

STATE OF NEW MEXICO  
SECRETARY OF ENVIRONMENT

ENVIRONMENTAL PROTECTION DIVISION  
OF THE NEW MEXICO ENVIRONMENT DEPARTMENT,  
Complainant,

NO. AQB MUR-37317-1601-EA (NOV)

MURCHISON OIL AND GAS, INC.,  
Respondent.

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**SETTLEMENT AGREEMENT AND STIPULATED FINAL COMPLIANCE ORDER**

This Settlement Agreement and Stipulated Final Compliance Order (“Final Order”) is entered into between the Environmental Protection Division (“Division”) of the New Mexico Environment Department (the “Department”) and the Respondent, Murchison Oil and Gas, Inc., (“Respondent”) (collectively, the “Parties”) to resolve alleged statutory, regulatory, and permit violations by the Respondent. The Department alleges violations of the New Mexico Air Quality Control Act (“AQCA”), NMSA 1978, Sections 74-2-1 to -17; the Air Quality Control Regulations (“AQCR”), 20.2 NMAC (“Regulations”), and Air Quality Permit Number 7040 (“Permit”).

**I. BACKGROUND**

**A. PARTIES**

1. The Department is an agency of the executive branch of the State of New Mexico, created pursuant to NMSA 1978, § 9-7A-4. The Division is an organizational unit of the Department. The Secretary of the Department has delegated to the Director of the Division the authority to seek administrative enforcement of the AQCA and the AQCR, including assessing civil

penalties for violations thereof. NMSA 1978, § 74-2-12. The Air Quality Bureau ("Bureau") is an organizational unit of the Division.

2. Respondent is a company doing business in New Mexico at the Ogden #5A Tank Battery ("Facility"), located in Eddy County, New Mexico. The function of the Facility is to collect oil from several wells, separate water and gas from the oil, and temporarily store the oil and water on-site until it is transported off-site. The Facility is a tank battery operating under the Permit.

## **B. HISTORY AND ALLEGED VIOLATIONS**

3. 20.2.72.200 NMAC, "Application for Construction, Modification, NSPS, and NESHAP - Permits and Revisions", states in relevant part: "A. Permits must be obtained from the department by: (1) Any person constructing a stationary source which has a potential emission rate greater than 10 pounds per hour or 25 tons per year of any regulated air contaminant for which there is a National or New Mexico Ambient Air Quality Standard. If the specified threshold in this subsection is exceeded for any one regulated air contaminant, all regulated air contaminants with National or New Mexico Ambient Air Quality Standards emitted are subject to permit review..."
4. On June 6, 2016, the Bureau received voluntary disclosure that Respondent failed to obtain a minor source New Source Review ("NSR") permit for the Facility. The Facility was constructed prior to obtaining a NSR permit as a minor source, contrary to 20.2.72.200 NMAC.
5. On August 1, 2016, the Bureau received from Respondent a permit application for the Facility. Upon review of the application, the Bureau determined that the Facility met the

applicability thresholds of 20.2.72.200 NMAC and became subject to NSR permitting on December 21, 2012.

6. On January 18, 2017, the Bureau issued to Respondent Notice of Violation MUR-37317-1601-EA (“NOV”), alleging one (1) violation of the AQCA, the AQCR, and the Permit. The alleged violation consisted of failure to obtain a minor source NSR permit, which is a violation of NMAC 20.2.72.200 "Application for Construction, Modification, NSPS, and NESHAP - Permits and Revisions".
7. The NOV included a Corrective Action Verification (“CAV”) requiring Respondent to submit to the Bureau measures taken to ensure future compliance with the permit conditions.
8. On February 13, 2017, the Bureau received the CAV from Respondent. The CAV was determined to be satisfactory by the Bureau on February 20, 2017.
9. The Parties have engaged in settlement discussions to resolve the NOV without further proceedings.

## **II. COMPROMISE AND SETTLEMENT**

### **A. GENERAL**

10. Respondent does not admit any of the allegations in the NOV. To avoid further legal proceedings, the Division and Respondent agree to the terms and conditions in this Final Order to resolve the alleged violations in the NOV.
11. The Parties admit jurisdiction and consent to the relief specified herein.

### **B. CIVIL PENALTY**

12. In compromise and settlement of the alleged violations set forth in the NOV and upon consideration of the seriousness of the alleged violations and Respondent’s good faith efforts

to comply, the Parties agree that Respondent shall pay a civil penalty of \$9,351.00 to the State of New Mexico within 30 calendar days after the effective date of this Final Order.

13. Payment shall be made to the *State of New Mexico General Fund* by certified or corporate check and sent to the following address:

New Mexico Environment Department  
Air Quality Bureau  
c/o Compliance and Enforcement Manager  
525 Camino de los Marquez, Suite 1  
Santa Fe, New Mexico 87505

14. If Respondent fails to make timely and complete payment of the civil penalty, Respondent shall pay a stipulated penalty of \$250.00 per day for each day a payment is not timely or complete. Respondent shall not contest or dispute in any way the stipulated penalty of \$250.00 per day in the event that the Department brings an action against Respondent for the failure to make timely or complete payment.

### **III. OTHER TERMS AND CONDITIONS**

#### **A. RESERVATION OF RIGHTS AND DEFENSES**

15. This Final Order shall not be construed to prohibit or limit in any way the Department from requiring Respondent to comply with any applicable state or federal requirement not resolved herein. This Final Order shall not be construed to prohibit or limit in any way the Department from seeking any relief authorized by the AQCA for violation of any state or federal requirement applicable to Respondent not resolved herein. This Final Order shall not be construed to prohibit or limit in any way Respondent from raising any defense to a Department action seeking such relief.

**B. MUTUAL RELEASE**

16. The Parties mutually release each other from all claims that each party raised or could have raised against the other regarding the facts and violations alleged in the NOV. Such release applies only to civil liability.

**C. WAIVER OF STATE LIABILITY**

17. Respondent shall assume all costs and liabilities incurred in performing all obligations under this Final Order. The Department, on its own behalf and on behalf of the State of New Mexico, does not assume any liability for Respondent's performance of any obligation under this Final Order.

**D. EFFECTIVE DATE AND TERMINATION DATES**

18. This Final Order shall become effective on the date it has been signed by the Department Secretary.

19. Except as otherwise provided in this Paragraph, the terms of this Final Order shall terminate when Respondent has fulfilled the requirements of this Final Order. The reservations of rights and defenses and the mutual release in Paragraphs 15 and 16 shall survive the execution and performance of this Final Order, and shall remain in full force and effect as an agreement between the Parties.

**E. INTEGRATION**

20. This Final Order merges all prior written and oral communications between the Parties concerning the subject matter of this Final Order, contains the entire agreement between the Parties, and shall not be modified without the express written agreement of the Parties.

**F. BINDING EFFECT**

21. This Final Order shall be binding on the Parties and their officers, directors, employees, agents, subsidiaries, successors, assigns, trustees, or receivers.

**G. AUTHORITY OF SIGNATORIES**

22. The persons executing this Final Order on behalf of Respondent and the Division, respectively, represent that he or she has the authority to execute this Final Order on behalf of Respondent and the Division.

**H. SIGNATURE AND COUNTERPARTS**

23. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

**ENVIRONMENTAL PROTECTION DIVISION  
NEW MEXICO ENVIRONMENT DEPARTMENT**

By: JCB  
**J.C. BORREGO**  
**DEPUTY CABINET SECRETARY**

Date: 5/5/17

**MURCHISON OIL AND GAS, INC.**

By: [Signature]  
Print Name: Gary Cooper  
Print Title: Vice President Operations

Date: April 24, 2017

**STIPULATED FINAL COMPLIANCE ORDER**

This Settlement Agreement and Stipulated Final Compliance Order, agreed to by the Division and the Respondent Murchison Oil and Gas, Inc., is hereby incorporated herein and **APPROVED AS A FINAL COMPLIANCE ORDER** issued pursuant to NMSA 1978, § 74-2-12.

  
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**BUTCH TONGATE**  
**SECRETARY**  
**ENVIRONMENT DEPARTMENT**

Date: 5/8/17