

FILED

Enduring Resources, LLC
Docket No. CAA-06-2023-3321

23 JUN 13 AM 10:41

ENVIRONMENTAL PROTECTION AGENCY
REGIONAL HEARINGS CLERK
EPA REGION VI
UNITED STATES
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:

Enduring Resources, LLC
Centennial, CO

RESPONDENT

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DOCKET NO. CAA-06-2023-3321

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is an administrative penalty assessment proceeding brought under Section 113(d) of the Clean Air Act, (the “CAA” or the “Act”), 42 U.S.C. § 7413(d), and Sections 22.13, 22.18, and 22.34 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permit (“Consolidated Rules”), as codified at 40 C.F.R. Part 22.

2. Complainant is the United States Environmental Protection Agency, Region 6 (“EPA”). On EPA’s behalf, the Director of the Enforcement and Compliance Assurance Division, EPA Region 6, has been delegated the authority to settle civil administrative penalty and compliance proceedings under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

3. Enduring Resources, LLC (“Enduring” or “Respondent”) is a limited liability company doing business in the State of New Mexico. Respondent is a “person” as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

4. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this Consent Agreement along with the corresponding Final Order hereinafter known together as the “CAFO” without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this CAFO.

B. JURISDICTION

5. This CAFO is entered into under Section 113(d) of the Act, as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules, 40 C.F.R. Part 22. The alleged violations in this CAFO are pursuant to Section 113(a)(1)(B) and (a)(3)(A) of the Act, 42 U.S.C. § 7413(a)(1)(B), (a)(3)(A).

6. EPA and the United States Department of Justice jointly determined that this matter, although it involves alleged violations that occurred more than a year before the initiation of this proceeding, is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.

7. In satisfaction of the notice requirements of Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), on July 11, 2022, EPA issued to Respondent a Notice of Violation and Opportunity to Confer (the “NOVOC”) and provided a copy of the NOVOC to the State of New Mexico. In the NOVOC, EPA provided notice to both Respondent and the State of New Mexico that EPA found Respondent committed the alleged violations of the federal New Source Performance Standards (“NSPS”) and the New Mexico State Implementation Plan (“SIP”)

described in Section E of this CAFO and provided Respondent an opportunity to confer with EPA.

8. The Regional Judicial Officer is authorized to ratify this CAFO which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b).

9. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

C. GOVERNING LAW

10. The Act is designed “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population.” 42 U.S.C. § 7401(b)(1).

11. EPA is authorized by Section 113 of the CAA, 42 U.S.C. § 7413, to take action to ensure that air pollution sources comply with all federally applicable air pollution control requirements. These include requirements promulgated by EPA and those contained in SIPs and federally enforceable permits.

a. NSPS 40 C.F.R. Part 60, Subparts OOOO and OOOOa

12. Section 111 of the CAA, 42 U.S.C. § 7411, authorizes EPA to promulgate regulations establishing New Source Performance Standards (“NSPS”). Section 111(e) of the CAA, 42 U.S.C. § 7411(e), states that after the effective date of standards of performance promulgated under this Section, it shall be unlawful for any owner or operator of any new source to operate such source in violation of any standard of performance applicable to such source.

13. In 2012, pursuant to its authority under Section 111(b)(1)(B) of the Act, 42 U.S.C. § 7411(b)(1)(B), to review and, if appropriate, revise the NSPS, EPA published the final rule,

“Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution,” found at 40 C.F.R. Part 60, Subpart OOOO (“Subpart OOOO”).

14. In 2016, EPA made amendments to the 2012 NSPS with respect to standards for storage vessels and other changes, which are found at 40 C.F.R. Part 60, Subpart OOOOa (“Subpart OOOOa”).

15. Affected facilities that commence construction, modification, or reconstruction after August 23, 2011, and on or before September 18, 2015, are subject to the standards of Subpart OOOO. 40 C.F.R. § 60.5360. Affected facilities that commence construction, modification, or reconstruction after September 18, 2015, are subject to the standards of Subpart OOOOa. 40 C.F.R. § 60.5360a.

16. Among the “affected facilities” subject to NSPS Subparts OOOO and OOOOa are “storage vessel affected facilities.” 40 C.F.R. §§ 60.5365(e), 60.5365a(e). NSPS Subparts OOOO and OOOOa specify that a “storage vessel affected facility” is a single storage vessel with the potential for VOC emissions equal to or greater than six (6) tons per year (“tpy”). 40 C.F.R. §§ 60.5365(e), 60.5365a(e).

17. For storage vessels that commenced construction, reconstruction, or modification after August 23, 2011, and on or before September 18, 2015, NSPS Subpart OOOO requires that the potential for VOC emissions “be calculated using a generally accepted model or calculation methodology, based on the maximum average daily throughput determined for a 30-day period of production prior to the applicable emission determination deadline specified in” 40 C.F.R. § 60.5365(e). “The determination may take into account requirements under a legally and practically enforceable limit in an operating permit or other requirement established under a Federal, State, local, or tribal authority.” 40 C.F.R. § 60.5365(e).

18. For storage vessels that commenced construction, reconstruction, or modification after September 18, 2015, and on or before November 16, 2020, NSPS Subpart OOOOa requires that the potential for VOC emissions “be calculated using a generally accepted model or calculation methodology, based on the maximum average daily throughput (as defined in [40 C.F.R.] § 60.5430a) determined for a 30-day period prior to the applicable emission determination deadline specified in” 40 C.F.R. § 60.5365a(e)(2)(i) and (ii). “The determination may take into account requirements under a legally and practicably enforceable limit in an operating permit or other requirement established under a Federal, state, local, or tribal authority.” 40 C.F.R. § 60.5365a(e)(1).

19. For storage vessels that commenced construction, reconstruction, or modification after November 16, 2020, NSPS Subpart OOOOa requires that the potential for VOC emissions be calculated for each individual storage vessel using a generally accepted model or calculation methodology, based on the maximum average daily throughput, as defined in 40 C.F.R. § 60.5430a, determined for a 30-day period of production, except as specified in 40 C.F.R. § 60.5365a(e)(3). “The determination may take into account requirements under a legally and practicably enforceable limit in an operating permit or other requirement established under a Federal, state, local, or tribal authority.” 40 C.F.R. § 60.5365a(e)(2).

20. NSPS Subparts OOOO and OOOOa require owners and operators, at all times, to maintain and operate any affected facility, including associated air pollution control equipment, in a manner consistent with good air pollution control practice for minimizing emissions. 40 C.F.R. §§ 60.5370(b), 60.5370a(b).

21. NSPS Subparts OOOO and OOOOa require each storage vessel affected facility, that uses a control device to reduce emissions from the facility, to connect the facility through a

closed vent system and route emissions to a control device or to a process. 40 C.F.R.

§§ 60.5395(e)(1), 60.5395a(b)(1).

22. NSPS Subpart OOOO requires that a closed vent system for a storage vessel affected facility using a control device or routing emissions to a process to meet the requirements of 40 C.F.R. § 60.5411(c). 40 C.F.R. § 60.5411(c) requires that a closed vent system for a storage vessel affected facility using a control device or routing emissions to a process, be designed, and operated with no detectable emissions, as determined using olfactory, visual, and auditory inspections. Each closed vent system that routes emissions to a process must be operational 95 percent of the year or greater. 40 C.F.R. § 60.5395(e)(1).

23. NSPS Subpart OOOOa requires that a closed vent system for a storage vessel affected facility using a control device or routing emissions to a process to meet the requirements of 40 C.F.R. § 60.5411a(c) and (d). 40 C.F.R. § 60.5411a(c) requires that a closed vent system for a storage vessel affected facility using a control device or routing emissions to a process, be designed, and operated with no detectable emissions, as determined using olfactory, visual, and auditory inspections or optical gas imaging inspections as specified in 40 C.F.R. § 5416a(c). 40 C.F.R. § 60.5395a(b)(1).

24. NSPS Subparts OOOO and OOOOa require each enclosed combustion device used to meet relevant emissions reduction standards at storage vessel affected facilities to be “maintained in a leak free condition.” 40 C.F.R. §§ 60.5412(d)(1)(i) and 60.5412a(d)(1)(i).

b. New Mexico State Implementation Plan

25. Section 109(a) of the CAA, 42 U.S.C. § 7409(a), requires the Administrator of EPA to publish national ambient air quality standards (“NAAQS”) for certain air pollutants.

Section 109(b) of the CAA, 42 U.S.C. § 7409(b), provides that the NAAQS establish primary air quality standards to protect public health and secondary standards to protect public welfare.

26. To achieve the objectives of the NAAQS and the Act, Section 110(a) of the CAA, 42 U.S.C. § 7410(a), requires each State to adopt a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS, and to submit it to the Administrator of EPA for approval.

27. The State of New Mexico has adopted a SIP that has been approved by EPA. *See* 40 C.F.R. Part 52, Subpart GG. The New Mexico SIP includes authorization for New Mexico to issue general construction permits to oil and gas facilities. *See* 40 C.F.R. § 52.1620(c); 20 N.M.A.C. 2.72.220.

28. Facilities “registered for coverage under a general permit shall be generally homogeneous in terms of operations, processes and emissions, subject to the same or substantially similar requirements, and not subject to case-by-case standards or requirements.” *Id.* “Any term or condition imposed by the department on a permit or permit revision is enforceable to the same extent as a regulation of the” New Mexico Environmental Improvement Board. 20 N.M.A.C. 2.72.210(D).

29. Pursuant to 20 N.M.A.C. 2.72.201, the State of New Mexico issued a New Mexico New Source Review (“NSR”) Permit for the Facility in Table 2 of Appendix A (the “NSR Facility”), which includes the following requirements relevant to this CAFO:

a. Part B101(A) of the NSR permit requires the NSR Facility to operate in accordance with the NSR Facility’s permit application and any supplemental submittals to the New Mexico Environmental Department (“NMED”).

D. FINDINGS OF FACT AND CONCLUSIONS OF LAW

30. Respondent owns and/or operates the oil and natural gas production facilities listed in Appendix A, which are located in the New Mexico San Juan Basin (the “Facilities”).

31. Respondent is the owner and/or operator of the Facilities within the meaning of the Act, Section 111(a)(5), 42 U.S.C. § 7411(a)(5), 40 C.F.R. § 60.2, and/or 40 C.F.R. § 51.100(f).

32. At all times relevant to this proceeding, Respondent owned and/or operated units that emit Volatile Organic Compounds (“VOCs”) at the Facilities, which produce oil and gas.

33. The facilities in Table 1 of Appendix A (the “NOI Facilities”) are covered by the State of New Mexico’s Notice of Intent and Emissions Inventory Requirements program for oil and gas facilities, located at 20 N.M.A.C. 2.73.

34. The NOI Facilities contain single storage vessels in the oil and natural gas production segments with the potential for VOC emissions equal to or greater than six (6) tons per year (tpy) and certain Facilities were constructed after August 23, 2011, and on or before September 18, 2015, while other Facilities were constructed after August 23, 2011. They are therefore subject to the requirements of NSPS Subpart OOOO and OOOOa, as listed in Appendix A.

35. The NSR Facility is permitted under the SIP-approved NSR Construction permit program, located at 20 N.M.A.C. 2.72.201.

36. NMED issued an air permit to Respondent for the NSR Facility under the SIP-approved NSR permit program. The permit covers various emission units at the NSR Facility, including process equipment and/or vapor recovery systems, tanks/any flares/tanks, and flares “tanks, fugitives, and flares”.

37. Respondent is required by Part B101(A) of the NSR Facility's permit listed in Attachment A to operate the NSR Facility as specified in the permit application and any subsequent submittals to the NMED.

38. EPA contracted helicopter flyovers of the San Juan Basin between August 25, 2020, and October 15, 2020, to assess energy extraction facility emissions using Optical Gas Imaging ("OGI") technology.

39. Flyovers of the Facilities at issue in this CAFO were conducted on September 30, 2020, and October 1, 2020. Appendix A identifies EPA's observations at each Facility.

40. On February 1, 2021, EPA sent Respondent OGI video captures showing potentially unauthorized hydrocarbon emissions from process equipment and vapor recovery systems at the Facilities. EPA asked Respondent to verify ownership, provide current site-specific permit information, and take any necessary corrective action to address unauthorized hydrocarbon emissions at each facility. EPA considered information provided by Respondent to determine whether violations occurred at the facilities.

41. On February 17, 2021, Respondent provided information to EPA that corrective actions were completed at the Facilities listed in Appendix A to address some of the compliance issues observed during the flyovers.

42. More than thirty (30) days before the issuance of this CAFO, Respondent was notified of the violations alleged herein. On July 11, 2022, EPA sent Respondent the NOVOC and provided a copy to the State of New Mexico, in accordance with Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1).

43. On August 23, 2022, and on various other occasions, EPA conferred with Respondent regarding the violations alleged herein and provided an opportunity for Respondent to submit additional information or materials.

44. On November 18, 2022, Respondent submitted additional information and documentation regarding compliance monitoring beyond that required under applicable regulations.

E. ALLEGED VIOLATIONS

45. EPA has conducted a comprehensive review of the facility-specific information gathered based upon observations made from the OGI video captures, facility permitted operations, and information provided by Respondent. Based on this review, EPA alleges the following violations for the Facilities:

a. Respondent violated NSPS Subparts OOOO and OOOOa, 40 C.F.R. §§ 60.5370(b) and 60.5370a(b), by failing to maintain and operate the NOI Facilities in a manner consistent with good air pollution control practice for minimizing emissions.

b. Respondent violated NSPS Subparts OOOO and OOOOa, 40 C.F.R. §§ 60.5395(e)(1) and 60.5395a(b)(1), by failing to use the NOI Facilities control device(s) to reduce emissions from the NOI Facilities by connecting the NOI Facilities through a closed vent system and routing emissions to a control device or to a process.

c. Respondent violated NSPS Subpart OOOO, 40 C.F.R. § 60.5395(e)(1), by failing to operate the closed vent systems of the NOI Facilities—which all use control devices or route emissions to process and operate as closed vent systems—with no detectable emissions, as determined using olfactory, visual, and auditory inspections, as required by 40 C.F.R. § 60.5411(c).

d. Respondent violated NSPS Subpart OOOOa, 40 C.F.R. § 60.5395a(b)(1), by failing to operate the closed vent systems of the NOI Facilities—which all use control devices or route emissions to process and operate as closed vent systems—with no detectable emissions, as determined using olfactory, visual and auditory inspections or optical gas imaging inspections as specified in 40 C.F.R. § 60.5416a(c), as required by 40 C.F.R. § 60.5411a(c).

e. Respondent violated NSPS Subparts OOOO and OOOOa, 40 C.F.R. §§ 60.5412(d)(1)(i) and 60.5412a(d)(1)(i), by failing to ensure that each enclosed combustion device used to meet relevant emissions reduction standards at its storage vessel affected facilities is maintained in a leak free condition.

f. Respondent violated Part B101(A) of the NSR Facility’s permit by failing to operate the NSR Facility in accordance with its permit application and any supplemental submittals to NMED.

F. CIVIL PENALTY AND CONDITIONS OF SETTLEMENT

a. General

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

Respondent:

- a. admits that EPA has jurisdiction over the subject matter alleged in this CAFO;
- b. neither admits nor denies the specific factual allegations contained in the CAFO;
- c. consents to the assessment of a civil penalty, as stated below;

- d. consents to the issuance of any specified compliance or corrective action order¹;
- e. consents to the conditions specified in this CAFO;
- f. consents to any stated Permit Action;
- g. waives any right to contest the alleged violations set forth in Section E of this CAFO; and
- h. waives its rights to appeal the Final Order included in this CAFO.

47. For the purpose of this proceeding, Respondent:

- a. agrees that this CAFO states a claim upon which relief may be granted against Respondent;
- b. acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement action;
- c. waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO, including any right of judicial review under Section 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1);
- d. consents to personal jurisdiction in any action to enforce this CAFO in the United States District Court for the District of New Mexico;
- e. waives any right it may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel

¹ Although 40 C.F.R. § 22.18(b)(2) requires each item in this list to be stated in this CAFO, subparagraphs (d) and (f) are not applicable to this particular case.

compliance with this CAFO and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action; and

f. agrees that in any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, or other relief relating to these Facilities, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim splitting, or other defenses based on any contention that the claims raised by the Complainant or the United States were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to this CAFO.

b. Penalty Assessment and Collection

48. Upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the size of the business, the economic impact of the penalty on the business, Respondent's full compliance history and good faith efforts to comply, the duration of the violations, payment by the violator of any penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violations, and other factors as justice may require, EPA has assessed a civil penalty in the amount of \$185,000.00 (the "EPA Penalty"). The EPA Penalty has been determined in accordance with Section 113 of the CAA, 42, U.S.C. § 7413, and at no time exceeded EPA's statutory authority.

49. Respondent agrees to:

a. pay the EPA Penalty within 30 calendar days of the Effective Date of this CAFO; and

b. pay the EPA Penalty by cashier's check, certified check, or wire transfer made payable to "Treasurer, United States of America, EPA – Region 6." Payment shall be remitted in one of five (5) ways: (1) regular U.S. Postal Service mail including certified mail; (2) overnight mail; (3) wire transfer; (4) Automated Clearinghouse for receiving U.S. currency; or (5) Online Payment.

For regular U.S. Postal Service mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, payment should be remitted to:

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

For overnight mail (non-U.S. Postal Service, *e.g.*, FedEx), payment should be remitted to:

U.S. Bank
Government Lockbox 979078
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

Contact: Natalie Pearson
(314) 418-4087

For wire transfer, payment should be remitted to:

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"

For Automated Clearinghouse (also known as "remittance express" or "REX"):

U.S. Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact: Jesse White
(301) 887-6548

For Online Payment:

<https://www.pay.gov/paygov/>
Enter sfo 1.1 in search field
Open form and complete required fields.

PLEASE NOTE: The docket number CAA-06-2023-3321 should be clearly typed on the check to ensure proper credit. The payment shall also be accompanied by a transmittal letter that shall reference Respondent's name and address, the case name, and docket number CAA-06-2023-3321. Respondent's adherence to this request will ensure proper credit is given when penalties are received for Region 6. Respondent shall also email a simultaneous notice of such payment, including a copy of the money order, or check, and the transmittal letter to the following email addresses:

Uma Lad
U.S. EPA Region 6
Lad.Uma@epa.gov

And

Region 6 Hearing Clerk
U.S. EPA Region 6
Vaughn.Lorena@epa.gov

50. Respondent agrees to pay the following on any overdue EPA Penalty:

a. Interest. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C.

§ 7413(d)(5), any unpaid portion of a civil penalty must bear interest at the rates established pursuant to 26 U.S.C. § 6621(a)(2).

b. Nonpayment Penalty. On any portion of a civil penalty more than ninety (90) calendar days delinquent, Respondent must pay a nonpayment penalty, pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), which shall accrue from the date the penalty payment became delinquent, and which shall be in addition to the interest which accrues under subparagraph (a) of this Paragraph.

51. Respondent shall pay a charge to cover the cost of processing and handling any delinquent penalty claim, pursuant to 42 U.S.C. § 7413(d)(5), including, but not limited to, attorney's fees incurred by the United States for collection proceedings.

52. If Respondent fails to timely pay any portion of the penalty assessed under this CAFO, EPA may:

a. refer the debt to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court (in which the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review) to secure payment of the debt, which may include the original penalty, enforcement and collection expenses, nonpayment penalty and interest, 42 U.S.C. § 7413(d)(5) and 40 C.F.R. §§ 13.13, 13.14, and 13.33;

b. collect the above-referenced debt by administrative offset (*i.e.*, the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not

limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; and

c. suspend or revoke Respondent's licenses or other privileges or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.

c. Conditions of Settlement

53. Facility Review. Respondent shall perform the following facility review at each Facility:

a. Within sixty (60) days of the Effective Date of this CAFO, Respondent shall conduct a permitting and operations review in accordance with Section I of Appendix B.

b. Within ninety (90) days of the Effective Date of this CAFO, Respondent shall complete a site inspection in accordance with Section II of Appendix B.

c. Within ninety (90) days of Respondent completing the permitting and operations review and site inspections described in subparagraphs a and b of Paragraph 53, Respondent shall complete an engineering assessment, in accordance with Section III of Appendix B.

54. Compliance Monitoring. Respondent shall perform the following compliance monitoring:

a. Respondent shall conduct optical gas imaging ("OGI") surveys at each Facility in accordance with Section I of Appendix C (hereinafter "OGI Survey") on a monthly basis, with at least fourteen (14) days between consecutive OGI Surveys, for a

period of one year from the Effective Date of this CAFO. The initial OGI Survey shall be conducted within ninety (90) days of the Effective Date of this CAFO.

b. Within ninety (90) days of the Effective Date of this CAFO, Respondent shall install and operate equipment monitoring in accordance with Sections II–IV of Appendix C for a period of one (1) year from the Effective Date of this CAFO.

55. Letter Report. Within one (1) year of the Effective Date of this CAFO, and no earlier than eleven (11) months after the Effective Date of this CAFO, Respondent shall send a letter report to EPA (“Letter Report”) containing all information identified in Section I of Appendix D. The Letter Report shall be emailed to:

Uma Lad

Lad.Uma@epa.gov

56. EPA reserves the right to pursue enforcement of any violations identified as a result of Paragraphs 53-55 (“Conditions of Settlement”).

d. Additional Terms of Settlement

57. Respondent agrees that the time period from the Effective Date of this CAFO until all the conditions specified in Paragraphs 53-55 of this CAFO are completed (the “Tolling Period”) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by Complainant on any claims set forth in Section E of this CAFO (the “Tolled Claims”). Respondent shall not assert, plead, or raise in any fashion, whether by answer, motion or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolled Claims.

58. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns. From the Effective Date of this Agreement until the end of the Tolling Period, as set out in Paragraph 57 of this CAFO, Respondent must give written notice and a copy of this CAFO to any successors in interest prior to transfer of ownership or control of any portion or interest in the Facilities. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to EPA. In the event of any such transfer, assignment or delegation, Respondent shall continue to be bound by the obligations or liabilities of this CAFO until EPA has provided written approval.

59. By signing this CAFO, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information. *See* 40 C.F.R. Part 2, Subpart B (Confidentiality of Business Information).

60. By signing this CAFO, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has legal capacity to bind the party he or she represents to this CAFO.

61. By signing this CAFO, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and is, truthful, accurate, and complete for each submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

62. EPA and Respondent agree to the use of electronic signatures for this matter. EPA and Respondent further agree to electronic service of this CAFO by email to the following addresses:

To EPA: Smith.Christian.A@epa.gov

To Respondent: ACampbell@enduringresources.com

63. Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17. Except as qualified by Paragraph 51 of this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

G. EFFECT OF CONSENT AGREEMENT AND FINAL ORDER

64. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.

65. If Respondent fails to timely and satisfactorily complete every condition stated in Paragraphs 53-55 of this CAFO, then Complainant may compel Respondent to perform the conditions in Paragraphs 53-55, seek civil penalties that accrue from the Effective Date of this CAFO until compliance is achieved, and seek other relief in a civil judicial action pursuant to the Clean Air Act, pursuant to contract law, or both.

66. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

67. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2),

performance of Paragraph 48 is restitution, remediation, or required to come into compliance with the law.

68. This CAFO constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.

69. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both parties, and approval of the Regional Judicial Officer.

70. Any violation of the included Final Order may result in a civil judicial action for an injunction or civil penalties of up to \$109,024 per day of violation, or both, as provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). EPA may use any information submitted under this CAFO in an administrative, civil judicial, or criminal action.

71. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state, or local permit.

72. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

H. EFFECTIVE DATE

73. Respondent and Complainant agree to the issuance of the included Final Order.

Upon filing, EPA will transmit a copy of the filed CAFO to Respondent. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer on the date of filing with the Hearing Clerk.

Enduring Resources, LLC
Docket No. CAA-06-2023-3321

The foregoing Consent Agreement In the Matter of Enduring Resources, LLC, Docket No. CAA-06-2023-3321, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

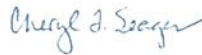
Date: 06/05/2023



Alex B. Campbell
Vice President
Enduring Resources, LLC

FOR COMPLAINANT:

Date: _____



Digitally signed by
CHERYL SEAGER
Date: 2023.06.06
14:44:11 -05'00'

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

APPENDIX A: FACILITIES
Enduring Resources, LLC
CAA-06-[xxx-xxx]

Table 1. Notice of Intent Facilities

Site Identity	New Mexico AIRS Number	NOI Number	NSPS Applicability	Flyover Date	Flyover Video ID	EPA Team Observations of Flyover Video Capture	Corresponding Sections of Appendix C, Sections II-IV
Chaco 2308-04P #150H	35-045-0568	543R4	OOOOa	9/30/2020	1241	Pressure relief valve leak	Sections II and IV
Rodeo UT No. 500/501	35-045-1083	6845R2	OOOOa	9/30/2020	1246	Pressure relief valve leak	Sections II and IV
Rodeo UT #508/509/510	35-045-1127	7758	OOOOa	9/30/2020	1247	Pressure relief valve and combustor leak	Sections II, III, and IV
Chaco 2308-04D #282H	35-045-1011	5926R1	OOOO	10/1/2020	1254	Pressure relief valve leak	Sections II and IV

Table 2. General Construction Permit Facilities

Site Identity	New Mexico AIRS Number	Permit Number	Application Type	Flyover Date	Flyover Video ID	EPA Team Observations of Flyover Video Capture	Corresponding Sections of Appendix C, Sections II-IV
West Lybrook Remote Facility #1	35-045-1076	6726M1R2	O&G NSR	9/30/2020	1245	Pressure relief valve leak	Sections II and IV

APPENDIX B: FACILITY REVIEW

I. Permitting and Operations Review

Respondent shall conduct a permitting and operations review, which shall consist, at a minimum, of the following:

1. For all the Facilities, review current air permit representations (*i.e.*, applications), current equipment inventories, current reported production and emissions data (for all operating scenarios), and all maintenance and operating logs and repair/replacement work orders generated within the eighteen (18) months preceding the Effective Date (including those available from past owners), in order to evaluate and ascertain current or possible recurring non-compliance issues associated with equipment and process controls at the Facilities.

2. For all the Facilities, review operation and maintenance procedures for inspecting process equipment at each of the Facilities, and update the procedures, as necessary, to ensure that problems are timely identified and addressed to minimize emissions from process equipment. If Respondent does not have such procedures, Respondent shall create such procedures. Respondent shall ensure these procedures include, at a minimum, the following:

a. the use of a standard site inspection checklist during regular inspections that requires evaluation of the following: well pad, flares, separators, heater treaters, tank batteries, compressors, fuel skid, well heads, spill containment, solid waste and chemical storage, and miscellaneous Facility-wide operations;

b. a quality control program that ensures the quality, efficiency, and performance of Facility maintenance activities; and

c. appropriate and regular training for personnel implementing the operation and maintenance procedures.

II. Site Inspections

Respondent shall conduct a site inspection that consists, at a minimum, of the following at each Facility:

3. For all tanks

a. Inspect and evaluate oil and water storage tanks and associated hatches, valves, gaskets, and pressure relief devices.

b. Evaluate whether the materials used are compatible with the gas compositions and whether they will deteriorate at unexpected rates.

c. Evaluate whether emergency pressure relief devices are set at the proper pressure set points.

4. For all flares and vapor combustion units (“VCUs”)

- a. Evaluate whether flares and VCUs are operating with a continuous pilot flame and that flame arrestors are properly installed.
 - b. Evaluate whether technology upgrades should be made to the flares and VCUs.
 - c. Evaluate whether reconfiguration of flare tips and installation of thermocouples with Supervisory Control and Data Acquisition capability, auto ignitors with pilots, air assist packages, and pressure gauges for flame arrestors would be appropriate.
5. Evaluate the operation of tanks, separators, compressors, vapor recovery units/towers, and other operational equipment.
- a. Inspect and address liquid leaks and staining at the well and production pad site, particularly near well heads, flares, VCUs, storage tanks, and separators.
 - b. Evaluate whether equipment inventories and process operational descriptions for each site are current.
 - c. Evaluate whether there are unauthorized emissions during normal operations by conducting an OGI survey in accordance with Section I of Appendix C.

III. Engineering Assessment

Respondent shall conduct an engineering assessment that consists, at a minimum, of the following at each Facility:

1. Performed by a Professional Engineer with experience conducting an engineering and design assessment of oil and gas production facilities.
2. Use condensate and gas samples, equipment inventories, and production rates to perform process flow modeling (e.g., ProMax modeling) and evaluate whether site equipment and design sufficiently address vapor emissions and meet regulatory requirements.
3. Evaluate whether all emissions sources, including process equipment fire tubes, gas aspirated generators, pneumatic pumps, and pneumatically actuated control valves, have been identified and accounted for in determining total emissions.
4. Based on the preliminary compliance review and site inspections, re-evaluate whether the Facilities are properly permitted and determine whether Respondent should prepare permit applications or revisions.
5. Evaluate whether flares are operated and maintained in conformance with their designs, including recommendations and specifications provided by the flare manufacturers, and in a manner consistent with good air pollution control practices for minimizing emissions.
6. Use engineering assessment results to revise the equipment specifications and process configuration to ensure vapor control systems, where required, adequately handle

maximum instantaneous vapor emissions, including working, breathing, or flashing losses from the tank batteries.

7. Based on preliminary compliance review, site inspections, and engineering assessments, evaluate the sufficiency of each Facility's spill containment adequacy and retention capacity.

APPENDIX C: COMPLIANCE MONITORING

I. OGI Survey

Respondent shall conduct an OGI camera survey (“OGI Survey”) at each Facility, that includes, at a minimum, the following procedures:

1. The OGI Survey shall be conducted using an OGI camera designed for and capable of detecting hydrocarbon and VOC emissions, performed by trained personnel or third parties, who maintain proficiency through regular use of the OGI camera. The OGI Survey shall be conducted during normal operations to detect any visible emissions, including while and immediately after hydrocarbon liquids are being sent to the tanks from all associated well production operations.

2. The OGI Survey shall consist of an inspection of all equipment and components at the Facility, including: tanks and associated hatches, valves, gaskets, and pressure relief devices; control devices; compressors; separators; vapor recovery units/tower, and vapor control piping.

Conducting the OGI Survey

3. At least once each monitoring day, each operator must record a verification video to demonstrate the OGI camera is capable of detecting hydrocarbon and VOC emissions.

4. For all OGI Surveys, maintain a survey log electronically in an Excel spreadsheet² that includes, at a minimum, the following:

- a. Site name and GPS coordinates;
- b. OGI camera operator name;
- c. Weather conditions at the start and end of each survey, including ambient temperature, wind speed, relative humidity, and sky conditions;
- d. Identification of the OGI camera used to conduct the survey, including make and model;
- e. Date and approximate start and end times; and
- f. Description of any visible emissions observed.

5. If a leak or defect is found, at a minimum capture a 10-second video clip of the leaking or defective component and keep the video clip with the rest of the OGI Survey documentation. The leaking or defective component must be tagged for repair, and the date, time, and location of the leak or defect must be recorded in the survey log referenced in Paragraph 4.

² EPA will provide a template spreadsheet for the survey log.

6. A leak or defect shall be repaired as soon as practicable, but no later than 15 days after initial observation. Any absence of pilot flame at a control device, or other indication of improper operation, shall be corrected and the control device returned to proper operation as soon as practicable. All corrective actions must be verified using an OGI Survey. The date and description of the corrective action, as well as the date of corrective action verification using an OGI Survey, must be recorded in the survey log referenced in Paragraph 4 of this section.

Quality Assurance and Quality Control

7. The Facility must have a written process which ensures the validity of the monitoring data. Examples may include routine review and sign-off of the monitoring data by the camera operator's supervisor, periodic comparative monitoring using a different camera operator as part of a continuing training verification plan, or other due-diligence procedures.

Reporting

8. The Facility must submit the following records to EPA on a monthly basis pursuant to the requirements of Paragraph 9, but no later than thirty (30) days after conducting each OGI Survey:

- a. Survey logs for all OGI Surveys;
- b. All video footage for each OGI Survey;
- c. Verification video for each monitoring day; and
- d. Record of corrective actions.

9. Upload all required records in Paragraph 8 of this Section to an electronic folder provided by EPA. Respondent shall contact the enforcement officer identified in Paragraph 55 of the Conditions of Settlement to make arrangements to upload the required records.

II. Tank Pressure Monitoring

Respondent shall conduct tank pressure monitoring at the Facilities identified in Appendix A in accordance with the following requirements:

1. By the applicable deadline in subparagraph (b), Paragraph 54 of Section F (Conditions of Settlement):

- a. Use manufacturer's recommendation to install, calibrate, maintain, and operate an electronic pressure monitor(s) at each tank system (collectively, "Tank Pressure Monitors").
- b. Tank Pressure Monitors shall record data at least once every five (5) minutes with a data transmission at least every five (5) minutes to a central monitoring station.

c. Tank Pressure Monitors must be operated and function continuously except during instances of planned or unplanned maintenance or malfunction of the Tank Pressure Monitors. If a Tank Pressure Monitor is identified as malfunctioning, Respondent shall complete the repair within five (5) days. Respondent shall record all dates, locations, durations, and causes of Tank Pressure Monitor malfunctions.

2. Within thirty (30) days after the Tank Pressure Monitors are installed pursuant to Paragraph 1, Respondent shall:

a. evaluate calibration and optimize the Tank Pressure Monitors to ensure that the data produced by the Tank Pressure Monitors are accurate;

b. conduct an OGI Survey during a pressure test to determine the leak point of each tank system. During the pressure test, Respondent shall pressurize the tank system up to the highest point at which the pressure relief devices are not emitting ("leak point"). The leak point shall be no greater than the lowest set point of any pressure relief device; and

c. determine the trigger point, which must be at least two ounces per square inch below the lowest set point of any pressure relief device in the tank system and less than the leak point (e.g., if a tank is equipped with a thief hatch with a set point of 16 oz/in² and a pressure relief valve ("PRV") with a set point of 14 oz/in², the trigger point can be no greater than 12 oz/in²).

3. At any time after thirty (30) days after the Tank Pressure Monitors are installed at a tank system pursuant to Paragraph 1 of this Section, if: (a) the Tank Pressure Monitor records two or more measurements in a 24-hour period that exceed the trigger point, or (b) a measurement exceeds the trigger point continuously for a duration of five minutes or longer, such record shall require a site investigation using an OGI camera. Respondent shall record all dates, locations, durations, and causes of each instance when the Tank Pressure Monitor records a measurement that exceeds the trigger point. Each site investigation shall be documented with a record that includes the results of the site investigation, any observation of VOC emissions observed, and any corrective actions taken to address observations of VOC emissions or any instances of malfunction of the Tank Pressure Monitors.

4. The Facility must submit all records made pursuant to subparagraph (c) of Paragraph 1 and Paragraph 3 of this section to EPA on a monthly basis within twenty-one (21) days of the end of each month. The Facility must upload the records to an electronic folder provided by EPA. Respondent shall contact the enforcement officer identified in Paragraph 55 of the Conditions of Settlement to make arrangements to upload the required records.

III. Combustion Control Device Monitoring

Respondent shall conduct combustion control device monitoring at the Facilities identified in Appendix A, in accordance with the following requirements:

1. Use manufacturer's recommendations to install, calibrate, maintain, and operate, for each combustion control device at each Facility, a thermocouple or equivalent device to

detect the presence of a flame for each combustion control device (collectively, “Pilot Monitors”).

2. Pilot Monitors shall record data at least once every five (5) minutes and, whenever the monitor fails to detect the presence of a flame, the monitors shall transmit data reporting such event to a central monitoring station within one (1) hour.

3. Pilot Monitors must be operated and function continuously except during instances of planned or unplanned maintenance or malfunction of the Pilot Monitors. If a Pilot Monitor malfunctions, company shall complete the repair or maintenance of the Pilot Monitor within five (5) business days. Respondent shall record all dates, locations, durations, and causes of Pilot Monitor malfunctions.

4. Respondent shall record all dates, locations, durations and causes of each instance when the Pilot Monitor failed to detect the presence of a flame.

5. The Facility must submit all records made pursuant to Paragraphs 3 and 4 of this section to EPA on a monthly basis within twenty-one (21) days of the end of each month. The Facility must upload the records to an electronic folder provided by EPA. Respondent shall contact the enforcement officer identified in Paragraph 55 of the Conditions of Settlement to make arrangements to upload the required records.

IV. Vapor Recovery Unit Monitoring

Respondent shall conduct vapor recovery unit (“VRU”) monitoring at the Facilities identified in Appendix A in accordance with the following requirements:

1. Use manufacturer’s recommendations to install, maintain, and operate a monitor that records the periods of time when the VRU is operating (collectively, “VRU Uptime Monitors”) at each tank system that uses a VRU. The VRU shall be considered to be operating if it is in “Normal” mode and is available to recover vapors from a tank system even if the pressure in the tank system is not then high enough to cause the VRU to activate. The VRU will also be considered to be operating if there are multiple VRUs serving the tank system and at least one of the VRUs is in “Normal” mode and is available to recover vapors from all tanks in the tank system, even if another VRU is not operating and/or is shown as being in “Alarm” mode.

2. Each VRU Uptime Monitor shall continually monitor periods of VRU operation and record data at least once every five (5) minutes and, every five (5) minutes, shall transmit records to a central monitoring station. The VRU Uptime Monitors must be operated and function continuously except during instances of planned or unplanned maintenance or malfunction of the VRU Uptime Monitors.

3. Within thirty (30) days of installing each VRU Uptime Monitor pursuant to Paragraph 1 above, Respondent shall record the date, time, location, and periods when the VRU is not operating or VRU Uptime Monitors are down due to maintenance or malfunction.

4. The Facility must submit all records made pursuant to Paragraph 3 of this section to EPA on a monthly basis within twenty-one (21) days of the end of each month. The Facility

must upload the records to an electronic folder provided by EPA. Respondent shall contact the enforcement officer identified in Paragraph 55 of the Conditions of Settlement to make arrangements to upload the required records.

APPENDIX D

I. Letter Report Requirements

Respondent shall provide a Letter Report to EPA containing the following:

1. Explain the scope of the Facility Review, provide a summary of the Facility Review process, and explain any obstacles encountered.
2. State the period of time covered by the Facility Review and list the date(s) any on-site portion of the Facility Review was conducted.
3. Identify the Facility Review team members, including names, titles, and summaries of qualifications.
4. Identify any representatives of EPA or Respondent who observed any portion of the Facility Review.
5. Include a written explanation of the instances of non-compliance noted during the Facility Review, and the areas of concern identified during the course of the Facility Review, regardless of whether they require corrective action or merit further review or evaluation for potential environmental or regulatory impacts.
6. A statement of whether Respondent is applying for, or will apply for, new or modified permits, repairing or replacing any equipment in accordance with the Facility Review, and implementing any of the examples of best management practices identified in Section II of Appendix D.
7. A description of the following steps that Respondent has taken or will take:
 - a. A schedule for promptly addressing deficiencies identified in the Facility Review and Compliance Monitoring.
 - b. A list of new equipment and piping to be procured, including flares, combustors, vapor recovery units/towers, tank hatches, pressure relief valves, piping, and gaskets.
 - c. The repair, replacement, upgrading, and/or installation of equipment, including vapor recovery units/towers, flares, combustors, tank pressure relief valves, tank hatches and gaskets, and compressors.
 - d. The replacement of any piping, valves, flame arrestors, or other equipment that is inadequately sized for the flow of condensate and volume of emissions.
 - e. The addition, upgrading, or replacement of spill containment capability.
8. An estimation of the total emission reductions for specific actions taken or improvements made or planned to be made.

9. Confirmation that there are no unauthorized emissions during normal operations for newly installed equipment (e.g., conduct OGI Camera Surveys to detect and correct any visible emissions).

FILED

Enduring Resources, LLC
Docket No. CAA-06-2023-3321

23 JUN 13 AM 10:42
REGIONAL HEARING CLERK
EPA REGION VI
UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:

Enduring Resources, LLC
Centennial, CO

RESPONDENT

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DOCKET NO. CAA-06-2023-3321

FINAL ORDER

Pursuant to section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

Enduring Resources, LLC is ORDERED to comply with all terms of the Consent Agreement. In accordance with 40 C.F.R. §22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated _____

THOMAS
RUCKI

Digitally signed by THOMAS RUCKI
DN: c=US, o=U.S. Government,
ou=Environmental Protection Agency,
email=THOMAS.RUCKI,
s=9 2342 18200300 100 1 +68001003655804
Date: 2023.06.13 10:07:02 -0400

Thomas Rucki
Regional Judicial Officer
U.S. EPA, Region 6

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Consent Agreement and Final Order was electronically delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270-2102, and that a true and correct copy was sent this day in the following manner to the addressees:

EMAIL - READ RECEIPT REQUESTED

Alex B. Campbell
Vice President
Enduring Resources, LLC
6300 South Syracuse Way, Suite #525
Centennial, Colorado 80111
ACampbell@enduringresources.com

Christopher B. Amandes
Amandes PLLC
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chris@amandeslaw.com

CHRISTIA
N SMITH Digitally signed by
CHRISTIAN SMITH
Date: 2023.06.13
11:26:15 -05'00'

U.S. EPA, Region 6
Dallas, Texas