

**STATE OF NEW MEXICO
SECRETARY OF ENVIRONMENT**

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

**NO. AQB BUR-35476-1501-EA (NOV)
AQB BUR-35594-1501-EA (NOV)
AQB BUR-35650-1501-EA (NOV)**

**BURNETT OIL CO., INC.,
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, Burnett Oil Co., 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 74-2-17; the Air Quality Control Regulations (“AQCR”), 20.2. NMAC (“Regulations”), and Air Quality Permit Numbers 6268, 6318, and 6355 (“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 company doing business in New Mexico at the Gissler B 3-3 Battery, Gissler A 2 Battery, and Jackson B 5 Battery Facilities (“Facilities”), located in Eddy County, New Mexico. The function of the Facilities is to collect oil from several wells, separate water and natural gas from the crude oil, and store the crude oil on-site prior to being piped offsite.

B. HISTORY AND ALLEGED VIOLATIONS

3. 20.2.70.200 NMAC provides in relevant part, “Part 70 Sources: Operating permits must be obtained from the Department for the following sources: A. Any major source...”.

4. 20.2.70.7.R NMAC provides in relevant part, “Major source means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person(s)) in which all of the pollutant emitting activities at such source ... and that is described in Paragraphs (1), (2), or (3) below. ...

(2) A major stationary source of air pollutants that directly emits or has the potential to emit, 100 or more tons per year of any air pollutant subject to regulation...”

5. 20.2.70.7.AC NMAC provides in relevant part, “Regulated air pollutant means the following: (1) nitrogen oxides, total suspended particulate matter, or any volatile organic compounds...”

6. On July 16, 2014, the Respondent voluntarily disclosed and notified the Department that the Respondent was commencing a formal program evaluating air quality compliance for current production sites and tank batteries including said Facilities. Facilities were assessed for air quality permit requirements and found to meet applicability thresholds of 20.2.70 NMAC Title V

permitting limits. The failure of Respondent to obtain a Title V permit at these three (3) Facilities while operating as a major source is a violation of 20.2.70.200 NMAC.

7. 20.2.74.200.C NMAC, Permits – Prevention of Significant Deterioration (PSD), provides in relevant part, “No new major stationary source or major modification to which the requirements of Subsections A, B, C and D of 20.2.74.300 NMAC, and Sections 301, 302, 303, 304, 305, 306, 402, and 403 of this part apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements.”

8. 20.2.74.7.AG NMAC, “Major stationary source”, provides in relevant part, “(2) Any stationary source not listed in table 1 (20.2.74.501 NMAC) and which emits or has the potential to emit two hundred fifty (250) tons per year or more of any regulated new source review pollutant.”

9. 20.2.74.300.A NMAC, provides in relevant part, “Any owner or operator who begins actual construction or operates a source or modification without, or not in accordance with, a permit issued under the requirements of this part shall be subject to enforcement action.”

10. On July 16, 2014, the Respondent voluntarily disclosed and notified the Department that Respondent was commencing a formal program evaluating air quality compliance for current production sites and tank batteries including said Facilities. Facilities were assessed for air quality permit requirements and found to meet applicability thresholds of 20.2.74 NMAC, Prevention of Significant Deterioration (PSD) permitting requirements. The failure of Respondent to obtain a PSD permit at these three (3) Facilities prior to construction and during operation of found years is a violation of 20.2.74.200.C NMAC.

11. On July 17, 2015, September 9, 2015, and September 30, 2015 respectively, the Bureau issued to the Respondent Notices of Violation BUR-35476-1501-EA, BUR-35591-1501-EA, and BUR-35650-1501-EA (“NOVs”), alleging violations of the AQCA, the AQCR, and the Permit.

For each NOV, the alleged violations consisted of: 1) Failure to obtain a Title V operating permit, which is a violation of NMAC 20.2.70.200 "Operating Permits"; and 2) Constructing and operating as a major stationary source without obtaining a PSD permit, which is a violation of NMAC 20.2.74.200.C "Permits – Prevention of Significant Deterioration (PSD)".

12. Each 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.

13. On October 13, 2015, October 15, 2015, and October 29, 2015, the Bureau received the final CAVs from the Respondent for respective Facilities. The CAVs were determined to be satisfactory by the Bureau on November 2, 2015.

14. The Parties have engaged in settlement discussions to resolve the NOV's without further proceedings.

II. COMPROMISE AND SETTLEMENT

A. GENERAL

15. The Respondent does not admit any of the allegations in the NOV's. 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's.

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

B. CIVIL PENALTY

17. In compromise and settlement of the alleged violations set forth in the NOV's 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 \$21,478.00 to the State of New Mexico within 30 calendar days after the effective date of this Final Order.

18. 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

19. 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

20. 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

21. 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's. Such release applies only to civil liability.

C. WAIVER OF STATE LIABILITY

22. 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

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

24. 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 20 and 21 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

25. 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

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

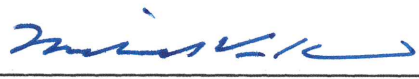
G. AUTHORITY OF SIGNATORIES

27. 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

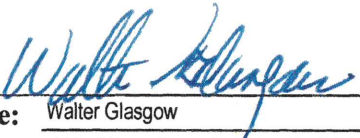
28. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

**ENVIRONMENTAL PROTECTION DIVISION
NEW MEXICO ENVIRONMENT DEPARTMENT**

By: 
MICHAEL VONDERHEIDE
DIRECTOR

Date: 3/24/16

BURNETT OIL CO., INC.

By: 
Print Name: Walter Glasgow
Print Title: VP of Operations - Permian Basin/New Mexico

Date: 18 March 2016

STIPULATED FINAL COMPLIANCE ORDER

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

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for **RYAN FLYNN**
SECRETARY
ENVIRONMENT DEPARTMENT

Date: 4/5/16