

**STATE OF NEW MEXICO  
SECRETARY OF ENVIRONMENT**

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

**NO. AQB ENT-34514-1701 (NOV)**

**ENTERPRISE PRODUCTS OPERATING, LLC,  
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 Respondent, Enterprise Products Operating, LLC, (“Respondent”) (collectively, the “Parties”) to resolve alleged statutory, regulatory, and permit violations by 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 GCP-4 Air Quality Permit Number 5945-M3 (“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 limited liability company doing business in New Mexico at the South Eddy Cryo Plant (“Facility”), located in Eddy County, New Mexico.

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

3. GCP-4 Section IV Required Content of Submittals and Notices, Line 22 Emission Limits, requires the applicant submit specific information regarding “The Allowable Annual Emissions, as calculated under Condition V.3, for the Facility, including the basis for emissions calculations.” Permit Form C Attachment B: Emissions Calculations and Supporting Documentation, Table 5: Flares [Condition VII Line 5] FL-1 Processing Flaring “Maximum Operational Emissions.”

4. An initial excess emission report (“EER”) was submitted on January 4, 2017. The Bureau received notification from Respondent dated January 17, 2017 which identified violations of the terms of the Permit. The violations were a result of higher flow levels of waste gas than was originally modeled for the Permit and therefore it was determined that the 12-month rolling total emissions from the flare exceeded permit limits. A final EER was submitted on July 21, 2017, which demonstrated that between August 25, 2016 and June 23, 2017 Respondent exceeded permitted emission limits for a total of 66,043 pounds of excess emissions for the Facility. After analysis by the Bureau, the excess emissions submitted with the final EER were determined to be incorrect and recalculated for a total of 241,300 pounds.

5. On February 9, 2018, the Bureau issued to Respondent Notice of Violation ENT-34514-1701 (“NOV”), alleging violations of the AQCA, the AQCR, and the Permit. The alleged

violation consisted of the failure to maintain emissions within modeled permit limits; which is a Permit Table 5.

6. 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.

7. On March 14, 2018, the Bureau received the CAV from Respondent. The CAV was determined to be satisfactory by the Bureau on May 1, 2018.

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

## **II. COMPROMISE AND SETTLEMENT**

### **A. GENERAL**

9. 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.

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

### **B. CIVIL PENALTY**

11. 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 \$73,230.00 to the State of New Mexico within 30 calendar days after Respondent’s receipt of a copy of this Final Order executed by the Department Secretary.

12. Payment shall be made to the *State of New Mexico General Fund* by certified corporate<sup>or</sup> 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

13. 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**

14. 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**

15. 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**

16. 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**

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

18. 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 14 and 15 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**

19. 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**

20. 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**

21. 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**

22. 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:  Date: 12/27/18  
**ELIZABETH BISBEY-KUEHN**  
**BUREAU CHIEF, AIR QUALITY BUREAU**  
**NEW MEXICO ENVIRONMENT DEPARTMENT**

**ENTERPRISE PRODUCTS OPERATING, LLC**

By:  Date: 12/18/18  
**Print Name: Ivan W. Zirbes**  
**Print Title: Vice President**

**STIPULATED FINAL COMPLIANCE ORDER**

This Settlement Agreement and Stipulated Final Compliance Order, agreed to by the Division and the Respondent Enterprise Products Operating, LLC, 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: 12/31/18