

1 JOHN C. CRUDEN  
Assistant Attorney General  
2 Environment and Natural Resources Division

3 MARK C. ELMER (VA-37575)  
4 Senior Counsel  
5 Environmental Enforcement Section  
6 U.S. Department of Justice  
7 999 18<sup>th</sup> Street, South Terrace, Suite 370  
8 Denver, Colorado 80202  
9 Telephone: (303) 844-1352  
10 Facsimile: (303) 844-1350  
11 Email: [Mark.Elmer@usdoj.gov](mailto:Mark.Elmer@usdoj.gov)

12 *Attorneys for Plaintiff United States of America*

13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15 SAN FRANCISCO DIVISION

16	_____ )	
17	UNITED STATES OF AMERICA, et al., )	
18	Plaintiffs, )	Case No: 3:03-cv-04650 CRB
19	v. )	<b>FIRST MATERIAL AMENDMENT TO</b>
20	CHEVRON U.S.A. INC., )	<b>CONSENT DECREE</b>
21	Defendant. )	Hon. Charles R. Breyer
22	_____ )	

23 WHEREAS, the United States of America (hereinafter “the United States”), the State of  
24 Hawaii, the Mississippi Commission on Environmental Quality, the State of Utah, the Bay Area  
25 Air Quality Management District, and Chevron U.S.A. Inc. (hereinafter, “Chevron”) are parties  
26 to a Consent Decree entered by this Court on June 27, 2005;

27 WHEREAS, on March 2, 2015, a Stipulation and Agreement for Non-Material  
28 Modification of Consent Decree was filed in this Court;

1           WHEREAS, the 2005 Consent Decree, as modified by the 2015 Stipulation and  
2 Agreement for Non-Material Modification of Consent Decree, shall be referred to as the  
3 “Consent Decree”;

4           WHEREAS, Chevron sold the Chevron Refinery located at Kapolei, Hawaii (hereinafter  
5 the “Hawaii Refinery”) to IES Downstream, LLC (“IES”) on November 1, 2016;

6           WHEREAS, IES has contractually agreed to assume the obligations, rights, and benefits  
7 of, and to be bound by the terms and conditions of, the Consent Decree as such obligations, rights,  
8 benefits, terms, and conditions relate to the Hawaii Refinery;

9           WHEREAS, IES represents that it has the financial and technical ability to assume the  
10 obligations and liabilities of the Consent Decree as they relate to the Hawaii Refinery;

11           WHEREAS, this First Material Amendment to Consent Decree does not affect, alter, or  
12 amend any obligation or requirement pertaining to any refinery or facility covered by the Consent  
13 Decree other than the Hawaii Refinery;

14           WHEREAS, the United States, the State of Hawaii, Chevron, and IES desire to amend the  
15 Consent Decree to: 1) transfer to IES all obligations, liabilities, rights, benefits, and releases of  
16 the Consent Decree as they pertain to the Hawaii Refinery; 2) make IES a party to the Consent  
17 Decree, as amended, with respect to the Hawaii Refinery; and 3) to release Chevron from its  
18 obligations and liabilities under the Consent Decree, as amended, insofar as they relate to the  
19 Hawaii Refinery;

20           WHEREAS, Chevron’s retention of liability to the United States and the State of Hawaii  
21 as provided for in this First Material Amendment to Consent Decree shall not alter or affect the  
22 rights and obligations of Chevron and IES to each other;

1           WHEREAS, Section II, Paragraph 7 of the Consent Decree provides for the transfer of  
2 ownership and/or operation of the Chevron Refineries that are subject to the Consent Decree,  
3 including the Hawaii Refinery; and

4           WHEREAS, Paragraph 234 of the Consent Decree requires that this First Material  
5 Amendment be approved by the Court before it is effective;

6           NOW THEREFORE, the United States, the State of Hawaii, Chevron, and IES hereby  
7 agree that, upon approval of this First Material Amendment by the Court, the Consent Decree  
8 shall be amended as follows:  
9

10           1.   Effective as of November 1, 2016, the date of sale of the Hawaii Refinery from  
11 Chevron to IES, IES hereby assumes, and Chevron is hereby released from, all obligations,  
12 liabilities, rights, and benefits imposed by the Consent Decree, on the Hawaii Refinery, and the  
13 terms and conditions of the Consent Decree as they relate to the Hawaii Refinery shall thereafter  
14 exclusively apply to, be binding upon, and be enforceable against IES to the same extent as if  
15 IES were specifically identified and/or named in those provisions of the Consent Decree  
16 applicable to the Hawaii Refinery. Chevron shall retain liability to the United States and the  
17 State of Hawaii for any violations of the Consent Decree that arose or occurred at the Hawaii  
18 Refinery prior to November 1, 2016. IES shall not be liable for any stipulated penalties under  
19 the Consent Decree for violations of the Consent Decree that occurred prior to November 1,  
20 2016.  
21

22           2.   IES shall not be responsible for any portion of any civil penalty under Section X  
23 of the Consent Decree or supplemental environmental projects under Section VIII of the Consent  
24 Decree. The United States acknowledges that the civil penalties under Section X of the Consent  
25 Decree have been paid in full, and the supplemental environmental projects associated with the  
26  
27  
28

1 Hawaii Refinery under Paragraphs 109A.a and b.iii of the Consent Decree and Paragraph A.2 of  
2 Appendix L of the Consent Decree have been completed.

3 3. None of the heaters and boilers at the Hawaii Refinery was used to reduce NOx  
4 emissions by at least 2777 tons per year as required under Section V.F, Paragraph 33 of the  
5 Consent Decree. Accordingly, the NOx reduction requirements and other requirements, terms,  
6 and conditions under Section V.F of the Consent Decree shall not apply to the Hawaii Refinery  
7 or IES. All such NOx reductions have applied, and will continue as of November 1, 2016, to  
8 apply, only to the Chevron El Segundo, Richmond, Pascagoula, and Salt Lake City Refineries.  
9

10 4. Paragraph 231 of the Consent Decree is hereby amended to include the following  
11 information as to IES:  
12

13 Tim Parker  
14 General Counsel  
15 IES Downstream, LLC  
16 91-480 Malakole Street  
17 Kapolei, HI 96707

18 With a copy to the Hawaii Refinery:

19 Marc Dexter  
20 Environmental Health and Safety Manager  
21 IES Downstream, LLC  
22 91-480 Malakole Street  
23 Kapolei, HI 96707

24 5. Each undersigned representative of Chevron U.S.A. Inc. and IES Downstream,  
25 LCC, and the Assistant Attorney General for the Environment and Natural Resources Division of  
26 the Department of Justice certifies that he or she is fully authorized to enter into the terms and  
27 conditions of this First Material Amendment to Consent Decree. This First Material Amendment  
28 to Consent Decree may be executed in several counterparts, each of which will be considered an  
original.

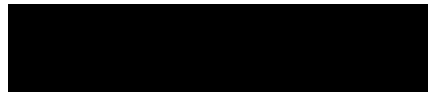
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**ORDER**

Before the taking of any testimony, without adjudication of any issue of fact or law, and upon the consent and agreement of the Parties, it is:

ORDERED, ADJUDGED, and DECREED that the foregoing First Material Amendment to Consent Decree is hereby approved and entered as a final order of this Court.

Dated and entered this 20<sup>th</sup> day of December, 2016.



CHARLES R. BREYER  
United States District Judge

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

FOR THE UNITED STATES OF AMERICA:

12/15/16  
Date



JOHN C. CRUDEN  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice

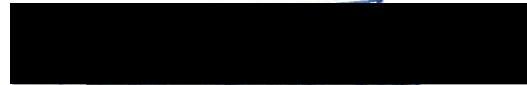


MARK C. ELMER  
Senior Counsel  
Environmental Enforcement Section  
United States Department of Justice  
999 18<sup>th</sup> Street, South Terrace, Suite 370  
Denver, CO 80202  
Telephone: (303) 844-1352  
Facsimile: (303) 844-1350  
mark.elmer@usdoj.gov

1 FOR THE STATE OF HAWAII:

2  
3 DOUGLAS S. CHIN  
4 Attorney General  
5 State of Hawaii

6 11-17-16  
Date



7 HEIDI M. RIAN  
8 WILLIAM F. COOPER  
9 Deputy Attorneys General  
10 465 South King Street, Room 200  
11 Honolulu, Hawaii 96813

12 VIRGINIA PRESSLER, M.D.  
13 Director  
14 Hawaii Department of Health

15 11-22-16  
Date

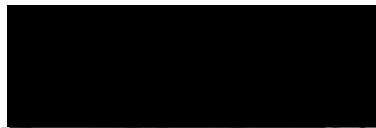


16 KEITH E. KAWAOKA  
17 Deputy Director for Environmental Health  
18 Department of Health  
19 1250 Punchbowl Street  
20 Honolulu, Hawaii 96813

1 FOR DEFENDANT CHEVRON U.S.A. INC.:

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

11/13/16  
Date



PAUL A. FRUIN  
Attorney-in-Fact  
Chevron U.S.A. Inc.



1 FOR IES DOWNSTREAM, LLC:

2  
3 11/15/16  
4 Date



R. SCOTT SPIEL VOGEL  
President  
IES Downstream, LLC

5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28