



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202 - 2733**

28 SEP 2016

CERTIFIED MAIL – RETURN RECEIPT REQUESTED: 7006 0810 0005 9535 8991

Rodney Barnwell  
Environmental & Safety Counsel  
XTO Energy, Inc.  
810 Houston Street  
Fort Worth, TX 76102-6298

RE: Consent Agreement and Final Order – Docket Number CAA-06-2016-3363

Mr. Barnwell,

Please find enclosed the above referenced finalized Consent Agreement and Final Order (CAFO) regarding XTO Energy, Inc. (XTO)'s Layton Facility in McMullen County, Texas.

XTO will have thirty (30) calendar days from the effective date of the CAFO to pay the civil penalty of thirty-five thousand dollars (\$35,000).

If you have any questions, please feel free to contact me at 214-665-8133. Thank you for your assistance with this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Candace Headen".

Candace Headen  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 6  
1445 Ross Avenue  
Dallas, Texas 75202  
(215) 665-8133

Enclosure

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS

FILED  
2016 SEP 28 PM 2:28  
REGIONAL HEARING CLERK  
EPA REGION VI

In the Matter of:

XTO ENERGY, INC.

Respondent.

Docket No. CAA-06-2016-3363

**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 “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 (the “EPA”). On the EPA’s behalf, John Blevins, Director of the Compliance Assurance and Enforcement Division, is delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the Act.

3. Respondent is a corporation doing business in the state of Texas. Respondent is a “person” as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the Act, 42 U.S.C. § 7413(d).

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 “CAFO” without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this CAFO.

5. For the purposes of this proceeding, Respondent admits that the EPA has jurisdiction over the subject matter alleged in this CAFO and Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

## **B. JURISDICTION**

6. 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).

7. In satisfaction of the notice requirements of section 113(a)(1), on August 18, 2016, the EPA issued to Respondent a notice of violation (“NOV”) and provided a copy of the NOV to Texas, providing notice to both that the EPA had found that Respondent committed the alleged violations described in Section E of this CAFO and providing Respondent an opportunity to confer with the 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 Clean Air Act is designed to protect and enhance the quality of the nation’s air so as to promote the public health and welfare and the productive capacity of its population. Section 101 (b)(1) of the Act, 42 U.S.C. §§ 7401(b)(1).

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

12. To achieve the objectives of the NAAQS and the CAA, Section 110(a) of the CAA, 42 U.S.C. § 7410(a), requires each state to adopt and submit a plan to the Administrator that provides

for the implementation, maintenance, and enforcement of the NAAQS. This plan is known as an applicable implementation plan or state implementation plan (“SIP”).

13. The State of Texas has adopted a SIP that has been approved by EPA. *See* 40 C.F.R. Part 52, Subpart SS. The Texas SIP authorizes the establishment of a permit by rule (“PBR”) program at 30 T.A.C. Chapter 106 – Permits by Rule. *See* 40 C.F.R. § 52.2270(c).

14. 30 T.A.C. § 106.4(c) provides a general requirement for facilities subject to a permit by rule: “[t]he emissions from the facility shall comply with all rules and regulations of the [Texas Commission on Environmental Quality] and with the intent of the Texas Clean Air Act (TCAA), including protection of health and property of the public, and all emissions control equipment shall be maintained in good condition and operated properly during operation of the facility.”

15. Subchapter O of Chapter 106 regulates permitting by rule for oil and gas facilities that produce more than a de minimis level of emissions but too little for other permitting options. *See* 30 T.A.C. §§ 106.4(a) and 106.351-59. 30 T.A.C. § 106.352(l) applies “to new and modified facilities.” The section states “[a]ny oil or gas production facility, carbon dioxide separation facility, or oil or gas pipeline facility consisting of one or more tanks, separators, dehydration units, free water knockouts, gunbarrels, heater treaters, natural gas liquid recover units, or gas sweetening and other gas conditioning facilities . . . are permitted by rule,” for “those facilities named which handle gases and liquids associated with the production, conditioning, processing, and pipeline transfer of fluids found in geologic formations beneath the earth’s surface.” 30 T.A.C. § 106.352(l).

16. 30 T.A.C. § 106.352(l)(1) requires that “flares shall meet the requirements of § 106.492.”

17. 30 T.A.C. § 106.492(1)(B) states that every flare subject to this section “shall be equipped with a continuously burning pilot or other automatic ignition system that assures gas ignition . . . .”

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

#### **D. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

19. At all times relevant to this CAFO, XTO Energy, Inc. (“XTO” or “Respondent”) owned and operated the Layton facility (the “Facility”), an unmanned oil and gas production facility located in McMullen County, Texas.

20. The Respondent is the owner and operator of the Facility within the meaning of the Act, Section 111(a)(5), 42 U.S.C. § 7411(a)(5), and 40 C.F.R. § 60.2.

21. Respondent is incorporated in the state of Delaware and authorized to do business in the state of Texas.

22. The Texas Commission on Environmental Quality (“TCEQ”) issued the Facility Oil & Gas PBR 98592, effective June 13, 2001, with a regulated entity number of RN1106228323.

23. At all times relevant to this CAFO, XTO operated one flare to control air emissions at the Facility.

24. On October 15, 2015, EPA conducted a flyover of a portion of the Eagle Ford Shale, which included the Facility.

25. A video capture from this flyover documents that the flare at the Facility was unlit.

26. EPA contacted XTO via letter in December 2015, informing them of the unlit flare, and requesting that they relight it and respond to EPA within thirty days.

27. XTO responded to this letter on January 19, 2016, indicating that they has resolved the issue of the unlit flare.

28. In a call on June 9, 2016, EPA and XTO discussed the issue of the unlit flare. EPA had additional follow-up questions regarding the relighting of the flare. XTO provided its response, which included flare monitoring records, on July 1, 2016.

29. EPA has conducted a comprehensive review of the information gathered during the flyover and provided by XTO.

30. XTO's earliest flare monitoring record indicating the flare had been relit was made on November 2, 2015.

31. XTO explained that, after five minutes of unsuccessful attempts to relight the flare, the automatic ignition system is designed to stop attempting to relight the flare. This occurred at the Facility on or about October 15, 2015, and an XTO employee visiting the Facility confirmed that the flare was lit on November 2, 2015.

32. Respondent has resolved the alleged violations set forth in Section E of this CAFO.

#### **E. ALLEGED VIOLATIONS**

33. 30 T.A.C. § 106.4(c) requires that emissions from the Facility "comply with all rules and regulations of the [TCEQ] . . . and all emissions control equipment shall be maintained in good condition and operated properly during operation of the facility."

34. TCEQ regulations at 30 T.A.C. § 106.352(l)(1) require that the Facility's flare "shall meet the requirements of § 106.492."

35. 40 T.A.C. § 106.492(1)(B) requires that the Facility's flare "shall be equipped with a continuously burning pilot or other automatic ignition system that assures gas ignition . . . ."

36. A video capture from EPA's flyover referenced in Paragraphs 24-25 and XTO's flare monitoring data indicate that the Facility's flare was unlit for an unspecified amount of time between October 15, 2015 and November 2, 2015. Therefore, the automatic ignition system failed to assure gas ignition at the Facility's flare during this period, as required by TCEQ regulations at 30 T.A.C. §§ 106.352(l)(1) and 106.492(1)(B).

37. Based on information available to EPA, the Facility, and in the Findings of Fact set forth above, EPA has determined that Respondent failed to equip the Facility with an automatic ignition system that assures gas ignition, as required by 30 T.A.C. §§ 106.352(l)(1) and 106.492(1)(B), and that Respondent's failure to comply with the TCEQ regulations described above constitutes a violation of the federally enforceable Texas SIP at 30 T.A.C. § 106.4(c).

## F. CIVIL PENALTY

### General

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

- a. admits that the 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 order;<sup>1</sup>
- e. consents to the conditions specified in this CAFO;
- f. consents to any stated Permit Action;<sup>2</sup>
- 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.

39. 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 actions;
- 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 Clean Air Act, 42 U.S.C. § 7607(b)(1);

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<sup>1</sup> Although 40 C.F.R. § 22.18(b)(2) requires this statement, it is not applicable to this Consent Agreement.

<sup>2</sup> *Id.*

- d. consents to personal jurisdiction in any action to enforce this CAFO in the United States District Court for the Southern District of Texas;
- e. waives any right it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel 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 this Facility, 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.

#### Penalty Assessment and Collection

40. 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, the Respondent's full compliance history and good faith efforts to comply, the duration of the violation, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and other factors as justice may require, EPA has assessed a civil penalty in the amount of thirty-five thousand dollars (\$35,000) ("EPA Penalty"). The EPA Penalty has been determined in accordance with the Section 113 of the Act, 42, U.S.C. § 7413 and at no time exceeded EPA's statutory authority.



41. Respondent agrees to:

- a. pay the EPA Penalty within 30 calendar days of the Effective Date of this CAFO,
- 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 US currency; or (5) On Line 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 979077  
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 REX or remittance express):

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 On Line 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-06-2016-3363 should be clearly typed on the check to ensure proper credit. The payment shall also be accompanied by a transmittal letter that shall reference XTO's name and address, the case name, and docket number CAA-06-2016-3363. XTO's adherence to this request will ensure proper credit is given when penalties are received for the Region. XTO shall also send a simultaneous notice of such payment, including a copy of the money order, or check, and the transmittal letter to the following addresses:

Mark Stead  
U.S. EPA Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

And

Region 6 Hearing Clerk (6RC-D)

U.S. EPA Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

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

a. Interest. Pursuant to Section 113(a)(5) of the Act, 42 U.S.C. § 7413(a)(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. Non-Payment Penalty. On any portion of a civil penalty more than 90 calendar days delinquent, Respondent must pay a non-payment penalty, pursuant to Section 113(a)(5) of the Act, 42 U.S.C. § 7413(a)(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.

43. 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 attorneys' fees incurred by the United States for collection proceedings.

44. If Respondent fails to timely pay any portion of the penalty assessed under this CAFO, the 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 expenses, non-payment 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.R.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 the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

45. 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 solely in their capacity on behalf of Respondent.

46. 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.

47. 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.

48. By signing this CAFO, both parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.

49. 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.

50. 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 43, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

#### **G. EFFECT OF CONSENT AGREEMENTS AND FINAL ORDER**

51. 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.

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

53. 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.

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

55. Any violation of the included Final Order may result in a civil judicial action for an injunction or civil penalties of up to \$37,500 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). The EPA may use any information submitted under this CAFO in an administrative, civil judicial, or criminal action.

56. 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 the 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.

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

#### **H. EFFECTIVE DATE**


58. Respondent and Complainant agree to the issuance of the included Final Order. Upon filing the EPA will transmit a copy of the filed CAFO to the 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.

The foregoing CAFO In the Matter of XTO Energy, Inc., Docket No. CAA-06-2016-3363 is Hereby Stipulated, Agreed, and Approved for Entry.


FOR RESPONDENT:

9/23/16  
DATE

  
\_\_\_\_\_  
Keith Carwile  
Vice President of Production and Operations  
Fort Worth Division  
XTO Energy, Inc.  
810 Houston Street  
Fort Worth, TX 76102-6298

FOR COMPLAINANT:

9.26.16  
DATE

  
\_\_\_\_\_  
John Blevins  
Director  
Compliance Assurance and  
Enforcement Division

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS

In the Matter of:

XTO ENERGY, INC.,

Respondent.

Docket No. CAA-06-2016-3363

**FINAL ORDER**

Pursuant to Section 113(d) of the Clean Air Act ("CAA" or the "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

Respondent 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.

9/28/14  
DATE



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



**CERTIFICATE OF SERVICE**

I certify that the foregoing Consent Agreement and Final Order, in the Matter of XTO Energy, Inc., Docket No. CAA-06-2016-3363, were filed and copies of the same were hand delivered to the Regional Hearing Clerk, U.S. EPA – Region 6, 1445 Ross Ave., Ste. 1200, Dallas, Texas and mailed to the parties as indicated below.

CERTIFIED MAIL – RETURN RECEIPT REQUESTED *70060810000595358991*

XTO Energy, Inc.  
810 Houston Street  
Fort Worth, TX 76102-6298

*September 28, 2016*  
DATE

*Sandra Hardy*  
\_\_\_\_\_  
U.S. EPA, Region 6  
Dallas, Texas