

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 3
Philadelphia, Pennsylvania 19103



In the Matter of: :
: :
CUNNINGHAM ENERGY, LLC : U.S. EPA Docket No. CAA-03-2024-0119
3230 Pennsylvania Avenue :
Charleston, WV 25302 : Proceeding under Section 113(a) of the Clean Air
: Act, 42 U.S.C. § 7413(a)
And :
: :
HOUSTON NATURAL RESOURCES CORP :
12 Greenway Plaza, Suite 1100 :
Houston, Texas 77046 :
: :
Respondents. :
: :
CUNNINGHAM ENERGY, LLC :
Shelton Road :
Bomont, WV 25030, :
: :
Facility. :
:

CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region 3 (“Complainant”), Cunningham Energy, LLC (“CE”), and Houston Natural Resources Corp (“HNRC”) (collectively the “Parties”), pursuant to Section 113(a) of the Clean Air Act, 42 U.S.C. § 7413(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. The Clean Air Act authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated the authority to enter into agreements concerning administrative penalties to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “Consent Agreement and Final Order”) resolve Complainant’s civil penalty claims against CE and HNRC (collectively, “Respondents”) under the Clean Air Act (“CAA” or the “Act”) for the violations alleged herein.

2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

JURISDICTION

3. The U.S. Environmental Protection Agency (“EPA”) has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(2).

GENERAL PROVISIONS

5. For purposes of this proceeding only, Respondents admit the jurisdictional allegations set forth in this Consent Agreement and Final Order.
6. Except as provided in Paragraph 5, above, Respondents neither admit nor deny the specific factual allegations set forth in this Consent Agreement.
7. Respondents agree not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this Consent Agreement and Final Order.
8. For purposes of this proceeding only, Respondents hereby expressly waive their right to contest the allegations set forth in this Consent Agreement and Final Order and waive their right to appeal the accompanying Final Order.
9. Respondents consent to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
10. Respondents shall bear their own costs and attorney’s fees in connection with this proceeding.
11. Pursuant to Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), the Administrator and the Attorney General, each through their respective delegates, have jointly determined that this administrative penalty action is appropriate.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

12. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
13. CE 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.
14. For purposes of this Consent Agreement and Final Order only, Respondents agree that CE is a wholly owned subsidiary of HNRC, a Nevada Corporation, effective July 7, 2023. For the purposes of this Consent Agreement and Final Order only, Respondents agree to be jointly and severally liable for the civil penalties in paragraph 113 as CE is the wholly-owned subsidiary of HNRC.
15. Respondents are each a “person” as that term is defined in in Section 302 of the CAA, 42 U.S.C. § 7602(e), and are subject to the assessment of civil penalties for the violations alleged herein.
16. Respondent CE is and, at all times relevant to the violations alleged herein, was the owner and operator of a facility located at Shelton Road in Bomont, WV 25030 (hereinafter “the Bomont Site”).
17. Respondent CE’s corporate office is located at 3230 Pennsylvania Avenue, Charleston, WV 25302.
18. Respondent CE began operations at the Bomont Site in 2014.
19. 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.
20. 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.”

21. The term “applicable implementation plan” is defined in Section 302(q) of the Act, 42 U.S.C. § 7602(q).
22. The applicable implementation plan for the State of West Virginia (“WV SIP”) is codified at 40 C.F.R. Part 52, Subpart XX.
23. 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.
24. 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.
25. 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.
26. 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.”
27. A “stationary source” is defined as a “building, structure, facility, installation, or emission unit or combination thereof.” 45 CSR 13-2.24.
28. 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.”
29. 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).

30. 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.
31. 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.
32. 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.
33. 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.”
34. “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.
35. 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).
36. 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).
37. 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.

Operating Permits

38. On December 18, 2018, the WVDEP issued Respondent CE 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. On February 21, 2017, the WVDEP issued Respondent CE 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”).
40. 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.

EPA Inspection and Investigation

41. 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.
42. On June 10, 2021, the EPA issued a CAA Information Request (“Information Request”) to CE, pursuant to Section 114(a) of the CAA, 42 U.S.C. § 7414(a).
43. On November 17, 2021, CE provided a partial response to the EPA’s June 10, 2021 Information Request.
44. On December 2, 2021, the EPA issued a Notice of Violation and Opportunity to Confer to CE that identified the violations of the CAA set forth hereinafter.
45. On December 6 and 7, 2021, CE provided additional responses to the EPA’s June 10, 2021 Information Request.
46. The EPA asserts that at all times relevant to this Order, CE and/or HNRC was required to comply with its permits for the King Pad and Cochran Pad, issued pursuant to the WV SIP.
47. The EPA asserts that CE and/or HNRC 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.

Count I

**Failure to Route All VOC Emissions from Storage Vessels 32S-33S & 39S-44S
to a Control Device at the King Pad**

48. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
49. Section 6.1.2 of the King Pad Permit requires that “[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).”
50. Section 7.1.3 of the King Pad Permit requires that “[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)].”
51. From at least May 2021 to August 2021, the King Pad was not equipped with a VRU to reduce VOC emissions from storage vessels. Specifically, Respondent CE failed to route all VOC emissions generated in the storage tanks 31S - 34S and 39S - 44S to the vapor recovery unit (“VRU”).
52. From at least May 2021 to August 2021, Respondent CE failed to comply with Sections 6.1.2 and 7.1.3 of the King Pad Permit, the WV SIP, and 40 C.F.R. § 52.23 by failing to route all VOC emissions generated in the storage tanks 31S - 34S and 39S - 44S to the VRU.
53. In failing to comply with Section 6.1.2 of the King Pad Permit, the WV SIP, and 40 C.F.R. § 52.23, Respondent CE violated Section 110 of the CAA, 42 U.S.C. § 7410, and Respondents are subject to penalties under CAA Section 113(a), 42 U.S.C. § 7413(a).

Count II

**Failure to Reduce VOC Emissions by 95% at storage vessels 31S & 34S
within 60 Days of Startup at the King Pad**

54. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
55. Section 6.1.3 of the King Pad Permit requires that “[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.”

56. 40 C.F.R. § 60.5395a(a)(2) requires each storage vessel affected facility to “[r]educ[e] 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.”
57. From at least May 2021 to August 2021, the King Pad’s VOC emissions were being emitted from an open-ended pipe into the atmosphere and as a result, at least 95% of VOC emissions from storage vessels 31S & 34S were not collected since the startup of the vessels in June 2017 and July 2018.
58. From at least May 2021 to August 2021, Respondent CE violated Section 6.2.3 of the King Pad Permit, the WV SIP, 40 C.F.R. § 52.23 and 40 C.F.R. § 60.5395a(a)(2) by failing to 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.
59. In failing to comply with Section 6.2.3 of the King Pad Permit, the WV SIP, 40 C.F.R. § 52.23, and 40 C.F.R. § 60.5395a(a)(2), Respondent CE violated Section 110 of the CAA, 42 U.S.C. § 7410, and Respondents are subject to penalties under CAA Section 113(a), 42 U.S.C. § 7413(a).

COUNT III

Failure to Install a Cover on the Storage Vessels with an Impermeable Barrier at the King Pad

60. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
61. Section 7.1.4.1 of the King Pad Permit requires that “[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 are of the liquid in the storage vessel.”
62. At the time of the Inspection, the EPA Inspector observed emissions from multiple storage vessel thief hatches at the King Pad using a FLIR camera.
63. At the time of the Inspection, Respondent CE violated Section 7.1.4.1 of the King Pad Permit, the WV SIP, and 40 C.F.R. § 52.23 by failing to install a cover on the storage vessels with an impermeable barrier over the storage vessels at the King Pad.

64. In failing to comply with Section 7.1.4.1 of the King Pad Permit, the WV SIP, and 40 C.F.R. § 52.23, Respondent CE violated Section 110 of the CAA, 42 U.S.C. § 7410, and Respondents are subject to penalties under CAA Section 113(a), 42 U.S.C. § 7413(a).

COUNT IV
Failure to Conduct an Assessment of the Closed Vent System
at the King Pad

65. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
66. Section 7.1.6 of the King Pad Permit requires that “[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 § 60.5.411a(d)].”
67. 40 C.F.R § 60.5.411a(d)(1) requires storage vessels using a control device or routing emissions to a process to “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.”
68. From at least July 2018 to December 2021, Respondent CE failed to conduct an assessment of the closed vent system.
69. From at least July 2018 to December 2021, Respondent CE violated Section 7.1.6 of the King Pad Permit, the WV SIP, 40 C.F.R. § 52.23, and 40 C.F.R. § 60.5411a(d) by failing to conduct an assessment of the closed vent system.
70. In failing to comply with Section 7.1.6 of the King Pad Permit, the WV SIP, 40 C.F.R. § 52.23, and 40 C.F.R. § 60.5411a(d), Respondent CE violated Section 110 of the CAA, 42 U.S.C. § 7410, and Respondents are subject penalties under CAA Section 113(a), 42 U.S.C. § 7413(a).

COUNT V

Failure to Monitor All Fugitive Emissions Components at the King Pad

71. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
72. Section 8.1.1(a) of the King Pad Permit requires that “[t]he permittee must monitor all fugitive emission components, defined as any component that has potential to emit fugitive emissions of methan or VOC at a well site.”
73. 40 C.F.R. § 60.5397a(a)(1) requires affected facilities to “monitor all fugitive emission components, as defined in § 60.5430a, in accordance with paragraphs (b) through (g) of this section [§ 60.5397a]. 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. For purposes of this section, fugitive emissions are defined as any visible emission from a fugitive emissions component observed using optical gas imaging or an instrument reading of 500 parts per million (ppm) or greater using Method 21 of appendix A-7 to this part.”
74. From at least September 2018 to June 2022, Respondent CE failed to monitor all fugitive emissions components at the King Pad since its permit was issued in December 2018.
75. From at least September 2018 to June 2022, Respondent CE violated Section 8.1.1(a) of the King Pad Permit, the WV SIP, 40 C.F.R. § 52.23, and 40 C.F.R. § 60.5397a(a)(1) by failing to conduct fugitive leak detection monitoring at affected components at the King Pad.
76. In failing to comply with Section 8.1.1(a) of the King Pad Permit, the WV SIP, 40 C.F.R. § 52.23, and 40 C.F.R. § 60.5397a(a)(1), Respondent CE violated Section 110 of the CAA, 42 U.S.C. § 7410, and Respondents are subject to penalties under CAA Section 113(a), 42 U.S.C. § 7413(a).

COUNT VI

Failure to Develop and Emissions Monitoring Plan for the King Pad

77. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
78. Section 8.1.1(b) of the King Pad Permit requires that “[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).”

79. 40 C.F.R. § 60.5397a(b) requires each affected facility to “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 [§ 60.5397a].”
80. At the time of the Inspection, Respondent CE had failed to develop an emissions monitoring plan.
81. At the time of the Inspection, Respondent CE violated Section 8.1.1(b) of the King Pad Permit, the WV SIP, 40 C.F.R. § 52.23, and 40 C.F.R. § 60.5397a(b) by Failing to develop an emissions monitoring plan that covers the fugitive emissions components at the well sites.
82. In failing to comply with Section 8.1.1(b) of the King Pad Permit, the WV SIP, 40 C.F.R. § 52.23, and 40 C.F.R. § 60.5397a(b), Respondent CE violated Section 110 of the CAA, 42 U.S.C. § 7410, and Respondents are subject to penalties under CAA Section 113(a), 42 U.S.C. § 7413(a).

COUNT VII
Failure to Comply with Recordkeeping Requirements
for engine 37S at the King Site

83. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
84. Section 6.2.1.b [sic] of the King Pad Permit requires that “[t]he run hours of the Vapor Recovery Unit shall be daily recorded and maintained.”
85. 40 C.F.R. § 60.4245(b) requires that “[f]or all stationary SI emergency ICE greater than 25 HP and less than 130 HP manufactured on or after July 1, 2008, that do not meet the standards applicable to non-emergency engines, the owner or operator of must keep records of the hours of operation of the engine that is recorded through the non-resettable hour meter. The owner or operator must document how many hours are spent for emergency operation, including what classified the operation as emergency and how many hours are spent for non-emergency operation.”
86. From at least December 2018 to May 2021, Respondent CE failed to record or keep records of the hours of operations of VRU compressor engine 37S, a 60 HP SI ICE, at the King Pad through a non-resettable hour meter since its permit was issued in December 2018.

87. From at least December 2018 to May 2021, Respondent CE violated 40 C.F.R. § 60.4245(b) by failing to record the hours of operation and document hours and additional information for the VRU compressor engine 37S at the King Pad.
88. In failing to comply with Section 6.2.1.b of the King Pad Permit, the WV SIP, 40 C.F.R. § 52.23, and 40 C.F.R. § 60.4245(b), Respondent CE violated Section 110 of the CAA, 42 U.S.C. § 7410, and Respondents are subject to the penalties under CAA Section 113(a), 42 U.S.C. § 7413(a).

COUNT VIII

Failure to Submit G-70 Annual Certifications for the Cochran Pad

89. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
90. Section 1.1.4 of the Cochran Pad Permit requires the permittee to prepare and submit by February 21st of each year, a G70-D Annual Certification for the previous year.
91. From at least 2017 to 2021, Respondent CE failed to submit an annual certification for the Cochran Pad by February 21st of each year.
92. From at least 2017 to 2021, Respondent CE violated Section 1.1.4 the Cochran Pad Permit, the WV SIP, and 40 C.F.R. § 52.23 by failing to submit G70-D Annual Certifications for the years 2017, 2018, 2019, and 2020, is a violation of Section 1.1.4 of the Cochran Pad Permit.
93. In failing to comply with Section 1.1.4 the Cochran Pad Permit, the WV SIP, and 40 C.F.R. § 52.23, Respondent CE violated Section 110 of the CAA, 42 U.S.C. § 7410, and Respondents are subject to penalties under CAA Section 113(a), 42 U.S.C. § 7413(a).

COUNT IX

Failure to Conduct the Emissions Determination for Each Storage Vessel at the Cochran Pad

94. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
95. Section 6.1.1 of the Cochran Pad Permit requires that “[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].”

96. At the time of the Inspection, Respondent CE had failed to determine VOC emissions for each storage vessel at the Cochran Pad.
97. At the time of the Inspection, Respondent CE violated Section 6.1.1 of the Cochran Pad Permit, the WV SIP, and 40 C.F.R. § 52.23 by failing to determine VOC emissions for each storage vessel at the Cochran Pad is a violation of Section 6.1.1 of the Cochran Pad Permit.
98. In failing to comply with Section 6.1.1 the Cochran Pad Permit, the WV SIP, and 40 C.F.R. § 52.23, Respondent CE violated Section 110 of the CAA, 42 U.S.C. § 7410, and Respondents are subject to the penalties under CAA Section 113(a), 42 U.S.C. § 7413(a).

COUNT X

Failure to Use a Site-Specific Example to Determine Potential Facility VOC Emissions at the Cochran Pad

99. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
100. Section 6.1.3.2 of the Cochran Pad Permit requires registrants at affected facilities to use a site-specific sample to determine potential emissions.
101. At the time of the Inspection, Respondent CE had failed to use a site-specific sample to determine potential emissions at the Cochran Pad.
102. At the time of the Inspection, Respondent CE violated Section 6.1.3.2 of the Cochran Pad Permit, the WV SIP, and 40 C.F.R. § 52.23 by failing to use a site-specific sample to determine potential emissions from the Cochran Pad is a violation of 6.1.3.2 of the Cochran Pad Permit.
103. In failing to comply with Section 6.1.3.2 the Cochran Pad Permit, the WV SIP, and 40 C.F.R. § 52.23, Respondent CE violated Section 110 of the CAA, 42 U.S.C. § 7410, and Respondents are subject to penalties under CAA Section 113(a), 42 U.S.C. § 7413(a).

COUNT XI

Failure to Submit Annual Reports for the King Pad and Cochran Pad

104. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
105. 40 C.F.R. § 60.5420a(b) requires owners and operators of affected facilities to “submit annual reports containing the information specified in paragraphs (b)(1) through (8) and

(12) of this section [§ 60.5420a(b)] and performance test reports as specified in paragraph (b)(9) or (10) of this section, if applicable.”

106. The initial compliance date for the King Site was June 2018.
107. From at least 2018 to 2021, Respondent CE failed to submit annual reports for well and storage vessel affected facilities for the King Pads.
108. From at least 2018 to 2021, Respondent CE violated 40 C.F.R. § 60.5420a(b) by failing to submit annual reports for the King Pad for years 2018, 2019, 2020, and 2021.
109. The initial compliance date for the Cochran Pad was August 2, 2016.
110. From at least 2016 to 2021, Respondent CE failed to submit annual reports for well and storage vessel affected facilities for the Cochran Pads.
111. From at least 2016 to 2021, Respondent CE violated 40 C.F.R. § 60.5420a(b) by failing to submit annual reports for the Cochran Pad for years 2016, 2017, 2018, 2019, 2020, and 2021.
112. In failing to comply with 40 C.F.R. § 60.5420a(b), Respondents are subject to penalties under CAA Section 113(a), 42 U.S.C. § 7413(a).

CIVIL PENALTY

113. In settlement of EPA’s claims for civil penalties for the violations alleged in this Consent Agreement, Respondents consent to the assessment of a civil penalty in the amount of seven hundred and forty-two thousand seven hundred and thirty-seven dollars (\$742,737), which Respondents shall be jointly and severally liable to pay in accordance with the terms set forth below.
114. The civil penalty is based upon EPA’s consideration of a number of factors, including the penalty criteria (“statutory factors”) set forth in Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), including, the following: the size of the business, the economic impact of the penalty on the business, the violator’s full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and other factors as justice may require. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA’s Clean Air Act Stationary Source Civil Penalty Policy (October 25, 1991), which reflects the statutory penalty criteria and factors set forth at Section 113(e)(1) the CAA, 42 U.S.C. § 7413(e)(1), the appropriate Adjustment of Civil

Monetary Penalties for Inflation, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA’s civil penalty policies to account for inflation.

- 115. The civil penalty is also based upon an analysis of Respondents’ ability to pay a civil penalty. This analysis was based upon information submitted to EPA by Respondents including signed, certified statements of Respondents’ current financial condition articulating a basis for their contention that they cannot pay the penalty within thirty (30) days of the Effective Date of this Consent Agreement and Final Order without experiencing an undue financial hardship.
- 116. Respondents agree to pay a civil penalty in the amount of \$742,737 (“Assessed Penalty”). Based upon Respondents’ documented inability to pay claim, and in accordance with applicable laws, EPA has relied upon the information identified in the preceding paragraph and based on that information determined that the Assessed Penalty is an appropriate amount to settle this action, which Respondents consent to pay as follows.
 - a. The Assessed Penalty will be paid in two installments, in order to complete payment of the entire Assessed Penalty and interest, which is assessed at the rate of 6% per annum on the outstanding principal balance. Including the Assessed Penalty and interest, the total amount that will be paid upon completion of all payments will be \$764,274.33. The first payment is due within thirty (30) days after the Effective Date of the Consent Agreement and Final Order. Respondents’ subsequent payment shall thereafter be due no later than 180 calendar days from the Effective Date.
 - b. Respondents shall make payments in accordance with the following schedule:

Payment No.	Principal Amount	Interest	Date Payment Due (From Effective Date of Consent Agreement)	Payment Amount Due
1	\$14,855	\$ -	<i>Within 30 Days</i>	\$14,855
2	\$727,882	\$21,537.33	<i>Within 180 Days</i>	\$749,419.33
Total:	\$742,737	\$21,537.33		\$764,274.33

- c. Notwithstanding Respondents’ agreement to pay the Assessed Penalty in accordance with the installment schedule set forth above, Respondents may pay the entire Assessed Penalty of \$742,737 within thirty [30] days of the Effective Date and, thereby avoid the payment of interest pursuant to 40 C.F.R. § 13.11(a). In addition, Respondents may, at any time after commencement of

payments under the installment schedule, elect to pay the entire principal balance remaining, together with any interest and other charges accrued up to the date of such full payment.

117. If Respondents fail to make timely payment of the first installment set forth in Paragraph 116, immediately above, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondents shall immediately pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondents shall be liable for, and shall pay, applicable interest, administrative handling charges and late payment penalty charges as described in Paragraph 120 below, in the event of any such failure or default.
118. Respondents shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as 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>.
119. When making a payment, Respondents shall:
 - a. Identify every payment with Respondents' names and the docket number of this Consent Agreement, CAA-03-2024-0119,
 - b. Concurrently with any payment or within 24 hours of any payment, Respondents shall serve Proof of Payment simultaneously **by email** to the following person(s):

Andrew Ingersoll
Assistant Regional Counsel
Ingersoll.andrew@epa.gov,

U.S. Environmental Protection Agency
Cincinnati Finance Center
CINWD_AcctsReceivable@epa.gov,

and

U.S. EPA Region 3 Regional Hearing Clerk
R3_Hearing_Clerk@epa.gov.

“Proof of Payment” means, as applicable, a copy of the check, 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 Respondents names.

120. 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 Respondents fail to timely pay any portion of the Assessed Penalty per this Consent Agreement, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and EPA is authorized to recover the following amounts.
- a. Interest. Interest begins to accrue from the Effective Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue 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 underpayment rate, equal to the Federal short-term rate plus 3 percentage points.
 - b. Handling Charges. The United States' enforcement expenses including, but not limited to, attorneys' fees and costs of handling collection.
 - c. Late Payment Penalty. A ten percent (10%) quarterly non-payment penalty.
121. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty per this Consent Agreement, 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 Respondents' licenses or other privileges, or suspend or disqualify Respondents from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
 - 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 shall not be subject to review.

122. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.
123. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Consent Agreement shall not be deductible for purposes of federal taxes.
124. Payment of the civil penalty, in accordance with the above terms and provisions, is due and payable immediately upon receipt by Respondents of a true and correct copy of the fully executed and filed Consent Agreement and Final Order. Receipt by Respondents or Respondents' legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed EPA by Respondents in accordance with 40 C.F.R. § 13.9(a).
125. The parties consent to service of the Final Order by e-mail at the following valid email addresses: Ingersoll.andrew@epa.gov (for Complainant), junger@spilmanlaw.com (for Respondent CE), and frank@hnrcholdings.com (for Respondent HNRC).
126. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service ("IRS") annually, 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). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondents to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondents herein agree, that:
 - a. Respondents shall each 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. Respondents shall therein each certify that its completed IRS Form W-9 includes the correct TIN or that it has applied for and is waiting for issuance of a TIN;
- c. Respondents shall each email their completed Form W-9 to EPA's Cincinnati Finance Center at henderson.jessica@epa.gov, within 30 days after the Final Order ratifying this Consent Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and
- d. In the event that a Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to that Respondent within 30 days after the effective date, then that Respondent, using the same email address identified in the preceding sub-paragraph, shall further:
 - i. notify EPA's Cincinnati Finance Center of this fact, via email, within 30 days after the 30 days after the Effective Date of the Final Order per Paragraph 133; and
 - ii. provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's issuance and receipt of the TIN.

GENERAL SETTLEMENT CONDITIONS

127. By signing this Consent Agreement, Respondents acknowledge that this Consent Agreement and Final Order will be available to the public and represent that, to the best of Respondents' knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondents.
128. Each Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter, including as to its financial conditions, was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by a Respondent to the EPA regarding matters relevant to this Consent Agreement and Final Order, **including information about that respondent's ability to pay the penalty within the time prescribed by this order**, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondents and their officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

CERTIFICATION OF COMPLIANCE

129. Respondents each certify to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement, and that were addressed in the Administrative Order on Consent between Respondent CE and the EPA, Docket No. CAA-03-2023-0038DA.

OTHER APPLICABLE LAWS

130. Nothing in this Consent Agreement and Final Order shall relieve Respondents of their obligation to comply with all applicable federal, state, and local laws and regulations, 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 the validity of any federal, state or local permit. This Consent Agreement and Final Order does not constitute a waiver, suspension or modification of the requirements of the CAA, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

131. This Consent Agreement and Final Order resolves only EPA's claims for civil penalties for the specific violations alleged against Respondents in this Consent Agreement and Final Order. EPA reserves the right to commence action against any person, including Respondents, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. This settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under the CAA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order after its effective date.

EXECUTION /PARTIES BOUND

132. This Consent Agreement and Final Order shall apply to and be binding upon the EPA, the Respondents and the officers, directors, employees, contractors, successors, agents and assigns of Respondents. By his or her signature below, the person who signs this Consent Agreement on behalf of each Respondent is acknowledging that he or she is fully authorized by that Respondent to execute this Consent Agreement and to legally bind that Respondent to the terms and conditions of this Consent Agreement and Final Order.

EFFECTIVE DATE


133. The effective date of this Consent Agreement and Final Order (“Effective Date”) is the date on which the Final Order, signed by the Regional Administrator of EPA, Region 3, or his/her designee, the Regional Judicial Officer, is filed along with the Consent Agreement by the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

ENTIRE AGREEMENT

134. This Consent Agreement and Final Order constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this Consent Agreement and Final Order.

For Respondent Cunningham Energy, LLC:

Date: 6/7/2024

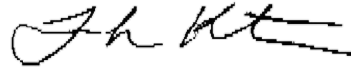
By: 

Ryan Cunningham
Manager

For Respondent Houston Natural Resources Corp:

Date: June 6, 2024

By:



Frank Kristan
President

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement & Compliance Assurance Division of the United States Environmental Protection Agency, Region 3, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

By: _____
[*Digital Signature and Date*]
Karen Melvin, Director
Enforcement & Compliance Assurance Division
U.S. EPA – Region 3
Complainant

Attorney for Complainant:

By: _____
[*Digital Signature and Date*]
Andrew Ingersoll
Assistant Regional Counsel
U.S. EPA – Region 3

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 3
Philadelphia, Pennsylvania 19103



In the Matter of: :
: :
CUNNINGHAM ENERGY, LLC : U.S. EPA Docket No. CAA-03-2024-0119
3230 Pennsylvania Avenue :
Charleston, WV 25302 : Proceeding under Section 113(a) of the Clean Air
: Act, 42 U.S.C. § 7413(a)
And :
: :
HOUSTON NATURAL RESOURCES CORP :
12 Greenway Plaza, Suite 1100 :
Houston, Texas 77046 :
: :
Respondents. :
: :
CUNNINGHAM ENERGY, LLC :
Shelton Road :
Bomont, WV 25030, :
Facility.

FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region 3, and Respondents, Cunningham Energy, LLC and Houston Natural Resources Corp, have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's Stationary Source Civil Penalty Policy (October 25, 1991), and the statutory factors set forth in Section 113(e)(1) the CAA, 42 U.S.C. § 7413(e)(1).

NOW, THEREFORE, PURSUANT TO Section 113(a) of the Clean Air Act, 42 U.S.C.

§ 7413(a) and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondents pay civil penalty in the amount of seven hundred and forty-two thousand seven hundred and thirty-seven dollars (\$742,737), in accordance with the payment provisions set forth in the Consent Agreement and in 40 C.F.R. § 22.31(c), and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondents' obligation to comply with all applicable provisions of the Clean Air Act and the regulations promulgated thereunder.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

By: _____
Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region 3

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 3
Philadelphia, Pennsylvania 19103

In the Matter of: :
 :
 :
 CUNNINGHAM ENERGY, LLC : U.S. EPA Docket No. CAA-03-2024-0119
 3230 Pennsylvania Avenue :
 Charleston, WV 25302 : Proceeding under Section 113(a) of the Clean Air
 : Act, 42 U.S.C. § 7413(a)
 And :
 :
 HOUSTON NATURAL RESOURCES CORP :
 12 Greenway Plaza, Suite 1100 :
 Houston, Texas 77046 :
 :
 Respondents. :
 :
 :
 CUNNINGHAM ENERGY, LLC
 Shelton Road
 Bomont, WV 25030,
 Facility.

CERTIFICATE OF SERVICE

I certify that the foregoing ***Consent Agreement and Final Order*** was filed with the EPA Region 3 Regional Hearing Clerk on the date that has been electronically stamped on the ***Consent Agreement and Final Order***. I further certify that on the date set forth below, I caused to be served a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following addresses:

Copies served via email to:

Ryan Cunningham
Cunningham Energy, LLC
ryan.cunningham@cunninghamenergy.com
3230 Pennsylvania Avenue
Charleston, WV 25302

Joseph C. Unger
Spilman Thomas & Battle, PLLC
junger@spilmanlaw.com
300 Kanawha Boulevard, East
Charleston, WV 25301

Frank Kristan
President
Houston Natural Resources Corp
frank@hnrcholdings.com
12 Greenway Plaza, Suite 1100
Houston, Texas 77046

Andrew Ingersoll
Assistant Regional Counsel
U.S. EPA, Region III
ingersoll.andrew@epa.gov

Bruce Augustine
Environmental Scientist
U.S. EPA, Region III
Augustine.Bruce@epa.gov

[Digital Signature and Date]
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 3