

STATE OF COLORADO

Bill Ritter, Jr., Governor
James B. Martin, Executive Director

Dedicated to protecting and improving the health and environment of the people of Colorado

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Colorado Department
of Public Health
and Environment

November 12, 2008

Byron R. Gale

EnCana Oil & Gas (USA) Inc. (South Parachute Field) Certified Mail Number: 7007 0220 0001 0156 8632
370 17th Street, Suite 1700
Denver, CO 80202

RE: Order for Civil Penalty, Number: SP-081112-2

Dear Mr. Gale:

EnCana Oil & Gas (USA) Inc. (South Parachute Field) is hereby served with the enclosed Order for Civil Penalty ("Penalty Order"). This Penalty Order is issued by the Colorado Department of Public Health and Environment's Water Quality Control Division (the "Division") pursuant to the authority given to the Division by §25-8-608(2) of the *Colorado Revised Statutes*. Payment of the imposed civil penalty should be made in accordance with the methods referenced in the Penalty Order and Compliance Order on Consent Number: SC-080915-4.

If you have any questions regarding the Penalty Order or the payment method, please do not hesitate to contact Michael Harris of this office at (303) 692-3598 or by electronic mail at michael.harris@state.co.us.

Sincerely,

Kristi-Raye Beaudin, Legal Assistant
Compliance Assurance and Data Management Section
WATER QUALITY CONTROL DIVISION

cc: Consumer Protection Division, CDPHE
 MS-3 File

ec: Aaron Urdiales, EPA Region VIII
 Mark Kadnuck, Engineering Section, CDPHE
 Gary Beers, Permits Unit, CDPHE
 Brian Macke, COGCC
 Dick Parachini, Watershed Program, CDPHE
 Carolyn Schachterle, OPA

Enclosure(s)



COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
DIVISION OF ADMINISTRATION
WATER QUALITY CONTROL DIVISION

ORDER FOR CIVIL PENALTY

NUMBER: SP-081112-2

IN THE MATTER OF: ENCANA OIL & GAS (USA) INC.
CDPS PERMIT NO. COR-030000
CERTIFICATION NO. COR-038210
GARFIELD COUNTY, COLORADO

This matter having come to my attention as the Designee of the Executive Director of the Colorado Department of Public Health and Environment upon petition for imposition of a civil penalty by the Water Quality Control Division's Compliance Assurance and Data Management Section, I hereby impose a civil penalty in the amount of Thirty Six Thousand Three Hundred Twenty Six Dollars (\$36,326.00) against EnCana Oil & Gas (USA) Inc. ("EnCana") for the violations cited in the Compliance Order on Consent between EnCana and the Division, executed on September 15, 2008 (the "Consent Order"). A copy of the Consent Order is attached hereto as Exhibit A and is incorporated herein by reference. The civil penalty shall be paid within thirty (30) calendar days of the date of this Order for Civil Penalty as set forth in the Consent Order. Method of payment shall be by certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment," and delivered to:

Michael Harris
Colorado Department of Public Health and Environment
Water Quality Control Division
Mail Code: WQCD-CADM-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

Dated this 12th day of November, 2008.

Steven H. Gunderson, Director
Water Quality Control Division
DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Exhibit A



COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT WATER QUALITY CONTROL DIVISION

COMPLIANCE ORDER ON CONSENT

NUMBER: SC-080915-4

**IN THE MATTER OF: ENCANA OIL & GAS (USA) INC.
 CDPS PERMIT NO. COR-030000
 CERTIFICATION NO. COR-038210
 GARFIELD COUNTY, COLORADO**

The Colorado Department of Public Health and Environment ("Department"), through the Water Quality Control Division ("Division"), issues this Compliance Order on Consent ("Consent Order"), pursuant to the Division's authority under §25-8-605, C.R.S. of the Colorado Water Quality Control Act ("the Act") §§ 25-8-101 to 703, C.R.S., and its implementing regulations, with the express consent of EnCana Oil & Gas (USA) Inc. ("EnCana"). The Division and EnCana may be referred to collectively as "the Parties."

STATEMENT OF PURPOSE

1. The mutual objectives of the Parties in entering into this Consent Order are to resolve, without litigation, the alleged violations cited herein.

DIVISION'S FINDINGS OF FACT AND DETERMINATION OF VIOLATIONS

2. Based upon the Division's investigation into and review of the compliance issues identified herein, and in accordance with §§25-8-602 and 605, C.R.S., the Division has made the following determinations regarding EnCana and EnCana's compliance with the Act and its permit.
3. At all times relevant to the alleged violations identified herein, EnCana was a Delaware corporation in good standing and registered to conduct business in the State of Colorado.
4. EnCana is a "person" as defined under the Water Quality Control Act, §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).

5. In early 2005, EnCana initiated construction activities to clear and grade numerous plots of land, and build associated access roads, on property located within a ten thousand eight hundred eighty (10,880) acre area of Garfield County, Colorado, for the drilling and recovery of oil and/or natural gas resources (the "South Parachute Field").
6. On May 13, 2005, EnCana applied for South Parachute Field coverage under the Colorado Discharge Permit System General Permit, Number COR-030000, for Stormwater Discharges Associated with Construction Activity (the "Permit").
7. On May 19, 2005, the Division provided EnCana Certification Number COR-038210 authorizing EnCana to discharge stormwater from the construction activities associated with the South Parachute Field to Dry Creek and the Colorado River, under the terms and conditions of the Permit. Certification Number COR-038210 became effective May 18, 2005 and remains in effect until June 30, 2012 or until EnCana inactivates Permit coverage.
8. Dry Creek and the Colorado River are "state waters" as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(102).
9. Pursuant to 5 CCR 1002-61, §61.8, a permittee must comply with all the terms and conditions of a permit and violators of the terms and conditions specified in a permit may be subject to civil and criminal liability pursuant to §§25-8-601 through 612, C.R.S.
10. On July 18, 2006, a representative from the Division (the "Inspector") conducted an on-site inspection of the South Parachute Field, pursuant to the Division's authority under §25-8-306, C.R.S., to determine EnCana's compliance with the Water Quality Control Act and the Permit. During the inspection, the Inspector spoke with South Parachute Field representatives, conducted a review of the South Parachute Field's stormwater management records, and performed a physical inspection of a portion of the South Parachute Field.
11. Pursuant to Part I. B. of the Permit, EnCana was required to prepare a Stormwater Management Plan ("SWMP") for each project that identified Best Management Practices ("BMPs") that, when implemented, would meet the terms and conditions of the Permit. The SWMP is required to identify potential sources of pollution (including sediment), which may be reasonably expected to affect the quality of stormwater discharges associated with construction activity from each project. In addition, the plan is required to describe and ensure the implementation of BMPs, which will be used to reduce the pollutants in stormwater discharges associated with construction activity.
12. The Division has determined that EnCana failed to prepare and maintain a complete and accurate SWMP for the South Parachute Field as described in paragraphs 12(a-i) below:
 - a. During the July 18, 2006 inspection, the Inspector reviewed the South Parachute Field's SWMP and noted that the SWMP onsite did not include documentation for the pipeline construction activities at the South Parachute Field, as that information was maintained in a separate location.

- b. During the July 18, 2006 inspection, the Inspector reviewed the South Parachute Field's SWMP and noted that the site map included in the SWMP did not include the total area of the site and the area of the site that was expected to undergo clearing, excavation or grading, as required in the Permit.
 - c. During the July 18, 2006 inspection, the Inspector reviewed the South Parachute Field's SWMP and noted that the SWMP did not include an estimate of the runoff coefficient of the site before construction activities, as required in the Permit.
 - d. During the July 18, 2006 inspection, the Inspector reviewed the South Parachute Field's SWMP and noted that the SWMP did not include a description of the existing vegetation at the site and an estimate of the percent vegetative ground cover, as required in the Permit.
 - e. During the July 18, 2006 inspection, the Inspector reviewed the South Parachute Field's SWMP and noted that the SWMP did not include the name of the receiving water(s) and the size, type and location of any outfall, as required in the Permit.
 - f. During the July 18, 2006 inspection, the Inspector reviewed the South Parachute Field's SWMP and noted that the site map did not clearly identify the construction site boundaries for all individual well pad locations and access roads.
 - g. During the July 18, 2006 inspection, the Inspector reviewed the South Parachute Field's SWMP and noted that the site map did not include the locations of major erosion control facilities or structures for the various access roads.
 - h. During the July 18, 2006 inspection, the Inspector reviewed the South Parachute Field's SWMP and noted that the SWMP did not include a narrative description of appropriate controls and measures that would be implemented before construction activities at the site.
 - i. During the July 18, 2006 inspection, the Inspector reviewed the South Parachute Field's SWMP and noted that the SWMP did not identify the magnesium chloride solution being utilized for dust suppression at the site as a potential pollutant source.
13. EnCana's failure to prepare and maintain a complete and accurate SWMP for the South Parachute Field constitutes violation(s) of Part L B. of the Permit.
14. Pursuant to Part L B. 3. a. (1) of the Permit, EnCana was required to minimize erosion and sediment transport from each of its projects. The Permit specifies that structural site management practices may include, but are not limited to: straw bales, silt fences, earth dikes, drainage swales, sediment traps, subsurface drains, inlet protection, outlet protection, gabions, and temporary or permanent sediment basins.

15. Pursuant to Part I B. 3. a. (2) of the Permit, EnCana was required to implement interim and permanent stabilization practices, including site-specific scheduling of the implementation of the practices. The Permit specifies that site plans should ensure existing vegetation is preserved where possible and that disturbed areas are stabilized. The Permit specifies that non-structural practices may include, but are not limited to: temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees and preservation of mature vegetation.
16. Pursuant to Part I B. of the Permit, EnCana was required to implement the provisions of the SWMP.
17. The Division has determined that EnCana failed to implement and/or maintain functional BMPs at the South Parachute Field as described in paragraphs 17(a-h) below:
 - a. During the July 18, 2006 inspection, the Inspector observed a disturbed drainage area along the western slope of an unnamed tributary to Pete and Bill Creek, located approximately two miles southeast of the intersection of CR 300 and CR 304 at the South Parachute Field. An erosion control blanket was observed in place, however, the blanket was not installed correctly and was not being maintained in good and effective operating condition, as the blanket was installed perpendicular to the direction of flow. Consequently, sections of the blanket had parted, thus exposing disturbed soil on the drainage slope to potential erosion and sediment discharge.
 - b. During the July 18, 2006 inspection, the Inspector observed a drainage pipe that had been installed at a drainage crossing for the access road to well pad PF 31 at the South Parachute Field. The drainage pipe had not been properly sized for the upslope drainage volume. Consequently, stormwater had overtopped the road resulting in erosion and sediment discharge from the access road.
 - c. During the July 18, 2006 inspection, the Inspector observed erosion control blankets and straw wattles located down gradient of the access road drainage crossing for well pad PF 31 at the South Parachute Field. The erosion control blanket and straw wattles were not being maintained to act as functional BMPs, however, as the blankets had been washed aside, thus exposing the disturbed soil below, and the straw wattles were not entrenched in the ground to create a tight seal.
 - d. During the July 18, 2006 inspection, the Inspector observed a drainage ditch associated with the access road for well pad PF 31 at the South Parachute Field. No BMPs were observed in place to prevent erosion from concentrated flow in the ditch. Additionally, no BMPs were observed in place to stabilize the adjacent disturbed slope or to prevent sediment from discharging from the slope to the drainage ditch.
 - e. During the July 18, 2006 inspection, the Inspector observed drainage pipe in place at the drainage crossing for well pad PF 31 at the South Parachute Field. The drainage pipe had not been properly sized for the upslope drainage volume. Additionally, sediment discharge was observed in the drainage channel and beyond the outlet of the drainage pipe.

- f. During the July 18, 2006 inspection, the Inspector observed disturbed areas associated with the pipeline installation activities north of PD-31 at the South Parachute Field. A brush barrier was observed in places along a disturbed slopes leading from the area, however, the brush barrier was not sufficiently dense to prevent sediment from discharging past the barrier. Additionally, no other BMPS were observed in place to stabilize the disturbed slopes or prevent sediment discharges.
 - g. During the July 18, 2006 inspection, the Inspector observed disturbed areas associated with the PH-1 pipeline installation activities adjacent to CR 304 at the South Parachute Field. A temporary sediment trap with straw bales and silt fence was observed in place directly adjacent to a drainage crossing at CR 304. However, no other BMPs were observed in place to prevent run-on to the disturbed slopes or to stabilize the slopes and other up gradient areas leading to the sediment trap.
 - h. During the July 18, 2006 inspection, the Inspector observed pipeline disturbance located south of CR 304 at the South Parachute Field. Straw wattles were observed at the toe of a slope leading away from the disturbance. However, no other BMPs were observed in place to stabilize the slopes and other up gradient disturbed areas leading to the wattles.
18. EnCana's failure to implement and maintain functional BMPs to protect stormwater quality during construction activities at the South Parachute Field constitutes violations of Part I. B. and Part I. B. 3. a. of the Permit.
19. The Division acknowledges that EnCana timely and satisfactorily performed all of the obligations and actions required under the August 2, 2006 Compliance Advisory.

EnCana's Position on Alleged Violations

20. EnCana commenced the construction activities relevant to this Consent Order in Spring 2005 (pipeline construction began in June 2005). Prior gas development had been conducted in the South Parachute Area by Tom Brown Inc. ("TBI"), which merged with EnCana in January 2005. It is EnCana's understanding that TBI had obtained a General Permit certification for the entire South Piceance area, including the South Parachute Area, prior to the merger, but that TBI had not performed any actual drilling in the area since some time in 2000. Any construction activities performed prior to May 18, 2005 would have been covered under the Tom Brown certification.
21. With respect to the alleged violations in paragraph 12 above concerning the preparation and maintenance of a SWMP for the South Parachute Field, EnCana states as follows:
- a. Pipeline construction activities within the South Parachute Area were described in a separate SWMP used by EnCana's Gas Gathering Division, which was not reviewed by the Division at the time of its July 18, 2006 inspection.
 - b. EnCana's SWMP did not include an estimate of the total area expected to undergo disturbance since total disturbed acreage increases and decreases as new facilities are constructed and old ones are stabilized. The SWMP has been revised since the Division's inspection to include this information.

- c. EnCana's SWMP stated that site runoff coefficients are expected to range from 0.1 to 0.4.
- d. EnCana's stormwater personnel rely on visual comparisons to adjacent vegetative cover when assessing the extent of re-growth on disturbed sites. EnCana began documenting pre-construction vegetation conditions and percent vegetative ground cover in its SWMPs following the Division's inspection.
- e. Site-specific information about outfall characteristics and the location and proximity of receiving streams was included on the site maps and inspection forms completed by EnCana's stormwater inspectors.
- f. EnCana now uses survey plats for its well-pads and access roads as the base maps for its stormwater site diagrams. These plats include perimeter lines and other information showing the locations of ground disturbing activities and stormwater controls measures relative to construction site boundaries.
- g. EnCana's site maps consisted of not-to-scale drawings that displayed the relative locations of well-pad perimeters, stormwater BMPs, the terminal portions of EnCana's access roads, and other major site features.
- h. EnCana's SWMP stated that BMPs will be installed prior to, during and immediately following construction as practicable with consideration given to safety, access and ground conditions. The operational phases of well-pad, access road and gas gathering construction were described, along with the steps initially taken to stabilize a typical construction site, including soil stockpiling, seeding and grading. EnCana's dirt-moving contractors begin implementing sediment and erosion control measures simultaneously with the initiation of construction.
- i. EnCana relied on the services of its contractor, EnviroTech, for spreading magnesium chloride for dust control. Because EnCana did not control the storage and use of magnesium chloride, EnCana did not consider it to be a potential pollution source that needed to be addressed in the SWMP. EnCana later revised its SWMP to include a description of magnesium chloride handling procedures.

22. With respect to the alleged findings in paragraph 17 above concerning the implementation and maintenance of BMPs, EnCana states as follows:

- a. The erosion blanket observed during the Division's inspection was installed to cover the steeper portions of the drainage slope; the lesser sloped areas were seeded. Installing erosion blankets across a cut slope generally allows for better anchoring. To the extent the erosion blanket panels had separated, this was due to excessive flows in the drainage resulting from a major storm event. EnCana had arranged to make repairs prior to the Division's inspection.

- b. The inspected culvert was sized to accommodate maximum anticipated flows, as estimated from observations of the ordinary high water mark within the drainage. The culvert had performed satisfactorily during prior spring runoff conditions. During 2005, EnCana's contractors armored the culvert inlet with boulders, re-graded the banks to reduce the slope, and installed straw-mats and other erosion controls on the disturbed areas. The U.S. Army Corps of Engineers ("ACOE") issued Nationwide General Permit #200575214 for this work on May 3, 2005. A severe and sudden storm event on July 9, 2006 resulted in excessive movement of stormwater, sediment and other debris into the dry wash, which overwhelmed and blocked the culvert. The Division's inspector noted that the sediment observed in the drainage was not from EnCana disturbed areas.
- c. The compromised condition of the BMPs observed by the Division was caused by the intense force of the storm runoff moving down the dry wash, not from any discharge of stormwater from EnCana's well-pads and access roads. These BMPs had been in place for some time, they were being appropriately maintained and inspected by EnCana's stormwater personnel, and they had functioned well during prior runoff and stormwater events. BMPs were later repaired.
- d. The inspected ditch was equipped with check dams and a large sediment trap designed to slow stormwater flow and prevent sediment discharge. The outlet of the sediment trap was rip-rapped and equipped with silt fencing to filter the overflow. The sediment trap and silt fencing were submerged during the Division's inspection due to the remaining impacts of the July 9 storm event. The gravel check dams also were damaged by the storm. BMPs were later repaired.
- e. EnCana experienced no problems with stormwater backing up behind the inspected culvert. At the time of the Division's July 18 inspection, the culvert was open and the inlet area was dry. Nevertheless, EnCana later replaced the culvert with a larger diameter pipe. The road-crossing was stabilized, including gravel on the road surface and boulders, rip-rap and cobble armoring surrounding the culvert inlet and outlet. Sediment observed by the Division washed down from upslope, non-disturbed lands and from within the drainage itself.
- f. Pipeline construction activities were in progress at the time of the Division's inspection. EnCana had determined that construction of a diversion berm at the top of the sloped edge of the right-of-way, combined with a brush barrier at the slope base, was sufficient to protect against off-site sediment transport until pipeline installation was completed. Road surfaces leading to the construction site were graveled, and the site was being monitored to verify that the implemented measures were preventing sediment discharge. Given the low potential for erosion at this location, and the fact that no drainages were present in the immediate area, the installation of other conventional BMPs such as rolled product, hay-bales or silt-fencing was not deemed necessary.
- g. EnCana was in the process of re-grading and seeding the inspected pipeline location site when the inspection occurred. Meanwhile, BMPs remained in place directly adjacent to the drainage crossing to protect it from possible discharges. Permanent stabilization measures were installed at the drainage crossing (rock-armored catch-basins, anchored straw wattles, rip-rap at the culvert inlet and outlet, and erosion blankets) following the Division's inspection.

- h. **EnCana had not installed structural BMPs directly on the right-of-way surface because active pipeline installation was occurring. Stormwater flow was effectively being dealt with through multiple BMPs, including: proper grading, surface roughening (track-walking), and berming. Soil and grubbed vegetation had been stockpiled along the up-gradient edge of the right-of-way to prevent stormwater run-on, and the pipeline trench was acting as a run-on diversion. Temporary BMPs (straw wattles, silt fencing and hay-bales) had been placed along the north side of the right-of-way while installation activities were ongoing.**
 - i. **The conditions observed during the July 18, 2006 inspection did not cause, were not associated with, and did not have the reasonable potential to cause or contribute to a “discharge of pollutants” as defined in §25-8-103(3), C.R.S., and the alleged violations did not contribute to the pollution, contamination or degradation of state waters**
- 23. **Since the issuance of the Compliance Advisory, EnCana has reviewed its internal procedures, conducted stormwater training sessions for its employees and taken additional steps to ensure timely compliance with Permit requirements. EnCana is deeply committed to maintaining compliance with all applicable stormwater permitting requirements, as well as all other state and federal regulations which apply to the oil and gas industry. EnCana has invested substantial time and resources, both before and since the issuance of the Compliance Advisory, to diligently ensure such compliance.**
- 24. **The Division does not agree with or accept any of EnCana’s positions on the alleged violations described or referenced herein.**

ORDER AND AGREEMENT

- 25. **Based on the foregoing factual and legal determinations, pursuant to its authority under §§25-8-602 and 605 C.R.S., and in satisfaction of the alleged violations cited herein, the Division orders EnCana to comply with all provisions of this Consent Order, including all requirements set forth below.**
- 26. **EnCana agrees to the terms and conditions of this Consent Order. EnCana agrees that this Consent Order constitutes a notice of alleged violation and an order issued pursuant to §§25-8-602 and 605, C.R.S., and is an enforceable requirement of the Act. EnCana also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by EnCana against the Division:**
 - a. **The issuance of this Consent Order;**
 - b. **The factual and legal determinations made by the Division herein; and**
 - c. **The Division’s authority to bring, or the court’s jurisdiction to hear, any action to enforce the terms of this Consent Order under the Act.**
- 27. **Notwithstanding the above, EnCana does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by EnCana pursuant to this Consent Order shall not constitute evidence of fault by EnCana with respect to the conditions of the South Parachute Field.**

CIVIL PENALTY

28. Based upon the application of the Division's Stormwater Civil Penalty Policy (January 25, 2007), and consistent with Departmental policies for violations of the Act, EnCana shall pay Thirty Six Thousand Three Hundred Twenty Six Dollars (\$36,326.00) in civil penalties. The Division intends to petition the Executive Director, or his designee, to impose the Thirty Six Thousand Three Hundred Twenty Six Dollar (\$36,326.00) civil penalty for the above violation(s) and EnCana agrees to make the payment within thirty (30) calendar days of the issuance of a Penalty Order by the Executive Director or his designee. Method of payment shall be by check drawn to the order of the "Colorado Department of Public Health and Environment," and delivered to:

Michael Harris
Colorado Department of Public Health and Environment
Water Quality Control Division
Mail Code: WQCD-CADM-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

ENVIRONMENTALLY BENEFICIAL PROJECT

29. In addition to all other funds necessary to comply with the requirements of this Consent Order, EnCana shall pay One Hundred Thirteen Thousand Four Hundred Seventeen Dollars (\$113,417.00) in the form of expenditures on an Environmentally Beneficial Project ("EBP"), which shall be the functional equivalent of a Supplemental Environmental Project ("SEP") administered in accordance with the Department's Final Agency-Wide Supplemental Environmental Project's Policy ("SEP Policy"), in order to achieve settlement of this matter.
30. EnCana's total expenditure for the EBP shall not be less than One Hundred Thirteen Thousand Four Hundred Seventeen Dollars (\$113,417.00). The final value of the EBP will be determined in accordance with the Department's SEP Policy. The funds will be used for a project or projects, to be approved by the Division, which improve or protect the environment. EnCana's expenditure for the EBP shall not constitute an admission of liability for the alleged violations cited herein.
31. EnCana shall submit a description of the proposed EBP for Division approval no later than thirty (30) calendar days after the effective date of this Consent Order. The submittal, at a minimum, shall outline the proposed project(s), the geographical area(s) to benefit from the project(s), a description of the expected environmental benefit(s), implementation costs and a timetable for completion. In addition, the submittal shall include a certification by EnCana that, as of the date of the submittal, it is not under any existing legal obligation to perform or develop the EBP. EnCana must further certify that it has not received, and will not receive, credit in any other enforcement action for the EBP. In the event that EnCana has, or will receive credit under any other legal obligation for the EBP, EnCana shall pay One Hundred Thirteen Thousand Four Hundred Seventeen Dollars (\$113,417.00) to the Division as a civil penalty within thirty (30) calendar days of receipt of a demand for payment by the Division. Method of payment shall be as specified in paragraph 28 above. The Division reserves the right to accept or deny the

EBP, or to require modifications to any provisions of the proposed project(s). If the Division denies the proposed EBP or requires modification thereof, EnCana shall develop an alternative proposed EBP for Division consideration or provide notice that the proposed EBP was modified as the Division requested within thirty (30) calendar days of receipt of written notice from the Division.

32. Upon receiving approval of the proposed EBP from the Division, EnCana shall implement the EBP in accordance with the approved time schedule. Unless otherwise approved by the Division through the EBP approval process, the EBP must be fully implemented and completed to the satisfaction of the Division by December 31, 2009.
33. EnCana shall not deduct the expenses associated with the implementation of the EBP for any tax purpose or otherwise obtain any favorable tax treatment of such payment or project.
34. In the event that the Division ultimately does not approve a proposed EBP, EnCana shall be liable for payment of a civil penalty in the amount of One Hundred Thirteen Thousand Four Hundred Seventeen Dollars (\$113,417.00). EnCana shall pay this penalty within thirty (30) calendar days of receipt of written demand by the Division. Method of payment shall be as specified in paragraph 28 above.
35. EnCana shall submit an EBP Completion Report to the Division within thirty (30) calendar days of the Division-approved completion date. The EBP Completion Report shall contain the following information:
 - a. A detailed description of the EBP as implemented;
 - b. A description of any operating problems encountered and the solutions thereto;
 - c. Itemized costs, documented by copies of purchase orders and receipts or canceled checks;
 - d. Certification that the EBP has been fully implemented pursuant to the provisions of this Consent Order; and
 - e. A description of the environmental and public health benefits resulting from implementation of the EBP (with quantification of the benefits and pollutant reductions, if feasible).
36. Failure to submit the EBP Completion Report with the required information, or any periodic report, shall be deemed a violation of this Consent Order.
37. In the event that EnCana fails to comply with any of the terms or provisions of this Consent Order relating to the performance of the EBP, EnCana shall be liable for penalties as follows:
 - a. Payment of a civil penalty in the amount of One Hundred Thirteen Thousand Four Hundred Seventeen Dollars (\$113,417.00). The Division, in its sole discretion, may elect to reduce this penalty for environmental benefits created by the partial performance of the EBP.
 - b. EnCana shall pay this penalty within thirty (30) calendar days of receipt of written demand by the Division. Method of payment shall be as specified in paragraph 28 above.
38. EnCana shall include the following language in any public statement, oral or written, making reference to the EBP: "This project was undertaken in connection with the settlement of an enforcement action taken by the Colorado Department of Public Health and Environment for violations of the Colorado Water Quality Control Act."

SCOPE AND EFFECT OF CONSENT ORDER

39. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the violations cited herein.
40. This Consent Order is subject to the Division's "Public Notification of Administrative Enforcement Actions Policy," which includes a thirty-day public comment period. The Division and EnCana each reserve the right to withdraw consent to this Consent Order if comments received during the thirty-day period result in any proposed modification to the Consent Order.
41. This Consent Order constitutes a final agency order or action upon the date when the Executive Director or his designee imposes the civil penalty following the public comment period. Any violation of the provisions of this Consent Order by EnCana, including any false certifications, shall be a violation of a final order or action of the Division for the purpose of §25-8-608, C.R.S., and may result in the assessment of civil penalties of up to ten thousand dollars per day for each day during which such violation occurs.
42. Notwithstanding paragraph 27 above, the violations described in this Consent Order will constitute part of EnCana's compliance history for purposes where such history is relevant. This includes considering the violations described above in assessing a penalty for any subsequent violations against EnCana. EnCana agrees not to challenge the use of the cited violations for any such purpose.
43. This Consent Order does not relieve EnCana from complying with all applicable Federal, State, and/or local laws in fulfillment of its obligations hereunder and shall obtain all necessary approvals and/or permits to conduct the activities required by this Consent Order. The Division makes no representation with respect to approvals and/or permits required by Federal, State, or local laws other than those specifically referred to herein.

LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY

44. Upon the effective date of this Consent Order, and during its term, this Consent Order shall stand in lieu of any other enforcement action by the Division with respect to the specific instances of violations cited herein. The Division reserves the right to bring any action to enforce this Consent Order, including actions for penalties or the collection thereof, and/or injunctive relief.
45. This Consent Order does not grant any release of liability for any violations not specifically cited herein.
46. Nothing in this Consent Order shall preclude the Division from imposing additional requirements in the event that new information is discovered that indicates such requirements are necessary to protect human health or the environment.
47. Upon the effective date of this Consent Order, EnCana releases and covenants not to sue the State of Colorado or its employees, agents or representatives as to all common law or statutory claims or counterclaims arising from, or relating to, the violations of the Act specifically addressed herein.

48. EnCana shall not seek to hold the State of Colorado or its employees, agents or representatives liable for any injuries or damages to persons or property resulting from acts or omissions of EnCana, or those acting for or on behalf of EnCana, including its officers, employees, agents, successors, representatives, contractors, consultants or attorneys in carrying out activities pursuant to this Consent Order. EnCana shall not hold out the State of Colorado or its employees, agents or representatives as a party to any contract entered into by EnCana in carrying out activities pursuant to this Consent Order. Nothing in this Consent Order shall constitute an express or implied waiver of immunity otherwise applicable to the State of Colorado, its employees, agents or representatives.

NOTICES

49. Unless otherwise specified, any report, notice or other communication required under the Consent Order shall be sent to:

For the Division:

Colorado Department of Public Health and Environment
Water Quality Control Division / WQCD-CADM-B2
Attention: Michael Harris
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: 303.692.3598
E-mail: michael.harris@state.co.us

For EnCana:

Byron R. Gale
EnCana Oil & Gas (USA) Inc.
370 17th Street, Suite 1700
Denver, CO 80202
Telephone: (720) 876-3626
Email: byron.gale@encana.com

MODIFICATIONS

50. This Consent Order may be modified only upon mutual written agreement of the Parties.

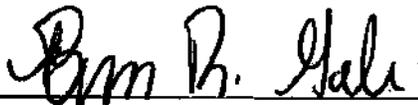
NOTICE OF EFFECTIVE DATE

51. This Consent Order shall be fully effective, enforceable and constitute a final agency action upon the date when the Executive Director or his designee imposes the civil penalty. If the penalty as described in this Consent Order is not imposed, or an alternate penalty is imposed, this Consent Order becomes null and void.

BINDING EFFECT AND AUTHORIZATION TO SIGN

52. This Consent Order is binding upon EnCana and its successors in interest and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this Consent Order. EnCana agrees to provide a copy of this Consent Order to any contractors and other agents performing work pursuant to this Consent Order and require such agents to comply with the requirements of this Consent Order. In the event that a party does not sign this Consent Order within thirty (30) calendar days of the other party's signature, this Consent Order becomes null and void. This Consent Order may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Order.

FOR ENCANA OIL & GAS (USA) INC.:

 Date: SEPTEMBER 11, 2008
Byron R. Gale, Attorney-in-Fact

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:

 Date: 09-15-08
Lori M. Gerzina, Section Manager
Compliance Assurance and Data Management Section
WATER QUALITY CONTROL DIVISION