



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

**1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733**

20 SEP 2018

SENT VIA EMAIL AND CERTIFIED MAIL:7007 1490 0004 0562 8791

Steve Carter
Asset Manager (Frio & CCNS)
BlackBrush O & G, LLC
18615 Tuscany Stone, Suite 300
San Antonio, TX 78258

Sent via email: steve.carter@blackbrushenergy.com

RE: In the Matter of BlackBrush O & G, LLC; Ferguson CS 1; CAA-06-2018-3353

Dear Mr. Carter,

Please find enclosed a copy of the fully-executed Administrative Order on Consent ("AOC"). Please note the timeframes that apply to BlackBrush O & G, LLC under the AOC.

If you have any questions, please contact Arati Tripathi by phone at 214-665-7404 or by email at tripathi.arati@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to be "Cheryl T. Seager", followed by a long horizontal line.

Cheryl T. Seager
Director
Compliance Assurance and
Enforcement Division

Enclosure (1)

ecc: Michael Miller, TCEQ (michael.miller@tceq.texas.gov)

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
BEFORE THE ADMINISTRATOR

In the Matter of:

BlackBrush O & G, LLC
Ferguson CS 1

Respondent

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EPA Docket No.
Docket No. 06-2018-3353

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, 42 U.S.C. § 7413(a)(1)(A) (hereinafter referred to as "the Act"). Section 113(a)(1) of the Act 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 Act. 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 Compliance Assurance and Enforcement Division, EPA Region 6.

STATUTORY AND REGULATORY BACKGROUND

1. The Act is designed to protect and enhance the quality of the nation's air so as to promote public health and welfare and the productive capacity of its population. CAA § 101(b)(1), 42 U.S.C. § 7401(b)(1).
2. 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.

3. 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 state implementation plan (“SIP”) that provides for the implementation, maintenance, and enforcement of the NAAQS, and to submit it to the Administrator of EPA for approval.

4. 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 T.A.C. Chapter 106 – Permits by Rule. *See* 40 C.F.R. § 52.2270(c).

5. Subchapter O of Chapter 106 of the Texas Administrative Code 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.

- a. The provisions of 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.”
- b. The provisions of 30 T.A.C. § 106.352(l) apply “to new and modified facilities.” This section provides that “[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 recovery 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).

- c. 30 T.A.C. § 106.352(l)(1) requires that "flares shall meet the requirements of § 106.492."
- d. 30 T.A.C. § 106.492(l)(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"

6. 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 federally-enforceable SIPs or permits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

7. BlackBrush O & G, LLC ("BlackBrush" or "Respondent") is a corporation 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 an oil and natural gas production facility, Ferguson CS 1, located in/near Derby, Texas in the Eagle Ford Shale area (the "Facility").

9. Respondent is the owner and/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 and/or operated an oil and gas Facility that emits Volatile Organic Compounds.

11. The Facility is subject to the State of Texas's Permits by Rule program for oil and gas facilities under Subchapter O of Chapter 106 of the Texas Administrative Code.

12. The Texas Commission on Environmental Quality ("TCEQ") issued Respondent Permit No. 107797, an air permit issued under the SIP-approved Permits by Rule program. This permit covers various emission units at the Facility, including any flares.
13. Respondent utilizes flares to control the emission of waste gas from the Facility. Permit No. 107797 requires, *inter alia*, that Respondent operate the flare in compliance with certain provisions of the Texas SIP.
14. During May 8 – 16, 2018, EPA conducted helicopter flyovers of the Eagle Ford Shale area to assess energy extraction facility emissions using Optical Gas Imaging ("OGI") technology.
15. On July 19, 2018, EPA sent Respondent OGI video captures of an unlit flare at the Facility emitting unburned hydrocarbons.
16. Based upon its review of the images obtained during the flyovers and preliminary permit information available from online state databases for oil and gas facilities, EPA Region 6 notified Respondent and TCEQ of violations of the Texas SIP on July 19, 2018.
17. On August 17, 2018, Respondent and EPA Region 6 conferred regarding violations of the Texas SIP.
18. On August 17, 2018, Respondent provided information to EPA that they have taken corrective action measures at the Facility to address compliance issues observed during the flyovers. Specifically, Respondent provided the following:
 - a. An electrical outage caused by a burnt-out relay resulted in the auto-igniter being out of service. Since the flyover, the electrical relay was replaced and the auto-igniter is back in service.

19. EPA has conducted a comprehensive review of the facility-specific information gathered based upon observations made from the flyover video captures and facility permitted operations. Based on this review, EPA has made the following findings for the Facility:

- a. Respondent violated 30 T.A.C. § 106.4(c) by failing to maintain in good condition and properly operate the emissions control equipment at certain facilities;
- b. Respondent violated 30 T.A.C. § 106.492(l)(B) by failing to equip certain facilities with a continuously burning pilot or automatic ignition system that assures gas ignition;
- c. Respondent violated 30 T.A.C. § 106.352(l)(1) by failing to comply with the requirements of 30 T.A.C. § 106.492, which requires flares to be equipped with a continuously burning pilot or other automatic ignition system that assures gas ignition.

20. More than thirty days before the issuance of this Consent Order, the Respondent was notified of the violations alleged herein. On July 19, 2018, the 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 an opportunity to confer has been satisfied 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 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 state implementation plan. 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 Facility:

- a. Within 30 days of the Effective Date of this Consent Order Respondent shall inspect all flares at the Facility to ensure that flares used for the control of emissions from production during all facility operating scenarios where gases are routed to the flares are properly operated and continuously lit.
- b. Within 120 days of the Effective Date of this Consent Order, based on the inspections above, Respondent shall send a letter to EPA outlining any actions taken or improvements made at the Facility, which may include flare tip replacement, changes to the auto-ignition system, installation of thermocouples, remote monitoring of flare ignition status (e.g., Supervisory Control and Data Acquisition), or any other actions taken to ensure or improve compliance.

27. Any information or correspondence submitted by Respondent to EPA under this Consent Order shall be addressed to the following:

Darrin Larson, Section Chief
Compliance Assurance and Enforcement Division (6EN-AA)
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733
Phone: (214) 665-7115
Email: larson.darrin@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 46, 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 the 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 Facility. Upon such action, the provisions of this Consent Order shall then apply to and be binding upon any new owner/operator, its officers, directors, agents, employees, and any successors in interest.

34. By signing this Consent Order, the undersigned representative of BlackBrush certifies that he or she is fully authorized by the 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 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.

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 EPA 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 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.

41. 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.

42. Respondent has entered into this Order in good faith without trial or adjudication of any issue of fact or law.

43. 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).

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

FAILURE TO COMPLY

45. 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

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

9-13-2018
Date


Steve Carter
Asset Manager (Frio & CCNS)
BlackBrush O & G, LLC
18615 Tuscany Stone, Suite 300
San Antonio, TX 78258

9-19-18
Date


Cheryl T. Seager
Director
Compliance Assurance and Enforcement
Division

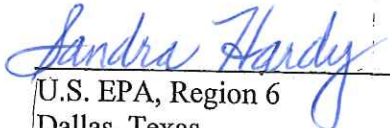
CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Administrative Order on Consent was placed in the United States mail to the following by the method indicated:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: # 700714 90000405628791

Steve Carter
Asset Manager (Frio & CCNS)
BlackBrush O & G, LLC
18615 Tuscany Stone, Suite 300
San Antonio, TX 78258

Date: 20 SEP 2018


U.S. EPA, Region 6
Dallas, Texas