

Nature of Action

2.

The United States brings this civil action pursuant to the Outer Continental Shelf Lands Act ("OCSLA"), 43 U.S.C. §1331, *et seq.*, the Federal Oil and Gas Royalty Management Act of 1982 ("FOGRMA"), 30 U.S.C. §1722; the False Claims Act ("FCA"), 31 U.S.C. §3729 *et seq.*, and under common law. By this action, the United States seeks damages, penalties, royalties and interest against Shell for its flaring and/or venting of natural gas from oil and gas production facilities in the Gulf of Mexico, its failure to accurately report the amounts of natural gas flared and/or vented to the Minerals Management Service, and its failure to pay royalties on those amounts of natural gas flared and/or vented in violation of the OCSLA, FOGRMA, the FCA and common law, and regulations promulgated pursuant to those statutes, all of which acts are addressed in detail hereinbelow. The unauthorized venting and/or flaring, and/or the failure to accurately report the amounts and the failure to pay related royalties occurred in varying degrees at all of the following Shell facilities;

- A) The Auger Unit,
- B) The Enchilada Unit,
- C) The Cougar Unit,
- D) The Eugene Island 331 Unit,
- E) The Cognac Unit,
- F) The Bourbon Unit,
- G) The Tahoe Unit, and
- H) The Cheetah Unit.

The details of Shell's activities with respect to each of these units are addressed separately below.

Jurisdiction and Venue

3.

This action arises under the OCSLA, 43 U.S.C. §1331, *et seq.*, FOGRMA, 30 U.S.C. §1701 *et seq.*, the FCA, 31 U.S.C §3729, *et seq.*, and under common law.

4.

The Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1331 (federal question), 43 U.S.C. §1350(a) (OCSLA), §30 U.S.C. §1722(a) (FOGRMA), and 31 U.S.C. §3730. Venue is proper in this district pursuant to 43 U.S.C. §1350(a), 28 U.S.C. §1391(b) and (c), 30 U.S.C. §1722(b) and 31 U.S.C. 3732(a).

The Parties

5.

The plaintiff herein is the United States of America, by and through Donald W. Washington, United States Attorney, A. G. "Alec" Alexander, III, Assistant United States Attorney and other counsel listed hereinbelow, which brings this suit on behalf of the Department of the Interior ("DOI") pursuant to OCSLA and FOGRMA, and on behalf of the Attorney General of the United States who is authorized to investigate violations of the False Claims Act and institute civil actions to recover thereunder on behalf of the United States. 43 U.S.C. §1350(a), 30 U.S.C. §1719, 31 U.S.C. §3730. DOI is authorized to administer the leasing of oil and gas resources on the outer continental shelf ("OCS") under the OCSLA. 43 U.S.C. §1337. DOI administers these OCS leases through its sub-agency, the Minerals Management Service ("MMS").

6.

The defendants herein are Shell Offshore Inc., a corporation organized under the laws of the State of Delaware, and Shell Exploration and Production Company, a corporation organized under the laws of the State of Delaware (collectively referred to as "Shell"). Shell is a lessee under numerous federal mineral leases that were issued and/or are administered under the OCSLA. Shell produces oil and natural gas from the OCS, and owns and/or operates many types of production facilities on the OCS. Shell's flaring and/or venting activities that are the subject of this complaint, as well as its failure to accurately report production, and its failure to pay royalty payments with respect thereto, were conducted at or in connection with OCS production facilities for which Shell is the lessee and/or operator.

The Auger Unit

7.

Shell's Auger Unit, which produced from the Auger Platform located on the OCS in Garden Banks Block 426A, began producing oil and gas in April 1994. Between April 1994 and September 1998, Shell vented and/or flared high BTU-content natural gas in amounts which frequently reached six million cubic feet per day (6MMCFD), much of which could have been economically recovered. Shell also failed to report these large amounts of flared and/or vented gas and failed to pay royalties thereon.

8.

On September 21, 1998, MMS issued an order to Shell to calculate and pay royalties on avoidably lost gas flared and vented from the wet oil and dry oil tanks on the Auger Platform from April 1994 through the issuance of the order.

9.

On September 23, 1998, MMS issued a notice of Incident of Noncompliance ("INC") to Shell, finding that Shell vented and/or flared large volumes of gas without prior approval of the Regional Supervisor, and that Shell failed to report the amounts of gas flared and/or vented on its monthly Form 4054 Oil and Gas Operations Report (OGOR). Shell also failed to accurately report these large, economically recoverable amounts of gas on its Form 2014 reports which lessees are required to accurately complete and submit for purposes of making proper royalty payments. By letter dated September 28, 1998, MMS issued a Notice of Non-Compliance and Civil Penalty in which MMS asserted that Shell had knowingly or willfully submitted false, inaccurate or misleading data on its Form 4054 (OGOR) reports during the preceding four years. By letter dated October 5, 1998, MMS notified Shell that the Auger INC had been referred to an Interior Department Hearing Officer for Civil Penalty Review.

10.

Despite the foregoing notifications from MMS regarding Auger's venting and flaring practices, between October 14 and October 31, 2001, Shell again vented and/or flared high BTU gas in unauthorized amounts from the Auger Unit.

The Enchilada Unit

11.

Shell's Enchilada Unit, produced from the Enchilada Platform located on the OCS in Garden Banks Block 128A, commenced production in October 1997.

12.

In October 1998, MMS issued an INC to Shell, finding that Shell had vented and/or flared more than a small volume of flash gas, much of which was economically recoverable, from the Enchilada Platform.

13.

By letter dated October 23, 1998, MMS ordered Shell to pay royalties on the gas vented and/or flared from the Enchilada Platform after April 15, 1998 in excess of a small amount, much of which could have been economically recovered. MMS also ordered Shell to correct its incomplete and inaccurate reporting with respect to the Enchilada Unit vent/flare gas and to include that vented and/or flared gas on revised and accurate Form 4054 reports.

The Cougar Unit

14.

Shell's Cougar Unit, produced from the Cougar Platform located on the OCS in South Timbalier Block 300A, commenced production in 1983.

15.

On December 10, 1998, the MMS issued an INC to Shell for venting more than a small volume of flash gas, much of which was economically recoverable, from the dry oil tank at the Cougar Platform from January 1996 through December 1998. The December 10, 1998 INC also addressed Shell's failure to properly report the amount of gas vented on its Form 4054 (OGOR) reports. The MMS also issued a separate order on December 10, 1998, requiring Shell to calculate and pay royalties for the amounts of dry oil tank flash gas vented and/or flared from the Cougar Platform.

The Eugene Island 331 Unit

16.

Shell's Eugene Island Block 331 Platform B, located on the OCS in Eugene Island Block 331B, commenced production in 1975.

17.

On August 25, 1999, the MMS issued an order finding Shell had vented more than a small daily volume of gas from the Eugene Island 331 Unit, much of which was economically recoverable. The MMS also ordered Shell to include that gas on revised Form 4054 (OGOR) reports and to maintain complete field records for all venting and flaring.

The Cognac Unit

18.

Shell's Cognac Unit, produced from the Cougar Platform located on the OCS in Mississippi Canyon Block 194A, commenced production in 1979, and in 1989 was shut-in in preparation for redevelopment.

19.

On August 25, 1999, the MMS issued an order alleging that without prior approval or authorization, Shell had vented more than a small volume of flash gas, much of which was economically recoverable, from Cognac from 1991 through 1998. Shell was ordered to maintain complete and accurate field records for all venting and flaring from the Cognac Unit.

The Bourbon Unit

20.

Shell's Bourbon Unit, produced from the Bourbon Platform located on the OCS in Mississippi Canyon Block 311A, commenced production in March 1980.

21.

On August 25, 1999, the MMS issued an order that Shell had not maintained complete and accurate field records as required. The MMS ordered that Shell begin maintaining such records with respect to all venting and flaring at the Bourbon Unit.

The Tahoe Unit

22.

Shell's Tahoe Unit, produced from a platform located on the OCS at Main Pass Block 252B, commenced production in 1992. From April 1998 to February 1999, the Tahoe Unit vented and/or flared more than a small volume of natural gas, much of which could have been economically recovered, without prior approval or authorization from MMS.

The Cheetah Unit

23.

Shell's Cheetah Unit, produced from a platform located on the OCS at Main Pass Block 310, commenced production in 1985. From January 1997 to February 1999, the Cheetah Unit vented and/or flared more than a small volume of natural gas, much of which was economically recoverable, without prior approval or authorization from MMS.

The United States seeks damages, penalties, royalties and interest from Shell for all of the foregoing on the following grounds:

Failure to Comply with 30 C.F.R. §250.1105

Count I

24.

The allegations of paragraphs 1 through 23 are incorporated by reference.

25.

Shell's actions in venting and/or flaring up to six million cubic feet per day (6MMCFD) of high-BTU content natural gas, much of which could have been economically recovered, from the Auger Unit between April 1994 and September 1998, violated 30 C.F.R. §250.1105(a)(1), which allows flaring or venting without prior approval only when the amount flared or vented is a "small volume . . . [that] cannot be economically recovered." Moreover, Shell's actions in venting and/or flaring gas from the Auger Unit between October 14 and October 31, 2001, violated 30 C.F.R. §250.1105(a)(2), which allows venting or flaring only when such venting or flaring occurs "[d]uring an equipment failure or to relieve system pressures[,] or the flaring or venting is necessary "to evaluate reservoir parameters." Similarly, Shell's venting and/or flaring activities from the Cougar Unit between January 1996 and December 1998; from the Cognac Unit from 1991 through 1998; from the Enchilada Unit between April 1998 and October 1998; from the Eugene Island Block 331 Unit between August 1990 and September 1998; from the Tahoe Unit from April 1998 through February 1999; and from the Cheetah Unit from January 1997 to February 1999, also violated 30 C.F.R. §250.1105(a). In each of the listed incidents, the vented or flared gas was more than a small amount, much of which could have been economically recovered.

26.

Shell's failure to create and maintain detailed and accurate field records of its venting and flaring activities at the Bourbon Unit and/or the Bourbon platform, and its failure to create and maintain detailed and accurate field records of its venting and flaring activities at the Eugene Island 331 Unit, violated 30 C.F.R. §250.1105(d) and (e), which require that such records be prepared and maintained.

Failure to Comply with 30 C.F.R. §210.10
Count II

27.

The allegations of paragraphs 1 through 26 are incorporated by reference.

28.

Shell's failure to fully and accurately state on its MMS Forms 4054 and 2014 reports the amounts of natural gas vented and/or flared from its Auger, Cougar, Enchilada, Cognac, Tahoe, Cheetah, and Eugene Island 331 Units as described hereinabove violated 30 C.F.R. §210.10, which requires that all oil and gas lease production be identified and accounted for on the MMS 2014 and 4054 reporting forms.

Failure to Comply with 30 C.F.R. §202.150
Count III

29.

The allegations of Paragraphs 1 through 28 are incorporated by reference.

30.

The initial actions of Shell in not timely calculating and remitting royalties on all amounts of natural gas flared and/or vented at its Auger, Cougar, Enchilada, Eugene Island 331, Cognac, Tahoe, and Cheetah Units violated 30 C.F.R. §202.150(b)(1), which requires that "[a]ll gas (except gas unavoidably lost or used on, or for the benefit of, the lease . . .) produced from a Federal lease" be subject to royalty.

31.

Shell's actions in not remitting royalties to the United States for the amounts of gas referenced in the MMS's May 21, 1999, order to pay additional royalties on production from the Auger Platform also violated 30 C.F.R. §202.150(b)(1).

Failure to Comply with 30 C.F.R. Pt. 241

Count IV

32.

All allegations set forth hereinabove in paragraphs 1-31 are incorporated by reference and constitute civil, administrative and/or regulatory violations which are subject to the provisions set out in 30 C.F.R. Pt. 241 regarding penalties.

**Violations of 31 U.S.C. §3729
(FALSE CLAIMS ACT)**

Count V

33.

The allegations of paragraphs 1 through 32 are incorporated by reference.

34.

Each and every failure by Shell to accurately state on its MMS Form 2014 reports the volumes of natural gas vented and/or flared from its Auger, Cougar, Enchilada, Cognac, Cheetah, Tahoe, and Eugene Island 331 Units constitutes a knowing false statement or record made to the United States in order to avoid or decrease Shell's statutory and regulatory obligation to pay royalties thereon. 31 U.S.C. §3729(a)(7) (False Claims Act).

Prayer For Relief

WHEREFORE, Plaintiff prays:

- (a) That there be judgment herein in favor of the United States and against Shell;
- (b) That this Court enter an order requiring Shell to pay damages, penalties, royalties and interest under OCSLA, FOGRMA, FCA, common law and applicable regulations promulgated pursuant thereto;
- (c) That this Court grant such further relief as may be appropriate based upon the evidence presented at the trial of the merits.

Respectfully submitted,

DONALD W. WASHINGTON
UNITED STATES ATTORNEY
WESTERN DISTRICT OF LOUISIANA



A.G. "ALEC" ALEXANDER, III (#24931)
Assistant United States Attorney
800 Lafayette Street, Suite 2200
Lafayette, Louisiana 70501-6832
(337) 262-6618

PETER D. KEISLER
Assistant Attorney General/Civil Division
JOYCE BRANDA
ALAN E. KLEINBURD
MICHAEL D. GRANSTON
Attorneys, Civil Division
United States Department of Justice
P. O. Box 261, Ben Franklin Station
Washington, D.C. 20044

ATTORNEYS FOR THE
UNITED STATES OF AMERICA