

**STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT**

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

NO. AQB XTO-0975-1201-R1 (NOV)

**XTO ENERGY INC.,
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, XTO Energy 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, § 74-2-1 to 74-2-17; the Air Quality Control Regulations (“AQCR”), 20.2. NMAC (“Regulations”), and Air Quality Permit Number 0594-M2 (“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 for-profit foreign corporation doing business in New Mexico at the Valencia Canyon Compressor Station Facility (“Facility”). The Facility is a compressor station, and is located in Rio Arriba County, New Mexico.

B. HISTORY AND ALLEGED VIOLATIONS

3. General Permit Condition 2.1.5 required initial testing within sixty days after achieving the maximum production rate at which the engine(s) or turbine(s) will normally operate.

4. The Permit was issued on September 30, 2011 and testing was required to be conducted no later than November 29, 2011. Initial testing was conducted for Unit E-1 on December 1, 2011, two days late. Due to inclement weather and site access concerns which were communicated to the Bureau, initial testing was conducted for Unit E-2 on April 5, 2012, 127 days after the original November 29, 2011 test completion date.

5. Permit Condition 2.1.15 required that copies of test reports must be submitted within thirty days of completion of testing.

6. Respondent conducted initial compliance testing for Unit E-1 on December 1, 2011 and submission of the test report was required by January 3, 2012. The test report was submitted to the Bureau on January 20, 2012, seventeen days late.

7. Table 2 of Permit 0549-M2 sets forth certain emission limits for Units E-1 and E-2. Specifically, Unit E-1 was limited to 1.3 pounds per hour (“pph”) nitrogen oxides (“NOX”), 0.7 pph carbon monoxide (“CO”), and 0.8 pph volatile organic compounds (“VOC”). Unit E-2 was limited to 1.4 pph NOX, 0.7 pph CO, and 0.8 pph VOC.

8. The initial test report for Unit E-1, conducted on December 1, 2011 and which the Bureau received from Respondent on January 20, 2012, revealed that Unit E-1 had exceeded the CO and VOC emissions allowed in Table 2. Specifically, the Unit E-1 emissions reported were 1.29 pph CO (limit = 0.7 pph) and 2.2 pph VOC (limit = 0.8 pph).

9. A subsequent test report for Unit E-1, conducted on April 5, 2012 and which the Bureau received from Respondent on May 2, 2012, revealed that Unit E-1 had exceeded the NOX and CO emissions allowed in Table 2. Specifically, the Unit E-1 emissions reported were 1.592 pph NOX (limit = 1.3 pph) and 1.209 pph CO (limit = 0.7 pph).

10. The initial test report for Unit E-2, conducted on April 5, 2012 and which the Bureau received from Respondent on May 2, 2012, revealed that Unit E-2 had exceeded the NOX and CO emissions allowed in Table 2. Specifically, the Unit E-2 emissions reported were 2.060 pph NOX (limit = 1.4 pph) and 1.055 pph CO (limit = 0.8 pph).

11. On April 10, 2012, the Bureau issued Notice of Violation XTO-0975-1201 (“NOV”) to Respondent, alleging violations of the AQCA, the AQCR, and the Permit. The alleged violations were late testing, late submission of test reports, and excessive emissions. On June 26, 2012, the Bureau issued a Revised Notice of Violation, XTO-0975-1201-R1, to reflect the status of initial compliance testing on an additional unit, E-2, and related violations, as well as subsequent testing of Unit E-1.

12. The initial NOV included a Corrective Action Verification (“CAV”) requiring Respondent to submit to the Bureau measures taken to ensure future compliance with the permit conditions.

13. On May 3, 2012 the Bureau received the CAV from Respondent. The CAV was determined to be satisfactory by the Bureau on May 4, 2012.

14. On June 26, 2012, the Bureau issued a proposed civil penalty for the alleged violations at the Facility to Respondent.

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

II. COMPROMISE AND SETTLEMENT OF NOTICE OF VIOLATIONS

A. GENERAL

16. Other than set forth in Paragraph 17 below, Respondent does not admit any of the allegations in the NOV's or any findings of fact or conclusions of law contained in this Final Order. 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's.

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's and this Final Order 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 \$ 90,000.00 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
1301 Siler Rd., Building B
Santa Fe, New Mexico 87507-3113

20. 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

21. 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

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's. Such release applies only to civil liability.

C. WAIVER OF STATE LIABILITY

23. 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

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 Respondent has fulfilled the requirements of this Final Order. The reservations of rights and defenses and the mutual release in Paragraphs III.A and III.B shall not terminate, and shall remain in 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 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: 12/10/12

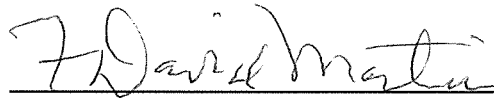
XTO ENERGY INC.

By: *KSRose*
K. STEVE ROSE
VICE PRESIDENT
NATURAL GAS OPERATIONS

Date: 12/4/12

STIPULATED FINAL COMPLIANCE ORDER

This Settlement Agreement and Stipulated Final Compliance Order, agreed to by the Division and the Respondent XTO Energy Inc., 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: 12-17-12