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Air Quality Bureau

STATE OF NEW MEXICO  
SECRETARY OF ENVIRONMENT

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

NO. AQB CON-0884-1401 (NOV)

CONOCOPHILLIPS COMPANY,  
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, ConocoPhillips Company (“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 74-2-17; the Air Quality Control Regulations (“AQCR”), 20.2.70 NMAC (“Regulations”), and Air Quality Permit Number P117-R2 (“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. The Respondent is an oil and gas producing company doing business in New Mexico at the Wingate Fractionating Plant ("Facility"), located in McKinley County, New Mexico. The Facility fractionates hydrocarbon liquids from a natural gas liquid stream into propane, n-butane, iso-butane, and other fractions using a distillation train. The Respondent is a recent past owner and operator of the Facility and no longer owns the Facility. The alleged violations were discovered under the ownership of the Respondent, and the Respondent has accepted responsibility for addressing the alleged violations.

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

### VIOLATION 1 - BACKGROUND

3. Permit P117-R2, Equipment Specific Requirement A209.B states in relevant part, "Leak Detection and Repair Program (Unit 12 and Fugitive Units 20-25), Requirement: To demonstrate compliance with the allowable emission limits in Table 106.A, the permittee shall repair component leaks (>10,000 ppm) within 30 days of discovery. Leak detection will be performed using a soap solution, portable analyzer per 40 CFR 60, Method 21, or alternative means such as Forward Looking Infra Red ("FLIR") instrumentation. Monitoring: An inspection of components in VOC service shall also be performed within 15 days of maintenance or repair that affects components. The permittee shall place a visible tag on all components that have a liquid leak or a vapor leak greater than 10,000 ppm VOCs until those components are repaired. Recordkeeping: The permittee shall maintain the following records. 1) Component identification or description and location 2) Date a leak is detected 3) Dates of attempts to repair 4) Designation of "repair delayed" and reason for delay if the leak is not repaired within 30 days of

leak discovery 5) Date of successful leak repair. Reporting: The permittee shall report the following in accordance with Condition B110: 1) The number of leaking components discovered, 2) The number of leaking components not repaired within 30 days, and 3) The duration of the leaks that exceeded 30 days."

4. On April 16, 2014, and on December 4, 2014, the Bureau received from the Respondent Semi-Annual ("SA") Reports for the periods September 1, 2013 to February 28, 2014, and March 1, 2014 to August 31, 2014, respectively.

5. Bureau staff examined the SA Reports and determined the required leak detection and repair ("LDAR") program for Units 12 and 20 to 25 was not being met. There was no indication of leaks being above or below 10,000 ppm, which leaks were repaired within 30 days of discovery, or what method was used to detect the leaks. Under monitoring, no mention was made of inspection within 15 days of maintenance or repair, or whether any leaks needed visible tags. Under recordkeeping, leaking components were not identified or locations provided, and no dates of leak detection, or leak repair were provided. Under reporting, it was not clear how many leaks were actually discovered versus those leaks repaired within 30 days, and if any leaks continued beyond 30 days.

#### VIOLATION 2 - BACKGROUND

6. Permit P117-R2, Facility Specific Requirement A109.A, "Facility Reporting Schedules" states in relevant part, "A Semi-Annual Report of monitoring activities is due within 45 days following the end of every 6-month reporting period. The six month reporting periods start on March 1st and September 1st of each year."

7. On December 4, 2014 the Bureau received from the Respondent an SA Report for the period from March 1, 2014 to August 31, 2014.

8. Bureau staff determined that the SA Report for the period from March 1, 2014 to August 31, 2014 was received 50 days late. The SA Report was due by October 15, 2014, but was submitted by the Respondent on December 3, 2014.

VIOLATION 3 - BACKGROUND

9. Permit P117-R2, General Condition B110.A., "General Reporting Requirements" states in relevant part, "Reports of required monitoring activities for this facility shall be submitted to the Department on the schedule in section A109."

10. Permit P117-R2, Facility Specific Requirement A109.A states in relevant part, "A Semi-Annual Report of monitoring activities is due within 45 days following the end of every 6-month reporting period. The six month reporting periods start on March 1st and September 1st of each year;"

11. Permit P117-R2, Equipment Specific Requirement A209.C, "40 CFR 60, Subpart NNN (Butamer Deisobutanizer and Megatrain Depropanizer)" states in relevant part, "Monitoring: The permittee shall comply with all applicable monitoring requirements of 40 CFR 63 [sic], Subpart A and Subpart NNN. Recordkeeping: The permittee shall comply with all applicable recordkeeping requirements of 40 CFR 63 [sic], Subpart A and Subpart NNN;" c) 40 CFR §60, Subpart NNN requires at §60.662(b) "combust the emissions in a flare that meets the requirements of §60.18" and requires at §60.663(b)(2) "a flow indicator that provides a record of vent stream flow to the flare at least once every hour for each affected facility."

12. On April 16, 2014 and December 4, 2014, the Bureau received from the Respondent SA Reports for the periods September 1, 2013 to February 28, 2014, and March 1, 2014 to August 31, 2014, respectively.

**13.** Bureau staff examined the SA Reports for the periods September 1, 2013 to February 28, 2014, and March 1, 2014 to August 31, 2014 and determined that there was no indication that the required monitoring activities for vent stream flow to the flare were being conducted.

**14.** The Annual Compliance Certification (“ACC”) Report received by the Bureau from the Respondent on December 4, 2014, stated that the facility was in compliance with 40 CFR §60 Subpart NNN requirements, monitoring, recordkeeping, and reporting, but the corresponding SA Reports did not include whether any monitoring was conducted according to 40 CFR §60 Subpart NNN.

#### VIOLATION 4 - BACKGROUND

**15.** Permit P117-R2, Facility Specific Requirement A109.B, "Facility Reporting Schedules" states in relevant part, "The Annual Compliance Certification Report is due within 30 days of the end of every 12-month reporting period. The 12-month reporting period starts on September 1st of each year."

**16.** On December 4, 2014, the Bureau received from the Respondent an ACC Report for for the period from September 1, 2013 to August 31, 2014.

**17.** Bureau staff examined the ACC Report for the period from September 1, 2013 to August 31, 2014 and determined that this ACC Report was received 65 days late. This ACC Report was due by September 30, 2014, but was submitted by the Respondent on December 3, 2014.

#### NOTICE OF VIOLATION AND CORRECTIVE ACTION

**18.** On April 13, 2015, the Bureau issued to the Respondent Notice of Violation CON-0884-1401 (“NOV”), alleging violations of the AQCA, the AQCR, and the Permit. The alleged violations consisted of:

- a. The failure of the Respondent to implement all of the requirements, including monitoring, recordkeeping, and reporting, for the LDAR program for Units 12 and 20 to 25, which is a violation of Permit P117-R2, Equipment Specific Requirement A209.B;
- b. The failure of the Respondent to submit an SA Report on time, which is a violation of Permit P117-R2, Facility Specific Requirement A109.A;
- c. The failure of the Respondent to report information pertaining to monitoring activities for vent stream flows from the Butamer Unit to the flare according to 40 CFR §60 Subpart NNN, which is a violation of Permit P117-R2, General Condition B110.A; and
- d. The failure of the Respondent to submit an ACC Report on time, which is a violation of Permit P117-R2, Facility Specific Requirement A109.B.

**19.** The NOV included a Corrective Action Verification (“CAV”) requiring the Respondent to submit to the Bureau measures taken to ensure future compliance with the permit conditions.

**20.** On May 19, 2015, the Bureau received the CAV from the Respondent. The CAV was determined to be satisfactory by the Bureau on August 17, 2015.

**21.** The Parties have engaged in settlement discussions to resolve the NOV without further proceedings.

## **II. COMPROMISE AND SETTLEMENT**

### **A. GENERAL**

22. The Respondent does not admit allegations in the NOV. To avoid further legal proceedings, the Division and the Respondent agree to the terms and conditions in this Final Order to resolve the alleged violation in the NOV.

23. The Parties admit jurisdiction and consent to the relief specified herein.

### **B. CIVIL PENALTY**

24. In compromise and settlement of the alleged violation 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 the Respondent shall pay a civil penalty of \$13,200.00 to the State of New Mexico within 30 calendar days after the effective date of this Final Order.

25. 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

26. If the Respondent fails to make timely and complete payment of the civil penalty, the Respondent shall pay a stipulated penalty of \$250.00 per day for each day a payment is not timely or complete. The 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 the Respondent for the failure to make timely or complete payment.

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

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

27. This Final Order shall not be construed to prohibit or limit in any way the Department from requiring the 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 the Respondent not resolved herein. This Final Order shall not be construed to prohibit or limit in any way the Respondent from raising any defense to a Department action seeking such relief.

#### **B. MUTUAL RELEASE**

28. 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**

29. The 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 the Respondent's performance of any obligation under this Final Order.

#### **D. EFFECTIVE DATE AND TERMINATION DATES**

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

31. Except as otherwise provided in this Paragraph, the terms of this Final Order shall terminate when the Respondent has fulfilled the requirements of this Final Order. The reservations



of rights and defenses and the mutual release in Paragraphs 27 and 28 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**

32. 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**

33. 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**

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

**H. SIGNATURE AND COUNTERPARTS**

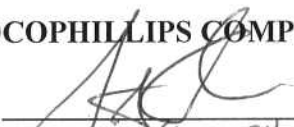
35. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

**ENVIRONMENTAL PROTECTION DIVISION  
NEW MEXICO ENVIRONMENT DEPARTMENT**

By:   
**MICHAEL VONDERHEIDE, DIRECTOR**

Date: 10/20/15

**CONOCOPHILLIPS COMPANY**

By:   
Print Name: Steve Ellison  
Print Title: Managing Counsel, Global HSE Law

Date: 10/13/15

**STIPULATED FINAL COMPLIANCE ORDER**

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

*for* Butch Longate  
RYAN FLYNN  
SECRETARY  
ENVIRONMENT DEPARTMENT

Date: 10/22/15