



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

1595 WYNKOOP STREET  
DENVER, CO 80202-1129

Phone 800-227-8917

<http://www.epa.gov/region08>

January 14, 2022

10:08 AM

DOCKET NO.: CAA-08-2022-0003

Received by  
EPA Region VIII  
Hearing Clerk

IN THE MATTER OF:

D90 ENERGY, LLC

RESPONDENT

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FINAL ORDER

Pursuant to 40 C.F.R. § 22.13(b) and §§ 22.18(b)(2) and (3) of EPA’s Consolidated Rules of Practice, the Expedited Settlement Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Expedited Settlement Agreement, effective immediately upon filing this Expedited Settlement Agreement and Final Order.

SO ORDERED THIS 14th DAY OF January, 2022.

KATHERIN  
HALL

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KATHERIN HALL  
Date: 2022.01.14 09:18:24  
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Katherin E. Hall  
Regional Judicial Officer

January 14, 2022

10:08 AM

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

Received by  
EPA Region VIII  
Hearing Clerk

IN THE MATTER OF: )  
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**D90 Energy, LLC** )  
**981 Silvertip Road** )  
**Powell, Wyoming 82435** )  
)  
Respondent. )  
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**Docket No.:** CAA-08-2022-0003

**EXPEDITED SETTLEMENT AGREEMENT**

AUTHORITY

1. This Expedited Settlement Agreement (ESA), which is intended to simultaneously commence and conclude this matter, is being entered into by the United States Environmental Protection Agency (EPA), Region 8, by its duly delegated official, the Chief, Air Enforcement Branch, Enforcement and Compliance Assurance Division, and D90 Energy, LLC (Respondent). This matter is authorized by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
2. The EPA and Respondent agree that the EPA has jurisdiction over this matter pursuant to sections 113(a)(3) and (d) of the Clean Air Act (the Act), 42 U.S.C. §§ 7413(a)(3) and (d).
3. The EPA and the U.S. Department of Justice have determined, pursuant to section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), that the EPA may pursue this type of case through administrative enforcement.

RESPONDENT

4. The Respondent is a Texas limited liability company that is authorized to do business in the state of Wyoming.
5. The Respondent is a “person” under section 302(e) of the Act. 42 U.S.C. § 7602(e).
6. Respondent is the owner or operator of Silvertip Processing Facility a stationary source, located at 981 Silvertip Road, Powell, Wyoming 82435 (facility).

ALLEGED VIOLATIONS

7. On January 5, 2021 – April 27, 2021, an authorized representative of the EPA conducted an off-site compliance monitoring activity of Respondent’s facility to determine compliance with the Risk Management Plan (RMP) regulations promulgated at 40 C.F.R. part 68 under section 112(r)(7) of the Act. Based on the off-site monitoring activity, the EPA has determined that Respondent failed to review and update their RMP submission as required.

8. Respondent became the owner or operator of the facility on October 1, 2020. On October 1, 2020, Respondent was required to revise and update the RMP. Pursuant to 40 C.F.R. § 68.190(a) and (b)(1), the owner or operator shall revise and update the RMP at least once every five years from the date of the most recent update. The most recent update of the RMP for the facility was dated April 23, 2014. The earliest RMP submission by the Respondent that the EPA has on file is dated April 23, 2021. Respondent failed to submit an updated RMP to the EPA at least once every five years from the most recent update as required by § 68.190(a) and (b)(1).

#### SETTLEMENT

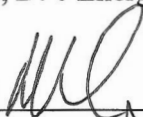
9. In consideration of the factors contained in section 113(d)(1) of the Act and the entire record, the parties enter into this ESA in order to settle the violations referenced above for the total penalty amount of \$1600.
10. This settlement is subject to the following terms and conditions with respect to the violations referenced above:
- a. Respondent, by signing below, waives any objections that it may have regarding jurisdiction, neither admits nor denies the specific factual allegations contained in this ESA, and consents to the assessment of the penalty as stated above.
  - b. Respondent waives its rights to a hearing afforded by section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A), and to appeal this ESA.
  - c. Each party to this action shall bear its own costs and attorney fees, if any.
  - d. Respondent waives any and all available rights to judicial or administrative review or other remedies that the Respondent may have with respect to any issue of fact or law or any terms and conditions set forth in this ESA, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
11. By signing this ESA Respondent certifies that (1) the alleged violations listed in paragraph 8 have been corrected, and (2) Respondent is submitting payment of the civil penalty as described below:
- a. Within 21 days of receipt of this ESA, Respondent must pay the civil penalty using any method provided on the following website <https://www.epa.gov/financial/makepayment>;
  - b. **The following payment tracking number for this ESA must be included on either the check or as directed where to notate the EPA document number: ESA-R8-CAA**
  - c. Within 24 hours of payment, email proof of payment to Daniel Webster at Webster.Daniel@epa.gov (“proof of payment” means, as applicable, an electronic copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate payment has been made according to the EPA requirements, in the amount due, and identified with the docket number that appears on the final order).
12. The signed ESA must be received by EPA no later than 21 calendar days after Respondent’s receipt of the ESA. The signed ESA must be sent by certified mail to:

Daniel Webster, 8ENF-AT-P  
US EPA Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202-1129

Immediately after signing the ESA email a copy to Daniel Webster at Webster.Daniel@epa.gov.

13. Respondent agrees that the penalty specified in this ESA shall not be deductible for purposes of state or federal taxes.
14. Once the Respondent receives a copy of the final order and pays in full the penalty assessment described above, the EPA agrees not to take any further civil administrative penalty action against Respondent for the violations alleged in this ESA.
15. This ESA does not pertain to any matters other than those expressly specified herein. The EPA reserves, and this ESA is without prejudice to, all rights against Respondent with respect to all other matters including, but not limited to, the following:
  - a. Claims based on a failure by Respondent to meet a requirement of this ESA including any claims for costs that are caused by the Respondent's failure to comply with this Agreement
  - b. Claims based on criminal liability
  - c. Claims based on any other violations of the Act or federal or state law
16. If the signed original ESA and proof of payment is not returned to the EPA Region 8 office at the above address in correct form by Respondent within 21 calendar days of the date of Respondent's receipt of this ESA, the proposed ESA is withdrawn, without prejudice to the EPA's ability to file an enforcement action for the violations identified in this ESA.
17. This ESA, upon incorporation into the final order, applies to and is binding upon the EPA and Respondent and Respondent's successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this ESA. This ESA contains all terms of the settlement agreed to by the parties.
18. Nothing in this ESA shall relieve Respondent of the duty to comply with the Act and its implementing regulations.
19. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions of this ESA and to bind Respondent to the terms and conditions of this ESA.
20. The parties consent to service of this ESA and final order by email at the following valid email addresses: weiner.marc@epa.gov (for Complainant), and jeff@d90energy.com (for Respondent).
21. The parties agree to submit this ESA to the regional judicial officer with a request that it be incorporated into a final order.

For Respondent, D90 Energy, LLC:



Date: 12/21/21

Name (Print) Daniel Silverman  
Title (Print) President

For Complainant, United States Environmental Protection Agency, Region 8:

**SCOTT PATEFIELD**

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PATEFIELD

Date: 2022.01.10 08:15:26 -07'00'

Date: \_\_\_\_\_

Scott Patefield, Chief, Air Enforcement Branch  
Enforcement and Compliance Assurance Division

## CERTIFICATE OF SERVICE

The undersigned certifies that the attached **EXPEDITED SETTLEMENT AGREEMENT** and the **FINAL ORDER** in the matter of **D90 ENERGY, LLC; DOCKET NO.: CAA-08-2022-0003** was filed with the Regional Hearing Clerk on January 14, 2022.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Marc Weiner, Enforcement Attorney, and sent via certified receipt email on January 14, 2022, to:

Respondent

Daniel Silverman, President  
D90 Energy, LLC (Operating Silvertip Processing Facility)  
daniel@fulcrumef.com

EPA Financial Center

Jessica Chalifoux  
U. S. Environmental Protection Agency  
Cincinnati Finance Center  
Chalifoux.Jessica@epa.gov

January 14, 2022

MELISSA  
HANIEWICZ

Digitally signed by  
MELISSA HANIEWICZ  
Date: 2022.01.14  
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Melissa Haniewicz  
Regional Hearing Clerk