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U.S. EPA REGION 8
HEARING CLERK

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF: XTO ENERGY, INC. 27777 Springwoods Village Pkwy Spring TX, 77389 Respondent.	Docket No. CAA-08-2024-0015 CONSENT AGREEMENT
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Complainant, the authorized representative of the United States Environmental Protection Agency (EPA), and Respondent, XTO Energy, Inc. (each individually, a Party, and collectively, the Parties), by their undersigned representatives, hereby consent and agree as follows:

I. 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. At all times relevant to this Agreement, XTO Energy, Inc. (Respondent) owns and/or operates oil and gas facilities located in North Dakota, specifically the Skoglund 11-10H Pad.
3. EPA and Respondent, having agreed settlement of this action is in the public interest, consent to the entry of this consent agreement (Agreement) without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Agreement.

II. JURISDICTION

4. This Agreement is entered into under the authority vested in the Administrator of the EPA by section 113(d) of the Act, 42 U.S.C. § 7413(d). The undersigned EPA official has been duly authorized to institute this action.
5. 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, as authorized by section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d), and adjusted for inflation consistent with 40 C.F.R. § 19.4.
6. In satisfaction of the notice requirements of section 113(a)(4) of the Act, 42 U.S.C. § 7413(a)(4), on August 29, 2024, EPA issued to Respondent a notice of violation (NOV) and provided a copy of the NOV to the state of North Dakota, providing notice to both that the EPA found Respondent committed the alleged violations described in section VI of this Agreement and providing Respondent an opportunity to confer with EPA. On October 16, 2024, representatives of Respondent and EPA discussed the August 29, 2024 NOV.
7. The Regional Judicial Officer (RJO) is authorized to approve this Agreement with a final order. 40 C.F.R. §§ 22.18(b), 22.4(b).
8. The final order approving this Agreement (Final Order) simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

III. DEFINITIONS

9. “Business Day” means Monday through Friday, with the exception of federal holidays. In computing any period of time under this Agreement expressed in Business Days, where the last day would fall on a Saturday, Sunday, or

federal holiday, the period shall run until 11:59 p.m. Mountain Time of the next Business Day.

10. “Calendar Day” means any of the seven days of the week. In computing any period of time under this Agreement expressed in Calendar Days (as opposed to Business Days), where the last Calendar Day would fall on a Saturday, Sunday, or federal holiday, the period shall not be extended to the next Business Day.
11. “Effective Date” shall have the definition provided in Section XII (Effective Date) of this Agreement.
12. “Gas” means a mixture of naturally occurring gases, principally comprised of hydrocarbons such as methane, ethane, and propane, that is produced from an oil and natural gas well and exists in the vapor phase.
13. “VOC” or “VOCs” means volatile organic compounds as defined in 40 C.F.R. § 60.2.

IV. GOVERNING LAW

14. As set forth in section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1), the purpose of the Act is “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population.”
15. Section 108 of the Act, 42 U.S.C. § 7408, directs the EPA to identify those air pollutants which “may reasonably be anticipated to endanger public health or welfare” and to issue air quality criteria for them based on “the latest scientific knowledge” about the effects of the pollutants on public health and the environment. The pollutants identified as such are called “criteria pollutants.”
16. Section 109 of the Act, 42 U.S.C. § 7409, requires the EPA to promulgate regulations establishing national ambient air quality standards (“NAAQS”)

for criteria pollutants. The primary NAAQS must be set at the level “requisite to protect the public health” with “an adequate margin of safety,” and the secondary NAAQS are intended to protect “the public welfare.” Public welfare effects include, but are not limited to, “effects on soils, water, crops, vegetation, . . . animals, wildlife, weather, visibility, and climate, damage to and deterioration of property . . . as well as effects on economic values” 42 U.S.C. § 7602(h).

17. Ground-level ozone is one of six criteria pollutants for which the EPA has promulgated national standards, due to its adverse effects on human health and the environment. Short-term exposures (1 to 3 hours) to ground-level ozone can cause acute health effects observed even at low concentrations, including temporary pulmonary inflammation. Long-term exposure (months to years) may cause permanent damage to lung tissue. Children and adults who are active outdoors are particularly susceptible to the adverse effects of exposure to ozone. See 73 Fed. Reg. 16,436 (Mar. 27, 2008).
18. Ozone is not emitted directly from sources of air pollution. Ozone is a photochemical oxidant, formed when certain chemicals in the ambient air react with oxygen in the presence of sunlight. These chemicals – volatile organic compounds (“VOC”) and nitrogen oxides (“NO_x”) – are called “ozone precursors.” Sources that emit ozone precursors are regulated to reduce ground-level ozone. See 62 Fed. Reg. 38,856 (July 18, 1997), and 80 Fed. Reg. 65,292, 65,299 (Oct. 26, 2015).
19. Section 110(a) of the Act requires that every state implementation plan (“SIP”) provides for the “implementation, maintenance, and enforcement of” the primary and secondary NAAQS. See 42 U.S.C. § 7410(a).
20. Section 111(b) of the Act authorizes the Administrator of the EPA to promulgate standards of performance applicable to “new sources” within categories of sources that cause “air pollution which may reasonably be anticipated to endanger public health or welfare.” 42 U.S.C. § 7411(b).

21. A “stationary source” is a “building, structure, facility, or installation which emits or may emit any air pollutant.” 42 U.S.C. § 7411(a)(3).
22. The EPA approved the state of North Dakota’s Air Pollution Control Rules in its SIP. *See* Approval & Promulgation of Air Quality Implementation Plan; North Dakota, 64 Fed. Reg. 47,395 (Aug. 31, 1999), and the subsequent redesignation of SIP authority from the North Dakota Department of Health (“NDDOH”) to the North Dakota Department of Environmental Quality (“NDDEQ”), 84 Fed. Reg. 1610 (Feb. 5, 2019). The approved SIP incorporates North Dakota’s requirements for flares at oil and gas production facilities, as set forth in North Dakota Administrative Code (“N.D. Admin. Code”) 33.1-15-07-02, -20-04.2 (2025). *See* 42 U.S.C. § 7413(a)(1) (authorizing EPA enforcement of requirements and prohibitions in EPA-approved SIPs after 30-day notice to the State).
23. Under N.D. Admin. Code 33.1-15-07-02.1, “[n]o person may cause or permit the emission of organic compounds gases and vapors, except from an emergency vapor blowdown system or emergency relief system, unless these gases and vapors are burned by flares, or an equally effective control device as approved by” NDDEQ. Minor sources, as determined by NDDEQ and not subject to New Source Performance Standards (“NSPS”), may be granted exemptions to N.D. Admin. Code 33.1-15-07-02.1.
24. Each flare required under N.D. Admin. Code 33.1-15-07-02.1 and used to combust gas at a production facility “must be equipped and operated with an automatic igniter or a continuous burning pilot.” N.D. Admin. Code 33.1-15-07-02.3, -20-04.2. Under North Dakota’s regulations, “production facility” means “all equipment, wells, flow lines, separators, treaters, tanks, flares, gathering lines, and auxiliary non transportation-related equipment used in the exploration, development, or subsequent production or handling of oil and gas from an oil or gas well or wells which are located on one or more contiguous or adjacent surface properties, and are under the control of the

- same person (or persons under common control).” N.D. Admin. Code 33.1-15-20-01.2.n.
25. Under North Dakota’s regulations, “emission” means “a release of air contaminants into the ambient air.” N.D. Admin. Code 33.1-15-01-04.9.
26. Under North Dakota’s regulations, "person" means “any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof and any legal successor, representative agent, or agency of the foregoing.” N.D. Admin. Code 33.1-15-01-04.29. Under Section 302(e) of the Act, 42 U.S.C. § 7602(e), a ”person” means “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.”

V. ALLEGED FACTS

27. Respondent is a publicly-held corporation incorporated in the State of Delaware.
28. At all relevant times to this Agreement, Respondent conducted and conducts business in the state of North Dakota.
29. Respondent is a “person” within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e), and within the meaning of N.D. Admin. Code 33.1-15-01-04.29.
30. Respondent owns and operates the oil and natural gas production facility at the Skoglund 11-10H Well Pad in North Dakota (NDIC Number 17344).The Skoglund 11-10H Well Pad is a “production facility” within the meaning of N.D. Admin. Code 33.1-15-02-01.2.n.

31. In October 2023, EPA's contractor, Toeroek Associates, Inc. ("Toeroek") and ChampionX Emissions Technologies Group ("ChampionX") performed aerial monitoring surveys of oil and gas facility operations in North Dakota. The aerial surveys were conducted using a helicopter operating at approximately 250 feet above ground level and an optical gas imaging camera.
32. On October 22, 2023, Toeroek/Champion X observed hydrocarbon emissions from an unlit flare at the Skoglund 11-10H facility described in Paragraph 30.
33. On November 15, 2023, after analyzing the information provided by Toeroek/Champion X, the EPA contacted Respondent representatives to inform them of the unlit flare at the Skoglund 11-10H facility, which was identified in the aerial survey on October 22, 2023.
34. The storage vessels and associated emissions control equipment at the Skoglund 11-10H facility are a minor source subject to N.D. Admin. Code 33.1-15-07-02.1, -07-02.3, and -20-04.2.
35. The Skoglund 11-10H well pad was registered as a minor source with the NDDOH Division of Air Quality on January 23, 2009.

VI. ALLEGED VIOLATIONS OF LAW

36. Based on aerial survey findings at the Skoglund 11-10H facility, Respondent violated requirements under N.D. Admin. Code 33.1-15-07-02.1 by causing or permitting the emission of organic compounds gases and vapors which were not burned by flares or an equally effective control device approved by the NDDEQ. N.D. Admin. Code 33.1-15-07-02.1.
37. Based on aerial survey findings at the Skoglund 11-10H facility, Respondent violated requirements under N.D. Admin. Code 33.1-15-07-02.3, -20-04.2 to equip and operate each flare used to combust gas at a production facility with an automatic igniter or a continuous burning pilot.

VII. TERMS OF CONSENT AGREEMENT

38. For the purpose of this proceeding, Respondent:

- a. admits the jurisdictional allegations in Section II of this Agreement;
- b. neither admits nor denies the factual allegations stated in Section V of this Agreement or the alleged violations of law stated in Section VI of this Agreement;
- c. admits that the Skoglund 11-10H facility is subject to the requirements of N.D. Admin. Code 33.1-15-07-02.1, -07-02.3, -20-04.2;
- d. consents to the assessment of a civil penalty as stated in Paragraph 40 of this Agreement;
- e. consents to the conditions specified in Paragraph 46 of this Agreement;
- f. acknowledges this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- g. waives any right to contest the alleged violations of law set forth in Section VI of this Agreement;
- h. waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the unlawfulness of the Final Order accompanying this Agreement; and
- i. waives any rights it may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel compliance with this Agreement or the Final Order, or both, and to seek an additional penalty for such

noncompliance, and agrees that federal law shall govern in any such civil action.

39. Civil Penalty.

- a. Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), authorizes EPA to assess a civil penalty in this matter.
- b. To determine the amount of the civil penalty, the EPA considered the size of Respondent's business, the economic impact of the penalty on the business, Respondent's full compliance history and good faith efforts to comply, the duration of the violations as established by any credible evidence, payment by the Respondent of penalties previously assessed for the same violations, the economic benefit of noncompliance, the seriousness of the violations, and such other factors as justice may require. 42 U.S.C. § 7413(e)(1).

40. Penalty Payment. Respondent agrees to pay the civil penalty in the amount of \$15,000.00 (Assessed Penalty) within 30 days after the Effective Date.

41. Respondent will pay the Assessed Penalty and any interest, fees, and other charges due, as set forth in Paragraph 44, using any method, or combination of methods, provided on the EPA website:

<https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

42. When making a payment, a Respondent will:

- a. Identify every payment with Respondent's name and the docket number of this Agreement, CAA-08-2024-0015
- b. Concurrently with any payment or by the end of the Business Day immediately following the date upon which Respondent makes payment, Respondent will send proof of payment to the following persons:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 8
ORC-IO, 1595 Wynkoop Street, Denver, CO 80202
[R8 Hearing Clerk@epa.gov](mailto:R8HearingClerk@epa.gov)
and

Mr. Scott Patefield
Air and Toxics Enforcement Branch Manager
U.S. Environmental Protection Agency, Region 8
8ENF-AT, 1595 Wynkoop Street, Denver, CO
R8AirReportEnforcement@epa.gov

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to: [CINWD AcctsReceivable@epa.gov](mailto:CINWD_AcctsReceivable@epa.gov)

43. “Proof of payment” means as applicable, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent’s name.
44. Interest, Charges, and Penalties on Late Payments. Pursuant to 42 U.S.C. § 7413(d)(5), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay the full amount of the Assessed Penalty per this Agreement, the EPA is authorized to recover, in addition to the amount of the unpaid Assessed Penalty, the following amounts:
 - a. Interest. Interest begins to accrue from the Effective Date; provided, however, if the Assessed Penalty is paid in full within 30 days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty 30 days, interest will continue to accrue from the Effective Date until any unpaid portion of the Assessed Penalty

as well as any interest, penalties, and other charges are paid in full. Per 42 U.S.C. § 7524(c)(6), interest will be assessed pursuant to 26 U.S.C. § 6621(a)(2), that is the IRS standard rate, equal to the Federal short-term rate plus 3 percentage points.

- b. Handling Charges. The United States' administrative collection expenses including, but not limited to, attorneys' fees and costs of handling collection.
- c. Late Payment Penalty. A 10% quarterly non-payment penalty.

45. Late Penalty Payment Actions. In addition to the amounts described in the prior Paragraph, If Respondent fails to timely pay any portion of the EPA Penalty assessed under this Agreement, the EPA may take additional actions. Such actions EPA may take include but are not limited to the following:

- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
- b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
- c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17. subject to any applicable notice, cure, and procedural requirements.
- d. Request that the Attorney General bring a civil action in the appropriate district court to enforce the Final Order and recover the

full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, pursuant to 42 U.S.C. § 7413(d)(5). In any such action, the validity, amount, and appropriateness of the Assessed Penalty and Final Order will not be subject to review.

46. Conditions of Settlement. As a condition of settlement, Respondent has completed the following actions:

- a. Shop-Built Flare Elimination. Respondent eliminated shop-built flares at the well production facilities listed in Paragraph 46.b.i. (each, individually, a “Facility”, and collectively, the “Facilities”) by: (1) replacing shop-built with engineered flares designed to reduce the mass content of VOC in natural gas emissions vented to the device by at least 95% or (2) re-routing oil from all wells at each Facility that produces to storage tanks that control emissions with shop-built flares to storage tanks that control emissions with engineered flares.
- b. Certificate of Project Completion. Respondent certifies in Appendix A of this agreement that during its ownership and/or operation of sites listed in Paragraph 46.b.i. below. that it eliminated use of all shop-built flares pursuant to Paragraph 46.a.

i. Shop-Built Flare Replacement Sites.

SITE IDENTITY	PERMIT NUMBER
BABETTE 24X-33 BATTERY	OGR-13819 v1.0
ERICKSON 12X-35 BATTERY	OGR-142814 v1.0
FEDERAL 33-1 BATTERY	OGR-228360 v1.0
GBU BARSTAD 32X-13 BATTERY	OGR- 13733 v1.0
GBU CHARLSON 11-6H BATTERY	OGR-12948 v1.0
GBU CHRISTOPHER 21X-12 BATTERY	OGR-13777 v1.0
GBU KELVIE 11X-15 BATTERY	OGR-14294 v1.0
GBU MARSDEN 14X-12 BATTERY	OGR-12485 v1.0
GBU THOMAS/NESSON/HARDING 44X-18 BATTERY	OGR-12482 v1.0

HARTSOCH STATE 34X-36 BATTERY	OGR-13061 v1.0
HBU BJARNE 34X-13 BATTERY	OGR-13486 v1.0
HBU CHARLSON 11-16H BATTERY	OGR-12717 v1.0
HOVE 11X-35 BATTERY	OGR-12029 v1.0
KULISH 21-11H BATTERY	OGR-12273 v1.0
KULISH 24-2H BATTERY	OGR-12355 v1.0
KULISH 24-3H BATTERY	OGR-12456 v1.0
MADISYN STATE 44X-1 BATTERY	OGR-14458 v1.0
MARMON HAHN 44X-3 BATTERY	OGR-12301 v1.0
MOE STATE 31X-36 BATTERY	OGR-13361 v1.0
NELSON 34X-19 BATTERY	OGR-13851 v1.0
PAL PROPERTIES 44X-1 BATTERY	OGR-12334 v1.0
SADOWSKY 44-1H BATTERY	OGR-12455 v1.0
SCHWINDT 31-10H BATTERY	OGR-12366 v1.0
TUBIE 21X-23 BATTERY	OGR-13325 v1.0
USA VOLKMANN 1-X BATTERY	OGR-228361 v1.0
WILD TURKEY FEDERAL 1-22H BATTERY	OGR-10790 v1.0
WOLFF 13X-24 BATTERY	OGR-15330 v1.0

47. 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.
48. The undersigned representative of Respondent certifies they are 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.
49. The Parties agree that this Agreement may be signed in any number of counterparts, each of which will be deemed an original and, when taken together, constitute one agreement; the counterparts are binding on the parties individually as fully and completely as if the Parties had signed one single instrument, so that the rights and liabilities of the Parties will be unaffected by the failure of any of the undersigned to execute any or all of the counterparts; any signature page and any copy of a signed signature page

may be detached from any counterpart and attached to any other counterpart of this Agreement and any signature page may be transmitted electronically (e.g., a PDF file).

50. By signing this Agreement, both Parties agree that each Party's obligations under this Agreement constitute sufficient consideration for the other Party's obligations.
51. 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.
52. Each Party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.
53. Respondent agrees the time period from the Effective Date of this Agreement until the civil penalty specified in Paragraph 40 and all of the conditions of settlement specified in Paragraph 46 are completed and this agreement is terminated according to Section XI (Termination) (the Tolling Period) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by EPA on any claims (Tolled Claims) set forth in section VI of this Agreement. Respondent shall not assert, plead, or raise in any fashion, whether by answer, motion or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolled Claims.

VIII. DISPUTE RESOLUTION

54. Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Agreement. Respondent's failure to seek resolution of a dispute under this Section shall preclude Respondent from raising any such issue as a defense to an action by EPA to enforce any obligation of Respondent arising under this Agreement.
55. Informal Dispute Resolution. Any dispute subject to dispute resolution under this Agreement shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Respondent sends EPA a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 60 Calendar Days from the date the dispute arises, unless that period is extended by written agreement. If the EPA and Respondent cannot resolve a dispute by informal negotiations, then the position advanced by EPA shall be considered binding unless, within 45 Calendar Days after the conclusion of the informal negotiation period, including any agreed extension of the period for negotiation under this Paragraph, Respondent invokes formal dispute resolution procedures as set forth below.
56. Formal Dispute Resolution. Respondent shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on EPA a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Respondent's position and any supporting documentation relied upon by Respondent.
57. EPA shall serve its Statement of Position to Respondent within 45 days of receipt of Respondent's Statement of Position. EPA's Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by EPA. EPA's Statement of Position shall be binding on Respondent,

unless Respondent requests alternative dispute resolution in accordance with the following Paragraph.

58. Respondent may request that EPA coordinate to designate a neutral party for dispute resolution. If the Parties cannot agree on a neutral party, Respondent may request the Regional Administrator or the RJO appoint a neutral party to proceed with dispute resolution.
59. The invocation of dispute resolution procedures under this Section VIII shall not, by itself, extend, postpone, or affect in any way any obligation of Respondent under this Agreement, unless and until final resolution of the dispute so provides.

IX. EFFECT OF CONSENT AGREEMENT AND FINAL ORDER

60. 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 specifically alleged above.
61. Consistent with section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), Respondent will not deduct penalties paid under this Agreement for federal tax purposes.
62. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to annually send to the Internal Revenue Service ("IRS") a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements) that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each

payor (i.e., a copy of IRS Form 1098-F). Respondent's failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. To provide EPA with sufficient information to enable it to fulfill these obligations, Respondent shall complete the following actions as applicable.

- a. Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>.
 - b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN.
 - c. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Division at Chalifoux.Jessica@epa.gov, on or before the date that Respondent's penalty payment is due, pursuant to Paragraph 40 of this Consent Agreement. EPA recommends encrypting IRS Form W-9 email correspondence.
 - d. In the event that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA's Cincinnati Finance Division with Respondent's TIN, via email, within five (5) days of Respondent's receipt of a TIN issued by the IRS.
63. 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.
64. Any violation of this Agreement, and subsequently issued final order approving this Agreement, may result in a civil judicial action for an injunction or civil penalties of up to \$57,617 per day per violation, or both, as provided in section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), as well as

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 Agreement in an administrative, civil judicial, or criminal action.

65. 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, nor shall it restrict 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.
66. 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.
67. If and to the extent 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 EPA, EPA reserves any and all of its legal and equitable rights.
68. The Parties consent to service of the Final Order approving this Consent Agreement by e-mail at the following valid e-mail addresses:
adams.colleen@epa.gov (for Complainant) and
colt.e.schmidtke@exxonmobil.com (for Respondent).

X. TERMINATION

69. Upon payment of the Assessed Penalty in accordance with Paragraph 40 and Certification of Project Completion, required under Paragraph 46.b., which has been provided by respondent herein Appendix A.
70. Within 90 days of receipt of payment of the assessed penalty, EPA shall provide a Confirmation of Termination or notify Respondent of outstanding compliance items arising under this agreement. If EPA does not provide such

Confirmation of Termination or notification of outstanding compliance items within 90 days of receipt of the Statement of Completion, this Agreement shall terminate immediately.

XI. 26 U.S.C. SECTION 162(f)(2)(A)(ii) IDENTIFICATION

71. For purposes of the identification requirement of section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of paragraphs 40 and 46 is restitution or required to come into compliance with law.

XII. EFFECTIVE DATE

72. The Parties agree to issuance of a final order approving this Agreement. Upon filing, the RJO 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 RJO, on the date of filing with the Hearing Clerk.

The foregoing Agreement In the Matter of XTO Energy, Inc. is hereby stipulated, agreed, and approved for entry.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,**

SCOTT PATEFIELD Digitally signed by SCOTT
PATEFIELD
By: _____ Date: 2026.09.10 10:43:14 -06'00'
Scott Patefield, Branch Manager
Air and Toxics Enforcement Branch
Enforcement and Compliance Assurance Division

Complainant.

XTO ENERGY, INC.,

August 17, 2026
Date: _____

DocuSigned by:
James Davison
46C53C6E6B99463...

Signature

Printed Name: James Davison
Title: Bakken Site Manager
Address: 321 22nd Ave. E
Williston, ND 58801

Respondent.

APPENDIX A:

Certification of Compliance

XTO Energy, Inc. hereby certifies that during its ownership and/or operation of sites listed in Paragraph 46.b. that it eliminated use of shop-built flares pursuant to the requirements set forth in Paragraph 46.a.

Date: August 17, 2026

DocuSigned by:
James Davison
46C53C6E6B99463...

Signature

Printed Name: James Davison
Title: Bakken Site Manager
Address: 321 22nd Ave. E
Williston, ND 58801