

FILED

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6

1201 Elm Street, Suite 500
Dallas, Texas 75270

APR 18 PM 3:47
REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of

Black Bear Midstream, LLC
Frierson, Louisiana

Respondent.

§
§
§
§
§
§

Docket No. CAA- 06-2023-3300

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 6 (“EPA” or “Complainant”), and Black Bear Midstream, LLC (“Respondent”) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(d). Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), the Administrator and the Attorney General jointly determined that this matter, in which the first date of alleged violation occurred more than twelve months prior to the initiation of the administrative action, was appropriate for administrative penalty action.

2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent has violated the Chemical Accident Prevention Provisions in

40 C.F.R. Part 68, promulgated pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and that Respondent is therefore in violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7). Furthermore, this Consent Agreement and Final Order serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), and 40 C.F.R. § 22.34, of the EPA's intent to issue an order assessing penalties for these violations.

Parties

3. Complainant is the Director of the Enforcement and Compliance Assurance Division of EPA, Region 6, as duly delegated by the Administrator of the EPA and the Regional Administrator, EPA, Region 6.

4. Respondent is Black Bear Midstream, LLC, a company authorized to conduct business in the state of Louisiana.

Statutory and Regulatory Background

5. On November 15, 1990, the President signed into law the CAA Amendments of 1990. The Amendments added Section 112(r) to Title I of the CAA, 42 U.S.C. § 7412(r). The objective of Section 112(r) is to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance.

6. Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), requires the Administrator to promulgate a list of regulated substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment. Section 112(r)(5) of the CAA, 42 U.S.C. § 7412(r)(5), requires that the Administrator establish a threshold quantity for any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3). The list of regulated substances and respective

threshold quantities is codified at 40 C.F.R. § 68.130.

7. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for stationary sources with threshold quantities of regulated substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3). On June 20, 1996, EPA promulgated a final rule known as the Risk Management Program, 40 C.F.R. Part 68 – Chemical Accident Prevention Provisions, which implements Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

8. The regulations at 40 C.F.R. Part 68 require owners and operators to develop and implement a Risk Management Program at each stationary source with over a threshold quantity of regulated substances. The Risk Management Program must include, among other things, a hazard assessment, a prevention program, and an emergency response program. The Risk Management Program is described in a Risk Management Plan (RMP) that must be submitted to the EPA.

9. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, an RMP must be submitted for all covered processes by the owner or operator of a stationary source subject to 40 C.F.R. Part 68 no later than the latter of June 21, 1999, or the date on which a regulated substance is first present above the threshold quantity in a process.

10. The regulations at 40 C.F.R. § 68.10 set forth how the Chemical Accident Prevention Provisions of 40 C.F.R. Part 68 apply to each program level of covered processes. Pursuant to 40 C.F.R. § 68.10(i), a covered process is subject to Program 3 requirements if the process does not meet the requirements of Program 1, as described in 40 C.F.R. § 68.10(g), and if it is in a specified North American Industrial Classification System code or is subject to the Occupational Safety and Health Administration (OSHA) process safety management standard, 29 C.F.R. §

1910.119.

11. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for violations that occurred before November 2, 2015, and to \$51,796 for violations that occur after November 2, 2015, and are assessed after January 12, 2022.

Definitions

12. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines “person” to include any individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency department, or instrumentality of the United States and any officer, agent, or employee thereof.

13. Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), and the regulation at 40 C.F.R. § 68.3 defines “accidental release” as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

14. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and the regulation at 40 C.F.R. § 68.3 defines “stationary source,” in part, as any buildings, structures, equipment, installations or substance-emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of

the same person (or persons under common control), and from which an accidental release may occur.

15. Section 112(r)(2)(B) of the CAA, 42 U.S.C. § 7412(r)(2)(B), and the regulation at 40 C.F.R. § 68.3 define “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the CAA, as amended, in 40 C.F.R. § 68.130.

16. The regulation at 40 C.F.R. § 68.3 defines “threshold quantity” as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, as amended, listed in 40 C.F.R. § 68.130 and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

17. The regulation at 40 C.F.R. § 68.3 defines “process” as any activity involving a regulated substance including any use, storage, manufacturing, handling or on-site movement of such substances, or combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

18. The regulation at 40 C.F.R. § 68.3 defines “covered process” as a process that has a regulated substance present in more than a threshold quantity as determined under 40 C.F.R. § 68.115.

EPA Findings of Fact and Conclusions of Law

19. Respondent is, and at all times referred to herein was, a “person” as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

20. Respondent is the owner and operator of the facility located in Frierson, Louisiana, with a street address of 1716 Friendship Road, Frierson, Louisiana 71027 (“the Facility”).

21. Pursuant to Section 114 of the CAA, 42 U.S.C. § 7414, the EPA conducted a Virtual

Partial Compliance Evaluation of the Facility from October 27, 2020, to January 14, 2021, to determine Respondent's compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68 ("the Inspection").

22. The Facility is a "stationary source" pursuant to Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and the regulation at 40 C.F.R. § 68.3.

23. The Respondent's facility is a natural gas liquid extraction plant, that utilizes compressor engines, an amine unit, a cryogenic unit, oil heaters, various engine oil tanks, condensate tanks, slop oil tanks, water tanks, various chemical tanks, flare, truck loading areas, piping and valves, to recover natural gas liquids. The facility produces a flammable mixture which contains several regulated substances such as propane, butane, isobutane, ethane, isopentane, and pentane. The Respondent's processes meet the definition of "process" and "covered process", as defined by 40 C.F.R. § 68.3. The Respondent's RMP program level 3 covered processes store or otherwise use a regulated substance in an amount exceeding the applicable threshold.

24. Propane, butane, isobutane, ethane, isopentane, and pentane are "regulated substances" pursuant to Section 112(r)(2)(B) of the CAA, and the regulation at 40 C.F.R. § 68.3. The threshold quantity for each of these regulated substances, propane, butane, isobutane, ethane, isopentane, and pentane, as listed in 40 C.F.R. § 68.130 is 10,000 pounds.

25. Respondent has greater than a threshold quantity of propane, butane, isobutane, ethane, isopentane, and pentane in processes at the Facility, meeting the definition of "covered process" as defined by 40 C.F.R. § 68.3.

26. From the time Respondent first had on-site greater than a threshold quantity of propane, butane, isobutane, ethane, isopentane, and pentane, in its processes, Respondent was

subject to the requirements of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. Part 68 because it was the owner or operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

27. From the time Respondent first had on-site greater than a threshold quantity of propane, butane, isobutane, ethane, isopentane, and pentane, in its processes, Respondent was required to submit an RMP pursuant to 40 C.F.R. § 68.12(a) and to comply with the Program 3 prevention requirements because pursuant to 40 C.F.R. § 68.10(i), the covered process at the Facility did not meet the eligibility requirements of Program 1 and is in North American Industry Classification System code 211112 (Natural Gas Liquid Extraction) and is subject to the OSHA process safety management standard, 29 C.F.R. § 1910.119.

EPA Findings of Violation

28. The facts stated in the EPA Findings of Fact and Conclusions of Law above are herein incorporated.

29. Complainant hereby states and alleges that Respondent has violated the CAA and federal regulations promulgated thereunder as follows:

Count 1 – Management

30. The regulation at 40 C.F.R. § 68.12(d)(1) requires the owner or operator of a stationary source with a process subject to Program 3 to implement a management system as provided in § 68.15. The regulation at 40 C.F.R. § 68.15(c) provides that the owner or operator shall document the names or positions and the lines of authority, defined through an organization chart or similar document, of those responsible for implementing individual requirements of Part 68 if the responsibility is assigned to persons other than the person identified under paragraph (b) of this section.

31. At the time of the Inspection, Respondent failed to document the names or positions of persons assigned responsibility for implementing individual requirements of Part 68, other than the person identified as the RMP Program Manager.

32. Respondent's failure to document the names or positions of persons assigned responsibility for implementing individual requirements of Part 68, other than the person identified as the RMP Program Manager, pursuant to 40 C.F.R. § 68.15(c), as required by 40 C.F.R. § 68.12(d)(1), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 2 – Process Safety Information

33. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. The regulation at 40 C.F.R. § 68.65(c)(1)(iii) provides that the owner or operator shall complete a compilation of written process safety information before conducting any process hazard analysis required by the rule. The process safety information shall include information pertaining to the technology of the process which shall include at least the maximum intended inventory.

34. At the time of the Inspection, Respondent failed to properly document the maximum intended inventory, including the information within the safety data sheet index.

35. Respondent's failure to properly document the maximum intended inventory, pursuant to 40 C.F.R. § 68.65(c)(1)(iii), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 3 – Operating Procedures

36. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements

of 40 C.F.R. §§ 68.65 through 68.87. The regulations at 40 C.F.R. §§ 68.69(a)(1)(iii) – (vii) provides that the owner or operator shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and shall address: (iii) temporary operations; (iv) emergency shutdown; (v) emergency operations; (vi) normal shutdown; and (vii) startup following a turnaround, or after an emergency shutdown.

37. At the time of the Inspection, Respondent failed to develop written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information that addressed temporary operations, emergency shutdown, emergency operations, normal shutdown, and startup following a turnaround, or after an emergency shutdown.

38. Respondent's failure to develop written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information that addressed temporary operations, emergency shutdown, emergency operations, normal shutdown, and startup following a turnaround, or after an emergency shutdown, pursuant to 40 C.F.R. §§ 68.69(a)(1)(iii) – (vii), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 4 – Operating Procedures

39. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. The regulation at 40 C.F.R. § 68.69(c) provides that the operating procedures shall be reviewed as often as necessary to assure that they reflect current operating practice, including changes that result from changes in process chemicals, technology,

and equipment, and changes to stationary sources. The owner or operator shall certify annually that these operating procedures are current and accurate.

40. At the time of the Inspection, Respondent failed to annually certify that the operating procedures were current and accurate.

41. Respondent's failure to annually certify that the operating procedures were current and accurate, pursuant to 40 C.F.R. § 68.69(c), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 5 – Training

42. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. The regulation at 40 C.F.R. §§ 68.71(b) – (c) provides that (b) refresher training shall be provided at least every three years, and more often if necessary, to each employee involved in operating a process to assure that the employee understands and adheres to the current operating procedures of the process. The owner or operator, in consultation with the employees involved in operating the process, shall determine the appropriate frequency of refresher training; (c) The owner or operator shall ascertain that each employee involved in operating a process has received and understood the training required by 40 C.F.R. § 68.71. The owner or operator shall prepare a record which contains the identity of the employee, the date of training, and the means used to verify that the employee understood the training.

43. At the time of the Inspection, Respondent failed to document that refresher training was provided at least every three years, and more often if necessary, to each employee involved in operating a process to assure that the employee understands and adheres to the current operating procedures of the process. Respondent also failed to provide records that contained the

means used to verify that the employee understood the training.

44. Respondent's failure to document that refresher training was provided at least every three years, and more often if necessary, to each employee involved in operating a process to assure that the employee understands and adheres to the current operating procedures of the process, and Respondent's failure to provide a record that contained the means used to verify that the employee understood the training pursuant to 40 C.F.R. §§ 68.71(b) – (c), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 6 – Mechanical Integrity

45. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. The regulation at 40 C.F.R. §§ 68.73(b) provides that the owner or operator shall establish and implement written procedures to maintain the on-going integrity of process equipment.

46. At the time of the Inspection, Respondent failed to establish written procedures for process equipment selected for review.

47. Respondent's failure to establish written procedures to maintain the on-going integrity of process equipment, pursuant to 40 C.F.R. §§ 68.73(b), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 7 – Mechanical Integrity

48. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. The regulation at 40 C.F.R. § 68.73(d)(4) provides that the owner or operator shall document each inspection and test that has been performed on process

equipment. The documentation shall identify the date of the inspection or test, the name of the person who performed the inspection or test, the serial number or other identifier of the equipment on which the inspection or test was performed, a description of the inspection or test performed, and the results of the inspection or test.

49. At the time of the Inspection, Respondent failed to provide documentation of each inspection and test that was performed on the process equipment reviewed. The documentation provided by Black Bear did not properly identify the date of the inspection or test, the name of the person who performed the inspection or test, the serial number or other identifier of the equipment on which the inspection or test was performed, a description of the inspection or test performed, and the results of the inspection or test.

50. Respondent's failure to properly identify the date of the inspection or test, the name of the person who performed the inspection or test, the serial number or other identifier of the equipment on which the inspection or test was performed, a description of the inspection or test performed, and the results of the inspection or test, pursuant to 40 C.F.R. § 68.73(d)(4), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 8 – Compliance Audits

51. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. The regulation at 40 C.F.R. § 68.79(a) provides that the owner or operator shall certify that they have evaluated compliance with the provisions of this subpart at least every three years to verify that procedures and practices developed under this subpart are adequate and are being followed.

52. At the time of the Inspection, Respondent failed to certify the compliance audits conducted to assure compliance with the provisions of Subpart D at least every three years to verify that procedures and practices developed under this subpart are adequate and are being followed.

53. Respondent's failure to certify the compliance audits conducted, pursuant to 40 C.F.R. § 68.79(a), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 9 – Employee Participation

54. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. The regulation at 40 C.F.R. §§ 68.83(a) – (b) provides that (a) the owner or operator shall develop a written plan of action regarding the implementation of the employee participation required by this section; (b) The owner or operator shall consult with employees and their representatives on the conduct and development of process hazards analyses and on the development of the other elements of process safety management in this rule.

55. At the time of the Inspection, Respondent failed to provide documentation to support that the Respondent developed a written plan of action regarding the implementation of the employee participation and that the Respondent consulted with employees and their representatives on the conduct and development of process hazards analyses and on the development of the other elements of process safety management.

56. Respondent's failure to provide documentation to support that the Respondent developed a written plan of action regarding the implementation of the employee participation and that the Respondent consulted with employees and their representatives on the conduct and

development of process hazards analyses and on the development of the other elements of process safety management, pursuant to 40 C.F.R. §§ 68.83(a) – (b), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 10 – Contractors

57. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. The regulation at 40 C.F.R. § 68.87(b)(2) provides that the owner or operator shall inform contract owner or operator of the known potential fire, explosion, or toxic release hazards related to the contractor's work and the process.

58. At the time of the Inspection, Respondent failed to provide documentation of how contractors are informed of potential fire, explosion, or toxic release hazards related to the contractor's work and the process.

59. Respondent's failure to provide documentation of how contractors are informed of potential fire, explosion, or toxic release hazards related to the contractor's work and the process, pursuant to 40 C.F.R. § 68.87(b)(2), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 11 – Contractors

60. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. The regulation at 40 C.F.R. § 68.87(b)(3) provides that the owner or operator shall explain to the contract owner or operator the applicable provisions of subpart E of 40 C.F.R. § Part 68.

61. At the time of the Inspection, Respondent failed to provide documentation supporting

that the Respondent informed contract owners or operators of the emergency response plan.

62. Respondent's failure to provide documentation supporting that the Respondent informed contract owners or operators of the emergency response plan, pursuant to 40 C.F.R. § 68.87(b)(3), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 12 – Contractors

63. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. The regulation at 40 C.F.R. § 68.87(b)(5) provides that the owner or operator shall periodically evaluate the performance of the contract owner or operator in fulfilling their obligations as specified in 40 C.F.R. § 68.87(c).

64. At the time of the Inspection, Respondent failed to provide documentation that the Respondent periodically evaluated the performance of the contract owner or operator in fulfilling their obligations.

65. Respondent's failure to provide documentation that the Respondent periodically evaluated the performance of the contract owner or operator in fulfilling their obligations, pursuant to 40 C.F.R. § 68.87(b)(5), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

CONSENT AGREEMENT

66. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2),

Respondent:

- a. admits the jurisdictional allegations set forth herein;
- b. neither admits nor denies the specific factual allegations stated herein;

- c. consents to the assessment of a civil penalty, as stated herein;
- d. consents to any conditions specified herein;
- e. waives any right to contest the allegations set forth herein; and
- f. waives its rights to appeal the Final Order accompanying this Consent Agreement.

67. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

68. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

Penalty Payment

69. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of **fifty thousand, four hundred and twenty-five dollars (\$50,425.00)**, as set forth below.

70. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

71. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Lorena S. Vaughn
Regional Hearing Clerk

U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500 (ORC)
Dallas, Texas 75270-2102
vaughn.lorena@epa.gov; and

Carlos Flores
Enforcement and Compliance Assurance Division
Air Enforcement Branch
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500 (ECDAC)
Dallas, Texas 75270-2101
flores.carlos@epa.gov

72. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six percent (6%) per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

Supplemental Environmental Project

73. In response to the alleged violations of 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and in settlement of this matter, although not required by 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), or any other federal, state, or local law, Respondent agrees to implement a supplemental environmental project (SEP), as described below in Paragraph 74 (or in Attachment A).

74. Respondent shall complete a purchase and the donation of the listed emergency

response equipment to the local emergency response fire department, consisting of: a DJI – Matrice 300 RTK drone combo, with a gas detection device and a radiometric thermal camera, including the necessary equipment to operate the drone device safely (including a battery, gimbal connector, and drone case). The SEP is more specifically described in Attachment A and incorporated herein by reference.

75. Respondent shall spend no less than \$96,001 on implementing the SEP. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report. If Respondent’s implementation of the SEP as described in Attachment A does not expend the full amount set forth in this paragraph, and if EPA determines that the amount remaining reasonably could be applied towards the purchase of additional emergency response equipment, Respondent will identify, purchase, and provide additional emergency response equipment to the emergency response organization identified in Appendix A.

76. The Respondent shall complete the SEP by August 1, 2023.

77. Identification of SEP Recipient

a. SEP Recipient

i. Respondent has selected the Desoto Parish Fire District 9 to receive the SEP. The emergency response equipment donation of the DJI – Matrice 300 RTK drone combo, with a gas detection device and a radiometric thermal camera, including the necessary equipment to operate the drone device safely (including a battery, gimbal connector, and drone case).

b. The EPA had no role in the selection of the SEP recipient, or specific equipment identified in the SEP, nor shall this CAFO be construed to constitute EPA approval or endorsement of any SEP recipient or specific equipment identified in

this CAFO.

78. The SEP is consistent with applicable EPA policy and guidelines, specifically EPA's 2015 Update to the 1998 Supplemental Environmental Projects Policy, (March 10, 2015). The SEP advances at least one of the objectives of the Chemical Accident Prevention Provisions in 40 C.F.R. Part 68, promulgated pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), by aiding in the safety of first responders and the public throughout a wide spectrum of chemical accident incident types. The SEP is not inconsistent with any provision of the Chemical Accident Prevention Provisions in 40 C.F.R. Part 68, promulgated pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r). The SEP relates to the alleged violation(s), and is designed to reduce:

- a. The overall risk to public health and/or the environment potentially affected by the alleged violations by providing valuable information to local fire, police, and emergency response personnel to prepare for and respond to chemical emergencies in their community.

79. Respondent certifies the truth and accuracy of each of the following:

- a. That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that the Respondent in good faith estimates that the cost to implement the SEP, exclusive of administrative costs is \$96,001;
- b. That, as of the date of executing this CAFO, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;
- c. That the SEP is not a project that Respondent was planning or intending to

construct, perform, or implement other than in settlement of the claims resolved in this CAFO;

- d. That Respondent has not received and will not have received credit for the SEP in any other enforcement action;
- e. That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;
- f. That for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP; and
- g. That Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph 74.

80. Any public statement, oral or written, in print, film, or other media, made by Respondent or a representative of Respondent making reference to the SEP under this CAFO from the date of its execution of this CAFO shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the federal laws."

81. SEP Reports.

- a. Respondent shall submit a SEP Completion Report to EPA by August 31, 2023. The SEP (Completion) Report shall contain the following information, with supporting documentation:
 - i. A detailed description of the SEP as implemented;
 - ii. A description of any operating problems encountered and the solutions thereto;
 - iii. Itemized costs;

- iv. Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO; and
 - v. A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).
- b. Respondent agrees that failure to submit the SEP Completion Report or any Periodic Report required by subsection (a) above shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to Paragraph 82 below.
- c. Respondent shall submit all notices and reports required by this CAFO to Carlos Flores, via electronic mail at flores.carlos@epa.gov.
- d. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP completion report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

82. Stipulated Penalties

- a. Except as provided in subparagraphs (b) and (c) below, if Respondent fails to satisfactorily complete the requirements regarding the SEP specified in Paragraph 74 by the deadline in Paragraph 76 Respondent agrees to pay, in addition to the civil penalty in Paragraph 69, the following per day per violation stipulated

penalty for each day the Respondent is late meeting the applicable SEP

requirement:

- i. \$250 per day for days 1-30
- ii. \$300 per day for days 31 – 60
- iii. \$500 per day for days beyond 60 days

b. If Respondent fails to timely submit any SEP reports, such as those referred to in Paragraph 81 in accordance with the timelines set forth in this CAFO, Respondent agrees to the following per day stipulated penalty for each day after the report was due until Respondent submits the report in its entirety:

- i. \$100 per day for days 1-30
- ii. \$150 per day for days 31 – 60
- iii. \$250 per day for days beyond 60 days

c. If Respondent does not satisfactorily complete the SEP, including spending the minimum amount on the SEP set forth in Paragraph 75 above, Respondent shall pay a stipulated penalty to the United States in the amount of \$100,000.

“Satisfactory completion” of the SEP is defined as Respondent spending no less than \$96,001 to purchase and donate a DJI – Matrice 300 RTK drone combo, with a gas detection device and a radiometric thermal camera, including the necessary equipment to operate the drone device safely (including a battery, gimbal connector, and drone case) by August 1, 2023. The determinations of whether the SEP has been satisfactorily completed shall be in the sole discretion of EPA.

d. EPA retains the right to waive or reduce a stipulated penalty at its sole discretion.

e. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of Paragraphs 70 - 71 above. Interest

and late charges shall be paid as stated in Paragraph 72.

Dispute Resolution

83. If the Respondent objects to any decision or directive of EPA, the Respondent shall notify the following persons in writing of its objections, and the basis for those objections, within fifteen (15) calendar days of receipt of EPA's decision or directive:

Chief, Chemical Accident Enforcement Section
Compliance Assurance and Enforcement Division
U.S. EPA - Region 6
1201 Elm St, Suite 500
Dallas, TX 75270-2101

Chief, RCRA & Toxics Enforcement Branch
Office of Regional Counsel
U.S. EPA - Region 6
1201 Elm St., Suite 500
Dallas, TX 75270-2101

84. The Chemical Accident Enforcement Section Chief (Chief) or his designee, and the Respondent shall then have an additional fifteen (15) calendar days from receipt by EPA of the Respondent's written objections to attempt to resolve the dispute. If an agreement is reached between the Chief and the Respondent, the agreement shall be reduced to writing and signed by the Chief and the Respondent and incorporated by reference into this Consent Agreement and Final Order.

85. If no agreement is reached between the Chief and the Respondent within that time period, the dispute shall be submitted to the Director of the Compliance Assurance and Enforcement Division (Division Director) or his designee. The Division Director and the Respondent shall then have a second 15-day period to resolve the dispute. If an agreement is reached between the Division Director and the Respondent, the resolution shall be reduced to writing and signed by the Division Director and Respondent and incorporated by reference into

this Consent Agreement and Final Order. If the Division Director and the Respondent are unable to reach agreement within this second 15-day period, the Division Director shall provide a written statement of EPA's decision to the Respondent, which shall be binding upon the Respondent and incorporated by reference into the Consent Agreement and Final Order.

Notification

86. Unless otherwise specified elsewhere in this Consent Agreement and Final Order, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other parties that another individual has been designated to receive the communication:

EPA: Carlos Flores
Enforcement and Compliance Assurance Division
Air Enforcement Branch
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500 (ECDAC)
Dallas, Texas 75270-2101

Respondent: Paul Espenan
Senior Vice President EH&S
Diversified Energy Company
1600 Corporate Drive
Birmingham, AL 35242

Modification

87. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of all parties and approval of the Regional Judicial Officer except that the Regional Judicial Officer need not approve written agreements between the parties modifying the SEP schedules described in Appendix B. The

Branch Manager of the Enforcement and Compliance Assurance Division shall have the authority to extend the deadlines in Appendix B for good cause.

Termination

88. At such time as Respondent believes that it has complied with all terms and conditions of this Consent Agreement and Final Order, Respondent may request that EPA advise whether this Consent Agreement and Final Order has been satisfied and terminated. EPA will respond to said request as expeditiously as possible. This Consent Agreement and Final Order shall terminate when all actions required to be taken by this Consent Agreement and Final Order have been completed, and Respondent has been notified by the EPA in writing that this Consent Agreement and Final Order has been satisfied and terminated.

No EPA Liability

89. Neither EPA nor the United States Government shall be liable for any injuries or damages to persons or property resulting from acts or omissions of the Respondent, their officers, directors, employees, agents, receivers, trustees, successors, assigns, or contractors in carrying out activities pursuant to this Consent Agreement and Final Order, nor shall the EPA or the United States Government be held out as a party to any contract entered into by the Respondent in carrying out activities pursuant to this Consent Agreement and Final Order.

Effect of Settlement and Reservation of Rights

90. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein.

91. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in paragraph directly below.

92. Full payment of the penalty proposed in this Consent Agreement shall not affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for violations of law not addressed in the Consent Agreement and Final Order. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of the CAA and regulations promulgated thereunder.

93. Complainant reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order.

General Provisions

94. By signing this Consent Agreement, the undersigned representative of Respondent certifies that it is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party it represents to this Consent Agreement.

95. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon filing of the Final Order by the Regional Hearing Clerk for EPA, Region 6. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

96. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State, and local taxes.

97. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors, and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent

with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

98. The EPA and Respondent agree to the use of electronic signatures for this matter pursuant to 40 C.F.R. § 22.6. The EPA and Respondent further agree to electronic service of this Consent Agreement and Final Order by email to the following:

To EPA:

pittman.lawrence@epa.gov

To Respondent:

pespenan@dgoc.com;

ddaugherty@dgoc.com;

gljohnson@liskow.com

RESPONDENT:
BLACK BEAR MIDSTREAM, LLC

Date: May 11, 2023



Signature

Paul M. Espenan
Print Name

Senior Vice President, Environmental, Health & Safety
Title

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: May 18, 2023



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

Digitally signed by CHERYL
SEAGER
Date: 2023.05.18 14:21:00
-05'00'

CERTIFICATE OF SERVICE

I certify that a true and correct 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, Dallas, Texas 75270-2102, and that a true and correct copy was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

pittman.lawrence@epa.gov

Copy via Email to Respondent:

pespenan@dgoc.com;

ddaugherty@dgoc.com;

gljohnson@liskow.com

Copy via Email to Regional Hearing Clerk:

vaughn.lorena@epa.gov

Dated this 18th day of May, 2023.

Signed
Office of Regional Counsel
U.S. EPA, Region 6

ATTACHMENT A: Supplemental Environmental Project

Title	Community Emergency Response Improvements
SEP Category	Purchase of Emergency Response Resources
Timeline	Complete expenditures within four (4) months of date of CAFO filing.
Projected Cost	\$ 96,001
Description	Black Bear Midstream, LLC (“Black Bear”) is partnering with the local Desoto Parish emergency response entity in the Frierson, Louisiana, area in fulfillment of this Supplemental Environmental Project (SEP). Each of the components of the listed project focuses on emergency planning and preparedness directed to assist the intended recipients to obtain better or additional chemical emission detection equipment and to aid in the safety of first responders and the public. The intended recipient and related equipment purchases are provided below.

Desoto Parish Fire District 9

The Desoto Parish Fire District 9 (Fire District) is in Frierson, Louisiana, and is responsible for providing 24/7 emergency medical services, Verdugo dispatch, arson investigations, and emergency operations center support. The area covered by the Fire District is the same area where Black Bear’s facility is located. Black Bear shall purchase and deliver to the Fire Department the following:

1. DJI – Matrice 600 RTK Drone
2. DJI – Matrice 300 – Intelligent Battery TB60
3. DJI – WB37 Intelligent Battery
4. GPC – DJI Matrice 300 V2 Case
5. DJI – Matrice 300 – Dual Gimbal Connector Part 10
6. DJI – Zenmuse H20T SP Basic
7. DJI – U10 Methane Gas Detector

The DJI drone has a gas detection device for remotely measuring methane gas and a Radiometric thermal camera. The methane detection device emits a laser, an invisible infrared laser that measures the concentration per unit (ppm.m) of methane gas present at a long distance. The detection device also identifies methane gas (CH₄) from up to 100 meters away at 5 ppm.m and utilizes Tunable Diode Laser Absorption Spectroscopy (TDLAS) to achieve high sensitivity.

The purchase of the drone will significantly aid in the safety of first responders and the public throughout a wide spectrum of incident types.

Black Bear shall purchase and donate this equipment to the Fires District within 4 months of the effective date of the Consent Agreement and Final Order.

Projected Cost: \$96,001