

**STATE OF NEW MEXICO
SECRETARY OF ENVIRONMENT**

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

NO. AQB INT-0208-1401 (NOV)

**INTREPID POTASH – NEW MEXICO, LLC
Respondent.**

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, Intrepid Potash – New Mexico, LLC (“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”), 20.2.1 to .350 NMAC (“Regulations”), and Air Quality Permit Numbers 0755-M8 and 0755-M10 (“Permits”).

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 a limited liability company doing business in New Mexico at the East Plant Facility ("Facility"), located in Eddy County, New Mexico. The Facility is a potash mine and refinery.

B. HISTORY AND ALLEGED VIOLATIONS

3. Permit 0755-M10, Condition A106 provides in relevant part, "A. The following Section lists the emission units and their allowable emission limits." Table 106A lists the allowable Total Suspended Particulates (TSP) emissions for Unit Number 9 as 1.2 pounds/hour (lb/hr).

4. On November 12, 2014, the Respondent sent notice to the Bureau that provided recalculated results for a December 11, 2013 compliance test for Unit 9, a rotary dryer. The corrected average TSP emission rate for the averaging period was 1.5 lb/hr. The allowable rate is 1.2 lb/hr. Therefore, the rotary dryer exceeded the allowable rate by 0.3 lb/hr.

5. Permit 0755-M8, General Condition B111.A provides in relevant part: "(3)...the default time period for each test run shall be at least 60 minutes and each performance test shall consist of three separate runs using the applicable test method. For the purpose of determining compliance with an applicable emission limit, the arithmetic mean of results of the three runs shall apply. In the event that...conditions occur in which one of the three runs must be discontinued because of forced shutdown ... compliance may, upon the Department approval, be determined using the arithmetic mean of the results of the two other runs."

6. On October 17, 2014, the Respondent notified the Bureau that the Facility's 2012 compliance test conducted on October 26, 2012 had an equipment failure during the third run of

the compliance test. Based on a review of their runtime records, the Respondent discovered that there was an equipment failure approximately 20 minutes into the third test run. All three test runs should have been conducted for 60 minutes. The Respondent disclosed that the invalid third run was included in the compliance test and the arithmetic mean of all three test runs were used in their calculations.

7. Permit 0755-M10, Condition A106.D provides in relevant part "...Unit 9 shall not exceed a limit of 0.01 grain per dry standard cubic feet (gr/dscf) of Particulate Matter to comply with Table 106.A TSP emission limits."

8. On October 17, 2014, the Respondent notified the Bureau of issues concerning the Facility's 2013 compliance test conducted on December 11, 2013. The Respondent disclosed potential excess emissions for Unit 9. As shown in its December 11, 2013 compliance test report, Unit 9 emitted an average Particulate Matter concentration of 0.02 gr/dscf, which exceeded the allowable limit of 0.01 gr/dscf.

9. On December 12, 2014, the Bureau issued to the Respondent Notice of Violation INT-0208-1401-SD ("NOV"), alleging three (3) violations of the AQCA, the AQCR, and the Permits. The alleged violations consisted of: 1) failure to limit TSP emissions to the allowable limits, which is a violation of Permit 0755-M10, Condition A106.A; 2) failure to conduct a performance test for the proper default time, which is a violation of Permit 0755-M08, General Condition B111.A; and 3) failure to limit Particulate Matter emission rate to the allowable limit, which is a violation of Permit 0755-M10 Condition A106.D.

10. 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.

11. On January 20, 2015, the Bureau received the CAV from the Respondent. The CAV was determined to be satisfactory by the Bureau on January 27, 2015.

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

II. COMPROMISE AND SETTLEMENT

A. GENERAL

13. The Respondent does not admit any of the 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 violations in the NOV.

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

B. CIVIL PENALTY

15. 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 the Respondent shall pay a civil penalty of \$20,300.00 to the State of New Mexico within 30 calendar days after the Respondent receives a copy this Final Order signed by the Secretary of the Environment Department.

16. 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

17. 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

18. 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

19. 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

20. 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

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

22. 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 18 and 19 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

23. 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

24. 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

25. 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

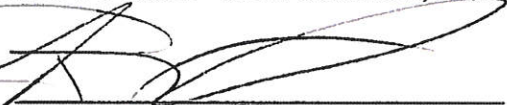
26. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

**ENVIRONMENTAL PROTECTION DIVISION
NEW MEXICO ENVIRONMENT DEPARTMENT**

By: 
MICHAEL VONDERHEIDE
DIRECTOR

Date: 11/5/15

INTREPID POTASH - NEW MEXICO, LLC

By: 
Print Name: ROBERT BALDRIDGE
Print Title: GENERAL MANAGER

Date: 30/OCT/2015

STIPULATED FINAL COMPLIANCE ORDER

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

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RYAN FLYNN
SECRETARY
ENVIRONMENT DEPARTMENT

Date: 11/12/15