

STATE OF NEW MEXICO
SECRETARY OF ENVIRONMENT

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

NO. AQB CON-0638-1301-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 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 Number P092-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 corporation doing business in New Mexico at the East Vacuum Liquid Recovery and CO₂ Plant (“Facility”), located in Lea County, New Mexico. The Facility is a CO₂ re-injection project.

B. HISTORY AND ALLEGED VIOLATIONS

3. Permit Condition A206.C provides: "40 CFR 64, CAM (Unit 19)...Requirement: Compliance Assurance Monitoring (CAM) contained in 40 CFR applies to the flare...Monitoring:...The permittee shall comply with the CAM plan in Appendix B of this permit...."

4. An excerpt from Appendix B Table of Permit P092-R2, Condition C104, Appendix B, Flare CAM Plan, is set forth below.

	Indicator No. 2
I. Indicator	Presence of Visible Emissions
Measurement Approach	The flare should be monitored for visible emissions once during each week that the flare is operational, in accordance with 40 CFR 60.18(c)
II. Indicator Range	Visible emissions present or not present, in accordance with 40 CFR 60.18(c)
III. Performance Criteria	
A. Data Representativeness	Efficient combustion is assumed if no visible emissions are observed.
B. QA/QC Practices and Criteria	Visible emissions to be determined in accordance with Method 22 of Appendix A of 40 CFR 60 subpart A (40 CFR 60.18(f)(1).
C. Monitoring Frequency	Visible emissions monitoring to occur once each week that the flare is operational
D. Data Collection Procedures	Records shall be maintained of all visible emissions observations

5. Between October 4, 2012 and October 15, 2013 the Bureau received three Semi-Annual Monitoring Reports (“Semi-Annuals”) which included copies of the visible emissions monitoring that had been conducted at the Facility. The Semi-Annuals did not include

monitoring of visible emissions for the Flare (Unit 19), using EPA Method 22, for 50 weeks between April 19, 2012 and June 1, 2013, as summarized below.

Semi-Annual Monitoring Period Ending	Date Report Received	Periods for Which Visible Emissions Were Not Monitored	# of Weeks Visible Emissions Were Not Monitored
9/1/2012	10/04/12	04/19/12 - 07/14/12 & 07/22/12 - 09/01/12	19
3/1/2013	03/29/13	09/02/12 - 01/05/13 & 01/13/13 - 02/23/13	24
9/1/2013	10/15/13	02/24/13 - 03/23/13, 04/07/13 - 04/20/13, & 05/26/13 - 06/01/13	7
TOTAL			50

6. 40 CFR § 63 Subpart ZZZZ, Excerpt of Table 5: Initial Compliance With Emission Limitations, Operating Limitations, and Other Requirements. (Footnotes added for clarification.)

For each . . .	Complying with the requirement to . . .	You have demonstrated initial compliance if . . .
9. Existing non-emergency 4SRB ^a stationary RICE ^b >500 HP located at a major source of HAP ^c	a. Limit the concentration of formaldehyde in the stationary RICE exhaust and using oxidation catalyst or NSCR ^d	ii. You have installed a CPMS ^e to continuously monitor catalyst inlet temperature

^a Four Stroke Rich Burn

^b Reciprocating Internal Combustion Engine

^c Hazardous Air Pollutants

^d Non-Selective Catalytic Reduction

^e Continuous Parameter Monitoring System

7. 40 CFR § 63.6585, Subpart ZZZZ provides in relevant part: "... You are subject to this subpart if you own or operate a stationary RICE at a major or area source of HAP emissions...(b) A major source of HAP emissions is a plant site that emits or has the potential to emit any single HAP at a rate of 10 tons (9.07 megagrams) or more per year..."

8. 40 CFR § 63.6595(b)(2), Subpart ZZZZ provides: "Any stationary RICE for which construction or reconstruction is commenced before your area source becomes a major source of HAP must be in compliance with the provisions of this subpart that are applicable to RICE located at major sources within 3 years after your area source becomes a major source of HAP."

9. On October 27, 2009, the source classification of the Facility was changed from an area source to a major source for hazardous air pollutants (“HAP”) under 40 CFR § 63 Subpart ZZZZ, with the potential to emit 15.9 Tons Per Year of n-Hexane. The Facility has four non-emergency, spark ignition four stroke rich burn reciprocating internal combustion engines greater than 500 hp, which use Non-Selective Catalytic Reduction. Therefore, in accordance with 40 CFR § 63 Subpart ZZZZ, the Facility is required to install a CPMS in order to demonstrate initial compliance.

10. In accordance with 40 CFR § 63.6595(b)(2), Subpart ZZZZ, the Facility was required to be in compliance with 40 CFR § 63 Subpart ZZZZ within three years of becoming a major source of HAP. Therefore, to demonstrate initial compliance, the Facility was required to install the CPMS to continuously monitor catalyst inlet temperature by October 27, 2012.

11. On March 29, 2013 the Bureau received an Annual Compliance Certification Report (“ACC”) for the Facility from the Respondent. The Respondent stated in the ACC that, in reference to compliance with 40 CFR § 63 Subpart ZZZZ, "...a continuous monitoring system...has not been installed as of this report."

12. On May 8, 2014, the Bureau issued to the Respondent Notice of Violation CON-0638-1301-R1 (“NOV”), alleging violations of the AQCA, the AQCR, and the Permit. The alleged violations consisted of the failure to: 1) monitor visible emissions weekly, which is a violation of Permit Conditions A206.C and C104; and 2) install a Continuous Parameter Monitoring System, which is a violation of 40 CFR § 63 Subpart ZZZZ, Table 5.

13. 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.

14. On March 28, 2014, the Bureau received the CAV from the Respondent. The CPMS was installed on July 3, 2013 and became fully functional on August 1, 2013. The CAV was determined to be satisfactory by the Bureau on March 31, 2014.

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

II. COMPROMISE AND SETTLEMENT

A. GENERAL

16. 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.

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

B. CIVIL PENALTY

18. 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 \$34,003.00 to the State of New Mexico within 30 calendar days after the effective date of this Final Order.

19. 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

20. 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

21. 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

22. 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

23. 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

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

25. 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 21 and 22 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

26. 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

27. 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

28. 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

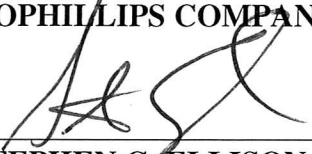
29. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

ENVIRONMENTAL PROTECTION DIVISION
NEW MEXICO ENVIRONMENT DEPARTMENT

By: 
MICHAEL VONDERHEIDE
DIRECTOR

Date: 10/31/14

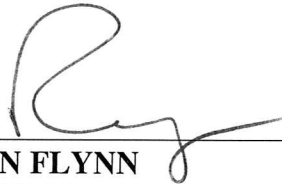
CONOCOPHILLIPS COMPANY

By: 
STEPHEN G. ELLISON
MANAGING COUNSEL

Date: 10/27/14

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.



**RYAN FLYNN
SECRETARY
ENVIRONMENT DEPARTMENT**

Date: 11/5/2014