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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

FILED  
EPA REGION VIII  
HEARING CLERK

DOCKET NO.: CAA-08-2016-0001

IN THE MATTER OF:

LINN Operating, Inc.

RESPONDENT

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FINAL ORDER

Pursuant to 40 C.F.R. §22.13(b) and 22.18(b)(2)(3), of EPA's Consolidated Rules of Practice, the Consent 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 Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 22<sup>nd</sup> DAY OF February, 2016.

Thomas Rucki  
Regional Judicial Officer

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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IN THE MATTER OF	)	
	)	
<b>LINN Operating, Inc.,</b>	)	COMBINED COMPLAINT AND
	)	CONSENT AGREEMENT
	)	
	)	
Respondent.	)	
	)	

Complainant, United States Environmental Protection Agency, Region 8 (the EPA or Complainant), and Respondent, LINN Operating, Inc. (LINN or Respondent) (together, the Parties), hereby consent and agree as follows:

**A. PRELIMINARY STATEMENT**

1. This is an administrative penalty assessment proceeding brought under section 113(d) of the Clean Air Act (CAA or the Act), 42 U.S.C. § 7413(d), and sections 22.13 and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. part 22.
2. On the EPA's behalf, Suzanne J. Bohan, Assistant Regional Administrator, is delegated the authority to settle civil administrative penalty proceedings under section 113(d) of the Act.
3. Respondent is LINN Operating, Inc., a corporation doing business in the state of Utah.
4. Respondent is a "person" as defined in section 302(e) of the Act, 42 U.S.C. § 7602(e).
5. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the filing of this combined complaint and consent agreement (Agreement) without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Agreement.

## **B. JURISDICTION**

6. This Agreement is entered into under section 113(d) of the Act, as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules, 40 C.F.R. part 22. The alleged violations in this Agreement are pursuant to section 113(a)(3)(A) of the Act.
7. The EPA and the United States Department of Justice jointly determined that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.
8. The Regional Judicial Officer is authorized to ratify this Agreement which memorializes a settlement between Complainant and Respondent in a final order. 40 C.F.R. §§ 22.4(a) and 22.18(b).
9. This Agreement and approval in a final order simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

## **C. GOVERNING LAW**

10. Section 111 of the CAA, 42 U.S.C. § 7411, authorizes the Administrator to promulgate regulations regarding emissions from new sources, including those from stationary spark ignition (SI) internal combustion engines (ICE), such as those employed by Respondent at its natural gas processing facility. The relevant regulations promulgated by the EPA, pursuant to CAA section 111, are set forth in 40 C.F.R. part 60, subpart JJJJ-Standards of Performance for Stationary Spark Ignition Internal Combustion Engines.
11. Under 40 C.F.R. § 60.4233(e), owners and operators of stationary SI ICE with a maximum engine power greater than or equal to 100 HP and built after January 1, 2011, must comply with an emission limit of 1.0 g/HP-hr. for nitrogen oxides.

#### **D. STIPULATED FACTS**

12. Respondent is the owner and operator of the Brundage Canyon natural gas processing facility (Facility), a stationary source, located near Duchesne, Utah .
13. The Facility includes a Caterpillar G3406 generator engine (Engine) which is subject to 40 C.F.R. § 60.4233(e) because its maximum output power is more than 100 HP and it was built after January 1, 2011.
14. On September 10, 2014, an authorized representative of the EPA conducted an inspection (the EPA inspection) of the Facility, with the consent of Respondent, to conduct portable monitoring emissions sampling with a portable air emissions analyzer. During the EPA inspection, the EPA representative observed an alleged violation of 40 C.F.R. § 60.4233(e).
15. The alleged violation is described in paragraph 17.
16. In order to bring the engine back into compliance, LINN replaced the oxygen sensor, installed a load bank to maintain a consistent full load on the engine and replaced the catalyst element.

#### **E. ALLEGED VIOLATION OF LAW**

17. During the EPA inspection, the EPA inspector used a portable analyzer and measured emissions of 16.3 g/HP-hr. The EPA maintains the test results represent credible evidence of a violation of 40 C.F.R. § 60.4233(e).
18. The EPA alleges that this violation continued until approximately February 10, 2015.

#### **F. TERMS OF CONSENT AGREEMENT**

19. For the purpose of this proceeding only, as required by 40 C.F.R. § 22.18(b)(2), Respondent:
  - (a) admits that the EPA has jurisdiction over the subject matter alleged in this Agreement;
  - (b) neither admits nor denies the alleged violation of law stated above;

- (c) consents to the assessment of a civil penalty as stated below;
- (d) consents to the conditions specified in this Agreement;
- (e) waives any right to contest the alleged violations of law set forth in Section E of this Agreement; and
- (f) waives its rights to appeal any final order which approves this Agreement.

20. For the purposes of this proceeding, Respondent:

- (a) agrees that this Agreement states a claim upon which relief may be granted against Respondent;
- (b) acknowledges that this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- (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 Agreement, including any right of judicial review under section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1);
- (d) consents to personal jurisdiction in any action to enforce this Agreement, in the United States District Court for the District of Utah; and
- (e) waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the Agreement, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.

21. Section 113(d)(1)(B) of the Act, 42 U.S.C. § 7413(d)(1)(B), and 40 C.F.R. part 19 authorize the assessment of a civil penalty of up to \$37,500 per day of violation for each violation of the implementing regulations associated with the requirements of 42 U.S.C. § 7411. To

determine the amount of the civil penalty to be assessed pursuant to section 113(e)(1) of the Act, 42 U.S.C. § 7413(e)(1), the EPA took into account, in addition to such other factors as justice may require, the size of the business, the economic impact of the penalty on the business, the Respondent's full compliance history and good faith efforts to comply, the duration of the alleged violations as established by any credible evidence, payment by the Respondent of penalties previously assessed for the same alleged violations, the economic benefit of noncompliance, the seriousness of the alleged violations, and defenses argued by Respondent and information submitted in support of such defenses.

22. Penalty Payment. Respondent agrees to:

- (a) pay a civil penalty of \$100,000 (EPA Penalty) within 30 calendar days of the Effective Date of this Agreement.
- (b) pay the EPA Penalty using the instructions found in Attachment A (Collection Information). Within 24 hours of payment of the EPA Penalty, send proof of payment to Scott Patefield at patefield.scott@epa.gov (proof of payment means, as applicable, a 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 that payment has been made according to the terms of Attachment A).

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

- (a) request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);

- (b) refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33;
  - (c) collect the 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
  - (d) suspend or revoke Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.
24. The provisions of this Agreement shall apply to and be binding upon Respondent, its successors and assigns. From the Effective Date of this Agreement until the penalty is paid in full, Respondent must give written notice and a copy of this Agreement to any successors in interest prior to any transfer of ownership or control of any portion of or interest in the Facility. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to the EPA. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this Agreement unless the EPA has provided written approval of the release of said obligations or liabilities.
25. By signing this Agreement, Respondent acknowledges that this Agreement will be available to the public and agrees that this Agreement does not contain any confidential business information or personally identifiable information.
26. By signing this Agreement, 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 Agreement and has the legal capacity to bind the Party he or she represents to this Agreement.

27. By signing this Agreement, both Parties agree that each Party's obligations under this Agreement constitute sufficient consideration for the other Party's obligations.
28. By signing this Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete for each such 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.
29. Except as provided in paragraph 23, each Party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

#### **G. EFFECT OF AGREEMENT**

30. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.
31. Complainant covenants not to sue Respondent for injunctive or other equitable relief for the violations and facts alleged in this matter, but such covenant automatically terminates if and when Respondent fails to timely and satisfactorily pay the penalty as stated in paragraph 22.
32. Penalties paid pursuant to this Agreement shall not be deductible for purposes of federal, state or local taxes.
33. This Agreement 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.



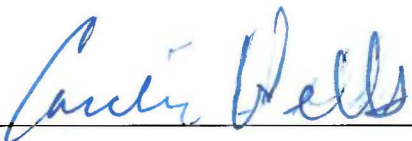
34. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of both Parties, and approval by the Regional Judicial Officer.
35. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
36. Nothing herein shall be construed to limit the power of the 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.
37. The EPA reserves the right to revoke this Agreement and settlement penalty if and to the extent that the EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, and the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.

#### **H. EFFECTIVE DATE**

38. Respondent and Complainant agree to issuance of a final order approving this Agreement. Upon filing, the EPA will transmit a copy of the filed Agreement to the Respondent. This Agreement and subsequently issued final order 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 Combined Complaint and Consent Agreement In the Matter of LINN Operating, Inc. is Hereby Stipulated, Agreed, and Approved.

FOR RESPONDENT LINN OPERATING, INC.:

Signature  Date 2/10/2016

Printed Name: Candice J. Wells




Title: Senior Vice President, General Counsel, and Corporate Secretary

Address: 600 Travis, JPMorgan Chase Tower, Suite 5100, Houston, TX 77002

Respondent's Federal Tax Identification Number: 71-0983530

FOR COMPLAINANT:

2/18/16  
DATE

  
Suzanne J. Bolian  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

**COLLECTION INFORMATION**

Payment shall be due on or before 30 calendar days after the date of the Final Order issued by the Regional Judicial Officer who adopts this agreement. If the due date falls on a weekend or legal Federal holiday, then the due date is the next business day. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.

In the event payment is not received by the specified due date, interest accrues from the date of the Final Order, not the 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. (That is, on the 1st late day, 30 days of interest accrues.)

In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 61st day from the date of the Final Order, 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 due date (that is, the 121st day from the date the Final Order is signed). Payments are first applied to handling charges, 6% penalty interest, and late interest; then any balance is applied to the outstanding principal amount.

The payment shall be made by 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," (or be paid by one of the other methods listed below) and sent as follows:

**CHECK PAYMENTS- U.S. Postal Service:**

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

Contact: Craig Steffen, 513-487-2091

**OVERNIGHT MAIL (Federal Express, Airborne, or other commercial carrier):**

US Bank  
Cincinnati Finance Center Box 979077  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

**WIRE TRANSFERS (FEDWIRE):**

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 “ D 68010727 Environmental Protection Agency “

**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 Public Forms” field

Open form and complete required fields then click “Submit Data”.

**AUTOMATED CLEARINGHOUSE (VENDOR EXPRESS)**

Automated clearinghouse payments can be made through the US Treasury using the following information:

US Treasury REX/Cashlink ACH Receiver

ABA: 051036706

Account Number: 310006, Environmental Protection Agency

CTX Format Transaction Code 22 – checking

Physical location of US Treasury Facility:

5700 Rivertech Court

Riverdale, MD 20737

US Treasury Contact Information:

John Schmid: 202-874-7026

Remittance Express (REX): 1-866-234-5681

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT AND CONSENT AGREEMENT and FINAL ORDER** in the matter of **LINN OPERATING, LLC.; DOCKET NO.: CAA-08-2016-0001** was filed with the Regional Hearing Clerk on February 22, 2016.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, David Rochlin, Senior Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on February 22, 2016, to:

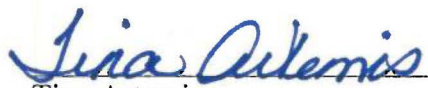
Respondent

Lawrence E. Volmert, Esq.  
Holland & Hart, LLP  
555 17<sup>th</sup> Street, Suite 3200  
Denver, CO 80202

And emailed to:

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

February 22, 2016



Tina Artemis  
Paralegal/Regional Hearing Clerk

