worn by all employees working in designated mandatory areas of the refineries subject to limited exceptions to those mandatory areas, such as employees merely passing through a mandatory area, not performing a task that could result in contact with a flash fire, or performing a task in a shutdown processing area that could not result in contact with a flash fire. At the Richmond refinery, mandatory areas will include the Hydroprocessing, Cracking, Distillation and Reforming, Cat/Wax, Blending and Shipping and Utility Divisions. At the other Chevron refineries, equivalent areas to such divisions will likewise be designated as mandatory areas subject to similar exceptions.

2) Turn Out Gear: Chevron further agrees to have available and require the use of turnout gear, as defined in NFPA 1971 through NFPA 1974, by any operators who are requested by the incident commander to perform an operating function in the hot zone during a fire at each of the refineries listed in Exhibit A. Hot zone is an area inside the perimeter 4 established by the incident commander where the risk of burn injuries to exposed skin could occur by flame contact or radiant heat.

Chevron further agrees to reinforce its policy as to operators' duties and responsibilities during the post-incident stage of a fire including outlining the general scope of operators' duties during an emergency; the use of flame resistant clothing and turnout gear during such emergencies; and that non-fire brigade operations personnel are not to enter the hot zone during a fire unless and until the incident commander so requests and turnout gear is provided and donned. Chevron will communicate such policy to all affected employees. Such communication will take the form of a Refinery Instruction or

equivalent, encompassing the role of incident commander, the role of operators on the site of an emergency once the fire brigade has arrived and that the provision of turn out gear does not qualify operators to fight fires beyond the incipient stage as defined in 1910.155(c)(26).

3) Chevron agrees to implement the abatement outlined in Paragraphs IV (b)(1) and IV (b)(2) above at each of its refineries listed in Exhibit A by June 1, 1991.

4) The implementation of the abatement described in Paragraph IV(b)(2) above shall not, in and of itself, necessitate compliance with 29 CFR 1910.156 or 29 CFR 1910.120.

5) Chevron represents that all other remaining alleged citations have been abated.

V.

The Secretary agrees that by execution of this Settlement Agreement Chevron does not admit liability of any nature whatsoever and further Chevron denies any and all allegation that it violated the Act. This Settlement Agreement is made entirely as a compromise for the purpose of the settlement of the aforementioned disputes, and to compromise, settle and extinguish all judgments, citations, penalties and causes of action against Chevron by the Secretary of Labor arising out of or in any way related to facts, matters and events referred to in the Amended Complaint. The Secretary and Chevron hereby acknowledge that this Settlement Agreement is entered into in good faith and has no other purpose than to compromise, settle and extinguish the claims, allegations, citations, and causes of action referred to herein. Nothing in this agreement including the Agreement itself, its execution, or the final order, is an admission, or evidence, nor is it to be construed as an admission, or treated as evidence, of any fact, or any violations of the Act by Chevron in any other proceeding except for further proceedings under the Act.

VI.

For purposes of service and notice, Chevron certifies that a copy of this Settlement Agreement has been served on affected employees at the Chevron Richmond California Refinery pursuant to 29 C.F.R. 2200.7 and .100.

Chevron also certifies that a copy of this Settlement Agreement was posted at the Chevron Richmond Refinery on

_____, 1990, pursuant to 29 C.F.R. 2200.7(g).

VII.

Each party agrees to bear all of its own attorneys fees, costs, and expenses arising out of and incidental to the instant matter.

W h e r e f o r e, the parties agree that under the

above-noted conditions, this matter docketed before the Commission as Docket No. 89-3125 is hereby settled.

For Complainant:

For Respondent:

U. S. DEPARTMENT OF LABOR
Refinery

Chevron U.S.A. Inc. Richmond

By _____
ALAN C. McMILLAN
Deputy Assistant Secretary
Occupational Safety and
Health Administration

By _____
JEFFREY J. TRUSKEY
Counsel for Respondent

Date: _____

Date: MARCH 7, 1991

ROBERT P. DAVIS
Solicitor of Labor

By _____
DANIEL W. TEEHAN
Regional Solicitor
Office of the Solicitor
United States Department
Labor
Attorneys for Complainant

By _____
LINDA B. WILLIAMS
Counsel for Respondent

Date: MARCH 6, 1991

Date: 3-6-91

EXHIBIT A
LIST OF CHEVRON REFINERIES
COVERED BY SETTLEMENT AGREEMENT

Richmond, California
El Segundo, California
Port Arthur, Texas
El Paso, Texas
Salt Lake, Utah
Pascagoula, Mississippi

Perth Amboy, New Jersey
Philadelphia, Pennsylvania
Honolulu, Hawaii
Kenai, Alaska