

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2009 SEP 15 AM 10:49
FILED
EPA REGION VIII
HEARING CLERK

Docket No. CAA-08-2009-0013


IN THE MATTER OF:

BERRY PETROLEUM COMPANY)
950 17th ST., Suite 2400)
DENVER, CO 80202)
)
)
)
Respondent.)
_____)

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 15th OF September, 2009.



Elyana R. Sutor
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

Docket No. CAA-08-2009-0013

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FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)

BERRY PETROLEUM COMPANY)
1999 Broadway, Suite 3700)
Denver, CO 80202)

Respondent)

CONSENT AGREEMENT

Complainant, United States Environmental Protection Agency- Region 8, and Respondent, Berry Petroleum Company, by their undersigned representatives, hereby consent and agree as follows:

INTRODUCTORY TERMS

1. On or about April 20, 2009, Complainant issued a Complaint to Respondent in this matter alleging certain violations of the Clean Air Act (CAA) and the implementing regulations promulgated by the authority contained in Section 111 of the CAA, 42 U.S.C. § 7411 ("New Source Performance Standards.") The specific alleged regulatory violations concern *STANDARDS OF PERFORMANCE FOR EQUIPMENT LEAKS OF VOC FROM ONSHORE NATURAL GAS PROCESSING PLANTS*, codified at 40 C.F.R. part 60, subpart KKK. In the Complaint, Complainant proposed a civil penalty assessment.
2. Respondent admits the jurisdictional allegations, and neither admits nor denies the remaining allegations of the Complaint. Respondent waives its right to contest any allegations at a hearing or at a civil proceeding in connection with the enforcement of the Final Order incorporating this Consent Agreement.
3. This Consent Agreement, upon incorporation into a Final Order, applies to and is binding upon EPA and upon Respondent and Respondent's heirs, successors or assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets of real or personal property, shall not alter Respondent's responsibilities under this agreement. This Consent Agreement contains all terms of the settlement agreed to by the parties.

TERMS OF SETTLEMENT

4. Respondent consents and agrees to pay a civil penalty in the total amount of **THIRTY SIX THOUSAND DOLLARS (\$36,000)** ("Main Civil Penalty") in the manner described below in this paragraph:
- a. Complainant and Respondent agree that the Main Civil Penalty shall be paid in one installment.
 - b. The one payment is due 30 calendar days after the date written on the Final Order, issued by the Regional Judicial Officer, which adopts this Consent Agreement. If the due date falls on a weekend or legal federal holiday, the due date is the next business day. The date the payment is made is considered to be the date of the deposit ticket (standard form 215) issued by the Mellon Bank. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.
 - c. The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case. (*Berry Petroleum Company*, Docket No. CAA-08-2009-0013), for the above-described amount, payable to "Treasurer, United States of America." to:

(via REGULAR MAIL):

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

(via WIRE TRANSFERS):

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

(via OVERNIGHT MAIL):

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Ms. Natalie Pearson (Tel.: 314-418-4087)

(via ACH (also known as REX or remittance express)):

Automated Clearinghouse (ACH) for receiving US
currency
PNC Bank
ABA: 051036706
Account Number: 310006
CTX Format Transaction Code 22 – checking
Environmental Protection Agency
808 17th Street NW
Washington DC 20074
Contact: Jesse White, 301-887-6548

(via ON LINE PAYMENT):

The On Line Payment Option is available through the Dept. of Treasury. This payment option can be accessed from the information below: WWW.PAY.GOV. Enter "sfo 1.1" in the search field. Open form and complete required fields.

A copy of the payment shall be sent simultaneously to:

Ms. Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA Region 8
1595 Wynkoop
Denver, CO 80202-1129

and

Ms. Carol Smith, Enforcement Engineer
Technical Enforcement Program (8ENF-T)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

- d. In the event any payment due is not received by the specified due date, interest accrues from the date of the final order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (i.e., on the 1st late day, 30 days of interest accrues).
- e. In addition, a handling charge of fifteen dollars (\$15) shall be assessed on the 31st day from the date of the Final Order, and each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the

due date (i.e., the 121st day from the date the Final Order is issued). Payments are applied in the following order: handling charges, 6% penalty interest, late interest, and any balance is applied to the outstanding principal amount.

- f. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

SUPPLEMENTAL ENVIRONMENTAL PROJECT

5. Respondent shall perform a Supplemental Environmental Project (SEP) that will consist of the installation of a flare device on the outlet of its Brundage Canyon Gas Plant (Brundage Plant). This flare device will capture well casing gas that otherwise may be vented to the atmosphere.

Currently, a casing gas gathering system at Respondent's Duchesne County production field feeds to the Brundage Plant. Discharge from the Brundage Plant then feeds to a Questar Pipeline. On occasion, Questar curtails or shuts in gas from the Brundage Plant which results in pressure buildup in the upstream gathering system. The pressure buildup can reach a point where casing gas vents at individual wells.

The installation of a flare located downstream of the Brundage Gas Plant will combust gas that may otherwise be vented at the oil wells during Questar outages and allow the Brundage Gas Plant to continue operating during an outage, thereby mitigating gathering system overpressure and well site venting. Respondent estimates that over 98% of the VOC emissions that may occur during Questar Pipeline outage events can be controlled by installing a flare at the Brundage facility. Additionally, methane emissions also will be controlled by this flare during curtailments and Respondent estimates that these emissions will be reduced by approximately 98%.

6. Respondent shall complete the work on the SEP no later than February 1, 2010, unless the parties agree in writing to an extension of the completion date. Such extensions may be granted if, for example, Respondent, through no fault of its own, is unable to meet the deadline due to circumstances beyond its control.
7. The total expenditure for the SEP shall be not less than **ONE HUNDRED FOURTEEN THOUSAND DOLLARS (\$114,000.00.)** Respondent shall provide EPA with documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report, more fully described below.
8. Respondent hereby certifies that, as of the date of this Consent Agreement, it is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or in compliance with state or local requirements. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

9. SEP Reports:

- a. Respondent shall submit a SEP Completion Report to EPA within thirty (30) days following completion of the final SEP. The SEP Completion Report shall contain the following information:
 1. A detailed description of the SEP as implemented, along with representative photographs;
 2. A description of any operating, implementing or performance problems encountered and the solutions thereto;
 3. Itemized costs, documented by copies of purchase orders and receipts or canceled checks; and,
 4. Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement.
- b. Respondent agrees that failure to submit the SEP Completion Report shall be deemed a violation of this Consent Agreement and Respondent shall become liable for stipulated penalties and late fees as set forth below.

10. Respondent agrees that EPA may inspect the location where the SEP is being performed at any time in order to confirm that the SEP is being implemented, consistent with the representations made herein.

11. Respondent shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to EPA pursuant to this Consent Agreement, and shall provide the documentation of any such underlying research and data to EPA within seven (7) days of a request for such information. In all documents or reports, including, without limitation, the SEP Completion Report, submitted to EPA pursuant to this Consent Agreement, Respondent shall have its duly appointed officer sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

12. EPA acceptance of SEP Reports.
 - a. Following receipt of the SEP Completion Report described above, EPA will do one of the following: (i) accept the SEP Completion Report; (ii) reject the SEP Completion Report with notification to Respondent in writing of deficiencies in the SEP Completion Report and grant Respondent an additional thirty (30) days in which to correct any deficiencies; or (iii) reject the SEP Completion Report and seek stipulated penalties in accordance with the provisions herein.
 - b. If EPA elects to exercise option (ii) above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency or disapproval within ten (10) days of receipt of such notification. EPA and Respondent shall then have an additional thirty (30) days to reach agreement from the receipt by EPA of Respondent's notification of objection. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision to Respondent which shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA, as a result of any such deficiency or failure to comply with the terms of this Consent Agreement.
13. The determination of whether the SEP has been satisfactorily completed and whether Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.
14. Respondent shall submit by first class mail all notices and reports required by this Consent Agreement to:

Ms. Carol Smith
Environmental Engineer
Technical Enforcement Program (8ENF-AT)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

STIPULATED PENALTIES AND LATE FEES

15. In the event that Respondent fails to comply with any of the terms or provisions of this agreement relating to the performance of the SEP described above, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the total SEP expenditure stated above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
 - a. If the SEP is not satisfactorily completed by the deadline stated in Paragraph 6, or an agreed-upon date extending the deadline, Respondent

shall pay a stipulated penalty to the United States in the amount of ONE HUNDRED FOURTEEN THOUSAND DOLLARS (\$114,000.00.)

- b. If the SEP has been satisfactorily completed, and Respondent spends less than the amount of money required to be spent for the project, Respondent shall pay ONE HUNDRED FOURTEEN THOUSAND DOLLARS (\$114,000.00.) less the EPA-approved amount already expended by Respondent on the SEP, to the U.S. Treasury within thirty (30) days of written demand by EPA.
 - c. For failure to submit the SEP Completion Report required above, Respondent shall pay to the U.S. Treasury, within thirty (30) days of written demand by EPA, a stipulated penalty in the amount of ONE HUNDRED Dollars (\$100) for each calendar day after the day the SEP Completion Report was originally due until the day that the SEP Completion Report is received by EPA.
16. Stipulated penalties for subparagraph 15(c) above shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of the completion of the activity.
 17. Respondent shall pay stipulated penalties within thirty (30) days of receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions for payment of the civil penalty above. Interest and late charges shall be paid as stated in the Paragraph 4.

ADDITIONAL CONDITIONS

18. Submit the initial semiannual LDAR report, including the component inventory, on or before August 30, 2009, for Respondent's Brundage Gas Plant facility. LDAR report requirements are set out in 40 C.F.R. §60.636 *et. seq.*
19. Respondent agrees to submit on or before August 31, 2009 to EPA at the address set out in Paragraph 14 above, a semiannual Leak Detection and Repair (LDAR) report for the period January 1, 2009 through June 30, 2009, for Respondent's Brundage Gas Plant facility.
20. EPA agrees to review the semiannual report described in Paragraph 19 above within thirty days (30) of receipt, and then promptly schedule a compliance assistance meeting with Respondent. Attendance at this meeting of Respondent's contractors is anticipated by the parties. EPA's intention in conducting this meeting is to provide an evaluation of Respondent's report and provide instruction on LDAR program and reporting requirements, if requested.
21. EPA specifically waives its right to take enforcement action against Respondent for LDAR-related claims that may have been committed by Respondent at its

Brundage Gas Plant facility, whether specifically pleaded in the complaint or not, for the time period from startup through August 31, 2009.

22. The next semiannual report is due 60 days after the end of the succeeding reporting period, which is July 1, 2009 thru December 31, 2009. This means the next semiannual report is due on or before March 1st, 2010.

GENERAL PROVISIONS

23. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with the Clean Air Act and its implementing regulations.
24. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the consent agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.
25. Nothing in this Consent Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Consent Agreement.
26. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to the terms and conditions of this Consent Agreement.
27. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a Final Order.
28. Each party shall bear its own costs and attorney fees in connection with this matter.
29. This Consent Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the Complaint.

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

Date:

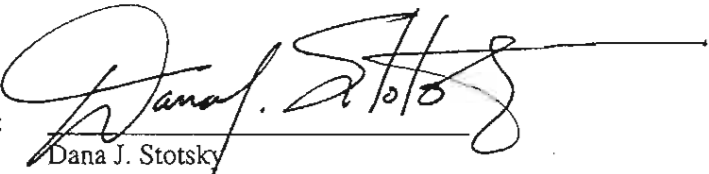
8/19/09

By:

Eddie Sierra

Eddie Sierra
Acting Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

Date: 8/19/09

By: 

Dana J. Stotsky
Senior Enforcement Agency
Legal Enforcement Program (8LEP)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
Colorado Bar # 14717
Phone: (303) 312-6905
FAX: (303) 312-6953
stotsky.dana@epa.gov

BERRY PETROLEUM COMPANY,

Respondent.

Date: 8/14/09

By: 

NAME:
TITLE: Daniel G. Anderson
Vice President, Production

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT** in the matter **BERRY PETROLEUM COMPANY; DOCKET NO.: CAA-08-2009-0013** was filed with the Regional Hearing Clerk on August 19, 2009. The **FINAL ORDER** was filed on September 15, 2009.


Further, the undersigned certifies that a true and correct copy of the documents were delivered Dana Stotsky, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on September 15 2009, to:

Gregory J. Patterson, Esq.
Musick, Peeler & Garrett, LLP.
One Wilshire Boulevard, Suite 2000
Los Angeles, CA 90017

E-mailed to:

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

September 15, 2009


Tina Artemis
Paralegal/Regional Hearing Clerk

