

**STATE OF NEW MEXICO  
SECRETARY OF ENVIRONMENT**

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

**NO. AQB DAV-0568-1201 (NOV)**

**DAVIS GAS PROCESSING, INC.,  
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 the Respondent, Davis Gas Processing, 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 -17 (1967, as amended through 2009); the Air Quality Control Regulations (“AQCR”), 20.2. NMAC (“Regulations”), and Air Quality Permit Number P079-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, Section 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 Denton Gas Plant (“Facility”), which is located in Lea County, New Mexico. The Facility is a natural gas processing plant.

**B. HISTORY AND ALLEGED VIOLATIONS**

3. Permit P079-R2, Condition A106.A states in relevant part, "The following table(s) list the emission units, and their allowable emission limits." Table 106.A, which follows as a continuation of Condition A106.A, does not list any allowable emissions of H<sub>2</sub>S from Unit 007 (Acid Gas Flare).

4. On July 30, 2012, the Bureau received from the Respondent a Final Excess Emissions Report (EER) which reported excess emissions of H<sub>2</sub>S at the Facility from Unit 007 (Acid Gas Flare) beginning at 10 a.m. on March 13, 2012, and ending 4 p.m. on March 24, 2012, for the duration of 270 hours. On May 27, 2014, the Respondent filed a corrected Final Excess Emissions Reporting Form, in which it reported total excess emissions of 23,267.22 pounds of H<sub>2</sub>S during the event, and the average emission rate for the averaging period as 86.17 pounds of H<sub>2</sub>S per hour.

5. 20.2.7.110 NMAC provides: “A. 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 ... (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 ... (2) Final report: the owner or operator shall file a final report ...no later than ten (10) days after the end of the excess emission.”

6. NMSA 1978, Section 12-2A-7 provides, "In computing a period of time prescribed or allowed by a statute or rule, the following rules apply ... E. if the period is less than eleven days, a Saturday, Sunday or legal holiday is excluded from the computation...."

7. The Respondent reported in the EER that the discovery date of the excess emission event was March 13, 2012.

8. The Respondent did not file an EER report related to this event other than the submittal on July 30, 2012, which therefore serves as both the Initial and Final EER. The Initial EER for this event was due to be filed no later than the end of March 14, 2012, which was the next regular business day after discovery. Therefore, the Respondent filed the Initial EER 138 days late. The Final EER for this event was due no later than April 6, 2012, which is ten regular business days after the end of the excess emission. Therefore, the Respondent filed the Final EER 115 days late.

9. On February 3, 2014, the Bureau issued to the Respondent Notice of Violation DAV-0568-1201 ("NOV"), alleging violations of the AQCA, the AQCR, and the Permit. The alleged violations consisted of: 1) allowing emissions of H<sub>2</sub>S from Unit 007 (Ace Gas Flare), which is a violation of Permit P079-R2, Condition A106.A; 2) the failure to file an initial excess emissions report no later than the end of the next regular business day after the time of discovery of an excess emission, which is a violation of 20.2.7.100.A(1) NMAC; 3) the failure to file a final excess emission report no later than ten days after the end of the excess emission, which is a violation of 20.2.7.110.A.(2) NMAC; and 4) the failure to pay emissions fees by the date required, which is in violation of 20.2.71.113A(3) NMAC and Permit Condition B103.A.

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 March 19, 2014, the Bureau received the CAV from the Respondent. The CAV was determined to be satisfactory by the Bureau on March 20, 2014.

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 \$97,072.00 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 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**

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.

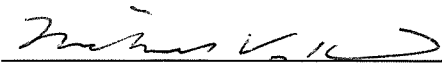
**G. AUTHORITY OF SIGNATORIES**

25. The persons executing this Final Order on behalf of the Respondent and the Complainant, respectively, represent that he or she has the authority to execute this Final Order on behalf of the Respondent and the Complainant.

**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: 11/18/14

**DAVIS GAS PROCESSING, INC.**

By: 

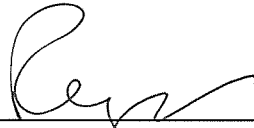
Date: 11-13-14

Print Name: Michael Davis

Print Title: Executive Vice-President

**STIPULATED FINAL COMPLIANCE ORDER**

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



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**RYAN FLYNN**  
**SECRETARY**  
**ENVIRONMENT DEPARTMENT**

**Date:** 11/19/2014