

FILED

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In the Matter of EnCore Permian Operating, LLC
Docket No. 06-2021-3365

REGIONAL HEARING CLERK
EPA REGION VI

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:

EnCore Permian Operating, LLC
Midland, Texas

RESPONDENT

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DOCKET NO. 06-2021-3365

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is an administrative penalty assessment proceeding brought under Section 113(d) of the Clean Air Act (the “CAA”), 42 U.S.C. § 7413(d), and Sections 22.13, 22.18, and 22.34 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permit (“Consolidated Rules”), as codified at 40 C.F.R. Part 22.

2. Complainant is the United States Environmental Protection Agency, Region 6 (“EPA”). On EPA’s behalf, the Director of the Enforcement and Compliance Assurance Division, EPA Region 6, has been delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

3. Respondent EnCore Permian Operating, LLC (“Respondent”) is a limited liability company doing business in the State of Texas. Respondent is a “person” as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

4. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this Consent Agreement along with the corresponding Final Order hereinafter known together as the “CAFO” without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this CAFO.

B. JURISDICTION

5. This CAFO is entered into under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules, 40 C.F.R. Part 22. The alleged violations in this CAFO are pursuant to Section 113(a)(1)(B) of the CAA, 42 U.S.C. § 7413(a)(1)(B).

6. In satisfaction of the notice requirements of Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1), on July 23, 2021, EPA issued to Respondent a Notice of Violation and Opportunity to Confer (the “NOVOC”) and provided a copy of the NOVOC to the State of Texas. In the NOVOC, EPA provided notice to both Respondent and the State of Texas that EPA found Respondent committed the alleged violations of the Texas State Implementation Plan (“SIP”) described in Section E of this CAFO and provided Respondent an opportunity to confer with EPA.

7. The Regional Judicial Officer is authorized to ratify this CAFO which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b).

8. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

C. GOVERNING LAW

9. The CAA is designed “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population.” 42 U.S.C. § 7401(b)(1).

10. EPA is authorized by Section 113 of the CAA, 42 U.S.C. § 7413, to take action to ensure that air pollution sources comply with all federally applicable air pollution control requirements. These include requirements promulgated by EPA and those contained in SIPs.

11. Section 109(a) of the CAA, 42 U.S.C. § 7409(a), requires the Administrator of EPA to publish national ambient air quality standards (“NAAQS”) for certain air pollutants. Section 109(b) of the CAA, 42 U.S.C. § 7409(b), provides that the NAAQS establish primary air quality standards to protect public health and secondary standards to protect public welfare.

12. To achieve the objectives of the NAAQS and the CAA, Section 110(a) of the CAA, 42 U.S.C. § 7410(a), requires each State to adopt a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS, and to submit it to the Administrator of EPA for approval.

13. The State of Texas has adopted a SIP that has been approved by EPA. *See* 40 C.F.R Part 52, Subpart SS. The Texas SIP includes authorization for Texas to establish a new source review permitting program, which can be found at 30 Tex. Admin. Code Chapter 116, Subchapter B; a permit by rule (“PBR”) program, which can be found at 30 Tex. Admin. Code Chapter 106; and a program for standard permits, which can be found at 30 Tex. Admin. Code Chapter 116, Subchapter F. *See* 40 C.F.R. § 52.2270(c).

14. Subchapter B of Chapter 116 of the Texas Administrative Code regulates permitting for new facilities or modification of existing facilities prior to beginning work on

those facilities. The provisions of 30 Tex. Admin. Code § 116.110(a) provide that “any person who plans to construct any new facility or to engage in the modification of any existing facility which may emit air contaminants into the air of this state shall either” obtain a permit, satisfy the conditions for a standard permit, satisfy the conditions for a flexible permit, satisfy the conditions for facilities permitted by rule, or satisfy the criteria for a de minimis facility or source as articulated in 30 Tex. Admin. Code §§ 116.110(a)(1)-(5).

15. Subchapter O of Chapter 106 of the Texas Administrative Code regulates permitting by rule for oil and gas facilities that produce more than a de minimis level of emissions. *See* 30 Tex. Admin. Code §§ 106.4(a) and 106.351-59. Additional regulations applicable to such facilities are also located in Subchapters A and V of Chapter 106 of the Texas Administrative Code. The permit by rule program includes the following requirements relevant to this CAFO:

a. 30 Tex. Admin. Code § 106.352(l) applies “to new and modified facilities” and provides that “[a]ny oil or gas production facility, carbon dioxide separation facility, or oil or gas pipeline facility consisting of one or more tanks, separators, dehydration units, free water knockouts, gunbarrels, heater treaters, natural gas liquid recovery units, or gas sweetening and other gas conditioning facilities . . . are permitted by rule” for “those facilities named which handle gases and liquids associated with the production, conditioning, processing, and pipeline transfer of fluids found in geologic formations beneath the earth’s surface.”

b. “Before operation begins, facilities handling sour gas shall be registered with the executive director in Austin using Form PI-7 along with supporting documentation that all requirements of this subsection will be met. . . . If the facilities cannot meet this subsection, a permit under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New

Construction or Modification) is required prior to continuing operation of the facilities.” 30 Tex. Admin Code § 106.352(l)(5).

16. Non-rule Standard Permits must comply with applicable requirements under Subchapter F of Chapter 116 of the Texas Administrative Code, which regulates standard permits for air pollution control projects that reduce or maintain authorized emission rates for existing facilities. *See* 30 Tex. Admin. Code § 116.601 – 116.615. Pursuant to 30 Tex. Admin. Code § 116.601(a)(2), the State of Texas issued the Air Quality Standard Permit for Oil and Gas Handling and Production Facilities (“TCEQ Non-Rule Standard Permit for Oil and Gas Facilities”), which includes the following requirements relevant to this CAFO:

a. “All facilities which have the potential to emit air contaminants must be maintained in good working order and operated properly during facility operations.” TCEQ Non-Rule Standard Permit for Oil and Gas Facilities (e)(1).

b. All process equipment and storage facilities individually must meet the requirements of BACT listed in Table 10, and any combination of process equipment and storage facilities with an uncontrolled potential to emit equal to or greater than 25 tons per year of VOC are required to capture and route emissions to a control device with a minimum design control efficiency of at least 95%. TCEQ Non-Rule Standard Permit for Oil and Gas Facilities (e)(5) and (m) Table 10.

c. All seals and gaskets in VOC or H₂S service must be “installed, checked, and properly maintained to prevent leaking” and tank hatches must “remain closed...except for sampling, gauging, loading, unloading, or planned maintenance activities.” TCEQ Non-Rule Standard Permit for Oil and Gas Facilities (e)(6)(A) and (D).

d. “Flares must be lit at all times when gas streams are present” and pilot flame monitoring must meet the specifications in 40 C.F.R. § 60.18. TCEQ Non-Rule Standard Permit for Oil and Gas Facilities (e)(11)(A) and (E).

D. FINDINGS OF FACT AND CONCLUSIONS OF LAW

17. At all times relevant to this CAFO, Respondent has owned and/or operated the Colt 45 State Unit 1601 AH and Rabbit Ears State 0508 A1H Facilities (the “Facilities”), which are oil and natural gas production facilities located in the Texas Permian Basin.

18. Respondent is the owner and/or operator of the Facilities within the meaning of 40 C.F.R. § 51.100(f).

19. At all times relevant to this proceeding, Respondent owned and/or operated units that emit Volatile Organic Compounds (“VOCs”) at the Facilities, which produce oil and gas.

20. The Colt 45 State Unit 1601 AH Facility is subject to the State of Texas’s Permit by Rule program for oil and gas facilities under Subchapter O of Chapter 106 of the Texas Administrative Code.

21. The Rabbit Ears State 0508 A1H Facility is subject to the State of Texas’s Non-Rule Standard Permits program authorized under Subchapter F of Chapter 116 of the Texas Administrative Code.

22. The Texas Commission on Environmental Quality (“TCEQ”) issued an air permit to Respondent for the Colt 45 State Unit 1601 AH Facility on February 8, 2021 under the SIP-approved Permit by Rule Program (Registration Number 164072). The TCEQ issued an air permit to PDC Permian, Inc. for the Rabbit Ears State 0508 A1H Facility on November 5, 2018 under the SIP-approved Non-Rule Standard Permit program (Registration Number 152978). The permit covers various emission units at the Rabbit Ears State 0508 A1H Facility, including

process equipment, tanks, and flares. Respondent obtained ownership and operatorship of the Rabbit Ears State 0508 A1H Facility in July 2019. Respondent notified the TCEQ of the change in ownership of the Rabbit Ears State 0508 A1H Facility on January 20, 2021.

23. Respondent is required to operate in compliance with certain provisions of the Texas SIP. Respondent is required by the SIP-approved Permits by Rule program to register the Colt 45 State Unit 1601 AH before operation begins if the facility is handling sour gas. Respondent is required by the SIP-approved Non-Rule Standard Permit Program to control the emission of waste gas streams from the Rabbit Ears State 0508 A1H Facility.

24. During August 25, 2020, through September 12, 2020, EPA contracted for helicopter flyovers of the Permian Basin area to assess emissions from energy extraction facilities using Optical Gas Imaging (“OGI”) technology. Flyovers of the Facilities at issue in this CAFO were conducted on September 2, 2020.

25. On December 14, 2020, EPA sent Respondent OGI video captures showing hydrocarbon emissions from process equipment at energy extraction facilities, including the Facilities at issue in this CAFO, that EPA believed to be owned or operated by Respondent. EPA asked Respondent to verify ownership, provide current site-specific information, and take any necessary corrective action to address unauthorized hydrocarbon emissions at each facility. EPA considered information provided by Respondent to determine whether violations occurred at the facilities identified.

26. On February 11, 2021, Respondent provided information to EPA that it had taken certain corrective action measures at the Facilities to address the compliance issues observed during the flyovers. Specifically, Respondent provided the following:

a. On February 8, 2021, Respondent submitted an application to TCEQ to register the Colt 45 State Unit 1601 AH Facility under TCEQ's SIP-approved Permits by Rule Program for oil and gas facilities under Subchapter O of the Texas Administrative Code. The application demonstrated that the Colt 45 State Unit 1601 AH Facility has been handling sour gas prior to Respondent submitting the Permit by Rule application.

b. On February 8, 2021, TCEQ issued Respondent Permit by Rule Registration Number 164072 for the Colt 45 State Unit 1601 AH Facility under TCEQ's Permit by Rule Program.

c. On February 11, 2021, Respondent submitted information stating the well flowing to the Rabbit Ears State 0508 A1H Facility was shut-in on September 10, 2020; and the Rabbit Ears State 0508 A1H Facility has been inactive since September 10, 2020.

27. On July 23, 2021, EPA sent Respondent and TCEQ the NOVOC, notifying them of alleged violations of the Texas SIP.

28. On August 11, 2021, and on various other occasions, EPA conferred with Respondent regarding the violations alleged herein and provided an opportunity for Respondent to submit additional information or materials.

E. ALLEGED VIOLATIONS

29. EPA has conducted a comprehensive review of information gathered from the helicopter flyovers conducted August 25, 2020, through September 12, 2020, and from Respondent. Based on this review, EPA has made the following findings:

a. Respondent violated 30 Tex. Admin. Code § 116.110(a) by failing to obtain a permit to construct the Colt 45 State Unit 1601 AH Facility, which emits air contaminants into the air of the state of Texas;

b. Respondent violated 30 Tex. Admin. Code § 106.352(l)(5) by failing to timely register the Colt 45 State Unit 1601 AH Facility under TCEQ's Permit by Rule for Oil and Gas Handling and Production Facilities for handling sour gas, prior to registering the Colt 45 State Unit 1601 AH Facility on February 8, 2021;

c. Respondent violated TCEQ Non-Rule Standard Permit for Oil and Gas Facilities (e)(1) by failing to ensure that the Rabbit Ears State 0508 A1H Facility, which has the potential to emit air contaminants, is maintained in good working order and is operating properly during facility operations;

d. Respondent violated TCEQ Non-Rule Standard Permit for Oil and Gas Facilities (e)(5) by failing to ensure that, for the Rabbit Ears State 0508 A1H Facility, emissions from tanks are captured and routed to a control device with a minimum design control efficiency as specified in Table 10;

e. Respondent violated TCEQ Non-Rule Standard Permit for Oil and Gas Facilities (e)(6) for the Rabbit Ears State 0508 A1H Facility by not properly maintaining seals and gaskets to prevent leaking and not ensuring that tank hatches remain closed except during sampling, gauging, loading, unloading, or planned maintenance activities; and

f. Respondent violated TCEQ Non-Rule Standard Permit for Oil and Gas Facilities (e)(11)(A) and (E) for the Rabbit Ears State 0508 A1H Facility by failing to ensure that the flares are lit at all times when waste gas streams are present and that flare tips are monitored per the specifications in 40 C.F.R. § 60.18.

F. CIVIL PENALTY AND CONDITIONS OF SETTLEMENT

a. General

30. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2),
- Respondent:
- a. admits that EPA has jurisdiction over the subject matter alleged in this CAFO;
 - b. neither admits nor denies the specific factual allegations contained in the CAFO;
 - c. consents to the assessment of a civil penalty, as stated below;
 - d. consents to the issuance of any specified compliance or corrective action order;
 - e. consents to the conditions specified in this CAFO;
 - f. consents to any stated Permit Action¹;
 - g. waives any right to contest the alleged violations set forth in Section E of this CAFO; and
 - h. waives its rights to appeal the Final Order included in this CAFO.
31. For the purpose of this proceeding, Respondent:
- a. agrees that this CAFO states a claim upon which relief may be granted against Respondent;
 - b. acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement action;

¹ Although 40 C.F.R. § 22.18(b)(2) requires each item in this list to be stated in this CAFO, subparagraph (f) is not applicable to this particular case.

c. waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO, including any right of judicial review under Section 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1);

d. consents to personal jurisdiction in any action to enforce this CAFO in the United States District Court for the Western District of Texas;

e. waives any right it may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel compliance with this CAFO and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action; and

f. agrees that in any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, or other relief relating to these Facilities, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim splitting, or other defenses based on any contention that the claims raised by the Complainant or the United States were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to this CAFO.

b. Penalty Assessment and Collection

32. Upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the size of the business, the economic impact of the penalty on the business, Respondent's full compliance history and good faith efforts to comply, the duration of the violations, payment by the violator of any penalties previously assessed for the same violation, the economic benefit of

noncompliance, the seriousness of the violation, and other factors as justice may require, EPA has assessed a civil penalty in the amount of \$36,805.88 (the "EPA Penalty"). The EPA Penalty has been determined in accordance with Section 113 of the CAA, 42, U.S.C. § 7413, and at no time exceeded EPA's statutory authority.

33. Respondent agrees to:

- a. pay the EPA Penalty within 30 calendar days of the Effective Date of this CAFO; and
- b. pay the EPA Penalty by cashier's check, certified check, or wire transfer made payable to "Treasurer, United States of America, EPA – Region 6." Payment shall be remitted in one of five (5) ways: (1) regular U.S. Postal Service mail including certified mail; (2) overnight mail; (3) wire transfer; (4) Automated Clearinghouse for receiving U.S. currency; or (5) Online Payment. For regular U.S. Postal Service mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, payment should be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service, *e.g.* FedEx), payment should be remitted to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

Contact: Natalie Pearson
(314) 418-4087

For wire transfer, payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

For Automated Clearinghouse (also known as REX or remittance express):

U.S. Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact – Jesse White (301) 887-6548

For Online Payment:

<https://www.pay.gov/paygov/>
Enter sfo 1.1 in search field
Open form and complete required fields.

PLEASE NOTE: The docket number 06-2021-3365 should be clearly typed on the check to ensure proper credit. The payment shall also be accompanied by a transmittal letter that shall reference Respondent's name and address, the case name, and docket number 06-2021-3365. Respondent's adherence to this request will ensure proper credit is given when penalties are received for Region 6. Respondent shall also email a simultaneous notice of such payment, including a copy of the money order, or check, and the transmittal letter to the following email addresses:

Jamie Salabogi
U.S. EPA Region 6
Salabogi.Jamie@epa.gov

And

Region 6 Hearing Clerk
U.S. EPA Region 6
Vaughn.Lorena@epa.gov

34. Respondent agrees to pay the following on any overdue EPA Penalty:

- a. Interest. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), any unpaid portion of a civil penalty must bear interest at the rates established pursuant to 26 U.S.C. § 6621(a)(2).
- b. Nonpayment of Penalty. On any portion of a civil penalty more than ninety (90) calendar days delinquent, Respondent must pay a nonpayment penalty, pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), which shall accrue from the date the penalty payment became delinquent, and which shall be in addition to the interest which accrues under Subparagraph “a.” of this Paragraph.

35. Respondent shall pay a charge to cover the cost of processing and handling any delinquent penalty claim, pursuant to 42 U.S.C. § 7413(d)(5), including, but not limited to, attorneys’ fees incurred by the United States for collection proceedings.

36. If Respondent fails to timely pay any portion of the penalty assessed under this CAFO, EPA may:

- a. refer the debt to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court (in which the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review) to secure payment of the debt, which may include the original penalty, enforcement and collection expenses, nonpayment penalty and interest, 42 U.S.C. § 7413(d)(5) and 40 C.F.R. §§ 13.13, 13.14, and 13.33;

b. collect the above-referenced debt by administrative offset (*i.e.*, the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; and

c. suspend or revoke Respondent's licenses or other privileges or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.

c. Conditions of Settlement

37. As Conditions of Settlement, Respondent agrees to the following:

a. Within thirty (30) days of the Effective Date of this CAFO, Respondent shall inspect and evaluate all oil and water storage tanks and associated hatches, valves, gaskets, and pressure relief devices at the Facilities to ensure there are no unauthorized emissions.

b. Within thirty (30) days of the Effective Date of this CAFO, Respondent shall inspect any and all flares at the Facilities to ensure that flares used for the control of emissions from production are properly operated and continuously lit during all facility operating scenarios where gases are routed to the flares.

c. Within ninety (90) days of the Effective Date of this CAFO, Respondent shall review its operation and maintenance procedures for inspecting process equipment at each of the Facilities, and update the procedures, as necessary, to ensure that problems are timely identified and addressed to minimize emissions from process equipment. If Respondent does not have such procedures, it shall create such procedures. Respondent shall ensure that these procedures include, at a minimum, the following:

i. the use of a standard site inspection checklist during regular inspections that requires evaluation of the following: well pad, flares, separators, heater treaters, tank batteries, compressors, fuel skid, well heads, spill containment, solid waste and chemical storage, and miscellaneous facility-wide operations;

ii. a quality control program that ensures the quality, efficiency, and performance of facility maintenance activities; and

iii. appropriate and regular training for personnel implementing the operation and maintenance procedures.

d. Within ninety (90) days from the review discussed in sub-paragraph “c.” above, Respondent shall send a letter (the “Letter Report”) to EPA detailing:

i. the equipment that was inspected under sub-paragraph “a.” and “b.” above at each facility, the method of inspection, and any actions taken, or improvements made to ensure or improve compliance; and

ii. any updates that were made to the operation and maintenance procedures for the Facilities to ensure that problems are timely identified and addressed to minimize emissions from process equipment.

The Letter Report shall be emailed to:

Jamie Salabogi
U.S. EPA Region 6
Salabogi.Jamie@epa.gov

38. Upon receipt of the Letter Report, EPA shall have ninety (90) days to respond with questions or disagreement that the Conditions of Settlement have been satisfied.

39. Respondent agrees that the time period from the Effective Date of this CAFO until all the conditions specified in Paragraph 37 of this CAFO are completed (the “Tolling

Period”) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by Complainant on any claims set forth in Section E of this CAFO (the “Tolled Claims”). Respondent shall not assert, plead, or raise in any fashion, whether by answer, motion or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolled Claims.

40. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors and assigns. From the Effective Date of this Agreement until the end of the Tolling Period, as set out in Paragraph 39 of this CAFO, Respondent must give written notice and a copy of this CAFO to any successors in interest prior to transfer of ownership or control of any portion or interest in the Facilities. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to EPA. In the event of any such transfer, assignment or delegation, Respondent shall continue to be bound by the obligations or liabilities of this CAFO until EPA has provided written approval.

41. By signing this CAFO, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information. *See* 40 C.F.R. Part 2, Subpart B (Confidentiality of Business Information).

42. By signing this CAFO, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has legal capacity to bind the party he or she represents to this CAFO.

43. By signing this CAFO, both parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.

44. By signing this CAFO, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and is, truthful, accurate, and complete for each submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

45. EPA and Respondent agree to the use of electronic signatures for this matter. EPA and Respondent further agree to electronic service of this CAFO by email to the following addresses:

To EPA: Lee.Jamie@epa.gov

To Respondent: j.stretcher@encorepermian.com

46. Respondent specifically waives its right to seek reimbursement of its costs and attorneys' fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17. Except as qualified by Paragraph 35 of this CAFO, each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

G. EFFECT OF CONSENT AGREEMENT AND FINAL ORDER

47. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.

48. If Respondent fails to timely and satisfactorily complete every condition stated in Paragraph 37 of this CAFO (including payment of any stipulated penalties owed), then Complainant may compel Respondent to perform the conditions in Paragraph 37, seek civil

penalties that accrue from the Effective Date of this CAFO until compliance is achieved, and seek other relief in a civil judicial action pursuant to the Clean Air Act, pursuant to contract law, or both.

49. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

50. This CAFO constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.

51. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both parties, and approval of the Regional Judicial Officer.

52. Any violation of the included Final Order may result in a civil judicial action for an injunction or civil penalties of up to \$102,638 per day of violation, or both, as provided in Section 113(b)(2) of the CAA, 42 U.S.C. § 7413(b)(2), as well as criminal sanctions as provided in Section 113(c) of the CAA, 42 U.S.C. § 7413(c). EPA may use any information submitted under this CAFO in an administrative, civil judicial, or criminal action.

53. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the CAA and other federal, state, or local laws or statutes, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state, or local permit.

54. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

55. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2), performance of Paragraph 37 is restitution, remediation, or required to come into compliance with the law.

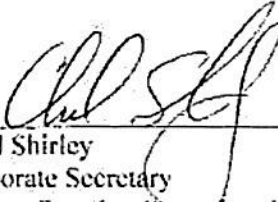
H. EFFECTIVE DATE

56. Respondent and Complainant agree to the issuance of the included Final Order. Upon filing, EPA will transmit a copy of the filed CAFO to Respondent. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer on the date of filing with the Hearing Clerk.

The foregoing Consent Agreement In the Matter of EnCore Permian Operating, LLC. Docket No. 06-2021-3365, is Hereby Stipulated, Agreed, and Approved for Entry.

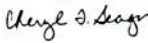
FOR RESPONDENT:

Date: AUGUST 26, 2021



Chad Shirley
Corporate Secretary
EnCore Permian Operating, LLC

FOR COMPLAINANT:



Cheryl T. Seager
Director
Enforcement and
Compliance Assurance Division
U.S. EPA, Region 6

Digitally signed by CHERYL SEAGER
DN: cn=US, o=U.S. Government,
ou=Environmental Protection Agency,
email=CHERYL_SEAGER,
c=US, 1.2.840.10038.1.1.68001003651793
Date: 2021.08.26 15:04:51 -0500

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21 AUG 26 PM 4: 56

REGIONAL HEARING CLERK ENVIRONMENTAL PROTECTION AGENCY
EPA REGION VI UNITED STATES
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:

EnCore Permian Operating, LLC
Midland, Texas

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DOCKET NO. 06-2021-3365

RESPONDENT

FINAL ORDER

Pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

EnCore Permian Operating, LLC is ORDERED to comply with all terms of the Consent Agreement. In accordance with 40 C.F.R. §22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

THOMAS
RUCKI

Digitally signed by THOMAS RUCKI
DN: cn=US, ou=U.S. Government,
ou=Environmental Protection Agency,
o=THOMAS RUCKI,
0.9.2342.19200300.100.1.1-68001003655804
Date: 2021.08.26 16:49:07 -0500

Thomas Rucki
Regional Judicial Officer
U.S. EPA, Region 6

CERTIFICATE OF SERVICE

I hereby certify that, on the date in the electronic signature below, an electronic copy of the foregoing Consent Agreement and Final Order was electronically delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270-2102, and a true and correct copy was delivered to the following individual by the method indicated below:

EMAIL - READ RECEIPT REQUESTED

EnCore Permian Operating, LLC
Attn: John Stretcher
203 W. Wall St., Ste. 1100
Midland, TX 79701
j.stretcher@encorepermian.com

Lee, Jamie

Digitally signed by Lee, Jamie
DN: cn=Lee, Jamie,
email=Lee.Jamie@epa.gov
Date: 2021.08.27 08:48:29
-05'00'

U.S. EPA, Region 6
Dallas, Texas