

**STATE OF NEW MEXICO  
SECRETARY OF ENVIRONMENT**

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

**NO. AQB FNF-3422-1501-R1 (NOV)**

**FNF CONSTRUCTION INCORPORATED,  
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, FNF Construction Incorporated (“FNF” or the “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 Air Quality Permit Number GCP-3-2728 (“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 public company doing business in New Mexico at the Asphalt Plant 95-00 Facility (“Facility”), located in Cibola County, New Mexico. The Facility is an Asphalt Plant.

**B. HISTORY AND ALLEGED VIOLATIONS**

3. Permit Condition GCP-3-2728, Section III, Facility Operating Requirements, Subpart F, Emissions Restrictions and Conditions, Number 5, provides in relevant part: "The Facility's silo Filter(s) shall exhibit visible emissions for no more than five (5) minutes in any two (2) consecutive hour period."

4. On September 10, 2015, the Bureau conducted a Full Compliance Inspection (“FCE”) of the facility in response to a citizen complaint. Prior to entering the Facility, Bureau inspectors observed visible emissions originating from the facility. A Bureau inspector conducted a visible emission test in accordance with the Environmental Protection Agency (“EPA”) Test Method 9, Visual Opacity, from outside the facility entrance. During this observation, continuous visible emissions from the silo filter were recorded over a ten-minute period.

5. Permit Condition GCP-3-2728, Section III, Facility Operating Requirements, Subpart F, Emissions Restrictions and Conditions, Number 1.c, states in relevant part: "Maintain and operate the Facility's dust control system(s) such that stack emissions from each piece of dust control equipment...shall not exhibit twenty (20) % opacity or greater."

6. On September 10, 2015, the Bureau conducted a FCE of the Facility in response to a citizen complaint. After entering the facility, a Bureau inspector conducted a visible emission test in accordance with EPA, Test Method 9, Visual Opacity, of the baghouse stack (Unit 95-02).

During a ten minute observation, an average opacity from the baghouse stack of 28.87% was recorded.

7. Permit Condition GCP-3-2728, Section IV, Monitoring, Recordkeeping and Notification Requirement, Subpart A, Monitoring, Number 1, states in relevant part: "The owner and operator of any Facility registered under this Permit shall perform a six (6) minute opacity reading on each screen, conveyor drop point and hopper at least once per month using Method 9...".

8. On September 10, 2015, the Bureau conducted a FCE of the facility in response to a citizen complaint. After entering the Facility, Bureau inspectors requested records of Method 9 opacity tests from Respondent. Records were not provided for February 2014, August 2015 and September, 2015. Operating records show the facility was operating during these timeframes.

9. GCP-3-2728, Section IV, Monitoring, Recordkeeping and Notification Requirement, Subpart B, Recordkeeping, Number 2, states in relevant part: "The owner or operator shall retain records for at least two (2) years after collection either onsite or at a local business office."

10. On September 10, 2015, the Bureau conducted a FCE of the facility in response to a citizen complaint. Bureau inspectors requested to review records maintained on-site. The Permit requires the following records to be maintained onsite or in a local business office: actual hours of operation (Section IV.B.3.a); daily and weekly total asphalt production and weekly 12-month total production (Section IV.B.3.c); number of haul truck trips per day including materials delivery and product (Section IV.B.3.d); the quantity and frequency of water or surfactant application to haul roads (Section IV.B.3.f); and weekly available horsepower at the site and the maximum available horsepower of equipment (Section IV.B.3.k)). These records were not available onsite when requested by Bureau inspectors.

11. GCP-3-2728, Section IV, Monitoring, Recordkeeping and Notification Requirement, Subpart B, Recordkeeping, Number 3, states in relevant part: "The owner or operator shall collect and retain the following records...(i) Copies of manufacturer's (or applicant's proposed) maintenance requirements and records demonstrating conformance with said requirements..."

12. On September 10, 2015, Bureau conducted a FCE of the facility in response to a citizen complaint. Bureau inspectors requested to review records maintained on-site. The records reviewed onsite and subsequently supplied by Respondent did not contain copies of manufacturer's (or applicant's proposed) maintenance requirements and records demonstrating conformance with said requirements.

13. On March 2, 2016, the Bureau issued to Respondent Notice of Violation FNF-3422-1501 ("NOV"), alleging violations of the AQCA, the AQCR, and the Permit. The alleged violations consisted of: 1) Failure to limit visible emissions from the silo filter(s) to less than five minutes over a two hour period, which is a violation of Permit Condition GCP-3-2728, Section III.F.5; 2) Failure to limit visible emissions from the baghouse to less than 20% opacity, which is a violation of Permit Condition GCP-3-2728, Sections III.F.1(c); 3) Failure to perform monthly opacity readings, which is a violation of Permit Condition GPC-3-2728, Section IV.A.1; 4) Failure to maintain records onsite or in a local office, which is a violation of Permit Condition Permit GPC-3-2728, Section IV.B.2; and 5) Failure to maintain copies of manufacturer's (or applicant's proposed) maintenance requirements, which is a violation of Permit Condition GPC-3-2728, Section IV.B.3.i.

14. 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.

15. On March 22, 2016, the Bureau received the CAV from Respondent. The CAV was determined to be satisfactory by the Bureau on March 29, 2016.

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

## **II. COMPROMISE AND SETTLEMENT**

### **A. GENERAL**

17. 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.

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

### **B. CIVIL PENALTY**

19. 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 \$28,900.00 to the State of New Mexico within 30 calendar days after the effective date of this Final Order.

20. 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

21. 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**

22. 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**

23. 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**

24. 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**

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

26. 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 22 and 23 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**

27. 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**

28. 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**

29. 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 the Respondent and the Division.

**H. SIGNATURE AND COUNTERPARTS**

30. 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:   
**RICHARD L. GOODYEAR, PE  
DIRECTOR**

Date: 20 July '17

FNF CONSTRUCTION, INC.

By: Jessie Contreras  
Print Name: TRESSIA CONTRERAS  
Print Title: environmental manager

Date: 7-11-17



**STIPULATED FINAL COMPLIANCE ORDER**

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



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

Date: 7/25/17