

**STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT**

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

v.

NO. AQB OXY-0197-1001-R3 (NOV)

**OXY USA WTP Limited Partnership,
Respondent**

SETTLEMENT AGREEMENT AND STIPULATED FINAL COMPLIANCE ORDER

This Settlement Agreement and Stipulated Final Order ("Final Order") is entered into between the Environmental Protection Division ("Division") of the New Mexico Environment Department (the "Department") and the Respondent, OXY USA WTP Limited Partnership ("OXY") (collectively, the "Parties") to resolve permit violations as alleged in Notice of Violation OXY 0197-1001-R3. 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"), issued thereunder; and OXY's Air Quality Facilities 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 OXY is a corporation doing business in New Mexico at the Indian Basin Gas Plant (“Facility”). The Facility is located in Eddy County, New Mexico

B. HISTORY AND ALLEGED VIOLATIONS

3. On September 14, 2009, the Department issued Air Quality Permit No. P-103-R1-M1 to OXY for operation of the Facility.

4. On June 1, 2010 Air Quality Bureau staff conducted a Full Compliance Evaluation (“FCE”) at the Facility.

5. On January 27, 2012, the Bureau issued Notice of Violation (“NOV”) OXY-0197-1001-R3 to OXY, alleging a number of violations at the Facility as detailed in the following paragraphs.

6. P103-R1-M1, General Condition 3.4.2.1.2.2.b) states in part: “...the flowmeter at the incinerator stack shall be calibrated no less frequently than quarterly.”

7. P103-R1-M1, General Condition 4.2.1.a) states in part: “Records of the SO₂...volume flow meter...calibrations shall be maintained...”

8. During a review of Facility records, OXY was unable to provide complete records of stack flow meter calibrations for the Sulfur Recovery Unit (“SRU”), which are required to be conducted quarterly.

9. OXY stated in its Corrective Action Verification form, received at the Bureau on March 8, 2011, that it was unable to provide records demonstrating that the calibrations for the third and fourth Quarters of 2010 had been performed.

10. The failure by OXY to calibrate the sulfur recovery unit stack flow meter for the third and fourth Quarters of 2010 is in violation of P103-R1-M1, General Conditions 3.4.2.1.2.2.b) and 4.2.1.a).

11. P103-R1-M1, General Condition 3.4.2.1.2.2.b) states in part: "... Calibration of the SO2 monitor shall include at a minimum a two-point calibration carried out daily as per CFR 60.13 (d)(1) using gases of certified known concentration."

12. P103-R1-M1, General Condition 4.2.1.g) states in part: "Records of all SO2 CEM calibration . . . shall be kept."

13. NSPS 40 CFR Subpart A, Section 60.13 states in part: "Monitoring requirements . . . (d)(1) Owners and operators of a CEMS installed in accordance with the provisions of this part, must check the zero (or low level value between 0 and 20 percent of span value) and span (50 to 100 percent of span value) calibration drifts at least once daily in accordance with a written procedure"

14. In the course of a review of Facility records during the FCE, OXY was unable to provide complete records of CEMS calibrations for the SRU. OXY did not have complete calibration records for April 3, 4, and 11, 2010, and May 1 and 2, 2010, for a total of 5 days.

15. The failure of OXY to calibrate the SRU CEMS on 5 separate days is in violation of P103-R1-M1, General Conditions 3.4.2.1.2.2.b) and 4.2.1.g) and NSPS 40 CFR Subpart A, Section 60.13.

16. P103-R1-M1, General Condition 4.2.1.e) states in part: "Daily measurements (except Saturdays, Sundays, and holidays) of the H2S concentration (ppmv) in the inlet gas flow to the plant...shall be made and the records of these measurements shall be kept."

17. P103-R1-M1, General Condition 5.2.1.4 b) states in part: "Within forty-five (45) days of the end of each calendar quarter, a report containing for each day of the quarter . . . the average H2S concentration (ppmv) of the feedstock for the day as determined from the daily (except Saturdays, Sundays, and holidays) concentration measurements"

18. In the first Quarter 2010 Sulfur Report which OXY submitted to the Bureau, OXY failed to report complete records of daily plant inlet sulfur concentration. Subsequent review of second Quarter, third Quarter, and fourth Quarter 2009 reports also revealed incomplete records. In total, OXY did not have measurement records for 18 days.

19. The failure of OXY to include daily inlet sulfur measurements for 18 days in the Quarterly Sulfur Report is in violation of P103-R1-M1, General Conditions 4.2.1.e) and 5.2.1.4.b).

20. P103-R1-M1, General Condition 3.4.2.1.2.2.d) states in part: "The minimum acceptable level of data capture for the SO₂ monitoring system shall be at least 90% data capture for each calendar Quarter."

21. In the facility's second Quarter 2010 Sulfur Report, received by the Bureau on July 29, 2010, OXY reported that the data capture rate for the SO₂ monitoring system was 84.48%.

22. The failure of OXY to achieve a data capture rate of 90% for the SO₂ monitoring system during the second Quarter of 2010 is in violation of P103-R1-M1, General Condition 3.4.2.1.2.2.d).

23. P103-R1-M1, General Condition 3.4.2.1.2.1 states in part: "...the permittee shall measure and record the following SRU variables at least quarterly: a) The temperature of the incinerator combustion zone"

24. P103-R1-M1, General Condition 5.1.1 states in part: "Reports shall clearly identify the subject equipment showing the emission unit ID number according to this operating permit...Reports of all required monitoring activities for this facility shall be submitted to the Department on the following schedule....Within 45 days following the end of every 6-month period following the issuance date of permit P103, September 03, 2003...."

25. The temperature of the incinerator combustion zone was not reported for the first and second Quarters of 2010, as shown in the Semi-Annual Monitoring reports covering the time period from September 4, 2009 to March 3, 2010 and March 4, 2010 to September 3, 2010.

26. The failure of OXY to report the temperature of the incinerator combustion zone in Semi-Annual Monitoring reports is in violation of P103-R1-M1, General Conditions 3.4.2.1.2.1 and 5.1.1.

II. COMPROMISE AND SETTLEMENT OF NOTICE OF VIOLATIONS

27. The parties have engaged in settlement discussion to resolve the NOV without further proceedings.

28. To avoid litigation, the Division and OXY propose the settlement in this Final Order to resolve the alleged violations in the NOV. The Division and OXY agree to this Final Order for the sole purpose of resolving the alleged violations in the NOV.

29. OXY does not admit any of the allegations in the NOV. However, for purposes of this proceeding and pursuant to 20.1.5.600.B NMAC, OXY admits jurisdiction and consents to the relief specified herein.

30. 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 OXY shall pay a civil penalty equal to \$56,904.00 to the State of New Mexico.

31. Payment shall be made to the *State of New Mexico* by certified or corporate check and sent to the following address within thirty (30) days of the effective date of this Settlement Agreement:

New Mexico Environment Department
Air Quality Bureau
c/o Compliance and Enforcement Manager
1301 Siler Rd., Building B
Santa Fe, New Mexico 87507-3113

32. If OXY fails to make timely and complete payment of the civil penalty, OXY 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

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

B. MUTUAL RELEASE

34. The Parties mutually release each other from all claims that each Party raised or could have raised against the other as a result of the FCE including the facts and violations alleged in the NOV. Such release applies only to civil liability.

C. LIABILITY

35. OXY 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 OXY's performance of any obligation under this Final Order.

D. EFFECTIVE DATE AND TERMINATION DATES

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

37. Except as otherwise provided in this Paragraph, the terms of this Final Order shall terminate when OXY has fulfilled the requirements of this Final Order. The reservations of rights and defenses and the mutual release in Paragraphs 33 and 34 shall not terminate, and shall remain in effect as an agreement between the Parties.

E. INTEGRATION

38. 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

39. 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

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

**ENVIRONMENTAL PROTECTION DIVISION
NEW MEXICO ENVIRONMENT DEPARTMENT:**

By: Mary E Rose
MARY ROSE
ACTING DIRECTOR

Date: 4/4/12

OXY USA WTP LIMITED PARTNERSHIP:

By:



JOHN KIRBY
MANAGER HES

Date:

3/22/2012

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 OXY USA WTP Limited Partnership, is hereby incorporated herein and **APPROVED AS A FINAL ORDER.**



DAVE MARTIN
SECRETARY OF ENVIRONMENT

Date:

4-12-12