

Opportunity to Confer (“NOVOC”) letter and provided a copy of the NOVOC to West Virginia, providing notice to both that the EPA found that Respondent committed the alleged violations described in Section C of this Agreement and providing Respondent an opportunity to confer with the EPA.

B. STATUTORY AND REGULATORY BACKGROUND

6. The EPA alleges and adopts the Findings set forth immediately below.
7. The EPA is authorized by Section 113 of the Act, 42 U.S.C. § 7413, to take action to ensure that air pollution sources comply with all federally applicable air pollution control requirements. This includes requirements promulgated by the EPA and those contained in federally enforceable State Implementation Plans (“SIPs”) or permits.
8. Pursuant to 40 C.F.R. § 52.23, “[f]ailure to comply with any provisions of [Part 52], or with any approved regulatory provision of a State implementation plan, or with any permit condition or permit denial issued pursuant to approved or promulgated regulations for the review of new or modified stationary or indirect sources, or with any permit limitation or condition contained within an operating permit issued under an EPA-approved program that is incorporated into the State implementation plan, shall render the person or governmental entity so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement action under section 113 of the Clean Air Act.”
9. The term "applicable implementation plan" is defined in Section 302(q) of the Act, 42 U.S.C. § 7602(q).
10. The applicable implementation plan for the State of West Virginia ("WV SIP") is codified at 40 C.F.R. Part 52, Subpart XX.

11. The WV SIP regulations are located at Title 45 of the Code of State Rules (“CSR”), and issued pursuant to the West Virginia Air Pollution Control Act, W.Va. Code, §§ 22-5-1, et seq.
12. The WV SIP regulations governing Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Temporary Permits, General Permits, and Procedures for Evaluation are currently codified at 45 CSR Series 13 and the latest version of 45 CSR 13 was included in the WV SIP approved by the EPA on October 5, 2018. 83 Fed. Reg. 50,266.
13. 45 CSR Series 13 describes “[t]he procedures for stationary source reporting, and the criteria for obtaining a permit to construct and operate a new stationary source which is not a major stationary source, to modify a non-major stationary source, to make modifications which are not major modifications to an existing major stationary source, to relocate non-major stationary sources within the state of West Virginia, and to set forth procedures to allow facilities to commence construction in advance of permit issuance.” 45 CSR 13-1.
14. Pursuant to 45 CSR 13-5.1, “no person shall cause, suffer, allow or permit the construction or modification or relocation and operation of any stationary source to be commenced without notifying the Secretary of such intent and obtaining a permit to construct, modify, relocate and operate the stationary source as required in this rule or any other applicable rule promulgated by the Secretary.”
15. A “stationary source” is defined as a “building, structure, facility, installation, or emission unit or combination thereof.” 45 CSR 13-2.24.
16. Pursuant to 45 CSR 13-5.11, “[t]he Secretary may develop and issue Class I and Class II general permits under this rule authorizing the construction, modification, relocation and

operation of a category of sources by the same owner or operator or involving the same or similar processes or pollutants upon the terms and conditions specified in the general permit.”

17. WVDEP developed a Class II General Permit G70-D (Prevention and Control of Air Pollution in regard to the Construction, Modification, Relocation, Administrative Update and Operation of Natural Gas Production Facilities Located at the Well Site).
18. Section 111(b) of the CAA, 42 U.S.C. 7411(b), requires the Administrator of the EPA to propose regulations establishing standards of performance for new stationary sources.
19. Pursuant to Section 111(b) of the CAA, 42 U.S.C. § 7411(b), the EPA promulgated 40 C.F.R. Part 60, Subpart OOOOa - Standards of Performance for Crude Oil and Natural Gas Facilities for Which Construction, Modification, or Reconstruction Commenced After September 18, 2015.
20. 40 C.F.R. Part 60, Subpart OOOOa, applies to owners or operators of storage vessel affected facilities and well affected facilities that are “located within the Crude Oil and Natural Gas Production source category, as defined in § 60.5430a, for which they commenced construction, modification, or reconstruction after September 18, 2015.”
40 C.F.R. § 60.5365a.
21. Pursuant to 40 C.F.R. § 60.5395a(a)(2), each storage vessel affected facility must comply with the Volatile Organic Compounds (“VOC”) Standards in § 60.5395a, including to “reduce VOC emissions by 95.0 percent within 60 days after startup. For storage vessel affected facilities receiving liquids pursuant to the standards for well affected facilities in § 60.5375a(a)(1)(i) or (ii), you must achieve the required emissions reductions within 60 days after startup of production as defined in § 60.5430a.”

22. “Startup of production” is defined as “the beginning of initial flow following the end of flowback when there is continuous recovery of salable quality gas and separation and recovery of any crude oil, condensate, or produced water, except as otherwise provided in this definition. For the purposes of the fugitive monitoring requirements of § 60.5397a, startup of production means the beginning of the continuous recovery of salable quality gas and separation and recovery of any crude oil, condensate, or produced water.”
40 C.F.R. § 60.5430a.
23. A “storage vessel affected facility” is defined as “[a] single storage vessel that commenced construction, reconstruction, or modification after September 18, 2015, and on or before November 16, 2020 . . . if its potential for VOC emissions is equal to or greater than 6 tons TPY.” 40 C.F.R. § 60.5365a(e)(1).
24. A “well affected facility” is defined as “a single well that conducts a well completion operation following hydraulic fracturing or refracturing.” 40 C.F.R. § 60.5365a(a).
25. A “well completion operation” is defined as “any well completion with hydraulic fracturing or refracturing occurring at a well affected facility.” 40 C.F.R. § 60.5430a.
26. Pursuant to 40 C.F.R. § 60.5395a(b), if an owner or operator uses a control device to reduce VOC emissions from their storage vessel affected facility, the owner or operator must equip the storage vessel with a cover that is connected through a closed vent system and must route emissions to a control device. Alternatively, the owner or operator may route the closed vent system to a process.
27. Pursuant to 40 C.F.R. § 60.5397a(a)(1), an owner or operator of an affected facility “must monitor all fugitive emission components, as defined in § 60.5430a, in accordance with paragraphs (b) through (g) of this section. You must repair all sources of fugitive emissions in accordance with paragraph (h) of this section. You must keep records in

accordance with paragraph (i) of this section and report in accordance with paragraph (j) of this section.”

28. Pursuant to 40 C.F.R. § 60.5397a(b), an owner or operator of an affected facility “must develop an emissions monitoring plan that covers the collection of fugitive emissions components at well sites and compressor stations within each company-defined area in accordance with paragraphs (c) and (d) of this section.”

29. Pursuant to 40 C.F.R. § 60.5411a(b)(1), “[t]he cover and all openings on the cover of storage vessels . . . shall form a continuous impermeable barrier over the entire surface area of the liquid in the storage vessel or wet seal fluid degassing system.”

30. Pursuant to 40 C.F.R. § 60.5411a(b)(3), “[e]ach storage vessel thief hatch shall be equipped, maintained and operated with a weighted mechanism or equivalent, to ensure that the lid remains properly seated and sealed under normal operating conditions, including such times when working, standing/breathing, and flash emissions may be generated.”

31. Pursuant to 40 C.F.R. § 60.5411a(d), “for centrifugal compressor wet seal fluid degassing systems, reciprocating compressors, pneumatic pumps and storage vessels using a control device or routing emissions to a process . . . [an owner or operator] must conduct an assessment that the closed vent system is of sufficient design and capacity to ensure that all emissions from the affected facility are routed to the control device and that the control device is of sufficient design and capacity to accommodate all emissions from the affected facility, and have it certified by a qualified professional engineer or an in-house engineer with expertise on the design and operation of the closed vent system in accordance with paragraphs (d)(1)(i) and (ii) of this section.

C. FINDINGS

32. Respondent is, and at all times relevant to the violations alleged herein was, a West Virginia limited liability company and an oil and gas producer, engaged in the drilling of oil and gas wells to extract natural gas and oil for sale.
33. Respondent owns at least three well pads, including the King and Cochran well pads, and one tank battery located at Shelton Road in Bomont, WV 25030 (“Bomont Site”).
34. Respondent’s corporate office is located at 3230 Pennsylvania Avenue, Charleston, WV 25302.
35. Respondent began operations at the Bomont Site in 2014. At the time of the CAA inspection on May 6, 2021, Respondent’s King and Cochran well pads were being operated by Summit Petroleum, Inc. (“Summit”), an Ohio corporation that conducts petroleum and pipeline operations, including maintenance and management of well pads.
36. Summit’s corporate office is located at 9345 Ravenna Road, Unit A, Twinsburg, Ohio 44087.
37. According to evidence gathered during the CAA inspection and in Respondent’s November 17, 2021 response to the EPA’s June 10, 2021 CAA Information Request Letter (“CAA IRL”), Summit took over control of the day to day operation of the Bomont Site from Respondent in January 2021. The wells at the King and Cochran well pads were brought back into service in February 2021 after operations paused in September 2020.

King Pad Permit

38. On December 18, 2018, the WVDEP issued Cunningham a Permit for Construction, Modification, Relocation and Operation of a Stationary Source of Air Pollutants (R13-33-

- 70) pursuant to 45 CSR 13-5.5 for construction and installation of an oil and gas production facility at the Bomont Site, named the “King Pad” (“King Pad Permit”).
39. Section 6.1.2 of the King Pad Permit states, “[t]he permittee shall route all VOC emissions (working/breathing/flashing) generated in the storage tanks 31S - 34S and 39S – 44S, to the vapor recovery unit (36C).”
40. Section 6.1.3 of the King Pad Permit states, “[t]he Vapor Recovery Unit (36C) shall collect at least 95% of the vapors from the storage tanks 31S – 34S and 39S – 44S and transfer the collected vapors to a sales gas pipeline.”
41. Section 7.1.3 of the King Pad Permit states, “[t]he permittee shall use a vapor recovery unit to reduce VOC emissions from storage vessel affected facilities. The permittee must equip the storage vessels with a cover that meets the requirements in section 7.1.4 and is connected through a closed vent system that meets the requirements of section 7.1.5 or as an alternative to routing the closed vent system to a control device, the permittee may route the closed vent system to a process. [40 C.F.R. § 60.5395a(b)].”
42. Section 7.1.4.1 of the King Pad Permit states, “[t]he cover and all openings on the cover (*e.g.*, access hatches, sampling ports, pressure relief devices and gauge wells) shall form a continuous impermeable barrier over the entire surface area of the liquid in the storage vessel.”
43. Section 7.1.4.2 of the King Pad Permit states, “[e]ach cover opening shall be secured in a closed, sealed position (*e.g.*, covered by a gasketed lid or cap) whenever material is in the unit on which the cover is installed except during those times when it is necessary to use an opening as follows:

- (i) To add material to, or remove material from the unit (this includes openings necessary to equalize or balance the internal pressure of the unit following changes in the level of the material in the unit);
 - (ii) To inspect or sample the material in the unit;
 - (iii) To inspect, maintain, repair, or replace equipment located inside the unit;
- or
- (iv) To vent liquids, gases, or fumes from the unit through a closed vent system designed and operated in accordance with the requirements of 7.1.5 to a control device.”

44. Section 7.1.4.3 of the King Pad Permit states, “[e]ach storage vessel thief hatch shall be equipped, maintained and operated with a weighted mechanism or equivalent, to ensure that the lid remains properly seated and sealed under normal operating conditions, including such times when working, standing/breathing, and flash emissions may be generated. The permittee must select gasket material for the hatch based on composition of the fluid in the storage vessel and weather conditions. [40 C.F.R. § 60.5411a(b)]”
45. Section 7.1.6 of the King Pad Permit states, “[t]he permittee must conduct an assessment that the closed vent system is of sufficient design and capacity to ensure that all emissions from the storage vessel are routed to the control device and that the control device is of sufficient design and capacity to accommodate all emissions from the affected facility and have it certified by a qualified professional engineer in accordance with 7.1.6 (i) and (ii). . . . [40 C.F.R § 60.5411a(d)].”
46. Section 8.1.1(a) of the King Pad Permit states, “[t]he permittee must monitor all fugitive emission components, defined as any component that has potential to emit fugitive emissions of methane or VOC at a well site.”

47. Section 8.1.1(b) of the King Pad Permit states, “[t]he permittee must develop an emission monitoring plan that covers the collection of fugitive emissions components at well sites within each company-defined area in accordance with 8.1.1(c) and (d).

Cochran Pad Permit

48. On February 21, 2017, the WVDEP issued Respondent a Class II General Permit to Construct and Operate (G70-D223) for new construction of an oil and gas facility at the Bomont Site, named the “Cochran Pad” (“Cochran Pad Permit”).

49. According to the Cochran Pad Permit, the Cochran Pad is required to comply with Sections 5.0 (Gas Well Affected Facility), 6.0 (Storage Vessels Containing Condensate and/or Produced Water, 7.0 (Storage Vessel Affected Facility), 12.0 (Fugitive Emissions GHG and VOC Standards), 13.0 (Reciprocating Internal Combustion Engines, Generator Engines) and 14.0 (Tanker Truck/Rail Car Loading) of the G70-D General Permit.

50. Section 6.1.1 of the Cochran Pad Permit states, “[t]he registrant shall determine the VOC emissions for each storage vessel (as defined in § 60.5430, 60.5430a) to determine affected facility status in accordance with the *emissions determination* required [in 6.1.1.a and 6.1.1.b].”

51. Section 6.1.3.2 of the Cochran Pad Permit states that registrants at affected facilities shall use a site specific sample to determine potential emissions.

EPA Inspection and Investigation

52. On May 6, 2021, an EPA inspector conducted a CAA Inspection at the Bomont Site (“Inspection”) to verify compliance with applicable State and Federal regulations.

53. On June 10, 2021, the EPA issued a CAA IRL, pursuant to Section 114(a) of the CAA, 42 U.S.C. § 7414(a).

54. On November 17, 2021, Respondent provided a partial response to the EPA's June 10, 2021 CAA IRL.
55. On December 6 and 7, 2021, Respondent provided additional responses to the EPA's June 10, 2021 CAA IRL.
56. The EPA asserts that at all times relevant to this Order, Respondent was required to comply with its permits for the King Pad and Cochran Pad, issued pursuant to the WV SIP.
57. The EPA asserts that Respondent at all times relevant to this Order has been the owner of storage vessel affected facilities and well affected facilities that are located within the Crude Oil and Natural Gas Production source category, for which it commenced construction or modification after September 18, 2015 and is therefore required to comply with the provisions of 40 C.F.R. Subpart OOOOa.
58. At the time of the CAA Inspection, the EPA noted that liquids were present in the storage vessels at the King Pad and that no control device was present to reduce VOC emissions by 95% at storage vessels, as required by Section 6.1.3 of the King Pad Permit and 40 C.F.R. § 60.5395a(a)(2).
59. At the time of the CAA Inspection, Respondent failed to use a control device to reduce VOC emissions from its storage vessel affected facility, equip the storage vessel with a cover that is connected through a closed vent system, and route emissions to a control device and failed to route the closed vent system to a process, as required by Section 7.1.3 of the King Pad Permit.
60. Based on information submitted in Respondent's CAA IRL responses, Respondent failed to monitor all fugitive emissions components at the King Pad, as required by Section 8.1.1(a) of the King Pad Permit and 40 C.F.R. § 60.5397a(a)(1).

61. Based on information submitted in Respondent's CAA IRL responses, Respondent failed to develop an emissions monitoring plan, as required by Section 8.1.1(b) of the King Pad Permit and 40 C.F. R. § 60.5397a(b).
62. At the time of the CAA Inspection, Respondent failed to ensure that the cover and all openings on the cover of the storage vessels at the King Pad form a continuous impermeable barrier over the entire surface area of the liquid in the storage vessel or wet seal fluid degassing system, as required by Section 7.1.4.1 of the King Pad Permit and 40 C.F.R. § 60.5411a(b)(1).
63. At the time of the CAA Inspection, Respondent failed to ensure each storage vessel thief hatch at the King Pad is equipped, maintained and operated with a weighted mechanism or equivalent, to ensure that the lid remains properly seated and sealed under normal operating conditions, including such times when working, standing/breathing, and flash emissions may be generated, as required by Section 7.1.4.3 of the King Pad Permit and 40 C.F.R. § 60.5411a(b)(3).
64. Based on information submitted in Respondent's CAA IRL responses, Respondent failed to conduct an assessment of the closed vent system at the King Pad, as required by Section 7.1.6 of the King Pad Permit and 40 C.F.R. § 60.5411a(d).
65. Based on information submitted in Respondent's CAA IRL responses, Respondent failed to determine potential VOC emissions for each storage vessel at the Cochran Pad, as required by Section 6.1.1 of the Cochran Pad Permit.
66. Based on information submitted in Respondent's CAA IRL responses, Respondent failed to use a site specific sample to determine potential emissions from the Cochran Pad, as required by Section 6.1.3.2 of the Cochran Pad Permit.
67. Respondent's failures to comply with its King Pad and Cochran Pad Permits are

violations of the WV SIP and 40 C.F.R. § 52.23.

68. As of the date of this Order, Respondent continues to operate the King and Cochran Pads in violation of its permits, the WV SIP and 40 C.F.R. § 52.23.

69. As of the date of this Order, Respondent continues to operate the King Pad in violation of provisions of 40 C.F.R. Part 60, Subpart OOOOa,

70. The EPA alleges that Respondent's failure to comply with the King Pad Permit, the Cochran Pad Permit, the WVSIP, and 40 C.F.R. Part 60, Subpart OOOOa constitute violations of the CAA including Sections 110 and 111 of the CAA, 42 U.S.C. §§ 7410 and 7411 and 40 C.F.R. § 52.23.

71. In failing to comply with the CAA, Respondent is subject to an administrative order under Section 113(a) of the CAA, 42 U.S.C. § 7413(a).

D. ORDER

72. Respondent is ordered to conduct the compliance program described in paragraphs 73 through 88 below.

73. Within thirty (30) days of the Effective Date of this Order, Respondent shall develop a well sampling and analysis plan and collect pressurized liquid samples from representative set of wells at the King and Cochran Pads. Respondent shall also collect a sample from the Drip Tank located at the Cochran Pad. Respondent may utilize representative pressurized liquid samples that have been collected at these sites during negotiation of this Order.

74. Within thirty (30) days after the collection and results of the pressurized liquid sampling, Respondent shall determine the potential for VOC emissions from each storage vessel at the King and Cochran Pads in accordance with Section 6.1.1 of G-70D and 40 C.F.R. § 60.5365a(e).

75. Within thirty (30) days after the emissions determination in Paragraph 74, Respondent shall submit a written Design Analysis Methodology for the vapor collection and control systems at the King and Cochran Pads in accordance with Appendix A (Design Analysis Methodology) for EPA review and approval. At any time, Respondent may submit a revised Design Analysis Methodology for EPA review and approval.
76. Within sixty (60) days after Respondent submits the Design Analysis Methodology or any revised Design Analysis Methodology, EPA shall notify Respondent of EPA's approval or request for revision of the Design Analysis Methodology or revised Design Analysis Methodology. In a request for revision, EPA shall provide a written description of any deficiencies it has identified in the Design Analysis Methodology or revised Design Analysis Methodology.
77. Within thirty (30) days of the EPA's approval of the Design Analysis Methodology, Respondent shall prepare an Engineering Evaluation for each vapor collection and control system. This Engineering Evaluation shall be based on the approved Design Analysis Methodology.
- a. Each Engineering Evaluation shall incorporate the results of the field surveys that Respondent performed on January 10, 11, and 13, 2022.
 - b. Each Engineering Evaluation shall include a determination as to whether the vapor collection and control system is adequately designed and sized for Potential Minimum Instantaneous Vapor Flow Rate (PMIVFR), Potential Peak Instantaneous Vapor Flow Rate (PPIVFR), and Peak Modeled Pressure, each of which shall be calculated pursuant to the Design Analysis Methodology.
 - c. For each vapor collection and control system that the Engineering Evaluation determines is not adequately designed and sized for the PMIVFR, PPIVFR, and

the Peak Modeled Pressure, Respondent shall determine what design, equipment, operational, or other modifications are necessary to achieve this objective, which may include, but is not limited to:

- i. Reducing the rate or otherwise altering the frequency or duration of the PPIVFR to ensure that Peak Modeled Pressures do not exceed the Maximum Design Pressure of the vapor collection and control system;
 - ii. Increasing the instantaneous rate of flow delivered to the control device associated with the vapor collection and control system to ensure the PMIVFR is within the control device's manufacturer design flow range; and/or
 - iii. Increasing the capacity of the vapor collection and control system as determined in the applicable Engineering Evaluation completed consistent with the Design Analysis Methodology.
- d. Respondent shall revise the Engineering Evaluation to address the necessary modifications identified in paragraph 77.c above.
 - e. If, after the sampling, VOC emissions from the Drip Tank are determined to be equal to or greater than six (6) tons per year, Respondent shall install a Vapor Recovery Line from Drip Tank to Vapor Recovery Line at the Cochran Pad.

78. With respect to each vapor collection and control system for which Respondent has determined that physical or operational modifications are necessary to ensure that the vapor collection and control system is adequately designed and sized for the PMIVFR, PPIVFR, and the Peak Modeled Pressure, pursuant to Paragraph 77, Respondent shall implement the modifications referenced in the revised Engineering Evaluation no later than 45 days after the completion of the Engineering Evaluation. In the event

circumstances beyond the control of Respondent render timely implementation of the modifications referenced in this paragraph impractical or impossible, Respondent shall notify EPA of said circumstances within seven (7) days of the event and request an extension of time to implement the modifications. In its request, Respondent shall provide a written description of the issue(s) causing the delay of implementation and provide an estimated timeline of completion. EPA's consent shall not be unreasonably withheld.

79. Prior to the completion of the Engineering Evaluation in Paragraph 77, Respondent shall make the following modifications to the King and Cochran Pads, including:

- a. Account for low points in the vapor collection and control system's piping configuration at the King and Cochran Pads to eliminate, to the extent practicable, the collection of liquids in the vapor collection and control system's piping;
- b. Install COMM Model 4 combustor at the Cochran Pad; and
- c. Install the Burner Management System at the Cochran Pad.

80. No later than thirty (30) days after the completion of the modifications in Paragraphs 77-79, Respondent shall verify that each vapor collection and control system at the King and Cochran Pads are adequately designed and sized for the PMIVFR, PPIVFR, and the Peak Modeled Pressure by conducting a one-time Infrared (IR) Camera Inspection. The IR Camera Inspection shall be conducted by a third party and shall be conducted during normal operations while, and immediately after, produced oil is sent to the storage vessels.

81. Within thirty (30) days of the Effective Date of this Order, Respondent shall implement recordkeeping and reporting provisions required pursuant to 40 C.F.R. § 60.5420a.

82. Within thirty (30) days of the Effective Date of this Order, Respondent shall install and operate “tattle tale” manual pressure monitoring gauges on each storage vessel closed vent header. The gauge will be located in a central location between the tanks where it is accessible to read from the catwalk.
83. Upon installation of pressure gauges in Paragraph 82, Respondent shall, on each calendar day, unless conditions at the site preclude personnel from visiting, observe and record the pressure on each storage vessel. The observed pressure readings shall be maintained in a readily accessible logbook or electronic database. If personnel are unable to visit the site, the reason should be recorded in the logbook or electronic database.”
84. If, during daily pressure monitoring, Respondent observes any gauge with a daily maximum pressure greater than 12 oz/in², Respondent shall investigate the cause of the pressure reading and implement any corrective actions to reduce the potential for leaking. If, during daily pressure monitoring, Respondent observes any gauge with a daily maximum pressure greater than 16 oz/in², Respondent shall immediately investigate the cause of the pressure exceedance and implement corrective action(s) to return the storage vessel to normal operating pressure.
85. Respondent shall establish ongoing field verification for well sites, storage vessels and fugitive components including:
- a. Performing inspections and implementing a preventative maintenance program;
 - b. Installing and operating storage vessel pressure gauges; and
 - c. Monitoring control devices.
86. Within forty-five (45) days of the completion of the engineering evaluation, modifications, and IR camera inspection in Paragraphs 77-80, Respondent shall submit permit modifications for the King Pad to the WVDEP. The permit application shall

reflect the current equipment at the sites, the applicability of 40 C.F.R. Part 60, Subpart OOOOa, the installation of storage vessel pressure gauges, and the monitoring requirements of this Order.

87. Within forty-five (45) days of the completion of the engineering evaluation, modifications, and IR camera inspection in Paragraphs 77-80, Respondent shall provide the EPA with Certification and Assessment of the Closed Vent System at the King Pad, in accordance with Section 7.1.6 of the King Pad Permit and 40 C.F.R. § 60.5411a(d).
88. If Respondent would like to request a modification of the terms of the Order, Respondent shall submit to the EPA such modification(s) for review, in writing, with an explanation of the reason for each modification. Upon acceptance by the EPA in writing, the proposed modifications(s) will be incorporated in an Amended Order and will become effective upon signature by the parties.

E. OTHER TERMS AND CONDITIONS

89. Respondent admits the jurisdictional allegations contained in this Order.
90. Respondent neither admits nor denies the findings in Section C (Findings) of this Order.

F. GENERAL PROVISIONS

91. Any violation of this Order may result in a civil administrative or judicial action for an injunction or civil penalties of up to \$109,024 per day, per violation, or both, as provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), or \$51,796 per day, per violation, or both, as provided in Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), which reflects the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing the EPA's civil penalty policies to account for inflation. Additionally, any violations of this Order may result in criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C.

§ 7413(c). The EPA may use any information submitted under this Order in an administrative, civil, judicial, or criminal action.

92. Nothing in this Order shall relieve Respondent of the duty to comply with all applicable provisions of the Act or 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.
93. 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.
94. The provisions of this Order 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 Order until the Termination Date as set out in paragraph 99 below, Respondent must give written notice and a copy of this Order to any successors in interest prior to any transfer of ownership or control of any portion of or interest in the Bomont Site. 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 Order unless the EPA has provided written approval of the release of said obligations or liabilities.
95. Unless this Order states otherwise, whenever, under the terms of this Order, written notice or other document is required to be given, it shall be directed to the individuals specified at the addresses below unless those individuals or their successors give notice of a change of address to the other party in writing:

Bruce Augustine
U.S. EPA, Region III
augustine.bruce@epa.gov

Ryan E. M. Cunningham
Cunningham Energy, LLC
ryan.cunningham@cunninghamenergy.com

All notices and submissions shall be considered effective upon receipt.

96. To the extent this Order requires Respondent to submit any information to the EPA, Respondent may assert a business confidentiality claim covering part or all of that information, but only to the extent and only in the manner described in 40 C.F.R. Part 2, Subpart B. The EPA will disclose information submitted under a confidentiality claim only as provided in 40 C.F.R. Part 2, Subpart B. If Respondent does not assert a confidentiality claim, the EPA may make the submitted information available to the public without further notice to Respondent.
97. Each undersigned representative of the Parties certifies that he or she is authorized to enter into the terms and conditions of this Order to execute and bind legally the Parties to this document.
98. 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. § 162-21(b)(2), performance of paragraphs 73-85 is restitution, remediation, or required to come into compliance with the law.
99. The parties consent to service of the Final Order by e-mail at the following valid email addresses: leone.hannah@epa.gov (for Complainant), and junger@spilmanlaw.com (for Respondent).

G. EFFECTIVE DATE AND OPPORTUNITY FOR A CONFERENCE

100. Pursuant to Section 113(a)(4) of the Act, an Order does not take effect until the person to whom it has been issued has had an opportunity to confer with the EPA concerning the alleged violations. By signing this Order, Respondent acknowledges and agrees that it has been provided an opportunity to confer with the EPA prior to issuance of this Order. Accordingly, this Order will take effect immediately upon signature by the latter of Respondent or the EPA.

H. JUDICIAL REVIEW

101. Respondent 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 Order, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1).

I. TERMINATION

102. This Order shall terminate on the earlier of the following (the “Termination Date”) at which point Respondent shall operate in compliance with the Act:

- a. One year after the Effective Date of this Order;
- b. The effective date of any determination by the EPA that Respondent has achieved compliance with all terms of this Order; or
- c. Immediately upon receipt by Respondent of notice from the EPA finding that an imminent and substantial endangerment to public health, welfare, or the environment has occurred.

For United States Environmental Protection Agency, Region 3:

[digitally signed and dated]

Karen Melvin, Director

Office of Enforcement and Compliance Assurance Division

U.S. EPA, Region III (3ED00)

4 Penn Center

1600 John F. Kennedy Blvd.

Philadelphia, PA 19103

For Cunningham Energy, LLC


Signature

5/2/23
Date

Printed Name: RYAN CUNNINGHAM

Title: PRESIDENT

Address: 3230 PENNSYLVANIA AVE
CHARLESTON, WV 25302

Date: _____

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III