

**STATE OF NEW MEXICO
SECRETARY OF ENVIRONMENT**

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

NO. AQB ELP-0220-1501 (NOV)

**EL PASO NATURAL GAS COMPANY, L.L.C.,
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, El Paso Natural Gas Company, L.L.C. (“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 -17; the Air Quality Control Regulations (“AQCR”), 20.2. NMAC (“Regulations”), and Air Quality Permit Number P064-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 a company doing business in New Mexico at the Washington Ranch Storage Facility ("Facility"), located south of Whites City, New Mexico. The Facility is a Natural Gas Storage and Transmission Facility.

B. HISTORY AND ALLEGED VIOLATIONS

3. Permit P064-R2, Condition 1.8, states in relevant part: "The permittee will continue to comply with all applicable requirements. For applicable requirements that will become effective during the term of the permit, the permittee will meet such requirements on a timely basis. This condition is pursuant to Sections 300.D.11.C and 302.G.3 of 20.2.70 NMAC..."

4. 40 CFR 63.6655(f), states in relevant part: "If you own or operate any of the stationary RICE in paragraphs (f)(1) through (2) of this section... The owner or operator must document how many hours are spent for emergency operation, including what classified the operation as emergency and how many hours are spent for non-emergency operation."

5. On April 13, 2015, the Bureau received a Semi Annual Monitoring Report for the monitoring period of September 1, 2014, to February 28, 2015. In the report, the Respondent stated that hourly operations were not logged for the 137-HP existing diesel emergency pump engine, in accordance with 40 CFR 63.6655(f). Records of hourly operations for the 137-HP diesel emergency pump engine were not maintained from May 3, 2013 through February 28, 2015.

6. Permit P064-R2, Condition 1.8, states in relevant part: "The permittee will continue to comply with all applicable requirements. For applicable requirements that will become

effective during the term of the permit, the permittee will meet such requirements on a timely basis. This condition is pursuant to Sections 300.D.11.C and 302.G.3 of 20.2.70 NMAC."

7. 40 CFR 63.6655(e)(2), states in relevant part: "(e) You must keep records of the maintenance conducted on the stationary RICE in order to demonstrate that you operated and maintained the stationary RICE..."

8. On April 13, 2015, the Bureau received a Semi Annual Monitoring Report for the monitoring period of September 1, 2014 to February 28, 2015. In the report the Respondent stated that maintenance was not logged for the 137-HP existing diesel emergency pump engine, in accordance with 40 CFR 63.6655(e)(2). Records of maintenance for the 137-HP diesel emergency pump engine were not maintained from May 3, 2013 through February 28, 2015 although maintenance was completed.

9. On November 30, 2015, the Bureau issued to the Respondent Notice of Violation ELP-0220-1501 ("NOV"), alleging violations of the AQCA, the AQCR, and the Permit. The alleged violations consisted of: 1) failure to record hourly operation of an existing emergency diesel engine, which is a violation of Permit P064-R2 Condition 1.8 and 40 CFR 63.6655 (f); and 2) failure to record maintenance of an existing emergency diesel engine, which is a violation of Permit P064-R2 Condition 1.8 and 40 CFR 63.6655(e)(2).

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 December 18, 2015, the Bureau received the CAV from the Respondent. The CAV was determined to be satisfactory by the Bureau on December 21, 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 \$ 5,400.00 to the State of New Mexico within 30 calendar days after the effective date of this Final Order.

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:

2/24/16

EL PASO NATURAL GAS COMPANY

By:


Print Name: Bobby W. Montgomery
Print Title: Director of Operations

Date:

02/18/16

STIPULATED FINAL COMPLIANCE ORDER

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



RYAN FLYNN
SECRETARY
ENVIRONMENT DEPARTMENT

Date: 2/24/2016