

RECEIVED

Pamela Jones

By Office of the Secretary at 10:19 am, May 06, 2024

STATE OF NEW MEXICO

BEFORE THE SECRETARY OF ENVIRONMENT

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

v.

No. AQB 23-60

AMERDEDEV II, 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 ("Department" or "NMED") and Respondent, Ameredev II, LLC, ("Ameredev") (collectively, the "Parties") to resolve alleged statutory, regulatory, and permit violations by Ameredev. 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 ("Regulations") at Title 20, Chapter 2 New Mexico Administrative Code NMAC ("NMAC"), and Air Quality Permits ("Permits") as identified below.

I. BACKGROUND

A. PARTIES

1. The Division and the Air Quality Bureau ("Bureau") are organizational units of the Department and have been delegated the authority by the Secretary of the Department to issue compliance orders under the AQCA. NMSA 1978, §§ 9-7A-6, 9-7A-7, 9-7A-8, 74-2-12,

and 74-2-12(A) (2006). Pursuant to the NMED Delegation Order of February 19, 2024, the Cabinet Secretary has delegated authority to issue compliance orders to the Compliance and Enforcement Division Director and Air Quality Bureau Chief.

2. Ameredev is a limited liability company doing business in New Mexico at various locations in New Mexico, including the Amen Corner Central Tank Battery (CTB), Azalea CTB, Firethorn CTB, Nandina CTB, and Red Bud CTB (collectively, the “Facilities”). Ameredev owns and operates the Facilities, located approximately four (4) to eight (8) miles west and southwest of Bennett and Jal in Lea County, New Mexico. At all times relevant to this Final Order, Ameredev owned and operated the Facilities.

B. HISTORY

3. During all relevant times, the Amen Corner CTB was authorized to operate under General Construction Permit-6 (GCP-6), Registration # 7835, issued May 31, 2018.

4. During all relevant times, the Azalea CTB was authorized to operate under GCP-6, Registration #7601, issued January 10, 2018, and subsequently General Construction Permit – Oil and Gas (GCP-O&G), Registration #7601M1, issued October 3, 2019.

5. During all relevant times, the Firethorn CTB was authorized to operate under GCP-6, Registration #7836, issued May 31, 2018, and subsequently GCP-O&G, Registration #7836M1, issued October 2, 2019.

6. During all relevant times, the Nandina CTB was authorized to operate under GCP-O&G, Registration #8189, issued February 28, 2019.

7. During all relevant times, the Red Bud CTB was authorized to operate under GCP-6, Registration #7839, issued May 31, 2018, and subsequently GCP-O&G, Registration # 7839M1, issued October 3, 2019.

8. In response to citizen complaints received on August 12, 2019, and September 9, 2019, the Air Quality Bureau conducted inspections of the Facilities on December 30-31, 2019; and requested and received records from Ameredev on January 2, 7, and 17, 2020 and on February 24, 2020. From the inspection and Ameredev records, the Department produced an inspection report and issued three Post-Inspection Notifications to Ameredev.

9. On October 7, 2019, Ameredev submitted a disclosure of potential violations to the Bureau. On January 20, 2020, and January 28, 2020, after completing a third-party audit of its permitted facilities, Ameredev submitted additional disclosures of potential violations to the Bureau (collectively, the "Disclosures").

10. On August 17, 2022, the Bureau issued Notice of Violation ("NOV") number AMDV-Multi-2001, alleging air quality violations for: 1) failure to construct or modify and operate five Facilities in accordance with representations in and as specified in the current Application or Registration forms pursuant to GCP-6, General Condition B101.A and to GCP-O&G, Specific Condition A100; 2) failure to obtain a regular, individual construction permit for each Facility from the Department before modifying and operating five Facilities above GCP thresholds pursuant to GCP-6, General Condition C101.D(1) and GCP-O&G, General Condition C101.C(1); 3) failure to operate and control tank emissions with the vapor recovery unit (VRU) as represented in the GCP-O&G #8189 for the Nandina CTB pursuant to GCP-O&G, Specific Condition A209.A; 4) failure to complete and/or record inspections of the Azalea CTB VRUs and associated piping from the controlled units pursuant to GCP-O&G, Specific Condition A209.A; 5) failure to perform monthly VRU inspections as of January 7, 2020, used to control air emissions from the Amen Corner CTB vapor recovery towers (VRTs) pursuant to GCP-6, Specific Condition A107.A; 6) failure to limit each of the Facilities' pound per hour and ton per year emission rates

to the facility-specific emission limits listed in each certified and approved Application and Registration form pursuant to GCP-6, Specific Condition A100.D and GCP-O&G, Specific Condition A106.C; 7) failure to comply with operational requirements and representations made in permit Application and Registration forms for each facility flare, FL-1, pursuant to GCP-6, Specific Condition A108.A and GCP-O&G, Specific Condition A207.B; and 8) failure to submit notifications of the anticipated dates of initial startup not less than 30 days prior to the date, pursuant to GCP-6 and GCP-O&G, General Condition B110.B(1).

11. On September 2, 2022, Ameredev submitted a response to the NOV that responded to the alleged violations, asserted defenses, and provided other information related to each alleged violation.

12. On June 29, 2023, the Division issued an Administrative Compliance Order (ACO) for the eight (8) violations alleged in the August 2022 NOV. The ACO required Ameredev to cease and desist excess emissions at all Ameredev facilities located in New Mexico, submit applications for individual construction permits to replace the GCPs, conduct 3rd party audits of all Ameredev facilities not listed in the NOV, propose mitigation projects to offset excess pollution, pay a civil penalty of \$40,336,818.00, and pay administrative compliance costs of \$412,960.00.

13. On July 28, 2023, Ameredev responded to the ACO with a Request for Hearing and Answer to the Environmental Protection Division of the NMED, in which Ameredev responded to each of the alleged violations and asserted defenses.

II. COMPROMISE AND SETTLEMENT

A. GENERAL

14. Following good faith settlement negotiations to resolve this matter without further

costly litigation, the Parties agree to a complete settlement of all the Department's claims for violations known by the Department of the following provisions of law at Ameredev's New Mexico facilities through the Effective Date: 20.2.5 NMAC, 20.2.7 NMAC, 20.2.38 NMAC, 20.2.50 NMAC, 20.2.61 NMAC, 20.2.70 NMAC, 20.2.71 NMAC, 20.2.72 NMAC, 20.2.73 NMAC, 20.2.74 NMAC, 20.2.75 NMAC, 20.2.77 NMAC, 20.2.78 NMAC, 20.2.79 NMAC, and applicable statutory and permit requirements, and consent to the terms of this Final Order. By agreeing to this settlement, Ameredev does not admit any of the potential violations subject to this Final Order or the Department's authority to require the actions specified in the Compliance Order.

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

B. CORRECTIVE ACTIONS

16. Ameredev shall hire an independent, third-party contractor to complete a compliance audit of all New Mexico facilities owned and/or operated by Ameredev as of the Effective Date that are under the Department's jurisdiction.

17. The Bureau shall approve the contractor selected by Ameredev for this purpose.

18. The contractor shall have experience in the oil and gas industry, have not completed any work for Ameredev in the past five (5) years and shall certify that no other work will be performed for Ameredev facilities in the three (3) years following the audit.

19. The audit shall start within 60 days of the full execution of this agreement, shall be completed within nine (9) months of the Effective Date, and a final, certified report submitted to the Bureau within ten (10) months of the Effective date.

20. Ameredev facilities subject to the third-party audit shall minimally include all tank batteries, all gas processing facilities, all compressor stations, all power generating stations, all water treatment facilities, all well sites, and all associated gathering lines and piping.

21. The third-party audit shall include the following for each of the Ameredev facilities audited:

- a. Facility name, location, and any current Bureau notices of intent (NOI) or permit numbers.
- b. A current list of and status of all wells sending produced oil, associated gas, and other hydrocarbons to each facility.
- c. A list of all stationary equipment, regardless of exemption status, that are sources of regulated air pollutants including unit number, description, make, model, serial number, capacity, construction and manufacture dates, and dates of initial startup.
- d. For all equipment, the regulatory citations of all applicable emissions standards, notifications, records, and reporting required in 40 CFR § 60 and 40 CFR § 63.
- e. A list and information of all control equipment, including capture efficiency, control efficiency, make, model, maintenance requirements and other processes to which emissions from regulated sources are routed to or controlled by.
- f. The calculations of the potential emission rate (PER), as defined at 20.2.72.7(Y) NMAC, of each emissions source and of each facility.

22. Beginning with the first full calendar month after the Effective Date, Ameredev shall calculate and submit by the 15th of each month, reports of actual pph and tpy emission rates for the prior calendar month from each emissions unit at each Ameredev facility operating in New Mexico under a General Construction Permit or NOI. Calculations shall be submitted in sortable and editable Excel spreadsheets and in PDF. Reports shall be submitted for two years from the Effective Date.

23. Within 30 days of the Effective Date, Ameredev shall propose, subject to NMED

approval, a mitigation project in the form of conducting weekly OGI inspections for each facility operating in New Mexico under a GCP-O&G for 2 years or implementing an advanced leak and repair monitoring technology as defined in 19.15.27 NMAC. Costs of such project shall not be creditable toward the assessed civil penalties and shall be borne solely by Ameredev.

24. Within 30 days of the Effective Date, Ameredev shall remove heaters, tanks VRUs, and VRTs at the Azalea CTB and submit the appropriate permit application or registration to amend the permit.

25. If Ameredev fails to complete the above corrective actions in the time allotted, and unless the Parties agree to extend the time allotted, Ameredev shall pay a stipulated penalty of \$2,000 per day for each day thereafter until the date the above corrective actions are completed.

C. CIVIL PENALTY AND COMPLIANCE COSTS

26. In compromise and settlement of the Department's claims for violations as set forth in Paragraph 14, and upon consideration of the seriousness of the alleged violations, and Ameredev's good faith efforts to comply, the Parties agree that Ameredev shall pay a lump sum amount of **\$24,500,000.00**, (**\$24,087,040.00** for assessed civil penalties and **\$412,960.000** for assessed administrative compliance costs), in a single cash payment to the State of New Mexico within 30 calendar days after the effective date of this Final Order.

27. Payment of the civil penalty shall be made to the State of New Mexico by wire transfer ("ACH deposit"). If, due to unforeseen hardship, payment cannot be made by ACH deposit, payment shall be made by certified or corporate check payable to the "State of New Mexico General Fund." On the date that delivery of funds is initiated, Ameredev shall notify the Air Quality Bureau Enforcement Manager by email at AQB.Settlement.Notification@state.nm.us and notify the Enforcement Specialist at cember.hardison@env.nm.gov.

Certified or corporate checks must be sent to the following:

New Mexico Environment Department
Air Quality Bureau
c/o Compliance and Enforcement Manager
525 Camino de los Marquez, Suite I
Santa Fe, New Mexico 87505

ACH deposits shall be made to Wells Fargo Bank as follows:

Wells Fargo Bank, N.A.
100 W. Washington Street, Floor20
Phoenix, AZ 85003
Routing Transit Number: 121000248
Deposit Account Number: 4123107799
Descriptor: NMED-AQB-C&E

28. If Ameredev fails to make timely and complete payment of the civil penalty as indicated above, and unless the Parties agree to extend the time for payment of the civil penalty, Ameredev shall pay a stipulated penalty of \$2,000.00 per day for each day a payment is not timely or complete.

D. STIPULATED PENALTY

29. Within 30 days following receipt of a written demand by the Department, Ameredev shall make payment of any stipulated penalty that is due and payable under this Final Order. Ameredev shall make a cash payment of any stipulated penalty in the same manner as the civil penalty payment, as instructed above. Ameredev shall not contest or dispute in any way the amount of the stipulated penalty stated above in the event that the Department brings an action against Ameredev to recover stipulated penalties as specified above, provided that Ameredev reserves the right to contest the basis for assessment of a stipulated penalty.

III. OTHER TERMS AND CONDITIONS

A. COMPLIANCE WITH OTHER LAWS AND REGULATIONS

30. Nothing in this Final Order shall relieve Ameredev of its obligation to comply with

all applicable federal, state, and local laws and regulations.

B. RESERVATION OF RIGHTS AND DEFENSES

31. This Final Order shall not be construed to prohibit or limit the Department in any way from requiring Ameredev to comply with any applicable state or federal requirement not resolved herein. This Final Order shall not be construed to prohibit or limit the Department in any way from seeking any relief authorized by the AQCA for violation of any state or federal requirement applicable to Ameredev not resolved herein. This Final Order shall not be construed to prohibit or limit Ameredev in any way from raising any defense to a Department action seeking such relief.

C. MUTUAL RELEASE

32. The Parties mutually release each other from all claims that each Party raised or could have raised against the other regarding the Department's claims for violations as set forth in Paragraph 14 of this Agreement through the Effective Date. Such release applies only to civil liability.

D. WAIVER OF STATE LIABILITY

33. Ameredev 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 Ameredev's performance of any obligation under this Final Order.

E. EFFECTIVE DATE AND TERMINATION DATES

34. This Final Order and any modifications thereto shall be effective when the Final Order or modification has been executed by both Parties.

35. Except as otherwise provided in this paragraph, the terms of this Final Order shall

terminate when Ameredev has fulfilled the requirements of this Final Order. The reservations of rights and defenses and the mutual release stated above shall survive the execution and performance of this Final Order and shall remain in full force and effect as an agreement between the Parties.

F. INTEGRATION

36. 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.

G. BINDING EFFECT

37. This Final Order shall be binding on the Parties and their officers, directors, employees, agents, subsidiaries, successors, assigns, trustees, or receivers.

H. AUTHORITY OF SIGNATORIES

38. The persons executing this Final Order on behalf of Ameredev and the Department, respectively, represent that they have the authority to execute this Final Order on behalf of Ameredev and the Department.

I. SIGNATURE AND COUNTERPARTS

39. This Final Order is intended to be executed on separate pages. Faxed, emailed, electronic, or digital signatures shall constitute original signatures binding on the signing party.

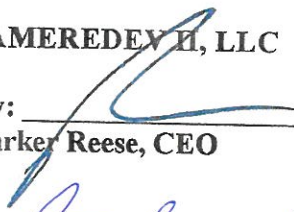
40. This Final Order may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

NEW MEXICO ENVIRONMENT DEPARTMENT

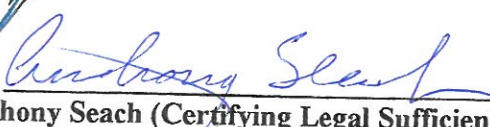
DocuSigned by:
Michelle Miano
77308F7C12E74CC...
By: _____ **Date:** 4/26/2024
Michelle Miano, Director
Environmental Protection Division

DocuSigned by:
Christopher Vigil
BEA771A476434FA
By: _____ **Date:** 4/26/2024
Chris Vigil (Certifying Legal Sufficiency)

AMEREDEV II, LLC

By: 
Parker Reese, CEO

Date: 4/26/2024

By: 
Anthony Seach (Certifying Legal Sufficiency)

Date: 4/26/2024

STIPULATED FINAL COMPLIANCE ORDER

This Settlement Agreement and Stipulated Final Compliance Order, agreed to by the Division and Ameredev II, LLC, is hereby incorporated herein and APPROVED AS A FINAL COMPLIANCE ORDER issued pursuant to NMSA 1978, §74-2-12.

DocuSigned by:

James Kenney

55675B6F3B62408...

Date: _____

4/26/2024

**James C. Kenney, Cabinet Secretary
New Mexico Environment
Department**

Certificate of Service

I hereby certify that on May 6, 2024, a copy of the foregoing was sent via electronic mail to the persons listed below. A hard copy will be mailed upon request.

Via Email:

Louis W. Rose
Kari Olson
lrose@montand.com
kolson@montand.com

Chris Vigil
Assistant General Counsel
Christopherj.vigil@env.nm.gov

Felicia Orth
Hearing Officer
Felicia.l.orth@gmail.com

Pamela Jones

Pamela Jones
Paralegal
Office of Public Facilitation
Pamela.jones@env.nm.gov