

STATE OF NEW MEXICO  
SECRETARY OF ENVIRONMENT



ENVIRONMENTAL PROTECTION DIVISION  
OF THE NEW MEXICO ENVIRONMENT  
DEPARTMENT,

**Complainant,**

v.

No. AQB 13-03 (CO)

**OCCIDENTAL PERMIAN LIMITED PARTNERSHIP**

**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 Occidental Permian Limited Partnership (“Occidental”) (collectively, the “Parties”) to resolve alleged violations of the New Mexico Air Quality Control Act (“AQCA”), NMSA 1978, § 74-2-1 to 74-2-17; the Air Quality Control Regulations, 20.2. NMAC et seq. (“Regulations”), and Permit NSR No. 2656-M3-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 Regulations, including assessing civil penalties for violations thereof. NMSA 1978, § 74-2-12. The Air Quality Bureau is an organizational unit of the Division.

2. The Respondent Occidental is a Texas limited partnership with an address of 5 Greenway Plaza, Houston, Texas 77046, which owns and operates the North Hobbs Reinjection Compression Facility and associated equipment, flares, tank batteries, wells, pipelines and gathering lines (collectively, the “Facility”). The function of the Facility is to clean and compress field gas to re-injection pressure, process natural gas liquids, and separate oil from water. The Facility is located near Hobbs, New Mexico.

3. The Department and Occidental negotiated this Final Order to resolve the potential claims and alleged violations identified in paragraph 6 below and any violations related to excess emissions from the Facility which were reported to the Department, and which occurred on or before April 25, 2012, and associated civil penalties and injunctive relief.

## **B. HISTORY AND ALLEGED VIOLATIONS**

4. On August 14, 2009, the Department issued NSR Air Quality Permit No. 2656-M3-R2 to Occidental for modification and operation of the Facility.

5. On September 1, 2010, the Bureau conducted a Full Compliance Evaluation at the Facility and identified alleged violations of the Act, Regulations, and Permit. On October 16, 2010, Occidental submitted records detailing total emissions estimates occurring at the Facility between January 1, 2008 and October 11, 2010. In response to Bureau requests, Oxy supplied additional or reformatted data to the Bureau on August 17, 2011. On August 31, 2011, the Division issued Notice of Violation (“NOV”) OCC-2415-1001, alleging three violations of the Permit and applicable Regulations. On November 29, 2011, the Bureau received emissions data for the Facility covering the time period between January 1, 2006 and August 22, 2011. The November 29, 2011 submittal included total emissions calculated in accordance with instructions provided by the Bureau and identified individual Excess Emissions reports, which Occidental

had previously submitted to the Bureau, related to excess emission events detailed in the submittal. The Bureau's review of these records for the Facility identified alleged violations of the Act, Regulations, and Permit. After receipt and analysis of additional data requested by the Bureau, on April 6, 2012, the Division issued a revised NOV, numbered OCC-2415-1001-R1 (attached hereto as Exhibit 1).

6. The violations alleged in NOV OCC-2415-1001-R1 are summarized as follows:

- a. Alleged Violation (1): Failure to accurately represent H<sub>2</sub>S emissions from the Reinjection Compression Facility ("RCF") Flare in the permit modification application (the Division subsequently agreed to withdraw this alleged violation and it is listed here for information only);
- b. Alleged Violation (2): Failure to submit a Title V operating permit application pursuant to 20.2.70 NMAC;
- c. Alleged Violation (3): Failure to submit a notification as required by 20.2.7.15.A. NMAC of emissions that caused the Facility to exceed the applicability threshold of 100 Tons Per Year as provided at 20.2.70.7.R.(2) NMAC;
- d. Alleged Violation (4): Exceedances of the tons per year ("TPY") emissions limit for the RCF Flare;
- e. Alleged Violation (5): Exceedance of TPY emissions limit for the West Injection Battery ("WIB") Flare;
- f. Alleged Violation (6): Exceedance of the 12 month rolling total for the RCF Flare;

- g. Alleged Violation (7): Exceedance of the 12 month rolling total for the WIB Flare;
- h. Alleged Violation (8): Exceedances of pounds per hour emissions limit for the RCF Flare;
- i. Alleged Violation (9): Exceedances of pounds per hour emissions limit for the WIB Flare;
- j. Alleged Violation (10): Failure to submit Initial Excess Emission Reports for Tons Per Year and 12 month rolling total exceedances for the RCF and WIB Flares; and
- k. Alleged Violation (11): Failure to submit Final Excess Emission Reports for Tons Per Year and 12 month rolling total exceedances for the RCF and WIB Flares.

7. The statute of limitations provided in NMSA 1978, § 74-2-12 for issuance of a compliance order has been stayed by written agreement of the parties.

8. Occidental has taken corrective action for each alleged violation, and such corrective action has been approved by the Department.

## II. COMPROMISE AND SETTLEMENT OF ALLEGED VIOLATIONS

9. To avoid litigation and as encouraged under 20.1.5.600.B NMAC, the Division and Occidental propose the settlement in this Final Order for the sole purpose of resolving the potential claims and alleged violations in the NOV, revised NOV, and any violations related to excess emissions from the Facility which were reported to the Department and which occurred on or before April 25, 2012, and associated civil penalties and injunctive relief. The Parties acknowledge that Occidental does not admit any of the allegations in the Compliance Order and

specifically denies that it has violated the Act, Regulations or Permit. The Parties further acknowledge that the Division does not concede the validity of any of affirmative defenses raised. Accordingly, nothing in this Compliance Order shall be construed as an admission by either Party as to any issue of fact or law. For purposes of this proceeding only, the parties waive any jurisdictional objections and consent to the relief specified herein, including the assessment of the stated civil penalty.

10. In compromise and settlement of the alleged violations set forth in the revised NOV, the Parties agree to this settlement for a civil penalty of \$95,000.00 in a cash payment to the State of New Mexico and Occidental's performance of the Supplemental Environmental Project ("SEP") described in Exhibit 2 attached hereto, which is part of a larger project undertaken by Occidental. For purposes of this settlement, the SEP represents an expenditure of at least \$825,482.00 ("SEP Cost"), which will be credited towards the civil penalty, for a total settlement value of \$920,482.00.

11. Occidental shall pay the civil penalty of \$95,000.00 to the State of New Mexico within 30 calendar days after the effective date of this Final Order.

12. Payment shall be made to the State of New Mexico 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

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

14. The SEP shall be completed within 360 days of the effective date of this order, and Occidental shall submit a certified statement of the SEP Cost associated with the SEP within 30 days of the SEP completion date.

15. Within 30 days of submission of the certified statement of SEP Cost, if the total SEP Cost is less than \$825,482.00 (i.e., \$920,482.00 – \$95,000.00), then Occidental shall submit a supplemental cash penalty equal to the difference between \$825,482.00 minus the certified SEP Cost.

16. If Occidental fails to complete the SEP within 360 days of the effective date of this order, and unless the Parties agree to extend the time for performance of the SEP, Occidental stipulates to pay a civil penalty of \$500.00 for each day thereafter until the earlier of (a) the date the SEP is completed or (b) the date the supplemental cash penalty described in paragraph 15 above is paid.

17. If Occidental fails to submit a certified statement of the costs associated with the SEP on within 30 days of the SEP completion date, and unless the Parties agree to extend the time for submittal of the certified statement, Occidental stipulates to pay a civil penalty of \$250.00 for each day thereafter until the certified statement of all costs associated with the SEP is submitted.

18. Within 30 days following its receipt of a written demand by the Department, Occidental shall make payment of any stipulated penalty that is due and payable under this Compliance Order. Occidental shall make a cash payment, by certified or corporate check, of any stipulated penalty to the State of New Mexico General Fund, and sent to the address specified in Paragraph 12.

### **III. OTHER TERMS AND CONDITIONS**

#### **A. FORCE MAJEURE AND DELAY**

19. Force Majeure. For the purposes of this Final Order, the term “Force Majeure” shall mean any event arising from a cause beyond the reasonable control of Occidental or its agents, contractors, or employees, that delays, prevents, or that can be reasonably anticipated to delay or prevent performance of the SEP and that could not be overcome with due diligence; provided, however, that Force Majeure shall not include Occidental’s unanticipated or increased costs or changed financial circumstances.

20. If an event occurs that causes or may cause a delay by Occidental in performance of the SEP, regardless whether attributable to Force Majeure, Occidental shall give prompt notice to the Department. After notice, and upon the Department’s request, Occidental shall submit a report to the Department providing (a) the reasons for the delay, (b) the anticipated length of the delay, (c) a description of actions taken or to be taken to prevent or minimize the delay, (d) a revised schedule for performing the SEP, and (e) the rationale and supporting documentation for a claim that the delay was or would be attributable to Force Majeure, if applicable.

21. If the Department agrees that Force Majeure or delay is applicable, then the parties may stipulate in writing to an extension of the time for performance of the SEP. If the

Department disputes that Force Majeure or delay is applicable, then the parties shall schedule a meeting to discuss and resolve the dispute. During the pendency of dispute resolution, the stipulated penalties of paragraphs 16 and 17 shall not accrue.

**B. RESERVATION OF RIGHTS AND DEFENSES**

22. This Final Order shall not be construed to prohibit or limit in any way the Department from requiring Occidental 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 Occidental not resolved herein. This Final Order shall not be construed to prohibit or limit in any way Occidental from raising any defense to a Department action seeking such relief.

**C. MUTUAL RELEASE**

23. The Parties mutually release each other, and their respective parents, partners, subsidiaries and affiliates, and the officers, directors, managers, employees and agents of each of the foregoing, from all claims that each Party raised or could have raised against the other regarding the facts and violations alleged in the compliance order, NOV, revised NOV pertaining to excess emissions (as defined at 20.2.7.7.D NMAC) , and any violations related to excess emissions from the Facility which were reported to the Department, and which occurred on or before April 25, 2012 and associated civil penalties and injunctive relief. Such release applies only to civil liability. Except for the released parties in the first sentence of this paragraph, this Compliance Order is not intended to benefit, either directly or indirectly, any person or entity that is not a Party to this Agreement.



**D. WAIVER OF STATE LIABILITY**

24. Occidental 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 Occidental's performance of any obligation under this Final Order.

**E. EFFECTIVE DATE AND TERMINATION DATE**

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 Occidental has fulfilled the requirements of this Final Order. The reservations of rights and defenses and the mutual release in Paragraphs 23 and 24 shall not terminate, and shall remain in effect as an agreement between the Parties.

**F. 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.

**G. BINDING EFFECT**

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

**H. AUTHORITY OF SIGNATORIES**

29. The person executing this Final Order on behalf of Occidental represents that he or she has the authority to execute this Final Order on behalf of Occidental.

ENVIRONMENTAL PROTECTION DIVISION  
NEW MEXICO ENVIRONMENT DEPARTMENT:

By: Mary Rose  
MARY ROSE  
ACTING DIRECTOR

Date: May 31, 2013

OCCIDENTAL PERMIAN LIMITED PARTNERSHIP

By: Andrew Falls  
ANDREW FALLS  
ON BEHALF OF JEFF SIMMONS  
PRESIDENT AND GENERAL MANAGER

Date: 30 May 2013

STIPULATED FINAL COMPLIANCE ORDER

Pursuant to section 20.1.5.600.B(2) NMAC, this Settlement Agreement and Stipulated Final Compliance Order, agreed to by the Division and the Respondent Occidental Permian Limited Partnership, is hereby incorporated herein and **APPROVED AS A FINAL COMPLIANCE ORDER** issued pursuant to NMSA 1978, §74-2-12.

Ryan Flynn  
RYAN FLYNN  
SECRETARY DESIGNATE  
ENVIRONMENT DEPARTMENT

Date: 31 May 2013