

**STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT**

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

NO. AQB BEN-0993-1201 (NOV)

**BENSON-MONTIN-GREER DRILLING CORP.,
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, Benson-Montin-Greer Drilling Corp. (“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 0914-M4 (“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 an oil and gas company doing business in New Mexico at the Cañada Ojitos Compressor Facility ("Facility"). The Facility is a natural gas compressor facility, and is located in Rio Arriba County, New Mexico.

B. HISTORY AND ALLEGED VIOLATIONS

3. New Source Review Permit 0914-M4, Table 106A, "Facility: Allowable Emissions" lists allowable carbon monoxide ("CO") emissions for emission unit COM#10 at 0.2 pounds per hour (pph).

4. In preparation for an initial emission compliance test, BMG notified the Bureau of a discrepancy between the type of compressor and exhaust stack listed on the permit as emission unit COM #10 and the compressor and exhaust stack which was in use as unit COM#10. When the emission test was conducted on May 10, 2012, the CO emissions from unit COM#10 were 4.54 pph, which is above the permitted level of 0.2 pph. Therefore, CO emissions from unit COM#10 exceeded the permitted level.

5. New Source Review Permit 0914-M4, Table 105, "Control Equipment List" indicates an "Oxidizing Catalytic Converter", controlling "CO, VOCs, Formaldehyde" for emission unit COM #10.

6. BMG provided documentation to the Bureau that the specifications for the compressor and exhaust stack provided by their vendor incorrectly indicated that the unit had an oxidizing catalytic converter. These specifications were used in the permit application for emission unit COM#10. The vendor provided specifications did not match the compressor and exhaust stack in use as emission unit COM#10, which did not have an oxidizing catalytic

converter. Therefore, the pollution control specified in the permit was not present on unit COM#10.

7. New Source Review Permit 0914-M4, Condition B110E states, "The permittee shall submit reports of excess emissions in accordance with 20.2.7.110.A NMAC."

8. 20.2.7.110 NMAC states in relevant part, "NOTIFICATION. 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 that includes all available information for each item in Subsection B of 20.2.7.110 NMAC. (2) Final report: the owner or operator shall file a final report that contains specific and detailed information for each item in subsection B of 20.2.7.110 NMAC, no later than ten (10) days after the end of the excess emission..."

9. The initial compliance emission test conducted by BMG at the Cañada Ojitos Compressor Facility on May 10, 2012 showed that CO emissions from unit COM#10 exceeded the permitted level. BMG failed to submit initial and final excess emission reports for the emissions above permitted levels.

10. On August 29, 2012, the Bureau issued to Respondent Notice of Violation BEN-0993-1201 ("NOV"), alleging violations of the AQCA, the AQCR, and the Permit. The alleged violations were 1) failure to comply with emissions limits for CO; 2) failure to install pollution control equipment required by the facility permit; and 3) failure to submit an excess emission report.

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

12. On October 4, 2012, the Bureau received the CAV from Respondent. The CAV was determined to be satisfactory by the Bureau on October 16, 2012.

13. On October 31, 2012, the Bureau issued to Respondent a proposal of a civil penalty for the alleged violations at the Facility.

14. On November 19, 2012, the Bureau received from Respondent a request to change the description for one violation based upon further details provided by Respondent which clarified the sequence of events which led to the occurrence of the violation.

15. On December 13, 2012, the Bureau issued to Respondent Revised Notice of Violation BEN-0993-1201-R1, alleging violations of the AQCA, the AQCR, and the Permit. The revised Notice of Violation clarified the descriptions of two of the violations and the third violation remained unchanged.

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

II. COMPROMISE AND SETTLEMENT OF NOTICE OF VIOLATIONS

A. GENERAL

17. Respondent does not admit any of the allegations in the NOV. 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.

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

B. CIVIL PENALTY

19. 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 Respondent pay a civil penalty of \$40,856.00 to the State of New Mexico.

20. On November 30, 2012, the Bureau received check number 0000037002, made payable to the State of New Mexico, in the amount of \$40,856.00. Therefore, the civil penalty has been paid in full.

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. 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 22 and 23 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 Rose
MARY ROSE
ACTING DIRECTOR

Date: 4/16/13

BENSON-MONTIN-GREER DRILLING CORP.

By: *Matt Dimond*
Print Name: MATT DIMOND
Print Title: PRESIDENT

Date: 12/26/2012

STIPULATED FINAL COMPLIANCE ORDER

This Settlement Agreement and Stipulated Final Compliance Order, agreed to by the Division and the Respondent Benson-Montin-Greer Drilling Corp., is hereby incorporated herein and **APPROVED AS A FINAL COMPLIANCE ORDER** issued pursuant to NMSA 1978, §74-2-12.

for Butch Longate
F. DAVID MARTIN
SECRETARY OF ENVIRONMENT

Date: 1/22/13

ENVIRONMENT DEPARTMENT ROUTING SLIP

To: Dave Martin

From: Sondra Sage *SS*

Drafted By: Sondra Sage

Date: 1/11/13

Subject: Settlement Agreement and Stipulated Final Compliance Order pertaining to Benson-Montin-Greer Drilling Corp. NOV BEN-0993-1201

Final Decision Needed By: 1/18/13

Reason: Timelines

Contact for Information: Sondra Sage 476-4358

Reviewer	Title	Initial	Date Received	Date Approved
1. Judy Fisher	Enforcement Manager	<i>CF</i>	1/11/13	
2. Sandra Ely	C&E Section Manager	<i>SE</i>	1/11/13	1/14/13
3. Richard Goodyear	Bureau Chief	<i>RG</i>	1/9/13	
4. Mary Rose	Division Director (A)	<i>MR</i>	1/14/13	1/16/13
5. Ryan Flynn	Office of General Counsel	<i>RF</i>	1/16/13	
6. Butch Tongate	Deputy Secretary	<i>BT</i>	1/22/13	
7. Dave Martin	Cabinet Secretary	<i>BT for DM</i>	1/22/13	
8. Sondra Sage	Return to Originator			

COMMENTS BY DRAFTER OR REVIEWER(S):

Attached you will find a Settlement Agreement and Stipulated Final Compliance Order between EPD, NMED, and BENSON_MONTIN_GREER DRILLING CORP. pertaining to the NOV BEN-0993-1201. Ryan Flynn reviewed and approved the document on Dec. 18, 2012, prior to it being executed by BMG. It is now ready for signature on behalf of 1) EPD and 2) NMED.

Please contact me if you have questions. Otherwise, please execute and return the document to me for further processing.

Thank you,

Sondra Sage
Sondra Sage