

**STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT**

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

NO. AQB CON-0638-1101-R1 (NOV)

**CONOCOPHILLIPS COMPANY,
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, ConocoPhillips Company (“Respondent”) (collectively, the “Parties”) to resolve alleged statutory, regulatory, and violations by the Respondent. The Department alleges violations of the New Mexico Air Quality Control Act (“AQCA”), NMSA 1978, § 74-2-1 to 74-2-17; the Air Quality Control Regulations (“AQCR”), 20.2. NMAC (“Regulations”), and Air Quality Permit Numbers P092 and NSR 0218 (“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 corporation doing business in New Mexico at the East Vacuum Liquid Recovery/CO₂ Plant (“Facility”). The Facility is a CO₂ re-injection project located in Lea County, New Mexico.

B. HISTORY AND ALLEGED VIOLATIONS

3. 20.2.70.302 H. NMAC states in relevant part: "Operational flexibility. (1) Section 502(b)(10) changes. (a) The permittee may make Section 502(b)(10) changes, as defined in 20.2.70.7 NMAC, without applying for a permit modification, if those changes are not title I modifications and the changes do not cause the facility to exceed the emissions allowable under the permit (whether expressed as a rate of emissions or in terms of total emissions). (b) For each such change, the permittee shall provide written notification to the department and the administrator at least seven (7) days in advance of the proposed changes. Such notification shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change. (c) The permittee and department shall attach each such notice to their copy of the relevant permit. (d) If the written notification and the change qualify under this provision, the permittee is not required to comply with the permit terms and conditions it has identified that restrict the change...."

4. 20.2.70.7 NMAC states in relevant part: "DEFINITIONS: In addition to the terms defined in 20.2.2 NMAC (definitions), as used in this part the following definitions shall apply...AF. ‘Section 502(b)(10) changes’ are changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene

permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements."

5. On November 29, 2011, the Bureau received from Respondent a letter in which it disclosed that an unpermitted flare had been operated at the Facility. The flare operated during three separate plant shutdowns: September 18-26, 2010; April 10-14, 2011; and August 14-19, 2011. The flare was taken out of service and removed from the Facility on the last day of each shutdown. The Respondent failed to submit a Section 502(b)(10) change for approval of the use of the flare during the plant shutdowns.

6. Permit P092-R1-M1 Condition 3.3.1 states in relevant part: "Tanks 11-15, 36, and 40-42 shall be vented to VRU unit 20..."

7. On November 29, 2011, the Bureau received from Respondent a letter in which it disclosed that an unpermitted flare had been operated at the Facility. The flare was operated during three separate plant shutdowns: September 18-26, 2010; April 10-14, 2011; and August 14-19, 2011. During the plant shutdowns the Respondent failed to vent the Tanks to the VRU as required and vented the Tanks to the unpermitted flare.

8. NSR Permit 0218-M6, Table 2.2 Excerpt states: Allowable Emission for the Flare, Unit 19, SO₂ - 241.00 tons per year.

9. NSR Permit 0218-M6, Condition 4.d. states: "The Permittee shall calculate and record the monthly and annual SO₂ emission rate for the flare. The monthly totals shall be calculated based on the total volume of process gas sent to the flare during each calendar month. The totals shall be available between the 1st and 10th day of the month for the preceding month, beginning on the first calendar month after permit issuance. The annual total shall represent the sum of 12 consecutive monthly totals."

10. On January 6, 2012, the Bureau received from Respondent a Final Excess Emission Report for the Facility. The report included excess emission calculations for SO₂ tons per year limits for Unit 19 flare for the month of November 2011 in the amount of 255.39 tons and for the month of December 2011 in the amount of 255.67 tons.

11. 20.2.7.110 A. NMAC states: "The owner or operator of a source having an excess emission shall report the following information to the department on forms provided by the department. The department may authorize the submittal of such reports in electronic format. (1) Initial report: the owner or operator shall file an initial report, no later than the end of the next regular business day after the time of discovery of an excess emission that includes all available information for each item in Subsection B of 20.2.7.110 NMAC. (2) Final report: the owner or operator shall file a final report that contains specific and detailed information for each item in Subsection B of 20.2.7.110 NMAC, no later than ten (10) days after the end of the excess emission."

12. On December 16, 2011, the Bureau received from Respondent an Initial Excess Emission Report for the Facility. The report included a notification of a possible exceedance of SO₂ Tons Per Year limits for Unit 19 flare for the month of November 2011 at the Facility, the report did not include any emissions calculations. On January 6, 2012, ConocoPhillips submitted a Final report, which included excess emission calculations for SO₂ for the month of November and December 2011. In accordance with 20.2.7.110 A. (1) and (2) NMAC, Initial EERs shall be filed no later than the end of the next regular business day after the time of discovery of an excess emission, and Final EERs (with final emissions calculations) are required to be filed no later than ten (10) days after the end of the excess emission. Respondent failed to submit Initial

and Final Excess Emission Reports in a timely manner for the November and December 2011 excess emissions events.

13. On May 30, 2012, the Bureau issued to Respondent Notice of Violation CON-0638-1101 (“NOV”), alleging violations of the AQCA, the AQCR, and the Permits. The alleged violations were the failure to 1) submit a Section 502(b)(10) change for the operation of a flare; 2) vent liquid recovery tanks to a vapor recovery unit; 3) meet the tons per year limit for SO₂; and 4) submit initial and final excess emission report forms within the required deadlines. 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.

14. On July 3, 2012, the Bureau received the CAV from Respondent. The CAV was determined to be satisfactory by the Bureau on July 13, 2012. On August 2, 2012 the Bureau issued to Respondent Notice of Violation CON-0638-1101-R1, which withdrew alleged violations 2 and 4.

15. On October 2, 2012, the Bureau issued to Respondent a proposal of a civil penalty for the alleged violations at the Facility.

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

II. COMPROMISE AND SETTLEMENT OF NOTICE OF VIOLATIONS

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 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 violations and good faith efforts to comply, the Parties agree that Respondent shall pay a civil penalty of \$50,940.00 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
1301 Siler Rd., Building B
Santa Fe, New Mexico 87507-3113

21. If Respondent fails to make timely and complete payment of the civil penalty, Respondent shall pay interest on the outstanding balance at the rate established for judgments and decrees under NMSA 1978, § 56-8-4.

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. 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 not terminate, and shall remain in 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 Complainant, respectively, represent that he or she has the authority to execute this Final Order on behalf of Respondent and Complainant.

**ENVIRONMENTAL PROTECTION DIVISION
NEW MEXICO ENVIRONMENT DEPARTMENT**

By: Mary E Rose
MARY ROSE
ACTING DIRECTOR

Date: Nov 2, 2012

CONOCOPHILLIPS COMPANY

By: Tyrone Maxey
TYRONE MAXEY
MANAGER, PERMIAN OPERATIONS

Date: 10/26/12

STIPULATED FINAL COMPLIANCE ORDER

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


F. DAVID MARTIN
SECRETARY OF ENVIRONMENT

Date: 11-5-12