



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2013 SEP 24 PM 1:24

Docket No. CAA-08-2013-0014

FILED  
EPA REGION VIII  
HEARING CLERK

IN THE MATTER OF: )  
)  
BERRY PETROLEUM COMPANY )  
1999 BROADWAY, SUITE 3700 )  
DENVER, CO 80202 )  
)  
Respondent. )  
)

COMBINED COMPLAINT  
AND CONSENT AGREEMENT

Complainant, United States Environmental Protection Agency, Region 8 (the EPA or Complainant), and Respondent, Berry Petroleum Company, by their undersigned representatives, hereby consent and agree as follows:

I. PRELIMINARY MATTERS

1. This matter is subject to the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation, Termination or Suspension of Permits* (Consolidated Rules), 40 C.F.R. part 22. This Combined Complaint and Consent Agreement (Agreement) contains all terms of the settlement agreed to by the parties.
2. This Agreement is entered into by the Parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. §22.13(b), and executed pursuant to 40 C.F.R. §22.18(b)(2) and (3) of the Consolidated Rules.
3. The United States Department of Justice has determined the EPA's request for authority to commence an administrative enforcement action in this matter is appropriate, as allowed by §113(d)(1) of the Clean Air Act (the Act), 42 U.S.C. §7413(d)(1). Accordingly, the EPA has jurisdiction over this matter pursuant to §113(d)(1)(B) of the Act.
4. Respondent admits the jurisdictional allegations in this Agreement, but neither admits nor denies the specific factual allegations or legal conclusions made by the Complainant herein.
5. Complainant asserts that settlement of this matter is in the public interest, and Complainant and Respondent agree that entry of this Agreement and Final Order without further litigation and without adjudication of any issue of fact or law is the most appropriate means of resolving this matter.

6. This Agreement, upon incorporation into a final order, applies to and is binding upon the EPA and upon Respondent, and Respondent's officers, directors, employees, agents, successors and assigns. Any change in ownership or corporate status of Respondent shall not alter Respondent's responsibilities under this agreement. Respondent may not sell or otherwise transfer any Facility (defined below) unless Respondent shall have obtained a written undertaking from the purchaser or transferee to comply with paragraphs 16 through 23 hereof with respect to any Facility.
7. Respondent Berry Petroleum Company is a Delaware corporation, with its principal place of business located in Colorado, where it is registered and in good standing with the Colorado Secretary of State as a Colorado foreign corporation. Respondent is therefore a "person" as defined in §7602(e) of the Act.
8. The Complainant alleges Respondent violated the Act, specifically requirements contained in 40 C.F.R. part 63, subpart ZZZZ and 40 C.F.R. part 71, with respect to operations at Respondent's Section 22 Compressor Station located at coordinates latitude 40.0306°, and longitude -110.330233° in Duchesne County, UT.
9. The Complainant alleges Respondent violated the Act, specifically requirements contained in 40 C.F.R. part 63, subpart ZZZZ and 40 C.F.R. part 71, with respect to operations at Respondent's Section 23 Compressor Stations located at coordinates latitude 40.02965°, and longitude -110.408717° in Duchesne County, UT.
10. The Complainant alleges, based on information Respondent provided to the EPA in a "Self-Disclosure" letter dated October 25, 2012 and subsequent updates that engines identified in Attachment A were out of compliance<sup>1</sup> with performance test requirements contained in 40 C.F.R. part 60, subpart JJJJ at the time of the Self-Disclosure. Complainant further alleges that, based on information in the Self-Disclosure letter, the facilities identified in Attachment B were out of compliance with the requirement to timely register such facilities with the reviewing authority in accordance with the Federal Minor New Source Review Program in Indian Country (40 C.F.R. §§ 49.151-49.161).
11. The Respondent's Brundage Gas Plant, Section 7, Section 22 and Section 23 Compressor Stations, and the various facilities identified in Attachments A and B, are collectively referred to as the "Facilities", and are all owned and operated by Respondent in the Uinta Basin in Duchesne County, UT.
12. The Complainant acknowledges the Respondent's cooperation in seeking a resolution to this matter, as well as the Respondent's commitment to implementing pollution control measures as a means of resolution.

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<sup>1</sup> Please see Footnote 5 to Attachment A.

13. Although not a part of this agreement and notwithstanding the allegations contained in Paragraphs 8 and 9 above, EPA has determined that Respondent's Engines and Glycol Dehydrators located at the Section 7 Compressor Station, the Section 21 Compressor Station, the Brundage Gas Plant, the Davis Hollow Compressor Station, and Respondent's Glycol Dehydrators located at Respondent's Section 22 Compressor Station and Respondent's Section 23 Compressor Station, are in compliance with 40 C.F.R. Part 63 Subpart HH, 40 C.F.R. Part 63 Subpart ZZZZ, 40 C.F.R Part 70, and 40 C.F.R Part 71, for the time period up to and including the date of this agreement.
14. EPA reserves its right to take any appropriate action against Respondent should EPA determine violations of the rules described in the preceding paragraph occurred at any of the locations described in the preceding paragraph, if EPA comes into possession of information that supports taking such action and the EPA does not currently possess such information as of the date this agreement is finalized.

## **II. TERMS OF SETTLEMENT**

15. Respondent owns and operates the Facilities described in paragraphs 8, 9, 10 and 11, above and which are further described in Attachments A and B.
16. Respondent agrees, within 12 months of the date the Final Order is issued in this matter, to route all emissions from the still vent of the glycol dehydrator at its Section 22 Compressor Station to an installed combustor, designed and operated to achieve at least a 95% reduction of volatile organic compounds (VOC) and hazardous air pollutant (HAP) emissions. Operating and other compliance requirements for the combustor will be established through the air permit outlined in paragraph 19, below.
17. Respondent agrees, within 12 months of the date the Final Order is issued in this matter, to route all emissions from the still vent of the glycol dehydrator at its Section 23 Compressor Station to an installed combustor, designed and operated to achieve at least a 95% reduction of VOC and HAP emissions. Operating and other compliance requirements for the combustor will be established through the air permit outlined in paragraph 19 below.
18. Respondent agrees, within 12 months of the date the Final Order is issued in this matter, to route all emissions from the still vent of the glycol dehydrator at its Section 7 Compressor Station to an installed combustor, designed and operated to achieve at least a 95% reduction of VOC and HAP emissions. Operating and other compliance requirements for the combustor will be established through the air permit outlined in paragraph 19, below.
19. Respondent agrees to voluntarily accept enforceable restrictions on its potential to emit at its Section 7, Section 22 and Section 23 Compressor Stations and, within 6

months of the date the Final Order is issued in this matter, to apply for “synthetic-minor” air permits for its Section 22 and Section 23 Compressor Stations under provisions of the Federal Minor New Source Review Program in Indian Country and for the Section 7 Compressor Station under provisions of the Utah Administrative Code.

20. Respondent agrees, within 12 months of the date the Final Order is issued in this matter, to physically route all emissions from two existing condensate tanks to the combustor installed at its Section 23 Compressor Station per paragraph 17. As an alternative to performing the engineering task described in the preceding sentence, Respondent may elect to implement engineering process changes that result in equivalent emission reductions.
21. Respondent agrees, within 12 months of the date the Final Order is issued in this matter, with respect to its Brundage Gas Plant, to either retrofit the existing rich burn engine with air pollution control(s), or replace such engine with a lean burn engine.
22. Respondent agrees, within 12 months of the date the Final Order is issued in this matter, to conduct a Performance Test on an engine at either its Section 22 Compressor Station or its Section 23 Compressor Station. The Respondent shall provide the agency 30 days’ notice prior to conducting such testing. The performance test will concurrently measure mass emissions of NO<sub>x</sub>, carbon monoxide (CO), VOC and formaldehyde in terms of grams per brake horsepower-hour using test methods and procedures set out in Appendix A of 40 C.F.R Part 60 (NO<sub>x</sub>, CO, and VOC) and Appendix A of 40 C.F.R part 63 (formaldehyde). The EPA acknowledges that it may not use results from this Performance Test as the evidentiary basis to establish violations of the Act, if any, that occurred at any facility owned or operated by Respondent prior to the date the Performance Test is conducted. The EPA reserves its right to bring an enforcement action for violations of the Act, other than the alleged violations settled by this Agreement, occurring at any time using other evidence.
23. Respondent agrees to submit quarterly progress reports, including a Certification of Truth, Accuracy & Completeness signed by a responsible official, commencing within 90 days of the date the Final Order is issued in this matter. The purpose of such reports is to provide the status of Respondent’s efforts to comply with the terms of settlement in this Agreement. Submissions of reports required by this Paragraph 23, shall be addressed to:

Air & Toxics Technical Enforcement Program Director  
U.S. EPA Region 8 (Mail Code 8ENF-AT)  
1595 Wynkoop St.  
Denver, CO 80202-1129

The Certification of Truth, Accuracy & Completeness shall read:

I certify under penalty of law that I have examined and am familiar with the information in the enclosed documents, including all attachments. Based on my personal inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are, to the best of my knowledge and belief, true and complete. I am aware that there are significant penalties for knowingly submitting false statements and information, including the possibility of fines or imprisonment pursuant to section 113(c)(2) of the Act, and 18 U.S.C. §§ 1001, 1341 and 1505.

24. The EPA has analyzed the facts and circumstances in this matter with the statutory factors described in section 113(d)(1)(B) of the Act. The EPA has determined that an appropriate civil penalty to resolve this matter is **TWENTY FIVE THOUSAND DOLLARS (\$25,000.00)**.
25. Respondent consents to the issuance of a Final Order and consents for the purposes of settlement, but without any admission of liability or wrongdoing, to pay a civil penalty in the amount of **TWENTY FIVE THOUSAND DOLLARS (\$25,000.00)** in the manner described below in this paragraph:
  - a. Payment is due within 30 calendar days from the date written on the Final Order, to be issued by the Regional Judicial Officer that adopts this Complaint and Consent Agreement. If the due date falls on a weekend or legal federal holiday, then the due date becomes the next business day. The date the payment is made is considered to be the date processed by the Bank described below. Payments received by 11:00 AM EST are processed on the same day, those received after 11:00 AM are processed on the next business day.
  - b. The payment shall be made by making a wire transfer as provided below or remitting a cashier's or certified check, including the name and docket number of this case, for the amount, payable to "*Treasurer, United States of America*," to:

CHECK PAYMENT:

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

OVERNIGHT MAIL:

US Bank  
1005 Convention Plaza

Mail Station SL-MO-C2GL  
St. Louis, MO 63101

Contact: Natalie Pearson  
314-418-4087

WIRE TRANSFER:

Wire transfers should be directed to the Federal Reserve Bank of  
New York  
Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read AD 68010727  
Environmental Protection Agency”  
ACH (also known as REX or remittance express)

Automated Clearinghouse (ACH) for receiving US currency  
PNC Bank  
808 17th Street, NW  
Washington, DC 20074  
Contact B Jesse White 301-887-6548  
ABA = 051036706  
Transaction Code 22 – checking  
Environmental Protection Agency  
Account 310006  
CTX Format

ON LINE PAYMENT:

There is now an On Line Payment Option, available through the  
Dept. of Treasury.

This payment option can be accessed from the information below:

WWW.PAY.GOV

Enter sfo 1.1 in the search field. Open form and complete required  
fields.

A copy of the check, or notification that the payment has been made by one of the other methods  
listed above, including proof of the date payment was made, shall be sent simultaneously to:

Ms. Alexis North (8ENF-AT)  
U.S. EPA Region 8  
Technical Enforcement Program  
1595 Wynkoop St.  
Denver, CO 80202-1129

and

Ms. Tina Artemis  
Regional Hearing Clerk (8RC)  
U.S. EPA Region 8  
1595 Wynkoop St.  
Denver, CO 80202-1129

- c. In the event a payment is not received by the specified due date, interest accrues from 30 days prior to the applicable due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. §3717, and will continue to accrue until payment in full is received.
  - d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 31st day from the applicable due date, and each subsequent thirty-day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the applicable due date. Payments are first applied to handling charges, 6% penalty interest, and late interest; then any balance is applied to the outstanding principal amount.
  - e. If Respondent elects to pay in installments, Respondent may nevertheless elect to pay the then-remaining amount due at any time prior to the applicable due date without penalty.
  - f. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.
26. Payment of the penalty in this matter does not relieve Respondent of its obligations to comply with the requirements of the Act and the Act's implementing regulations.
27. Failure by Respondent to comply with any of the terms of this Agreement shall constitute a breach of the Agreement and may result in referral of the matter to the United States Department of Justice for enforcement of this Agreement and for such other relief as may be appropriate.
28. Nothing in this Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Agreement. However, the EPA agrees that, before seeking such costs or penalty, it will first provide notice to Respondent of any failure to perform existing at the time of such notice and a reasonable opportunity to explain circumstances associated therewith and/or to demonstrate that performance was achieved or that no such performance is necessary.



### **III. GENERAL PROVISIONS**

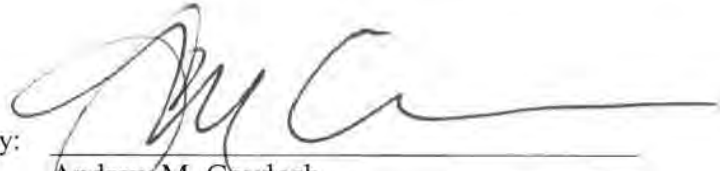
29. Each undersigned representative of the Parties to this Agreement certifies that he or she is fully authorized by the Party represented to bind the Party to the terms and conditions of this Agreement and to execute and legally bind that Party to this Agreement.
30. The Parties agree to submit this Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order. This Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the Parties, shall be a complete, full and final settlement of the violations alleged in this Agreement.
31. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of the Parties, and approval of a Regional Judicial Officer.
32. Each Party shall bear its own costs and attorneys fees in connection with all issues associated with this Agreement.
33. Respondent remains obligated to comply with all requirements of the Act and its implementing regulations.
34. This Agreement may be executed in counterparts.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8,  
Office of Enforcement, Compliance, and  
Environmental Justice

COMPLAINANT.

Date: Sept. 24, 2013

By:



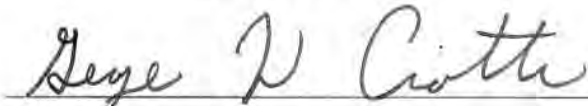
Andrew M. Gaydosh  
Assistant Regional Administrator  
Office of Enforcement, Compliance and  
Environmental Justice

BERRY PETROLEUM COMPANY

RESPONDENT.

Date: 9/17/2013

By:



George W. Ciotti

PRINTED NAME: \_\_\_\_\_

TITLE:

VICE PRESIDENT OF ROCKY MOUNTAIN PRODUCTION

**ATTACHMENT A: ENGINE DETAILS**

**All engines are new (commenced construction after 6/12/06 AND manufacture dates after 7/1/2008) spark ignition, internal combustion engines (SI ICE) between 25 hp and 100 hp, NOT gasoline or rich burn LPG and are Non-certified.**

Location	Well Name	Manufacture	Model	Serial #	Manufacture Date <sup>2</sup>	Start-up Date <sup>3</sup>	Compliance Demonstration Completed?
30-54Inj	30-54 Inj	Caterpillar	G3406	CTS00676	1/1/2010	10/1/2009	N/A <sup>4</sup>
15-26-56	15-26-56	AJAX	E565	85955	6/1/2011	3/30/2012	Yes
14-2-56	14-2-56	AJAX	E565	85956	6/1/2011	4/7/2012	Yes
11-3D-56	11-3D-56	AJAX	E565	85970	7/1/2011	4/28/2012	Yes
3-21D-56	3-21D-56	AJAX	E565	85971	7/1/2011	4/21/2012	Yes
14-14D-56	14-14D-56	AJAX	E565	85969	7/1/2011	1/18/2012	Yes
15-23D-56	15-23D-56	Arrow	L-795	L-600620	Unknown	3/30/2012	Yes
3-34-45	3-34-45	Arrow	L-795	L600885	Unknown	9/8/2012	Yes
2-5D-56	2-5D-56	Arrow	L-795	L-600736	10/20/2011	7/23/2012	Yes
11-17-56	11-17-56	Arrow	L-795	L-600489	2/17/2011	7/1/2010	Yes
9-8D-56	9-8D-56	Arrow	L-795	L-600497	2/24/2011	7/1/2012	Yes
13H-3-56	13H-3-56	Arrow	L-795	L-600618	Unknown	10/25/2011	Pending <sup>5</sup>
8 29 45	8 29 45	Arrow	L-795	L-600785	10/20/2011	1/22/2012	Yes
15-15D-56	15-15D-56	Arrow	L-795	L-600882	2/24/2011	6/25/2012	Yes
15-15D-56	9-15D-56	Arrow	L-795	L-600496	3/19/2012	6/25/2012	Yes
10 21 56	10 21 56	Arrow	L-795	L-600886	3/20/2012	6/7/2012	Yes
8-30D-56	8-30D-56	Arrow	L-795	L600883	3/20/2012	7/22/2012	Yes
3-15D-56	3-15D-56	Arrow	L-795	L-600490	2/10/2011	7/23/2011	Yes
8-16D-56	8-16D-56	Arrow	L-795	L-600619	Unknown	9/22/2011	Yes
13-29-45	13-29-45	Arrow	L-795	L-600784	10/20/2011	3/2/2012	Yes
16-3-54	16-3-54	Ajax	E-565	85996	Unknown	9/30/2012	Yes
16-30D-56	16-30D-56	Arrow	L-795	L600492	Unknown	8/16/2012	Yes
1A-29-54	1A-29-54	Arrow	C-106	303814C	Unknown	9/13/2012	Yes
15-9D-54	15-9D-54	Ajax	E-565	86004	Unknown	8/23/2012	Yes
14-9D-54	14-9D-54	Ajax	E-565	86011	Unknown	8/21/2012	Yes

<sup>2</sup> "Unknown" dates could not be determined due to a lack of records and an unreadable data plate.

<sup>3</sup> This table provides the date of first production as a proxy for the start-up date. Precise start-up dates are not known, but typically occur approximately one week after first production.

<sup>4</sup> Engine has been permanently removed from service.

<sup>5</sup> Engine has been and still is out of service pending certain drilling activity. An appropriate compliance determination will be completed after the engine is placed in service.

**ATTACHMENT B: FEDERAL MINOR NSR PROGRAM IN INDIAN COUNTRY – EXISTING TRUE MINOR SOURCES FOR WHICH REGISTRATIONS WERE SUBMITTED**

Source Name	Location			
	Qtr-Qtr	Section	Township	Range
BCUT 8-21	SENE	21	5S	4W
F 1-11-65	NENE	11	6S	5W
F 11-2D-65	NESW	2	6S	5W
F 14-6D-64	SESW	6	6S	4W
F 15-1D-65	SWSE	1	6S	5W
F 16-5-65	SESE	5	6S	5W
F 2-12D-65	NWNE	12	6S	5W
F 2-2-65	NWNE	2	6S	5W
F 5-3-64	SWNW	3	6S	4W
F 5-4-65	SWNW	4	6S	5W
F 5-6-65	SWNW	6	6S	4W
F 6-1-65	SENE	1	6S	5W
F 8-2D-64	SENE	2	6S	4W
F 9-1D-65	NESE	1	6S	5W
LF 1-22-57	NENE	22	5S	7W
LF 1-31D-45	NENE	31	4S	5W
LT 5-23D-56	SWNW	23	5S	6W
LT 6-28-45	SENE	28	4S	5W
LT 7-27-45	SWNE	27	4S	5W
LT 8-30D-56	SENE	30	5S	6W
LT 9-28D-45	NESE	28	4S	5W
LT 9-9D-56	NESE	9	5S	6W
UT 10S-21D-54	NWSE	21	5S	4W
UT 1-14D-55	NENE	14	5S	5W
UT 12-29D-55	NWSW	29	5S	5W
UT 1-29	NENE	29	5S	4W
UT 13-35D-55	SWSW	35	5S	5W
UT 13H-16-55	SWSW	16	5S	5W
UT 14-9D-54	SESW	9	5S	4W
UT 2-24-54	NWNE	24	5S	4W
UT 2-30-55	NWNE	30	5S	5W
UT 3-25-56	NENW	25	5S	6W
UT 3-30-55	NENW	30	5S	5W
UT 3-35-54	NENW	35	5S	4W
UT 4-20D-55	NWNW	20	5S	5W
UT 5-13-54	SWNW	13	5S	4W

Source Name	Location			
	Qtr-Qtr	Section	Township	Range
UT 5-25-56	SWNW	25	5S	6W
UT 5-35-54	SWNW	35	5S	4W
UT 6-24-54	SENW	24	5S	4W
UT 6-30-55	SENW	30	5S	5W
UT 7-19-55	SWNE	19	5S	5W
UT 7-21-54	SWNE	21	5S	4W
UT 7-24-56	SWNE	24	5S	6W
UT 7-25-56	SWNE	25	5S	6W
UT 8-10D-54	SENE	10	5S	4W
UT 8-20-55	SENE	20	5S	5W
UTE 10-24-54	NWSE	24	5S	4W
UTE 11-13-54	NESW	13	5S	4W
UTE 11-25-56	NESW	25	5S	6W
UTE 11-29-54	NESW	29	5S	4W
UTE 11-35-54	NESW	35	5S	4W
UTE 13-35-54	SWSW	35	5S	4W
UTE 1-35-54	NENE	35	5S	4W
UTE 14-18-55	SESW	18	5S	5W
UTE 14-24-56	SESW	24	5S	6W
UTE 14-25-54	SESW	25	5S	4W
UTE 15-35-54	SWSE	35	5S	4W
UTE 16-24-54	SESE	24	5S	4W
UTE 16-25-54	SESE	25	5S	4W
UTE 16-3-54	SESE	3	5S	4W
UTE 7-35-54	SWNE	35	5S	4W
UTE 8-19-55	SENE	19	5S	5W
UTE 8-25-54	SENE	25	5S	4W
UTE 9-35-54	NESE	35	5S	4W
UTF 2-13-55	NWNE	13	5S	5W

**CERTIFICATE OF SERVICE**

The undersigned certifies that the original of the attached **COMBINED COMPLAINT, CONSENT AGREEMENT and FINAL ORDER** in the matter **BERRY PETROLEUM COMPANY; DOCKET NO.: CAA-08-2013-0014** was filed with the Regional Hearing Clerk on September 24, 2013, the **FINAL ORDER** was filed on September 30, 2013.

Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Dana Stotsky, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were sent and placed in the United States mail certified/return receipt and emailed on September 30, 2013 to:


Counsel for Respondent:

Lawrence E. Volmert  
Holland and Hart LLP.  
555 Seventeenth Street, Suite 3200  
Denver, CO 80202-3979  
lvolmert@hollandhart.com

And emailed to:

Kim White  
U. S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive (MS-0002)  
Cincinnati, Ohio 45268

September 24, 2013

  
Tina Artemis  
Paralegal/Regional Hearing Clerk