STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT

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

NO. AQB INT-0208-1201-R1 (NOV)

INTREPID POTASH – NEW MEXICO, LLC,
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, Intrepid Potash – New Mexico, LLC ("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 -17; the Air Quality Control Regulations ("AQCR"), 20.2. NMAC ("Regulations"), Air Quality NSR Permit 755-M7 and Title V Permit P009-R1.

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 limited liability company doing business in New Mexico at the Intrepid Potash East Plant Facility ("Facility"). The Facility is a potash mine and refinery complex with processing units operating to produce potash and Langbeinite fertilizer from sylvinite ore. The Facility is located in Eddy County, New Mexico.

B. HISTORY AND ALLEGED VIOLATIONS

3. NSR Permit 0755-M7, Condition A601D states in relevant part, "Monitoring: The permittee shall monitor the excess air level in the flue gas semi-annually using a portable oxygen analyzer...Excess air measurements that use an electronic analyzer must conform to the procedures in the most current version of the Bureau's Standard Operating Procedure: Use of Portable Analyzers in Performance Tests...Recordkeeping: The permittee shall maintain records of excess combustion air to include the heater's fuel flow rate and firing box temperature."

4. Title V Permit P009-R1, Condition 3.4.2.5 states in relevant part, "The boilers listed in Section 2.1 shall have the excess air level and temperature in the flue gas measured at the frequency indicated in the table... Excess air measurements that use an electronic analyzer must conform to the procedures in the most current version of the Bureau's Standard Operating Procedure: Use of Portable Analyzers in Performance Tests."

5. The Bureau's Portable Analyzers Standard Operating Procedure (Version 1.6) states in relevant part, "Sampling Requirements: A. The sample shall be drawn from location in the stack as required by 40 CFR 60, Methods 1-4."

6. Title V Permit P009-R1, Condition 4.2.5 states in relevant part, "Flue Gas & Excess Air Recordkeeping (For Boilers 1B to 5B): Records of excess combustion air shall include the boiler's fuel flow rate..."

7. During a Full Compliance Evaluation ("FCE") of the Facility on March 28, 2012, Bureau personnel discovered that, during the excess air monitoring conducted during the period of April 2009 through September 2011, the Respondent utilized an electronic analyzer but did not conform to the Bureau's Portable Analyzers Standard Operating Procedure (Version 1.6) as to the sampling location, and that the fuel flow rates were not recorded.

8. Title V Permit P009-R1, Condition 5.1.2 states, "The permittee shall submit reports of all deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. These reports shall be contained in the semi-annual reports required in Table 5.1.1. This condition is pursuant to 20.2.70.302.E.2 NMAC."

9. During the FCE of the Facility on March 28, 2012, Bureau personnel discovered that deviations from permit conditions were not reported in semi-annual reports required by Title V Permit P009-R1, Table 5.1.1.

10. On January 25, 2013, the Bureau issued to the Respondent Notice of Violation INT-0208-1201, alleging violations of the AQCA, the AQCR, and the Permits. The alleged violations were: 1) the failure to properly conduct excess air monitoring, a violation of NSR Permit 0755-M7, Condition A601D; 2) the failure to record fuel flow rates during excess air testing, a violation of Title V Permit P009-R1, Conditions 3.4.2.5 and 4.2.5; and 3) the failure to report deviations from permit conditions in the semi-annual reports, a violation of Title V Permit P009-R1, Condition 5.1.2.

11. 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.

12. On February 27, 2013, the Bureau received the CAV from the Respondent. The CAV was determined to be satisfactory by the Bureau on February 27, 2013.

13. On June 20, 2013, the Bureau issued to the Respondent the Revised Notice of Violation INT-0208-1201-R1 ("Revised NOV"), alleging violations of the AQCA, the AQCR, and the Permit. The alleged violations were: 1) the failure to properly conduct excess air monitoring and to record fuel flow rates during excess air testing, violations of NSR Permit 0755-M7, Condition A601D and Title V Permit P009-R1, Conditions 3.4.2.5 and 4.2.5; and 2) the failure to report deviations from permit conditions in the semi-annual reports, a violation of Title V Permit P009-R1, Condition 5.1.2.

14. On June 20, 2013, the Bureau issued to the Respondent a proposal of a civil penalty for the alleged violations at the Facility.

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

II. COMPROMISE AND SETTLEMENT OF NOTICE OF VIOLATIONS

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 terms and conditions in this Final Order to resolve the alleged violations in the Revised 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 Revised NOV and upon consideration of the seriousness of the violations and good faith efforts to comply, the Parties agree that the Respondent shall pay a civil penalty of $76,000.00 to the State of New Mexico.

19. On July 8, 2013, the Bureau received check number 708885, paid to the order of the State of New Mexico General Fund, in the amount of $76,000.00.

III. OTHER TERMS AND CONDITIONS

A. RESERVATION OF RIGHTS AND DEFENSES

20. 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. 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

21. 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 Revised NOV. Such release applies only to civil liability.

C. WAIVER OF STATE LIABILITY

22. 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

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

24. 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 20 and 21 shall not terminate, and shall remain in effect as an agreement between the Parties.

E. INTEGRATION

25. 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

26. 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

27. 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.

ENVIRONMENTAL PROTECTION DIVISION
NEW MEXICO ENVIRONMENT DEPARTMENT

By: _____ **Date:** 8/1/13
MICHAEL VONDERHEIDE
DIRECTOR

INTREPID POTASH - NEW MEXICO, LLC

By: _____ **Date:** 29/July/2013
Print Name: ROBERT BALDRIDGE
Print Title: GENERAL MANAGER

STIPULATED FINAL COMPLIANCE ORDER

This Settlement Agreement and Stipulated Final Compliance Order, agreed to by the Division and the Respondent Intrepid Potash – New Mexico, LLC, is hereby incorporated herein and **APPROVED AS A FINAL COMPLIANCE ORDER** issued pursuant to NMSA 1978, §74-2-12.

RYAN FLYNN
SECRETARY DESIGNATE
ENVIRONMENT DEPARTMENT

Date: 8/4/13