



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590  
MAY 12 2015

REPLY TO THE ATTENTION OF:

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

R. Clay Taylor  
Environmental Attorney  
Whiting Oil and Gas Corporation  
1700 Broadway, Suite 2300  
Denver, Colorado 80290-2300

Dear Mr. Taylor:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves case docket No. CAA-05-2015-0030. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on May 12, 2015.

Pursuant to paragraph 54 of the CAFO, Whiting must pay the civil penalty within 30 days of the date the CAFO was filed. Your check must display the case name Whiting Oil and Gas Corporation and the docket number CAA-05-2015-0030.

Please direct any questions regarding this case to Mark Palermo, Associate Regional Counsel, 312-886-6082.

Sincerely,

A handwritten signature in black ink, appearing to read "Nathan A. Frank".

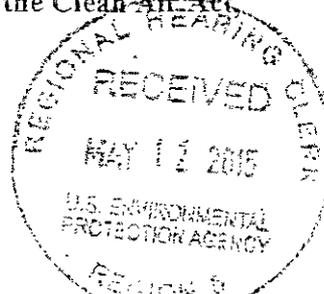
Nathan A. Frank  
Air Enforcement and Compliance Assurance Branch (IL/IN)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/C-14J  
Regional Hearing Clerk/E-19J  
Mark Palermo/C-14J  
Chris Hare, MDEQ  
Michael A. Peters, Ryan Whaley Coldiron Shandy PLLC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of:	)	Docket No.:	CAA-05-2015-0030
	)		
Whiting Oil and Gas Corporation	)	Proceeding to Assess a Civil Penalty	
West Branch, Michigan	)	Under Section 113(d) of the Clean Air Act,	
	)	42 U.S.C. § 7413(d)	
Respondent.	)		



Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), as codified at 40 C.F.R. Part 22.
2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency ("EPA"), Region 5.
3. Respondent is Whiting Oil and Gas Corporation ("Whiting" or "Respondent"), a corporation doing business in Michigan.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order ("CAFO"), 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. For the purpose of this proceeding, Respondent consents to entry of this CAFO, the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

**Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations and alleged violations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

**Statutory and Regulatory Background**

*New Source Performance Standards Subpart KKK*

9. Section 111(b) of the CAA, 42 U.S.C. § 7411(b), establishes that EPA shall promulgate New Source Performance Standards (“NSPS”) for certain categories of stationary sources.

10. Pursuant to Section 111(e) of the CAA, 42 U.S.C. § 7411(e), after the effective date of a promulgated NSPS, it shall be unlawful for any owner or operator of any new source to operate such source in violation of any NSPS applicable to such source.

11. On June 24, 1985, EPA promulgated, pursuant to Section 111(b) of the CAA, 42 U.S.C. § 7411(b), Subpart KKK - Standards of Performance for Equipment Leaks of VOC from Onshore Natural Gas Processing Plants, 50 Fed. Reg. 26124 (“NSPS Subpart KKK”). Since then, EPA has amended NSPS Subpart KKK at 51 Fed. Reg. 2702 (January 21, 1986), at 65 Fed. Reg. 61773 (October 17, 2000), and at 77 Fed. Reg. 49542 (August 16, 2012). NSPS Subpart KKK is codified at 40 C.F.R. Part 60.

12. NSPS Subpart KKK applies to the following affected facilities (in onshore natural gas processing plants) that commence construction, reconstruction, or modification after January 20, 1984, and on or before August 23, 2011: a compressor in Volatile Organic Compound (“VOC”) service or in wet gas service; and the group of all equipment (except compressors)

defined in 40 C.F.R. § 60.631 within a process unit. See 40 C.F.R. § 60.630(a). A compressor station, dehydration unit, sweetening unit, underground storage tank, field gas gathering system, or liquefied natural gas unit is covered by NSPS Subpart KKK if it is located at an onshore natural gas processing plant site. See 40 C.F.R. § 60.630(e).

13. For purposes of NSPS Subpart KKK, "equipment" is defined in 40 C.F.R. § 60.631 as meaning "each pump, pressure relief device, open-ended valve or line, valve, compressor, and flange or other connector that is in VOC service or in wet gas service, and any device or system required by this subpart."

14. 40 C.F.R. § 60.632(a) states that each owner or operator subject to the provisions of NSPS Subpart KKK shall comply with the following requirements of Subpart VV - Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for which Construction, Reconstruction, or Modification Commenced After January 5, 1981, and on or before November 7, 2006, 40 C.F.R. Part 60 ("NSPS Subpart VV"): §§ 60.482-1, (a), (b), and (d) and 60.482-2 through 60.482-10, except as provided in § 60.633, as soon as practicable, but no later than 180 days after initial startup.

15. NSPS Subpart VV at 40 C.F.R. § 60.482-7 sets forth Leak Detection and Repair ("LDAR") standards for valves in gas/vapor and in light liquid service, including the requirement at 40 C.F.R. § 60.482-7(a)(1) that each valve be monitored monthly to detect leaks by the methods specified in 40 C.F.R. § 60.485(b), and the requirement at § 60.482-7(d)(1) that, when a leak is detected, it shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected, unless delay of repair standards apply under § 60.482-9.

16. NSPS Subpart VV at 40 C.F.R. § 60.482-2 sets forth LDAR requirements for pumps in light liquid service, including the requirement at § 60.482-2(a) that each pump shall be

monitored to detect leaks by the methods specified § 60.485(b), and the requirement at § 60.482-2(c)(1) that, when a leak is detected, it shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected, unless delay of repair standards apply under § 60.482-9.

17. NSPS Subpart VV at 40 C.F.R. § 60.485(b) requires owners and operators to determine compliance with applicable standards using Method 21.

18. NSPS Subpart VV at 40 C.F.R. § 60.482-4 provides standards specific to pressure relief devices in gas/vapor service and provides, in part, the following:

a. Except during pressure releases, pressure relief devices in gas/vapor service are to be operated with no detectable emissions (*i.e.*, instrument reading of less than 500 parts per million (“ppm”) above background as determined pursuant to the methods specified in § 60.485(c)).

b. Except as provided in the § 60.482-9 delay of repair provisions, a pressure relief device is required to be returned to a condition of no detectable emissions as soon as practicable but no later than 5 calendar days after a pressure release and shall be monitored to confirm the conditions of no detectable emissions.

c. Pressure relief devices routed to a process or fuel gas system or equipped with a closed vent system capable of capturing and transporting leakage from a pressure relief device to a control device described in § 60.482-10 are exempted from the above specified requirements.

19. NSPS Subpart KKK at 40 C.F.R. § 60.633 provides that each owner or operator subject to NSPS Subpart KKK may comply with the exceptions to the provisions of NSPS Subpart VV, as specified under § 60.633. 40 C.F.R. § 60.633(b)(1) states pressure relief devices in gas/vapor service may be monitored quarterly and within 5 days after each pressure release to

detect leaks by the methods specified in § 60.485(b) except as provided in §§ 60.632(c), 60.633(b)(4), and 60.482-4(a) through (c). 40 C.F.R. § 60.633(d) exempts pumps in light liquid service, valves in gas/vapor and light liquid service, and pressure relief devices at nonfractionating plants with design capacities less than 10 Million Standard Cubic Feet per Day (“MMSCFD”) of field gas from the routine monitoring requirements of §§ 60.482-2(a)(1), 60.482-7, and 60.633(b)(1).

20. 40 C.F.R. § 60.632(e) of NSPS Subpart KKK states that each owner or operator subject to the provisions of this subpart shall comply with the recordkeeping and reporting provisions of 40 C.F.R. §§ 60.486 and 60.487 except as provided in §§ 60.633, 60.635, and 60.636. 40 C.F.R. § 60.486(i) of NSPS Subpart VV, as referenced in NSPS Subpart KKK at §§ 60.632(e) and 60.635(a), states that an analysis demonstrating the design capacity of the affected facility shall be recorded in a log that is kept in a readily accessible location for use in determining exemptions as provided in 40 C.F.R. § 60.480(d).

21. NSPS Subpart VV at 40 C.F.R. § 60.482-10(d) states that flares used to comply with this subpart shall comply with the requirements of 40 C.F.R. § 60.18. 40 C.F.R. § 60.633(g) of NSPS Subpart KKK states that flares used to comply with this subpart shall comply with the requirements of 40 C.F.R. § 60.18 under the NSPS General Provisions.

a. 40 C.F.R. § 60.18(c)(1) states that flares shall be designed for and operated with no visible emissions as determined pursuant to the methods specified in paragraph (f), except for periods not to exceed a total of 5 minutes during any 2 consecutive hours.

b. 40 C.F.R. § 60.18(c)(2) states that flares shall be operated with a flame present at all times, as determined by the methods specified in paragraph (f).

c. 40 C.F.R. § 60.18(d) states that owners or operators of flares used to comply with the provisions of Part 60 shall monitor these control devices to ensure that they are operated and maintained in conformance with their designs, and applicable subparts will provide provisions stating how owners or operators of flares shall monitor these control devices.

d. 40 C.F.R. § 60.18(e) states that flares used to comply with provisions of Part 60 shall be operated at all times when emissions may be vented to them.

e. 40 C.F.R. § 60.18(f)(2) states that the presence of a flare pilot flame shall be monitored using a thermocouple or any other equivalent device to detect the presence of a flame.

22. The NSPS General Provisions, at 40 C.F.R. § 60.11(d), require that at all times, including periods of startup, shutdown, and malfunction, owners and operators shall, to the extent practicable, 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.

*National Emission Standards for Hazardous Air Pollutants Subpart HH*

23. Section 112(d) of the CAA, 42 U.S.C. § 7412(d), specifies that EPA shall promulgate National Emission Standards for Hazardous Air Pollutants (“NESHAPs”) for certain source categories of Hazardous Air Pollutant (“HAP”) emissions.

24. Section 112(i)(3) of the CAA, 42 U.S.C. § 7412(i)(3), provides that after the effective date of any emission standard, limitation, or regulation promulgated pursuant to Section 112 of the CAA, no person may operate a source in violation of such standard, limitation, or regulation except, in the case of an existing source, the EPA shall establish a compliance date or dates for each category of existing sources which shall provide for compliance as expeditiously

as practicable, but in no event later than 3 years after the effective date of such standard subject to limited exception.

25. On June 17, 1999, EPA promulgated, pursuant to Section 112(d) of the CAA, 42 U.S.C. § 7412(d), Subpart HH - National Emission Standards for Hazardous Air Pollutants from Oil and Natural Gas Production Facilities, 64 Fed. Reg. 32628 ("NESHAP Subpart HH"). Since then, EPA has amended NESHAP Subpart HH at 66 Fed. Reg. 34550 (June 29, 2001), at 72 Fed. Reg. 36 (January 3, 2007), and at 77 Fed. Reg. 49568 (August 16, 2012). These standards are codified at 40 C.F.R. Part 63.

26. 40 C.F.R. § 63.760 of the NESHAP Subpart HH states the subpart applies to specific emission points that are located at oil and natural gas production facilities that are area sources of HAP as defined in 40 C.F.R. § 63.761 and either process, upgrade, or store hydrocarbon liquids or that process, upgrade, or store natural gas prior to the point at which natural gas enters the natural gas transmission and storage source category or is delivered to a final end user. 40 C.F.R. § 63.760(b)(2) of the NESHAP Subpart HH states that for area sources of this type, the affected source includes each Triethylene Glycol ("TEG") dehydration unit located at the facility. 40 C.F.R. § 63.760(f)(3)(ii) states that the compliance date for an owner or operator of an affected area source that is not located within any Urbanized Area plus offset and Urban Cluster boundary, as defined in 40 C.F.R. § 63.761, is January 5, 2009.

27. 40 C.F.R. § 63.764(e)(1)(i) of the NESHAP Subpart HH states that the owner or operator of an area source is exempt from the requirements of § 63.764(d) if the actual annual average flowrate of natural gas to the glycol dehydration unit is less than 85 thousand standard cubic meters per day, except that the records of the determination of these criteria must be

maintained as required in 40 C.F.R. § 63.774(d)(1). 40 C.F.R. § 63.774(d)(1)(i) states that an owner or operator of a glycol dehydration unit that meets the exemption criteria in § 63.764(e)(1)(i) shall maintain the record of the actual annual average natural gas throughput (in terms of natural gas flowrate to the glycol dehydration unit per day) for that glycol dehydration unit.

State Implementation Plan Permit to Install Requirements

28. Section 110(a)(1) of the CAA, 42 U.S.C. § 7410(a)(1), requires each state to adopt and submit to EPA for approval a State Implementation Plan ("SIP") that provides for the implementation, maintenance, and enforcement of the National Ambient Air Quality Standards ("NAAQS"). Under Section 110(a) of the CAA, 42 U.S.C. § 7410(a), each SIP must include a permit program to regulate the modification and construction of any stationary source of air pollution as necessary to assure that NAAQS are achieved. Pursuant to Section 113(a) and (b) of the CAA, 42 U.S.C. § 7413(a) and (b), upon EPA approval, SIP requirements are federally enforceable. Under 40 C.F.R. § 52.23, any permit limitation or condition contained within a permit issued under an EPA-approved program that is incorporated in a SIP, is a requirement of the SIP, and is federally enforceable under Section 113 of the CAA, 42 U.S.C. § 7413.

29. On May 6, 1980, EPA approved Michigan Rule 336.1201, "Permits to Install," as part of the federally enforceable SIP for the State of Michigan. 45 Fed. Reg. 29790 (May 6, 1980).

Permit No. 529-87

30. The Michigan Department of Natural Resources ("MDNR") issued Permit No. 529-87 on July 30, 1987, which contains the following conditions at the non-fractionating natural

gas processing facility owned and operated by Whiting and located in West Branch, Michigan ("West Branch Gas Plant"):

- a. Special Condition 14 states that there shall be no visible emissions from the natural gas processing facility.
- b. Special Condition 15 states that there shall be no visible emissions from the flare, except as provided for in Subpart KKK.
- c. Appendix A, Preliminary Leak Detection and Maintenance Plan, of Permit No. 529-87, states that "[t]he flare will be operated with a flame present at all times, and be designed for and operated with no visible emissions except for periods not to exceed a total of five minutes during any two consecutive hours. The flare will also comply with exit velocity limitations specified in [40 C.F.R. § 60.18] during normal operations."

Permit No. 544-88

31. The MDNR issued Permit No. 544-88 on October 31, 1988, which contains the following conditions applicable to the condensate truck unload and storage facility associated with the West Branch Gas Plant:

- a. Special Condition 14 states that there shall be no visible emissions from the condensate storage tank or flare (*i.e.*, the equipment).
- b. Special Condition 16 states that the applicant shall not operate the equipment unless the flare is installed and operating properly.

Permit No. 709-96

32. On December 11, 1996, the Michigan Department of Environmental Quality ("MDEQ") Air Quality Division approved a Permit to Install (Permit No. 709-96) for certain equipment at the West Branch Gas Plant in response to a permit application from Marathon Oil

Company ("MOC"). Whiting became subject to Permit No. 709-96 subsequent to acquiring the equipment subject to the permit on or about September 1, 2002.

33. Permit No. 709-96 contains the following conditions:

a. Special Condition 15 states that the owner and operator shall calculate the actual emission levels for various specified air pollutants based on a 12 month period, rolled monthly using Appendix A of the permit.

b. Special Condition 19 states that the owner or operator of the source shall conduct all necessary maintenance and make all necessary attempts to keep all components of the process equipment in proper operating condition at all times.

c. Special Condition 20 states that operation of oil and gas production facility with a crude oil or condensate storage tank having a capacity equal to or greater than 952 barrels, and the crude oil or condensate having a true vapor pressure of greater than 1.5 psia, shall not operate the tank(s) unless the pollution control equipment is installed and operating properly.

34. Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1), authorizes the Administrator of EPA ("the Administrator") to issue an administrative penalty order in accordance with Section 113(d) of the CAA, 42 U.S.C. § 7413(d), whenever, among other things, the Administrator finds that any person has violated or is in violation of a requirement or prohibition of an applicable SIP or permit.

35. Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), authorizes the Administrator to issue an administrative penalty order in accordance with Section 113(d) of the CAA, 42 U.S.C. § 7413(d), whenever, among other things, the Administrator finds that any person has violated or is in violation of a requirement or prohibition of Section 111 of the CAA.

any NSPS promulgated under Section 111 of the CAA, Section 112 of the CAA, and any NESHAP promulgated under Section 112 of the CAA.

36. The Administrator may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for violations that occurred between January 12, 2009 and December 6, 2013 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

37. Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

38. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

#### **Complainant's Factual Allegations and Alleged Violations**

39. Whiting is a corporation doing business in the state of Michigan.

40. Whiting is a "person" as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

41. Whiting has indicated to EPA that on or about August 24, 2014, natural gas liquid extraction and processing at the West Branch Gas Plant ceased and equipment associated with natural gas liquid extraction and process (e.g., cryogenic unit, condensate stabilizer, and natural gas liquid storage) was physically disconnected and removed from the facility or awaiting removal from the facility. Whiting further has indicated to EPA that after August 24, 2014 the

facility is operated solely to gather, dehydrate, and compress natural gas. Whiting has renamed the facility the West Branch Production Gathering and Compression Facility.

42. Whiting owns and operates the facility that previous to August 24, 2014 was named the West Branch Gas Plant located at 2251 Simmons Road, West Branch, Michigan and is now named the West Branch Production Gathering and Compression Facility.

43. On April 4, 2012, EPA conducted an inspection of the West Branch Gas Plant hereafter referred to as the "April 2012 Inspection."

44. During the April 2012 Inspection, EPA personnel observed the following:

- a. Visible emissions from the flare that exceeded five consecutive minutes; and
- b. Hydrocarbons being emitted from the flare stack when the pilot light was not lit using the FLIR® infrared camera. EPA personnel recorded a video of the occurrence.

45. After the April 2012 Inspection, EPA issued an information request dated August 9, 2012 to Whiting concerning CAA compliance at the West Branch Gas Plant.

46. Whiting submitted a response to the information request on or about August 31, 2012, September 21, 2012, and October 15, 2012.

47. On January 8, 2013, EPA issued Notice of Violation/Finding of Violation (No. EPA-5-13-MI-02) ("NOV/FOV") that identified alleged violations up through the date of the NOV/FOV of NSPS Subpart KKK, NESHAP Subpart HH, Permit No. 529-87, Permit No. 544-88, and Permit No. 709-96 at Paragraphs 44 through 58 of the NOV/FOV. Whiting subsequently responded to the NOV/FOV.

48. At the time of the April 2012 Inspection and subsequent information request responses in September and October 2012, the West Branch Gas Plant constituted a "natural gas

processing plant” as defined under 40 C.F.R. § 60.631 of NSPS Subpart KKK, and was subject to the requirements of NSPS Subpart KKK.

49. Prior to August 24, 2014, some of the West Branch Gas Plant pressure relief devices were equipped with a closed vent system capable of capturing and transporting leakage of VOCs through the pressure relief devices to a flare for emissions control.

50. The facility formerly known as the West Branch Gas Plant is an area source of HAP.

51. The TEG dehydration unit at the facility formerly known as the West Branch Gas Plant is an affected facility as defined in 40 C.F.R. § 63.760 and is subject to the requirements of NESHAP Subpart HH.

52. Whiting has violated NSPS Subpart KKK, NSPS Subpart VV, NESHAP Subpart HH, and Permit Nos. 529-87, 544-88, and 709-96 at the West Branch Gas Plant as follows:

a. Count 1 - For the period of October 2009 through April 2012, Whiting failed to comply with LDAR requirements under NSPS Subparts KKK and VV for valves and pumps at the West Branch Gas Plant in violation of Section 111 of the CAA, 42 U.S.C. § 7411, and its implementing regulations at 40 C.F.R. §§ 60.482-1(a), (b), (d), 60.482-2, 60.482-10, and 60.485, as referenced in §§ 60.632(a) and (d).

b. Count 2 – On April 4, 2012, visible emissions from the flare at the West Branch Gas Plant lasted longer than 5 minutes, in violation of Section 111 of the CAA, 42 U.S.C. § 7411, and its implementing regulation at 40 C.F.R. § 60.18(c)(1), Section 110 of the CAA, 42 U.S.C. § 7410, and its implementing regulation at 40 C.F.R. § 52.23, and permits issued pursuant to the Michigan SIP, Permit No. 529-87, Special Conditions 14 and 15, and Permit No. 544-88, Special Condition 14.

c. Count 3 - Prior to January 31, 2013, Whiting failed to operate a flare

thermocouple or equivalent device at the West Branch Gas Plant, in violation of Section 111 of the CAA, 42 U.S.C. § 7411, and its implementing regulation at 40 C.F.R. § 60.18(f)(2), Section 110 of the CAA, 42 U.S.C. § 7410, and its implementing regulation at 40 C.F.R. § 52.23, and Permit No. 709-96, Special Condition 19, issued pursuant to the Michigan SIP.

d. Count 4 - On April 4, 2012, emissions at the West Branch Gas Plant were routed to the flare when the pilot light was not lit, in violation of Section 111 of the CAA, 42 U.S.C. § 7411, and its implementing regulation at 40 C.F.R. § 60.18(e), Section 110 of the CAA, 42 U.S.C. § 7410, and its implementing regulation at 40 C.F.R. § 52.23, and Permit No. 529-87, Special Condition 17, and Permit No. 544-88, Special Condition 16, issued pursuant to the Michigan SIP.

e. Count 5 - Based on the April 2012 inspection and responses to EPA's information request, Whiting has failed to measure, calculate, and record the net heating value of the gas, the actual exit velocity, and the maximum permitted velocity of the flare as required by 40 C.F.R. § 60.18(f)(3), (4), and (6). As such Whiting operated its flare in violation of Section 111 of the CAA, 42 U.S.C. § 7411, and its implementing regulations at 40 C.F.R. § 60.18(c)(3) and (5).

f. Count 6 - Based on Whiting's response to EPA's information request, Whiting has failed to maintain records sufficient to demonstrate the NESHAP Subpart HH exemption criteria for glycol dehydration units have been met, in violation of Section 112 of the CAA, 40 C.F.R. § 7412, and its implementing regulations at 40 C.F.R. §§ 63.764(e)(1) and 63.744(d)(1)(ii).

g. Count 7 - Based on Whiting's response to EPA's information request, Whiting underestimated compressor engine emission calculations in violation of Section 110 of the CAA,

42 U.S.C. § 7410, and its implementing regulation at 40 C.F.R. § 52.23, and Permit No. 709-96, Special Condition 15, issued pursuant to the Michigan SIP.

Civil Penalty

53. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case and Respondent's cooperation, return to compliance, and agreement to perform a supplemental environmental project, Complainant has determined that an appropriate civil penalty to settle this action is \$58,250.

54. Within 30 days after the effective date of this CAFO, Respondent must pay a \$58,250 civil penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, Missouri 63101

The check must note Respondent's name and docket number of this CAFO.

55. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Attn: Compliance Tracker (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

Mark Palermo (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

56. This civil penalty is not deductible for federal tax purposes.

57. If Respondent does not pay timely the civil penalty or any stipulated penalties due under Paragraph 69, below, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

58. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States' enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

#### Supplemental Environment Project

59. Respondent must complete a supplemental environmental project ("SEP") as described in Paragraph 60, below, which is designed to protect public health by improving ambient air quality and by reducing environmental asthma triggers and adverse respiratory health conditions.

60. Description of SEP. Respondent shall provide for the replacement of two mid-1990s model year diesel-powered school buses owned and operated by the West Branch Rose City Area Schools Transportation Department (“Recipient”) in West Branch, Michigan with two new diesel-powered school buses that meet 2014 or newer emission standards. Respondent must expend at least \$204,280 for the implementation of the SEP. Each diesel engine configuration of an old school bus replaced under this SEP shall be rendered permanently disabled and disposed of so that the old diesel engine configuration cannot be resold or reused.

61. Project Completion Date. Completion of the SEP must occur by no later than 180 days after the Effective Date of this CAFO. In its sole discretion, EPA may grant additional time to complete the SEP.

62. Respondent certifies that Whiting Oil and Gas Corporation is not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that Whiting Oil and Gas Corporation has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

63. Respondent certifies under penalty of law that it would have agreed to perform a comparably valued, alternative project other than a diesel emissions reduction Supplemental Environmental Project, if the Agency were precluded by law from accepting a diesel emissions reduction Supplemental Environmental Project.

64. Respondent must submit a SEP completion report to EPA by no later than 270 days from the Effective Date of this CAFO, unless an extension of time is provided by EPA in its sole discretion. This report must contain the following information:

- a. Detailed description of the SEP as completed;

- b. Description of any problems executing the SEP and the actions taken to correct the problems;
- c. For the SEP described in Paragraph 60, above, Respondent must provide certification from the Recipient that the funds were spent in conformity with the SEP as described. This certification should include an itemized cost of goods and services used to complete the SEP documented by copies of invoices, purchase orders or cancelled checks that specifically identify and itemize the individual cost of the goods and services. If the Recipient has not yet completed the project, certification from the Recipient that any unused funds are being held in an account earmarked for the specified purpose, and a target date for completion of the project;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

65. Respondent must submit the SEP completion report described in Paragraph 64 by express-mail to the Compliance Tracker of the Air Enforcement and Compliance Assurance Branch at the address provided in Paragraph 55, above.

66. In the SEP completion report, Respondent must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

67. Following receipt of the SEP completion report described in Paragraph 64, above, EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report, and EPA will give Respondent 30 days, or additional time as provided by EPA in writing, from date of Respondent's receipt of such notice to correct the deficiencies; or

- c. It has not satisfactorily completed the SEP or the SEP report, and EPA will seek stipulated penalties under Paragraph 69, below.

68. If EPA exercises option b in Paragraph 67, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any reasonable requirement that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under Paragraph 69, below.

69. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, Respondent must pay a penalty of \$183,852, but Respondent will receive credit towards the penalty amount for any sums that were satisfactorily expended towards the SEP pursuant to the requirements of this CAFO.
- b. If Respondent did not complete the SEP satisfactorily, but EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it expended at least \$183,852, Respondent will not be liable for any stipulated penalty under subparagraph a, above.
- c. If Respondent completed the SEP satisfactorily, but spent less than \$183,852, Respondent must pay a stipulated penalty in the amount of the difference between \$183,852 and the amount actually spent.
- d. If Respondent did not timely submit the SEP completion report required under Paragraph 64 above, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$150	1 <sup>st</sup> through 14 <sup>th</sup> day
\$200	15 <sup>th</sup> through 30 <sup>th</sup> day
\$300	31 <sup>st</sup> day and beyond

70. EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

71. Respondent must pay any stipulated penalties under Paragraph 69, above, within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in Paragraph 54, above, and will pay interest and nonpayment penalties on any overdue amounts.

72. Any public statement that Respondent makes referring to the SEP must include the following language: "Whiting Oil and Gas Corporation undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Whiting Oil and Gas Corporation for alleged violations of the Clean Air Act."

73. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

- a. Respondent must notify EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.
- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, EPA will notify Respondent

in writing of its decision and any delays in completing the SEP will not be excused.

- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

74. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

#### General Provisions

75. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO and the NOV/FOV dated January 8, 2013.

76. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

77. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in Paragraph 75, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

78. Respondent certifies, based on information and belief formed after reasonable inquiry, the West Branch Production Gathering and Compression Facility is complying fully with the provisions of the CAA and its permits.

79. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

80. The terms of this CAFO bind Respondent, its successors and assigns.

81. Except as otherwise specified in this CAFO, Respondent reserves all of its rights, remedies, and defenses in any future proceeding. This CAFO shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

82. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

83. Each party agrees to bear its own costs and attorneys' fees in this action.

84. This CAFO constitutes the entire agreement between the parties.

**Whiting Oil and Gas Corporation, Respondent**

4/21/2015  
Date

Peter W. Hagist  
Pete Hagist  
Senior Vice President, Planning  
Whiting Oil and Gas Corporation

**United States Environmental Protection Agency, Complainant**

5/5/15  
Date

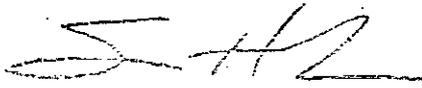
George T. Czerniak  
George T. Czerniak  
Director  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5

**Consent Agreement and Final Order**  
**In the Matter of: Whiting Oil and Gas Corporation**  
Docket No.           CAA-05-2015-0030

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

5-11-2015  
Date

  
\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 5

Consent Agreement and Final Order  
In the Matter of: Whiting Oil and Gas Corporation  
Docket No: CAA-05-2015-0030

**CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final**

Order, docket number CAA-05-2015-0030, which was filed on

May 12, 2015, this day in the following manner to the following addressees:

Copy by (Certified Mail  
Return-Receipt Requested

R. Clay Taylor  
Environmental Attorney  
Whiting Oil and Gas Corporation  
1700 Broadway, Suite 2300  
Denver, Colorado 80290-2300

Copy by E-mail to  
Attorney for Respondent:

Michael A. Peters  
[mpeters@rvanwhalev.com](mailto:mpeters@rvanwhalev.com)

Copy by E-mail to  
Attorney for Complainant:

Mark Palermo, Associate Regional Counsel.  
[palermo.mark@epa.gov](mailto:palermo.mark@epa.gov)

Copy by E-mail to  
Regional Judicial Officer:

Ann Coyle  
[coyle.ann@epa.gov](mailto:coyle.ann@epa.gov)

Dated: May 12, 2015   
LaDawn Whitehead  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): 7011 1150 0000 2540 4246