

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
BEFORE THE ADMINISTRATOR

IN THE MATTER OF:

WGR Operating, LP
The Woodlands, Texas

RESPONDENT

)
)
)
)
)
)
)

DOCKET NO. 06-2021-3376

ADMINISTRATIVE COMPLIANCE ORDER ON CONSENT

The following Administrative Compliance Order on Consent (“Consent Order”) is issued pursuant to the authority of Section 113(a)(1)(A) of the Clean Air Act (the “CAA”), 42 U.S.C. § 7413(a)(1)(A). Section 113(a)(1) of the CAA authorizes the Administrator of the United States Environmental Protection Agency (“EPA”) to issue an order requiring compliance to any person whom the Administrator finds to be in violation of the CAA. The authority to issue this Consent Order has been delegated to the Regional Administrator of EPA Region 6 and re-delegated to the Director of the Enforcement and Compliance Assurance Division, EPA Region 6.

STATUTORY AND REGULATORY BACKGROUND

1. The CAA 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).

2. 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 state implementation plans (“SIP”).

3. 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.

4. 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 a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS, and to submit it to the Administrator of EPA for approval.

5. 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 includes authorization for Texas to establish a permit by rule (“PBR”) program, which can be found at 30 Tex. Admin. Code Chapter 106 – Permits by Rule. *See* 40 C.F.R. § 52.2270(c).

6. Subchapter O of Chapter 106 of the Texas Administrative Code (“TAC”) 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 Tex. Admin. Code §§ 106.4(a) and 106.351-359. Additional regulations applicable to such facilities are also located in Subchapters A and V of Chapter 106 of the TAC. The permit by rule program includes the following requirements relevant to this Consent Order:

- a. “The 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.” 30 Tex. Admin. Code § 106.4(c).

- b. “All representations with regard to construction plans, operating procedures, and maximum emission rates in any certified registration under this section become conditions upon which the facility permitted by rule shall be constructed and operated.” 30 Tex. Admin. Code § 106.6(b).
- c. “It shall be unlawful for any person to vary from [the representations described in § 106.6(b)] if the change will cause a change in the method of control of emissions, the character of the emissions, or will result in an increase in the discharge of the various emissions, unless the certified registration is first revised.” 30 Tex. Admin. Code § 106.6(c).
- d. Salt water disposal facilities used to handle aqueous liquid wastes from petroleum production operations and water injection facilities are permitted by rule, provided that the conditions of 30 Tex. Admin. Code § 106.351 are met. 30 Tex. Admin. Code § 106.351.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

7. WGR Operating, LP (“WGR” or “Respondent”) is a limited partnership doing business in the state of Texas. Respondent is a “person” within the meaning of Section 113(a) of the CAA, 42 U.S.C. § 7413(a), and as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

8. At all times relevant to this Consent Order, Respondent has owned and/or operated the Cobra SWD Facility, which is located in the Texas Permian Basin (the “Facility”).

9. Respondent is the “owner or operator” of the Facility within the meaning of 40 C.F.R. § 51.100(f).

10. At all times relevant to this Consent Order, Respondent owned or operated units that emit Volatile Organic Compounds (“VOCs”) at the Facility.

11. The Facility is subject to the State of Texas’s Permits by Rule (“PBR”) program for oil and gas facilities under Subchapter O of Chapter 106 of the TAC. Specifically, the Facility is a salt water disposal facility subject to the PBR program under 30 Tex. Admin. Code § 106.351.

12. The Texas Commission on Environmental Quality (“TCEQ”) issued Permit No. 156552 to Respondent for the Cobra SWD Facility under the SIP-approved PBR program. The permit covers various emission units at the Facility, including process equipment and tanks.

13. Respondent is required to operate in compliance with certain provisions of the Texas SIP, and Respondent is required by Permit No. 156552 and the PBR program, including the SIP-approved general PBR requirements in Subchapter A of Chapter 106 of the TAC, to control the emission of waste gas streams from the Facility.

14. During August 25, 2020, through September 12, 2020, EPA contracted helicopter flyovers of the Permian Basin area to assess emissions from energy extraction and salt water disposal facilities using Optical Gas Imaging (“OGI”) technology. Flyovers of the Facility at issue in this Consent Order were conducted on September 10, 2020.

15. On February 12, 2021, EPA sent Respondent OGI video captures showing hydrocarbon emissions from process equipment at salt water disposal facilities, including the Facility at issue in this Consent Order, that EPA believed to be owned or operated by Respondent. EPA asked Respondent to verify ownership, provide current site-specific permit information, and take any necessary corrective action to address unauthorized hydrocarbon

emissions at the facility. EPA considered information provided by Respondent to determine whether violations occurred at the facility identified.

16. On February 19, 2021, and September 3, 2021, Respondent provided information to EPA that it had taken certain corrective action measures at the Cobra SWD Facility to address the compliance issues observed during the flyovers. Specifically, Respondent provided the following:

- a. On February 19, 2021, Respondent provided information to EPA that Respondent made repairs at the Facility on November 3, 2020, and verified such repairs with an OGI survey conducted on November 5, 2020.
- b. On September 3, 2021, Respondent provided information to EPA that Respondent specifically repaired tank hatches and pressure relief valves at tanks at the Facility on November 3, 2020. Respondent also provided information to document that there were no unobserved emissions after the repairs were made at the Facility.

17. On August 27, 2021, EPA Region 6 sent Respondent and TCEQ a Notice of Violation and Opportunity to Confer (“NOVOC”), notifying them of alleged violations of the Texas SIP.

18. On September 2, 2021, 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.

19. EPA has conducted a comprehensive review of information gathered from the helicopter flyovers conducted August 25, 2020, through September 12, 2020, and from Respondent. Based on this review, EPA has made the following findings:

- a. Respondent violated 30 Tex. Admin. Code § 106.4(c) by failing to maintain the Facility's emissions control equipment in good condition and properly operate such equipment.
- b. Respondent violated 30 Tex. Admin. Code § 106.6(b) by failing to operate equipment consistent with operating procedures in the Facility's certified registrations.
- c. Respondent violated 30 Tex. Admin. Code § 106.6(c) by varying from representations in the Facility's certified registrations regarding emissions at the Facility.

20. More than thirty (30) days before the issuance of this Consent Order, Respondent was notified of the violations alleged herein. On August 27, 2021, Respondent and the State of Texas were notified of the violations alleged herein, in accordance with Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1).

21. The parties to this Consent Order agree that Respondent had an opportunity to confer in accordance with Section 113(a)(4) of the CAA, 42 U.S.C. § 7413(a)(4).

22. The parties further agree that in order to avoid protracted litigation, and in the best interest of all the parties and the environment, this Administrative Compliance Order will be entered into on Consent and by mutual agreement of the parties.

23. Only for the purposes of this proceeding, including any subsequent proceeding by EPA to enforce this document, Respondent admits the jurisdictional allegations contained herein; however, Respondent neither admits nor denies the specific findings of fact and conclusions of law contained in this Consent Order.

24. Respondent also consents to and agrees not to contest EPA's jurisdiction to either issue this Consent Order or enforce its terms. Further, Respondent will not contest EPA's jurisdiction to either compel compliance with this Consent Order in any subsequent enforcement proceedings, whether administrative or judicial, or require Respondent's full compliance with the terms of this Consent Order or impose sanctions for violations of this Consent Order.

Respondent consents to the terms of this Consent Order.

ORDER ON CONSENT

25. Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1), provides in pertinent part that the Administrator may issue an Order requiring compliance with any requirement of a SIP. Pursuant to this authority, EPA has decided to issue this Consent Order after investigating all relevant facts, taking into account Respondent's compliance history, efforts made by Respondent to comply with applicable regulations, and based upon the foregoing Findings of Fact and Conclusions of Law herein.

26. Respondent has consented to, and is hereby ordered to satisfy, the following requirements regarding the Cobra SWD Facility:

- a. Within thirty (30) days of the Effective Date of this Consent Order, Respondent shall inspect and evaluate all oil and water storage tanks and associated hatches, valves, gaskets, and pressure relief devices at the Facility to ensure there are no unauthorized emissions.
- b. Within ninety (90) days of the Effective Date of this Consent Order, Respondent shall review its operation and maintenance procedures for inspecting process equipment at the Facility, 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, it shall create such procedures. Respondent shall ensure that these procedures include, at a minimum, the following:

- i. the use of a standard site inspection checklist during regular inspections that requires evaluation of the following: separators, tank batteries, pumps, fuel skid, spill containment, chemical storage, and miscellaneous facility-wide operations;
 - ii. a quality control program that ensures the quality, efficiency, and performance of facility maintenance activities; and
 - iii. appropriate and regular training for personnel implementing the operation and maintenance procedures.
- c. Within ninety (90) days from the review discussed in sub-paragraph “b.” above, Respondent shall send a letter to EPA detailing:
- i. the equipment that was inspected under sub-paragraph “a.” above at the Facility, the method of inspection, and any actions taken, or improvements made to ensure or improve compliance; and
 - ii. any updates that were made to the operation and maintenance procedures for the Facility to ensure that problems are timely identified and addressed to minimize emissions from process equipment.

27. Any information or correspondence submitted by Respondent to EPA under this

Consent Order shall be emailed to the following email address:

Griffith Brown
U.S. EPA Region 6
Brown.Griffith@epa.gov

28. To the extent this Consent Order requires Respondent to submit any information to EPA, Respondent may assert a business confidentiality claim covering part or all of that information, but only to the extent and only in the manner described in 40 C.F.R. § 2.203. EPA will disclose information submitted under a confidentiality claim only as provided in 40 C.F.R. Part 2, Subpart B. *See* 41 Fed. Reg. 36,902 (Sept. 1, 1976). If Respondent does not assert a confidentiality claim, EPA may make the submitted information available to the public without further notice to Respondent. Emission data provided under Section 114 of the CAA, 42 U.S.C. § 7414, is not entitled to confidential treatment under 40 C.F.R. Part 2, Subpart B. “Emission data” is defined in 40 C.F.R. § 2.301.

29. By signing this Consent Order, Respondent acknowledges that this Consent Order will be available to the public and agrees that this Consent Order does not contain any confidential business information.

GENERAL PROVISIONS

30. Pursuant to Section 113(a)(4) of the CAA, 42 U.S.C. § 7413(a)(4), this Consent Order shall be effective when fully executed, as set forth below in Paragraph 48 shall not exceed a term of one year, and shall be nonrenewable.

31. The provisions of this Consent Order shall apply to and be binding upon Respondent, its officers, directors, agents, and employees solely in their capacity of acting on behalf of Respondent.

32. Respondent neither admits nor denies any of the factual or legal determinations made by EPA in this Consent Order.

33. The provisions of this Consent Order shall be transferable to any other party, upon sale or other disposition of the Facilities. Upon such action, the provisions of this Consent Order

shall then apply to and be binding upon any new owner or operator, its officers, directors, agents, employees, and any successors in interest.

34. By signing this Consent Order, the undersigned representative of WGR certifies that he or she is fully authorized by Respondent to execute and enter into the terms and conditions of this Consent Order and has the legal capacity to bind Respondent to the terms and conditions of this Consent Order.

35. Nothing in this Consent Order shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain compliance, penalties, or injunctive relief under any applicable Federal, State, or local laws or regulations, including 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.

36. Nothing contained in this Consent Order shall affect the responsibility of Respondent to comply with all other applicable Federal, State, or local laws or regulations, including Section 303 of the CAA, 42 U.S.C. § 7603.

37. EPA does not waive any rights or remedies available to it for any violations by Respondent of Federal laws, regulations, statutes, or permitting programs.

38. Any and all information required to be maintained or submitted pursuant to this Consent Order is not subject to the Paperwork Reduction Act of 1995, 44 U.S.C. §§ 3501 *et seq.*, because it seeks to collect information from specific entities to assure compliance with this administrative action.

39. By signing this Consent Order, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and is, to the best of its

knowledge and belief, 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.

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

To EPA: Lee.Jamie@epa.gov

To Respondent: Sherry.Bursey@westernmidstream.com

41. EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this Consent Order. This Consent Order shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, and/or authorities, civil or criminal, which EPA has under any statutory, regulatory, or common law authority of the United States.

42. This Consent Order does not resolve any civil or criminal claims of the United States for the violations alleged in this Consent Order; nor does it limit the rights of the United States to obtain penalties or injunctive relief under the Act or other applicable federal law or regulations.

43. Respondent enters into this Consent Order in good faith without trial or adjudication of any issue of fact or law.

44. Respondent 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 Consent Order, including any right of judicial review under Section 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1).

45. The parties shall bear their own costs and fees in this action, including attorneys' fees.

46. 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 26 is restitution, remediation, or required to come into compliance with the law.

FAILURE TO COMPLY

47. Failure to comply with this Consent Order may result in an enforcement action for appropriate injunctive relief as well as civil penalties pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b) or, in appropriate cases, criminal penalties.

EFFECTIVE DATE

48. This Consent Order shall become effective upon the later of the two signatures below.

Date

Charles G. Griffie
Senior Vice President, Operations and
Engineering
WGR Operating, LP

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

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Administrative Compliance Order on Consent was sent this day in the following manner to the addressee:

Copy via Email to Respondent:
Sherry.Bursey@westernmidstream.com

U.S. EPA, Region 6
Dallas, Texas