



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

2014 MAY -1 PM 2: 08

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

FILE
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CAA-08-2013-0014

IN THE MATTER OF:

BERRY PETROLEUM COMPANY

1999 Broadway, Suite 3700

Denver, CO 80202

RESPONDENT

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FINAL ORDER

Pursuant to 40 C.F.R. §22.13(b) and 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 of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 1st DAY OF May, 2014.

Elyana R. Sutin
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY 2014 APR 30 PM 12: 30
REGION 8

Docket No. CAA-08-2013-0014

EPA REGION VIII
READING ROOM

IN THE MATTER OF:)

BERRY PETROLEUM COMPANY, LLC)
1999 BROADWAY, SUITE 3700)
DENVER, CO 80202)

Respondent.)

COMBINED COMPLAINT
AND CONSENT AGREEMENT

Complainant, United States Environmental Protection Agency, Region 8 (the EPA or Complainant), and Respondent, Berry Petroleum Company, LLC by their undersigned representatives, hereby consent and agree as follows:

I. PRELIMINARY MATTERS

1. This Combined Complaint and Consent Agreement (Agreement) is entered into by the Parties to settle alleged violations of the federal Clean Air Act (Act), 42 U.S.C. §§ 7401-7671, 40 C.F.R. part 60, Standards of Performance for New Stationary Sources; and 40 C.F.R. part 63, National Emission Standards for Hazardous Air Pollutants.
2. This matter is subject to the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation, Termination or Suspension of Permits* (Consolidated Rules), 40 C.F.R. part 22. This Agreement contains all terms of the settlement agreed to by the parties. It is entered into by the Parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. §22.13(b), and executed pursuant to 40 C.F.R. §22.18(b)(2) and (3) of the Consolidated Rules. It also supersedes any prior agreements or understandings, whether written or oral, between the parties with respect to these alleged violations.
3. The EPA Administrator and the United States Attorney General have jointly determined that this matter is appropriate for an administrative penalty assessment, as authorized by section 113(d)(1) of the Act, 42 U.S.C. §7413(d)(1). Accordingly, the EPA has jurisdiction over this matter pursuant to section 113(d)(1)(B) and section 113(d)(2)(B) of the Act.

4. Respondent admits the jurisdictional allegations in this Agreement, but neither admits nor denies the specific factual allegations or legal conclusions made by the Complainant herein.
5. Complainant asserts that settlement of this matter is in the public interest, and Complainant and Respondent agree that entry of a final order approving this Agreement without further litigation and without adjudication of any issue of fact or law is the most appropriate means of resolving this matter. Respondent waives its rights to contest the allegations in the Complaint and to appeal the final order issued by the Regional Judicial Officer approving this Consent Agreement.
6. This Agreement, upon incorporation into a final order, applies to and is binding upon the EPA and upon Respondent, and Respondent's officers, directors, employees, agents, successors, and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Agreement. Respondent may not sell or otherwise transfer any Facility (defined below) unless Respondent shall have obtained a written undertaking from the purchaser or transferee to comply with paragraphs 15 through 22 hereof with respect to any Facility.
7. Respondent Berry Petroleum Company, LLC is a Delaware corporation, with its principal place of business located in Colorado, where it is registered and in good standing with the Colorado Secretary of State as a Colorado foreign corporation. Respondent is therefore a "person" as defined in §7602(e) of the Act.
8. The Respondent's Brundage Gas Plant, Section 7, Section 22 and Section 23 Compressor Stations, and the various facilities identified in Attachments A and B, are collectively referred to as the "Facilities", and are all owned and operated by Respondent in the Uinta Basin in Duchesne County, UT.
9. The Complainant acknowledges the Respondent's cooperation in seeking a resolution to this matter, as well as the Respondent's commitment to implementing pollution control measures as a means of resolution.
10. Although not a part of this agreement and notwithstanding the allegations contained in Paragraph 11 below, EPA has determined that Respondent's Engines and Glycol Dehydrators located at the Section 7 Compressor Station, the Section 21 Compressor Station, the Brundage Gas Plant, the Davis Hollow Compressor Station, and Respondent's Glycol Dehydrators located at Respondent's Section 22 Compressor Station and Respondent's Section 23 Compressor Station, are in compliance with 40 C.F.R. Part 63 Subpart HH, 40 C.F.R. Part 63 Subpart ZZZZ, 40 C.F.R Part 70, and 40 C.F.R Part 71, for the time period up to and including the date of this agreement.

11. EPA reserves its right to take any appropriate action against Respondent should EPA determine violations of the rules described in the preceding paragraph occurred at any of the locations described in the preceding paragraph, if EPA comes into possession of information that supports taking such action and the EPA does not currently possess such information as of the date this agreement is finalized.

II. ALLEGED VIOLATIONS

12. Complainant alleges Respondent violated regulations implementing the Act at the Facilities, specifically as follows:
 - a. regulatory requirements contained in 40 C.F.R. part 63, subpart ZZZZ and 40 C.F.R. part 71, with respect to operations at Respondent's Section 22 Compressor Station located at coordinates latitude 40.0306°, and longitude -110.330233° in Duchesne County, UT.
 - b. regulatory requirements contained in 40 C.F.R. part 63, subpart ZZZZ and 40 C.F.R. part 71, with respect to operations at Respondent's Section 23 Compressor Stations located at coordinates latitude 40.02965°, and longitude -110.408717° in Duchesne County, UT.
 - c. regulatory requirements contained in 40 C.F.R. part 60, subpart JJJJ, based on information Respondent provided to the EPA in a "Self-Disclosure" letter dated October 25, 2012 and subsequent updates, indicating that engines identified in Attachment A were out of compliance¹ with performance test requirements at the time of the Self-Disclosure.
 - d. regulatory requirements contained in 40 C.F.R. §§ 49.151-49.161 (Federal Minor New Source Review Program in Indian Country), based on information in the Self-Disclosure letter described in the preceding subparagraph, the facilities identified in Attachment B were out of compliance with the requirement to timely register such facilities with the reviewing authority in accordance with the Federal Minor New Source Review Program in Indian Country.

II. TERMS OF SETTLEMENT

13. Complainant acknowledges that all the violations alleged in paragraph 12 above have been corrected; provided that nothing herein shall constitute an admission by Respondent that it committed any violations. As a condition of settlement, Respondent agrees to the non-penalty provisions below in paragraphs 15-22. In consideration for Respondent's agreement to perform these non-penalty obligations, the EPA is agreeing to the Covenant Not to Sue in paragraph 28

¹ Please see Footnote 5 to Attachment A

below. In addition, in accordance with section 113(d)(2)(B) of the Act, the EPA has compromised the maximum civil penalty of \$37,500 per day per violation authorized in this matter, applying the factors set forth in section 113(e) of the Act and the 1991 Clean Air Act Civil Penalty Policy, including Respondent's significant cooperation in agreeing to perform the non-penalty obligations in paragraphs 15-22 below.

14. Respondent owns and operates the Facilities described in paragraph 8 above and which are further described in Attachments A and B.
15. Respondent agrees, within 12 months of the date the Final Order is issued in this matter, to route all emissions from the still vent of the glycol dehydrator at its Section 22 Compressor Station to an installed combustor, designed and operated to achieve at least a 95% reduction of volatile organic compounds (VOC) and hazardous air pollutant (HAP) emissions. Operating and other compliance requirements for the combustor will be established through the air permit outlined in paragraph 18, below.
16. Respondent agrees, within 12 months of the date the Final Order is issued in this matter, to route all emissions from the still vent of the glycol dehydrator at its Section 23 Compressor Station to an installed combustor, designed and operated to achieve at least a 95% reduction of VOC and HAP emissions. Operating and other compliance requirements for the combustor will be established through the air permit outlined in paragraph 18 below.
17. Respondent agrees, within 12 months of the date the Final Order is issued in this matter, to route all emissions from the still vent of the glycol dehydrator at its Section 7 Compressor Station to an installed combustor, designed and operated to achieve at least a 95% reduction of VOC and HAP emissions. Operating and other compliance requirements for the combustor will be established through the air permit outlined in paragraph 18, below.
18. Respondent agrees to voluntarily accept enforceable restrictions on its potential to emit at its Section 7, Section 22 and Section 23 Compressor Stations and, within 6 months of the date the Final Order is issued in this matter, to apply for "synthetic-minor" air permits for its Section 22 and Section 23 Compressor Stations under provisions of the Federal Minor New Source Review Program in Indian Country and for the Section 7 Compressor Station under provisions of the Utah Administrative Code.
19. Respondent agrees, within 12 months of the date the Final Order is issued in this matter, to physically route all emissions from two existing condensate tanks to the combustor installed at its Section 23 Compressor Station per paragraph 16. As an alternative to performing the engineering task described in the preceding sentence, Respondent may elect to implement engineering process changes that result in equivalent emission reductions.

20. Respondent agrees, within 12 months of the date the Final Order is issued in this matter, with respect to its Brundage Gas Plant, to either retrofit the existing rich burn engine with air pollution control(s), or replace such engine with a lean burn engine.
21. Respondent agrees, within 12 months of the date the Final Order is issued in this matter, to conduct a Performance Test on an engine at either its Section 22 Compressor Station or its Section 23 Compressor Station. The Respondent shall provide the agency 30 days' notice prior to conducting such testing. The performance test will concurrently measure mass emissions of NO_x, carbon monoxide (CO), VOC and formaldehyde in terms of grams per brake horsepower-hour using test methods and procedures set out in Appendix A of 40 C.F.R Part 60 (NO_x, CO, and VOC) and Appendix A of 40 C.F.R part 63 (formaldehyde). The EPA acknowledges that it may not use results from this Performance Test as the evidentiary basis to establish violations of the Act, if any, that occurred at any facility owned or operated by Respondent prior to the date the Performance Test is conducted. The EPA reserves its right to bring an enforcement action for violations of the Act, other than the alleged violations settled by this Agreement, occurring at any time using other evidence.
22. Respondent agrees to submit quarterly progress reports, including a Certification of Truth, Accuracy & Completeness signed by a responsible official, commencing within 90 days of the date the Final Order is issued in this matter. The purpose of such reports is to provide the status of Respondent's efforts to comply with the terms of settlement in this Agreement. Submissions of reports required by this Paragraph 22, shall be addressed to:

Air & Toxics Technical Enforcement Program Director
U.S. EPA Region 8 (Mail Code 8ENF-AT)
1595 Wynkoop St.
Denver, CO 80202-1129

The Certification of Truth, Accuracy & Completeness shall read:

I certify under penalty of law that I have examined and am familiar with the information in the enclosed documents, including all attachments. Based on my personal inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are, to the best of my knowledge and belief, true and complete. I am aware that there are significant penalties for knowingly submitting false statements and information, including the possibility of fines or imprisonment pursuant to section 113(c)(2) of the Act, and 18 U.S.C. §§ 1001, 1341 and 1505.

23. The EPA has analyzed the facts and circumstances in this matter with the statutory factors described in section 113(d)(1)(B) of the Act. The EPA has determined that an appropriate civil penalty to resolve this matter is **TWENTY FIVE THOUSAND DOLLARS (\$25,000.00)**. In light of the unusual procedural history of this matter (*see* Environmental Appeal Board rulings in Appeal Nos. 13-03, 13-04 and 13-05), and the fact that Respondent has paid the sum of \$25,000 to the U.S. Treasury in connection with the Final Order issued in Docket No. CAA-08-2013-0014, no further penalty payment is owed to the United States. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit. It is agreed that payment of the penalty does not constitute an admission that Respondent committed any violation alleged herein.
24. Failure by Respondent to comply with any of the terms of this Agreement shall constitute a breach of the Agreement and may result in referral of the matter to the United States Department of Justice for enforcement of this Agreement and for such other relief as may be appropriate.
25. Nothing in this 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 Agreement.

IV. GENERAL PROVISIONS

26. Each undersigned representative of a Party to this Agreement certifies that he or she is fully authorized by the Party represented to bind the Party to the terms and conditions of this Agreement and to execute and legally bind that Party to this Agreement. The Parties agree that each Party's obligations under this Agreement constitute sufficient consideration for the other Party's obligations under the Agreement.
27. The Parties agree to submit this Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.
28. This Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the Parties, shall be a complete, full and final settlement of the United States' civil penalty claims against Respondent for the specific violations alleged in this Agreement. In addition, in exchange for the Respondent's promise to fulfill the conditions contained in paragraphs 15-22 above, the EPA agrees not to issue any administrative order or sue Respondent for injunctive or other equitable relief for the specific violations alleged in this matter, but such covenant terminates if Respondent fails to timely and satisfactorily complete every condition stated in paragraphs 15-22 above; provided, however, that such covenant shall not terminate until and unless Complainant first provides notice to Respondent of any failure to perform any such condition and

provides a reasonable opportunity to cure such failure, to demonstrate that performance was achieved or that no such performance is necessary, or to explain circumstances associated with such condition. Should the covenant terminate, Complainant may compel Respondent to perform any or all of those conditions and seek other relief in a civil action pursuant to the Clean Air Act, pursuant to contract law, or both. In addition, the Parties agree that the covenant not to sue described above constitutes sufficient consideration for Respondent's obligations in Paragraphs 15-22 above.

29. The substantive terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of the Parties, and incorporation in a revised final order by a Regional Judicial Officer.
30. Each Party shall bear its own costs and attorneys fees in connection with all issues associated with this Agreement.
31. Respondent remains obligated to comply with all requirements of the Act and its implementing regulations.
32. This Agreement may be executed in counterparts.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Office of Enforcement, Compliance, and
Environmental Justice

COMPLAINANT.

Date: 03/12/2014

By: Eddie A. Sierra
Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

BERRY PETROLEUM COMPANY, LLC

RESPONDENT.

Date: 2/25/2014

By: Arden Walker, Jr.

PRINTED NAME: Arden Walker, Jr.

TITLE: Executive Vice President and
Chief Operating Officer

ATTACHMENT A: ENGINE DETAILS

All engines are new (commenced construction after 6/12/06 AND manufacture dates after 7/1/2008) spark ignition, internal combustion engines (SI ICE) between 25 hp and 100 hp, NOT gasoline or rich burn LPG and are Non-certified.

Location	Well Name	Manufacture	Model	Serial #	Manufacture Date ²	Start-up Date ³	Compliance Demonstration Completed?
30-54Inj	30-54 Inj	Caterpillar	G3406	CTS00676	1/1/2010	10/1/2009	N/A ⁴
15-26-56	15-26-56	AJAX	E565	85955	6/1/2011	3/30/2012	Yes
14-2-56	14-2-56	AJAX	E565	85956	6/1/2011	4/7/2012	Yes
11-3D-56	11-3D-56	AJAX	E565	85970	7/1/2011	4/28/2012	Yes
3-21D-56	3-21D-56	AJAX	E565	85971	7/1/2011	4/21/2012	Yes
14-14D-56	14-14D-56	AJAX	E565	85969	7/1/2011	1/18/2012	Yes
15-23D-56	15-23D-56	Arrow	L-795	L-600620	Unknown	3/30/2012	Yes
3-34-45	3-34-45	Arrow	L-795	L600885	Unknown	9/8/2012	Yes
2-5D-56	2-5D-56	Arrow	L-795	L-600736	10/20/2011	7/23/2012	Yes
11-17-56	11-17-56	Arrow	L-795	L-600489	2/17/2011	7/1/2010	Yes
9-8D-56	9-8D-56	Arrow	L-795	L-600497	2/24/2011	7/1/2012	Yes
13H-3-56	13H-3-56	Arrow	L-795	L-600618	Unknown	10/25/2011	Pending ⁵
8-29-45	8-29-45	Arrow	L-795	L-600785	10/20/2011	1/22/2012	Yes
15-15D-56	15-15D-56	Arrow	L-795	L-600882	2/24/2011	6/25/2012	Yes
15-15D-56	9-15D-56	Arrow	L-795	L-600496	3/19/2012	6/25/2012	Yes
10-21-56	10-21-56	Arrow	L-795	L-600886	3/20/2012	6/7/2012	Yes
8-30D-56	8-30D-56	Arrow	L-795	L600883	3/20/2012	7/22/2012	Yes
3-15D-56	3-15D-56	Arrow	L-795	L-600490	2/10/2011	7/23/2011	Yes
8-16D-56	8-16D-56	Arrow	L-795	L-600619	Unknown	9/22/2011	Yes
13-29-45	13-29-45	Arrow	L-795	L-600784	10/20/2011	3/2/2012	Yes
16-3-54	16-3-54	Ajax	E-565	85996	Unknown	9/30/2012	Yes
16-30D-56	16-30D-56	Arrow	L-795	L600492	Unknown	8/16/2012	Yes
1A-29-54	1A-29-54	Arrow	C-106	303814C	Unknown	9/13/2012	Yes
15-9D-54	15-9D-54	Ajax	E-565	86004	Unknown	8/23/2012	Yes
14-9D-54	14-9D-54	Ajax	E-565	86011	Unknown	8/21/2012	Yes

² "Unknown" dates could not be determined due to a lack of records and an unreadable data plate.

³ This table provides the date of first production as a proxy for the start-up date. Precise start-up dates are not known, but typically occur approximately one week after first production.

⁴ Engine has been permanently removed from service.

⁵ Engine has been and still is out of service pending certain drilling activity. An appropriate compliance determination will be completed after the engine is placed in service.

**ATTACHMENT B: FEDERAL MINOR NSR PROGRAM IN INDIAN COUNTRY –
EXISTING TRUE MINOR SOURCES FOR WHICH REGISTRATIONS WERE
SUBMITTED**

Source Name	Location			
	Qtr-Qtr	Section	Township	Range
BCUT 8-21	SENE	21	5S	4W
F 1-11-65	NENE	11	6S	5W
F 11-2D-65	NESW	2	6S	5W
F 14-6D-64	SESW	6	6S	4W
F 15-1D-65	SWSE	1	6S	5W
F 16-5-65	SESE	5	6S	5W
F 2-12D-65	NWNE	12	6S	5W
F 2-2-65	NWNE	2	6S	5W
F 5-3-64	SWNW	3	6S	4W
F 5-4-65	SWNW	4	6S	5W
F 5-6-65	SWNW	6	6S	4W
F 6-1-65	SENW	1	6S	5W
F 8-2D-64	SENE	2	6S	4W
F 9-1D-65	NESE	1	6S	5W
LF 1-22-57	NENE	22	5S	7W
LF 1-31D-45	NENE	31	4S	5W
LT 5-23D-56	SWNW	23	5S	6W
LT 6-28-45	SENW	28	4S	5W
LT 7-27-45	SWNE	27	4S	5W
LT 8-30D-56	SENE	30	5S	6W
LT 9-28D-45	NESE	28	4S	5W
LT 9-9D-56	NESE	9	5S	6W
UT 10S-21D-54	NWSE	21	5S	4W
UT 1-14D-55	NENE	14	5S	5W
UT 12-29D-55	NWSW	29	5S	5W
UT 1-29	NENE	29	5S	4W
UT 13-35D-55	SWSW	35	5S	5W
UT 13H-16-55	SWSW	16	5S	5W
UT 14-9D-54	SESW	9	5S	4W
UT 2-24-54	NWNE	24	5S	4W
UT 2-30-55	NWNE	30	5S	5W
UT 3-25-56	NENW	25	5S	6W
UT 3-30-55	NENW	30	5S	5W
UT 3-35-54	NENW	35	5S	4W
UT 4-20D-55	NWNW	20	5S	5W
UT 5-13-54	SWNW	13	5S	4W

Source Name	Location			
	Qtr-Qtr	Section	Township	Range
UT 5-25-56	SWNW	25	5S	6W
UT 5-35-54	SWNW	35	5S	4W
UT 6-24-54	SENW	24	5S	4W
UT 6-30-55	SENW	30	5S	5W
UT 7-19-55	SWNE	19	5S	5W
UT 7-21-54	SWNE	21	5S	4W
UT 7-24-56	SWNE	24	5S	6W
UT 7-25-56	SWNE	25	5S	6W
UT 8-10D-54	SENE	10	5S	4W
UT 8-20-55	SENE	20	5S	5W
UTE 10-24-54	NWSE	24	5S	4W
UTE 11-13-54	NESW	13	5S	4W
UTE 11-25-56	NESW	25	5S	6W
UTE 11-29-54	NESW	29	5S	4W
UTE 11-35-54	NESW	35	5S	4W
UTE 13-35-54	SWSW	35	5S	4W
UTE 1-35-54	NENE	35	5S	4W
UTE 14-18-55	SESW	18	5S	5W
UTE 14-24-56	SESW	24	5S	6W
UTE 14-25-54	SESW	25	5S	4W
UTE 15-35-54	SWSE	35	5S	4W
UTE 16-24-54	SESE	24	5S	4W
UTE 16-25-54	SESE	25	5S	4W
UTE 16-3-54	SESE	3	5S	4W
UTE 7-35-54	SWNE	35	5S	4W
UTE 8-19-55	SENE	19	5S	5W
UTE 8-25-54	SENE	25	5S	4W
UTE 9-35-54	NESE	35	5S	4W
UTF 2-13-55	NWNE	13	5S	5W

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT AND CONSENT AGREEMENT** in the matter of **BERRY PETROLEUM COMPANY, DOCKET NO.: CAA-08-2013-0014** was filed with the Regional Hearing Clerk on April 30, 2014.

Further, the undersigned certifies that, on the same date, a true and correct copy of the document was sent by internal EPA mail to:

Elyana R. Sutin, Regional Judicial Officer
U.S. EPA Region 8
1595 Wynkoop Street, Mail Code 8RC
Denver, CO 80202

Further, the undersigned certifies that a true and correct copy of the document was sent by first class U.S. Mail on April 30, 2014, to:

Counsel for Respondent:

Lawrence E. Volmert, Esq.
Holland & Hart, LLP
555 Seventeenth Street, Suite 3200
Denver, CO 80202-3979

Date April 30, 2014

David Rochlin
David Rochlin, Counsel for Complainant

CERTIFICATE OF SERVICE

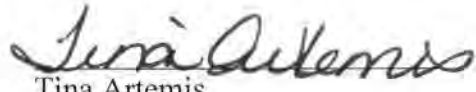
The undersigned certifies that the original of the attached **COMBINED COMPLAINT, CONSENT AGREEMENT** in the matter **BERRY PETROLEUM COMPANY, LLC; DOCKET NO.: CAA-08-2013-0014**. The **COMBINED COMPLAINT, CONSENT AGREEMENT** was filed with the Regional Hearing Clerk on April 30, 2014; the **FINAL ORDER** was filed on May 1, 2014.

Further, the undersigned certifies that a true and correct copy of the documents were delivered to, David Rochlin, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were sent and placed in the United States mail certified/return receipt and emailed on May 2, 2014 to:

Counsel for Respondent:

Lawrence E. Volmert
Holland and Hart LLP
555 Seventeenth Street, Suite 3200
Denver, CO 80202-3979
lvolmert@hollandhart.com

May 2, 2014


Tina Artemis
Paralegal/Regional Hearing Clerk

