

**STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT**

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

NO. AQB LOR-27659-1201 (NOV)

**LORDSBURG MINING 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, Lordsburg Mining 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 Numbers 3807-M1 and 3807-M2 (collectively, the “Permits”).

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 Summit Mine (“Facility”). The Facility is a gold and silver mining operation, and is located in Grant County, New Mexico.

B. HISTORY AND ALLEGED VIOLATIONS

3. Permit 3807-M1, General Condition B101.B states in relevant part: "Any future physical changes, changes in the method of operation or changes in restricted area may constitute a modification as defined by 20.2.72 NMAC, Construction Permits...no modification shall begin prior to issuance of a permit..."

4. On February 28, 2012, the Bureau received a Universal Stack Test Notification, Protocol and Report Form (Report) from the Respondent for two generator engines located at the Facility. According to the Report, the installation date of a Caterpillar C-27 engine with serial number ODWB00373 was September 23, 2011. However, this engine was not authorized under Permit 3807-M1. The Respondent did not obtain a permit modification prior to construction of the C-27 engine; therefore, this engine was constructed without a permit.

5. Permit 3807-M2, Condition A106.A states in relevant part: "The following table lists the emission units and their allowable emission limits..." Table 106.A sets forth an allowable emissions limit of 1.4 pounds per hour of CO for Unit 3b.

6. On June 15, 2012, the Bureau received a Universal Stack Test Notification, Protocol and Report Form (Report-1) from the Respondent on the results of Initial Compliance Tests conducted on May 15, 2012 for Unit 3b, a generator engine located at the Facility. According to

Report-1, the average CO emission rate for Unit 3b was 1.68 pounds per hour. Therefore, Unit 3b exceeded the 1.4 pounds- per-hour CO emission limit.

7. 20.2.7.110.A NMAC states in relevant part: "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..."

8. On June 15, 2012, the Bureau received Report-1 from the Respondent. According to the test results in Report-1, the pounds-per-hour CO emissions limit for Unit 3b was exceeded. In accordance with 20.2.7.110.A(1) NMAC, an initial report is required to be submitted to the Bureau no later than the end of the next regular business day after the time of discovery of an excess emission. The discovery date of the excess emission was June 14, 2012, which is the date test results were finalized per Report-1. Therefore, an initial excess emission report (EER) was required to be submitted no later than June 15, 2012. An initial EER was not submitted by the Respondent.

9. 20.2.7.110.A NMAC states in relevant part: "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...(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..."

10. On June 15, 2012, the Bureau received Report-1 from the Respondent. According to the test results in Report-1, the pounds-per-hour CO emissions limit for Unit 3b was exceeded. On August 10, 2012, the Bureau received a Universal Stack Test Notification, Protocol and

Report Form (Report-2) from the Respondent stating that a retest on Unit 3b was conducted on August 2, 2012 and the results met the allowable pounds-per-hour emissions limit of CO. In accordance with 20.2.7.110.A(2) NMAC, a final report is required to be submitted to the Bureau no later than ten (10) days after the end of the excess emission. Test results were verified on August 10, 2012 per Report-2. Therefore, the final EER was required to be submitted no later than August 20, 2012. The respondent submitted a final EER on November 8, 2012.

11. Permit 3807-M1, Condition A804.A, Combustion Equipment - Engines, states in relevant part: "Initial Compliance Test - Units 1 and 3...Monitoring: The permittee shall perform an initial compliance test in accordance with the General Testing Requirements of Section B111..."

12. Permit 3807-M1, General Condition B111, General Testing Requirements, states in relevant part: "A. Compliance Tests...(2) Compliance tests shall be conducted within sixty (60) days after the unit(s) achieve the maximum normal production rate. If the maximum normal production rate does not occur within one hundred twenty (120) days of source startup, then the tests must be conducted no later than one hundred eighty (180) days after initial startup of the source."

13. The initial compliance test of Unit 1 was required to be completed according to timeframes associated with "initial startup" and "maximum operating rate as described in General Condition B111.A(2). However, according to the Report received by the Bureau on February 28, 2012, Unit 1 had been operating since August 2008, as authorized by Notice of Intent 3807. Since Unit 1 was already in operation when Permit 3807-M1 was issued on August 15, 2011, the testing timeframes required by Permit 3807-M1, General Condition B111 were not practical for this unit. The Bureau determined that the appropriate deadline for conducting an

initial compliance test for Unit 1 was February 11, 2012, which is no later than 180 days after Permit 3807-M1 was issued. According to Report-1 received by the Bureau on June 15, 2012, the initial compliance test for Unit 1 was conducted on May 15, 2012. Therefore, the initial compliance test for Unit 1 was 94 days late.

14. On October 11, 2012, the Bureau issued to the Respondent Notice of Violation LOR-27659-1201 (“NOV”), alleging violations of the AQCA, the AQCR, and the Permits. The alleged violations were: 1) Failure to Modify Permit Prior to Construction of Unit 3b; 2) Failure to Meet Carbon Monoxide Emission Limit for Unit 3b; 3) Failure to Submit an Initial Excess Emission Report by the End of the Next Regular Business Day After Discovery for Unit 3b; 4) Failure to Submit a Final Excess Emission Report No Later Than Ten Days After the End of an Excess Emission from Unit 3b; and 5) Failure to Conduct a Compliance Test for Unit 1 No Later than 180 days after Issuance of Permit 3807-M1.

15. 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.

16. On November 9, 2012, the Bureau received the CAV from the Respondent. The CAV was determined to be satisfactory by the Bureau on November 28, 2012.

17. On May 17, 2013, the Bureau issued to the Respondent a proposal of a civil penalty for the alleged violations at the Facility.

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

II. COMPROMISE AND SETTLEMENT OF NOTICE OF VIOLATIONS

A. GENERAL

19. 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 NOV.

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

B. CIVIL PENALTY

21. 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 the Respondent shall pay a civil penalty of \$35,000.00 to the State of New Mexico within 30 calendar days after the effective date of this Final Order.

22. 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

23. If the Respondent fails to make timely and complete payment of the civil penalty, the 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

24. 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

25. 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

26. 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

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

28. 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 24 and 25 shall not terminate, and shall remain in effect as an agreement between the Parties.

E. INTEGRATION

29. 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

30. 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

31. 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.

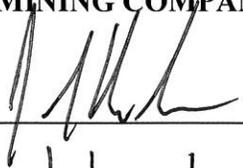
**ENVIRONMENTAL PROTECTION DIVISION
NEW MEXICO ENVIRONMENT DEPARTMENT**

By: 
MICHAEL VONDERHEIDE
DIVISION DIRECTOR

Date: 7/17/13

LORDSBURG MINING COMPANY

By: _____



Date: _____

07/11/13

Print Name: _____

John L. White

Print Title: _____

Vice President.

STIPULATED FINAL COMPLIANCE ORDER

This Settlement Agreement and Stipulated Final Compliance Order, agreed to by the Division and the Respondent Lordsburg Mining Company, 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: 7-22-2013