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Pamela Jones

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**STATE OF NEW MEXICO
SECRETARY OF ENVIRONMENT**

**ENVIRONMENTAL PROTECTION DIVISION
OF THE NEW MEXICO ENVIRONMENT
DEPARTMENT,**

Complainant,

v.

No. AQB 23-60

AMEREDEV II, LLC,

Respondent.

**RESPONDENT AMEREDEV II, LLC'S
REQUEST FOR HEARING AND ANSWER TO COMPLIANCE ORDER**

Respondent, Ameredev II, LLC (“Ameredev”), pursuant to 20.1.5.200 NMAC, submits the following Request for Hearing and Answer (“Request”) to the New Mexico Environment Department, Environmental Protection Division’s (“Division”) Administrative Compliance Order (“Compliance Order”), signed June 29, 2023, and received by Ameredev on June 29, 2023, for alleged violations of the Air Quality Control Act, permit conditions, and regulations at Ameredev’s Amen Corner Central Tank Battery (“CTB”), Azalea CTB, Firethorn CTB, Nandina CTB, and Red Bud CTB (collectively “the Facilities”), located in Lea County, New Mexico.

REQUEST FOR HEARING

Ameredev, pursuant to NMSA 1978, § 74-2-12(C) (2006) and 20.1.5.200.A NMAC, hereby requests a hearing on the Compliance Order. A copy of the Compliance Order is attached to this Request.

ANSWER

Ameredev, pursuant to 20.1.5.200.A(2) NMAC, submits the following answers to the factual assertions in the Compliance Order. Except where Ameredev expressly admits a factual assertion in this Request, Ameredev expressly denies every allegation of the Compliance Order.

FACTUAL BACKGROUND

1. Ameredev admits the factual assertions in Paragraph 1.
2. Ameredev admits the factual assertions in Paragraph 2.
3. Ameredev admits the factual assertions in Paragraph 3.
4. Ameredev admits the factual assertions in Paragraph 4, but states that the Azalea CTB was authorized to operate under GCP-6 #7601 (issued January 10, 2018) prior to that date.
5. Ameredev admits the factual assertions in Paragraph 5, but states that the Firethorn CTB was authorized to operate under GCP-6 #7836 (issued May 31, 2018) prior to that date.
6. Ameredev admits the factual assertions in Paragraph 6.
7. Ameredev admits the factual assertions in Paragraph 7, but states that the Red Bud CTB was authorized to operate under GCP-6 #7839 (issued May 31, 2018) prior to that date.
8. Ameredev admits the factual assertions in Paragraph 8.
9. Ameredev admits the factual assertions in Paragraph 9.
10. Ameredev admits the factual assertions in Paragraph 10.
11. Ameredev admits the factual assertions in Paragraph 11.
12. Ameredev admits the factual assertions in Paragraph 12.
13. Ameredev admits the factual assertions in Paragraph 13, but states that the mixed streams first passed through three-phase separators and the separated gas was routed to the sales line.

14. Ameredev denies the factual assertions in Paragraph 14.

15. In response to Paragraph 15, Ameredev is without sufficient information to admit or deny the factual assertions, and therefore, denies the assertions.

16. In response to Paragraph 16, Ameredev is without sufficient information to admit or deny the factual assertions, and therefore denies the assertions.

17. Ameredev admits the factual assertions in Paragraph 17, but states it understood that the Air Quality Bureau's ("AQB") notification addressed only emissions from the Azalea CTB, and that Ameredev voluntarily disclosed emergency flaring issues at the Azalea, Firethorn, Red Bud, and Nandina CTBs to the AQB on October 7, 2019, and requested a meeting with AQB staff.

18. Ameredev admits the factual assertions in Paragraph 18, but states that (a) Ameredev explained the cause of flaring in its October 7, 2019 voluntary disclosure and (b) a representative from Trinity Consultants attended the meeting to discuss Ameredev's voluntary air emissions compliance audit.

19. In response to Paragraph 19, Ameredev is without sufficient information to admit or deny the factual assertions, and therefore denies the assertions.

20. In response to Paragraph 20, Ameredev admits that AQB personnel conducted an on-site inspection of the Facilities on December 30-31, 2019, but denies that AQB personnel produced an inspection report resulting in three Post-Inspection Notifications on those same dates.

21. Ameredev admits the factual assertions in Paragraph 21.

22. In response to Paragraph 22, Ameredev admits the factual assertions in the first sentence of Paragraph 22, but states that, with respect to the second sentence of Paragraph 22, Ameredev's responses speak for themselves and no answer is necessary. To the extent that the

factual assertions in Paragraph 22 and Sections I through VIII of the Compliance Order are inconsistent with Ameredev's responses, the assertions are denied.

23. Ameredev admits the factual assertions in Paragraph 23, but states that Ameredev also submitted a voluntary disclosure of violations to AQB on October 7, 2019.

24. In response to Paragraph 24, Ameredev is without sufficient information to admit or deny the factual assertions, and therefore denies the assertions. To the extent that the AQB has made such a determination, Ameredev states that the determination is incorrect and is not binding on the Secretary in this proceeding. Ameredev further states that (a) the AQB's May 26, 2020 letter addressing Ameredev's voluntary audit was the first occasion on which the AQB notified Ameredev of the AQB's position that Ameredev's audit did not meet conditions of the AQB's voluntary environmental disclosure policy, (b) Ameredev responded to the AQB's May 26, 2020 letter on June 6, 2020, (c) Ameredev on May 27, 2020 re-urged its January 7, 2020, and March 17, 2020, requests for a meeting to discuss Ameredev's successful efforts to eliminate emergency flaring and to update the AQB on Ameredev's progress on correcting voluntarily self-disclosed compliance issues, but the AQB did not grant the meeting requests, and (d) Ameredev notified the AQB on May 29, 2020 that Ameredev had successfully completed corrective actions under its voluntary audit.

25. Ameredev denies the factual assertions in Paragraph 25.

26. In response to Paragraph 26, Ameredev is without sufficient information to admit or deny the factual assertions, and therefore, denies the assertions.

27. In response to Paragraph 27, Ameredev admits that the AQB issued post-inspection notifications on January 10 and March 16, 2020, but denies that the AQB issued a post-inspection notification on April 8, 2020.

28. Ameredev admits the factual assertions in Paragraph 28.

29. In response to Paragraph 29, Ameredev states that its responses to the NOV speak for themselves and no answer is necessary, and states that Ameredev's September 15, 2022 submittal included a request for a settlement conference.

30. Ameredev admits the factual assertion in Paragraph 30.

31. In response to Paragraph 31, Ameredev admits that it provided records in response to the AQB's May 18, 2023 records request, but denies that those records reveal "current potential compliance issues."

VIOLATIONS

Violation 1

Failure to construct or modify and operate five Facilities in accordance with representations in and as specified in the current application or registration forms pursuant to GCP-6, General condition B101-A—*Legal*, and to GCP-O&G Specific Condition A100—*Introduction and Applicability*.

Violation 1 Background

32. In response to Paragraph 32, Ameredev states that GCP-6, General Condition B101.A, *Legal*, speaks for itself and no answer is necessary. To the extent that the factual assertions in Paragraph 32 are inconsistent with GCP-6, General Condition B101.A, the assertions are denied.

33. In response to Paragraph 33, Ameredev states GCP-O&G, Specific Condition A100, *Introduction and Applicability*, speaks for itself and no answer is necessary. To the extent that the factual assertions in Paragraph 33 are inconsistent with GCP-O&G, Specific Condition A100, the assertions are denied.

34. In response to Paragraph 34, Ameredev is without sufficient information to admit or deny the factual assertions, and therefore denies the assertions.

35. In response to Paragraph 35, Ameredev admits the factual assertions about unregistered equipment, but states that the equipment referenced in Paragraph 35 (a) was listed as “allowable equipment” in Table 104 of the GCP-Oil & Gas, and (b) would either be expected to have minimal emissions or is a control device.

36. In response to Paragraph 36, Ameredev admits that it submitted registrations for certain equipment as specified in Table 3, but denies that it “delayed” submittal of the registrations or that the registrations were for “unauthorized modification.”

Violation 1 Summary.

37. Paragraph 37 states a legal conclusion that does not require an answer.

38. Paragraph 38 states a legal conclusion that does not require an answer.

39. In response to Paragraph 39, Ameredev is without sufficient information to admit or deny the factual assertions, and therefore denies the assertions.

Violation 2

Failure to obtain a regular, individual construction permit for each Facility from the Department before modifying and operating five Facilities above GCP thresholds pursuant to GCP-6, General Condition C101.D(1) and GCP-O&G, General Condition C101.C(1).

Violation 2 Background

40. In response to Paragraph 40, Ameredev states that GCP-6, General Condition C101, *Revision Process, D(1) Changes that Prevent Meeting General Permit Limits*, speaks for itself and no answer is necessary. To the extent that the factual assertions in Paragraph 40 are inconsistent with GCP-6, General Condition C101.D(1), the assertions are denied.

41. In response to Paragraph 41, Ameredev states that GCP-6, Specific Condition A100, *Description*, Paragraph E, speaks for itself and no answer is necessary. To the extent that

the factual assertions in Paragraph 41 are inconsistent with GCP-6, Specific Condition A100.E, the assertions are denied.

42. In response to Paragraph 42, Ameredev states that GCP-6 Table 100.A speaks for itself, and no answer is necessary. To the extent that the factual assertions in Paragraph 42 are inconsistent with GCP-6 Table 100.A, the assertions are denied.

43. In response to Paragraph 43, Ameredev states that GCP-O&G, General Condition C101, *Revision Process, C(1) Changes that Prevent Meeting General Permit Limits* speaks for itself, and no answer is necessary. To the extent that the factual assertions in Paragraph 43 are inconsistent with GCP-6, General Condition C101.C(1), the assertions are denied.

44. In response to Paragraph 44, Ameredev states that GCP-O&G, Specific Condition A106.A—*Facility: Allowable Emissions* speaks for itself, and no answer is necessary. To the extent that the factual assertions in Paragraph 44 are inconsistent with GCP-O&G, Specific Condition A106.A, the assertions are denied.

45. In response to Paragraph 45, Ameredev states that GCP-O&G, Table 106 speaks for itself, and no answer is necessary. To the extent that the factual assertions in Paragraph 45 are inconsistent with GCP-O&G, Table 106, the assertions are denied.

46. In response to Paragraph 46, Ameredev states that 20.2.72.220.D(2) NMAC speaks for itself, and no answer is necessary. To the extent that the factual assertions in Paragraph 46 are inconsistent with 20.2.72.220.D(2) NMAC, the assertions are denied.

47. Ameredev admits the factual assertions in the first sentence of Paragraph 47 but denies the second sentence of Paragraph 47. Ameredev further states that Exhibit 22 does not depict that air pollutants exceeded up to five GCP ton per year permit thresholds.

48. In response to Paragraph 48, Ameredev admits the factual assertions in the first and third sentences, but denies the factual assertions in the second sentence.

49. Ameredev denies the factual assertions in the first sentence of Paragraph 49 and the characterization that routing was “unlawful[],” but admits the factual assertions in the second sentence and Table 4.

50. Ameredev admits the factual assertions in Paragraph 50, and states that 20.2.7.113 NMAC, *Affirmative Defense for an Emergency*, speaks for itself, and no answer is necessary. To the extent that the factual assertions in Paragraph 50 are inconsistent with 20.2.7.113 NMAC, the assertions are denied.

51. In response to Paragraph 51, Ameredev admits the factual assertions in the first sentence, and states that the AQB’s evaluation of Ameredev’s affirmative defenses, as reflected in NMED Exhibit 18, speaks for itself and therefore no answer is required. Ameredev denies that the AQB’s determination “that the excess emissions were not caused by emergencies since Ameredev continued to flare for several months after becoming aware of the excess emissions and failed to take all reasonable steps to minimize excess emissions” is correct. Ameredev further states that (a) it disclosed to the AQB in October 2019 that its third-party gas takeaway counterparty was not fully performing under the contract, but that the third-party was periodically performing and continually pledged to fully perform; (b) Ameredev shared with the AQB in an in-person meeting on November 7, 2019 a plan to eliminate the emergency flaring, (c) AQB staff confirmed in a November 8, 2019 email to the citizen who complained about flaring that Ameredev was “being very cooperative and helpful in understanding the problem, and are working to resolve it as quickly as possible,” that Ameredev was “adamant that they ‘want to do better in the future’” and, to that end, Ameredev was “working on building in ‘redundancy’ for their gas routing so that this situation

does not occur again” but that “as with most efforts of this magnitude, it takes time,” and that Ameredev had “hired a 3rd party consultant to complete an audit of, not only these operations, but other possible issues for the company,” (d) Ameredev worked as quickly as possible to secure alternative gas takeaway outlets but that time was required due to the need to execute commercial agreements with other midstream companies, acquire rights-of-way to connect to those companies (including securing right-of-way approvals from the New Mexico State Land Office and U.S. Bureau of Land Management), and to expend capital and construct additional infrastructure to connect to those delivery points, and (e) the AQB has never informed Ameredev of what other “reasonable steps” should have been taken to minimize excess emissions.

52. In response to Paragraph 52, Ameredev states that its September 2, 2022 response to the AQB’s Notice of Violation speaks for itself and no answer is required. To the extent that the factual assertions in Paragraph 52 are inconsistent with the September 2, 2022, response, the assertions are denied.

53. In response to Paragraph 53, Ameredev states that the cited permit conditions and 20.2.72 NMAC speak for themselves and no answer is required. To the extent that the factual assertions in Paragraph 53 are inconsistent with the cited permit conditions and/or 20.2.72 NMAC, the assertions are denied.

Violation 2 Summary

54. Paragraph 54 states a legal conclusion that does not require an answer.

55. In response to Paragraph 55, Ameredev is without sufficient information to admit or deny the factual assertions, and therefore denies the assertions.

Violation 3

Failure to operate and control tank emissions with the Vapor Recovery Unit (VRU) as represented in the GCP-O&G #8189 for the Nandina CTB pursuant to GCP-O&G, Specific Condition A209.A *Vapor Recovery Unit or Department Approved Equivalent*

Violation 3 Background

56. In response to Paragraph 56, Ameredev states that GCP O&G, Specific Condition A209.A, *Vapor Recovery Unit or Department approved Equivalent*, speaks for itself and no answer is necessary. To the extent that the factual assertions in Paragraph 56 are inconsistent with GCP-6, Specific Condition A209.A, the assertions are denied.

57. In response to Paragraph 57, Ameredev states that GCP-O&G #8189 emissions calculation form for Nandina CTB speaks for itself and no answer is necessary. To the extent that the factual assertions in Paragraph 57 are inconsistent with the GCP-O&G #8189 emissions calculation form, the assertions are denied.

58. In response to Paragraph 58, Ameredev states that GCP-O&G #8189 registration form speaks for itself, and no answer is necessary. To the extent that the factual assertions in Paragraph 58 are inconsistent with the registration form, the assertions are denied.

59. In response to Paragraph 59, Ameredev is without sufficient information to admit or deny the factual assertions, and therefore, denies the assertions.

60. Ameredev denies the factual assertions in Paragraph 60.

61. Ameredev admits the factual assertions in Paragraph 61.

62. Ameredev denies the factual assertions in Paragraph 62.

Violation 3 Summary

63. In response to Paragraph 63, Ameredev states that 20.2.72.220.D(2) NMAC speaks for itself and no answer is necessary. To the extent that the factual assertions in Paragraph 63 are inconsistent with 20.2.72.220.D(2) NMAC, the assertions are denied.

64. Paragraph 64 states a legal conclusion that does not require an answer.

65. In response to Paragraph 65, Ameredev is without sufficient information to admit or deny the factual assertions, and therefore denies the assertions.

Violation 4

Failure to complete and/or record inspections of the Azalea CTB vapor recovery units (or “VRUs”) and associated piping from the controlled units pursuant to GCP—O&G, Specific Condition A209.A Vapor Recovery Unit or Department-Approved Equivalent

Violation 4 Background

66. In response to Paragraph 66, Ameredev states that GCP O&G, Specific Condition A209.A, *Vapor Recovery Unit or Department approved Equivalent*, speaks for itself and no answer is necessary. To the extent that the factual assertions in Paragraph 66 are inconsistent with GCP-6, Specific Condition A209.A, the assertions are denied.

67. Ameredev admits the factual assertions in Paragraph 67.

68. In response to Paragraph 68, Ameredev states its January email and submittal speak for themselves and no answer is necessary. To the extent that the factual assertions in Paragraph 68 are inconsistent with the January 7, 2020 email and submittal, the assertions are denied.

Violation 4 Summary

69. Paragraph 69 states a legal conclusion that does not require an answer.

70. In response to Paragraph 70, Ameredev is without sufficient information to admit or deny the factual assertions, and therefore denies the assertions.

Violation 5

Failure to perform monthly VRU inspections as of January 7, 2020, used to control air emissions from the Amen Corner CTB VRT's pursuant to GCP-6, Specific Condition A107.A Vapor Recovery Unit (VFRU) or Ultra Low-Pressure Separators (ULPS) and Compressor Operation

Violation 5 Background

71. In response to Paragraph 71, Ameredev states that GCP-6, Specific Condition A107-A-Vapor Recovery Unit (VRU) or Ultra Low-Pressure Separators (ULPS) and Compressor speaks for itself, and no answer is necessary. To the extent that the factual assertions in Paragraph 71 are inconsistent with GCP-6, Specific Condition A107.A, the assertions are denied.

72. Ameredev admits the factual assertions in Paragraph 72.

73. In response to Paragraph 73, Ameredev states its January 7, 2020 response speaks for itself and no answer is necessary. To the extent that the factual assertions in Paragraph 73 are inconsistent with the January 7, 2020 response, the assertions are denied.

Violation 5 Summary

74. Paragraph 74 states a legal conclusion that does not require an answer.

75. In response to Paragraph 75, Ameredev is without sufficient information to admit or deny the factual assertions, and therefore denies the assertions.

Violation 6

Failure to limit each of the Facilities pph and tpy emission rates to the facility-specific emission limits listed in each certified and approved Application and Registration form pursuant to GCP-6, Specific Condition A100.D, Part A Facility Specific Requirements and GCP-O&G, Specific Condition A106.C Allowable Hourly and Annual Emissions

Violation 6 Background

76. In response to Paragraph 76, Ameredev states that GCP-6, Specific Condition A100.D-Description- speaks for itself and no answer is necessary. To the extent that the factual

assertions in Paragraph 76 are inconsistent with GCP-6, Specific Condition A100.D, the assertions are denied.

77. In response to Paragraph 77, Ameredev states that GCP-6, Specific Condition A106.C-Facility: *Allowable Emissions - Allowable Hourly and Annual Emission Limits* speaks for itself, and no answer is necessary. To the extent that the factual assertions in Paragraph 77 are inconsistent with GCP-6, Specific Condition A106.C, the assertions are denied.

78. Ameredev denies the factual assertions in Paragraph 78.

79. Ameredev admits the factual assertions in Paragraph 79, but denies that the AQB properly denied Ameredev's affirmative defense claims.

80. In response to Paragraph 80, Ameredev admits that it provided the referenced records, but Ameredev denies the other factual assertions in Paragraph 80.

81. Ameredev denies the factual assertions in Paragraph 81.

Violation 6 Summary

82. Paragraph 82 states a legal conclusion that does not require an answer.

83. Ameredev admits the factual assertions in Paragraph 83, but denies that the alleged violations are subject to the NMED-AQB Civil Penalty Policy.

Violation 7

Failure to comply with operational requirements and representations made in permit Application and Registrations for Each Facility flare, unit FL-1, pursuant to GCP-6, Specific Condition A108.A – *Flare Operation*; and GCP-O&G, Specific condition A207.B – *Pilot Flame, Visible Emissions, and Operational Requirements* and General Condition B101.A-*Legal*

Violation 7 Background

84. In response to Paragraph 84, Ameredev states that GCP-6, Part A – Facility Specific Requirements, Specific Condition A108.A-*Flare Operations*- speaks for itself and no answer is

necessary. To the extent that the factual assertions in Paragraph 84 are inconsistent with GCP-6, Specific Condition A108.A, the assertions are denied.

85. In response to Paragraph 85, Ameredev states that GCP-O&G, Specific Condition A207.B – *Pilot Flame, Visible Emission, and Operational Requirements* speaks for itself, and no answer is necessary. To the extent that the factual assertions in Paragraph 85 are inconsistent with GCP—O&G, Specific Condition A207.B, the assertions are denied.

86. In response to Paragraph 86, Ameredev states that GCP-6, General Condition B101.A—*Legal* speaks for itself and no answer is necessary. To the extent that the factual assertions in Paragraph 86 are inconsistent with GCP-6, General Condition B101.A, the assertions are denied.

87. In response to Paragraph 87, Ameredev states that its audit disclosure letter speaks for itself and no answer is necessary. To the extent that the factual assertions in Paragraph 87 are inconsistent with Ameredev’s audit disclosure letter, the assertions are denied.

Violation 7 Summary

88. Paragraph 88 states a legal conclusion that does not require an answer.

89. Paragraph 89 states a legal conclusion that does not require an answer.

90. Paragraph 90 states a legal conclusion that does not require an answer.

91. Paragraph 91 states a legal conclusion that does not require an answer.

92. In response to Paragraph 92, Ameredev is without sufficient information to admit or deny the factual assertions, and therefore denies the assertions.

Violation 8

Failure to submit notifications of the anticipated date of initial startup not less than 30 days prior to the date pursuant to GCP-6 and GCP-O&G, General Condition B110.B(1) General Reporting Requirements

Violation 8 Background

93. In response to Paragraph 93, Ameredev states that GCP-6 and GCP-O&G General Condition B110.B – *General Reporting Requirements* speak for themselves and no answer is necessary. To the extent that the factual assertions in Paragraph 93 are inconsistent with GCP-6 and GCP-O&G General Condition B110.B, the assertions are denied.

94. In response to Paragraph 94, Ameredev is without sufficient information to admit or deny the factual assertions in the first sentence of Paragraph 94, and therefore denies the assertions. Ameredev admits the factual assertions in the second sentence of Paragraph 94.

Violation 8 Summary

95. Paragraph 95 states a legal conclusion that does not require an answer.

96. In response to Paragraph 96, Ameredev is without sufficient information to admit or deny the factual assertions, and therefore denies the assertions.

EFFECTIVE DATE

97. In response to Paragraph 97, Ameredev states that the Effective Date in Paragraph 97 is inconsistent with the Air Quality Control Act, § 74-2-12(C), which states that “[a]n order issued pursuant to Subsection A of this section shall become final unless, no later than thirty days after the order is served, the person named therein submits a written request to the secretary . . . for a public hearing.”

COMPLIANCE ORDERS

98. In response to Paragraph 98, Ameredev states that § 74-2-12(A) speaks for itself and no answer is necessary.

99. In response to Paragraph 99, Ameredev is without sufficient information to admit or deny the factual assertions, and therefore denies the assertions.

100. In response to Paragraph 100, Ameredev is without sufficient information to admit or deny the factual assertions, and therefore denies the assertions.

101. In response to Paragraph 101, Ameredev states that no answer is necessary. Ameredev states that it implemented timely and appropriate corrective action for the violations alleged in the Compliance Order over two years prior to the AQB's issuance of the NOV and over three years prior to the Division's issuance of the Compliance Order.

Order 1

Cease and Desist Excess Emissions at All Ameredev Facilities Located in New Mexico

102. In response to Paragraph 102, Ameredev states that no answer is necessary. Ameredev notes that § 74-2-12(A) only authorizes the Secretary to issue a compliance order requiring "compliance immediately or within a specified time period." The actions required by Paragraph 102 are beyond the authority granted by § 74-2-12(A). Ameredev further states that it ended the emergency flaring events by April 2020, over three years prior to the Division's issuance of the Compliance Order.

103. In response to Paragraph 103, Ameredev states that no answer is necessary. Ameredev notes that § 74-2-12(A) only authorizes the Secretary to issue a compliance order requiring "compliance immediately or within a specified time period." The actions required by Paragraph 103 are beyond the authority granted by § 74-2-12(A).

104. In response to Paragraph 104, Ameredev states that no answer is necessary. Ameredev notes that § 74-2-12(A) only authorizes the Secretary to issue a compliance order

requiring “compliance immediately or within a specified time period.” The actions required by Paragraph 104 are beyond the authority granted by § 74-2-12(A).

105. In response to Paragraph 105, Ameredev states that no answer is necessary.

Order 2: Submit Construction Permit Applications

106. In response to Paragraph 106, Ameredev states that no answer is necessary. Ameredev also states that the AQB issued amended GCP-O&G permits for each of the Facilities over three years ago—April 24, 2020 (Nandina), May 15, 2020 (Red Bud), May 22, 2020 (Firethorn), June 5, 2020 (Amen Corner), and June 12, 2020 (Azalea). Ameredev notes that § 74-2-12(A) only authorizes the Secretary to issue a compliance order requiring “compliance immediately or within a specified time period.” The actions required by Paragraph 106 are beyond the authority granted by § 74-2-12(A).

107. In response to Paragraph 107, Ameredev states that no answer is necessary. Ameredev notes that § 74-2-12(A) only authorizes a compliance order to require “compliance immediately or within a specified time period.” The actions required by Paragraph 107 are beyond the authority granted by § 74-2-12(A).

108. In response to Paragraph 108, Ameredev states that no answer is necessary. Ameredev notes that § 74-2-12(A) only authorizes a compliance order to require “compliance immediately or within a specified time period.” The actions required by Paragraph 108 are beyond the authority granted by § 74-2-12(A).

109. In response to Paragraph 109, Ameredev states that no answer is necessary. Ameredev notes that § 74-2-12(A) only authorizes a compliance order to require “compliance immediately or within a specified time period.” The actions required by Paragraph 109 are beyond the authority granted by § 74-2-12(A).

Order 3: Conduct Third-Party Audit of all other Ameredev New Mexico Facilities

110. In response to Paragraph 110, Ameredev states that no answer is necessary. Ameredev notes that § 74-2-12(A) only authorizes a compliance order to require “compliance immediately or within a specified time period.” The actions required by Paragraph 110 are beyond the authority granted by § 74-2-12(A).

111. In response to Paragraph 111, Ameredev states that no answer is necessary. Ameredev notes that § 74-2-12(A) only authorizes a compliance order to require “compliance immediately or within a specified time period.” The actions authorized by Paragraph 111 are beyond the authority granted by § 74-2-12(A).

112. In response to Paragraph 112, Ameredev states that no answer is necessary. Ameredev notes that § 74-2-12(A) only authorizes a compliance order to require “compliance immediately or within a specified time period.” The actions required by Paragraph 112 are beyond the authority granted by § 74-2-12(A).

113. In response to Paragraph 113, Ameredev states that no answer is necessary. Ameredev notes that § 74-2-12(A) only authorizes a compliance order to require “compliance immediately or within a specified time period.” The actions authorized by Paragraph 113 are beyond the authority granted by § 74-2-12(A).

114. In response to Paragraph 114, Ameredev states that no answer is necessary. Ameredev notes that § 74-2-12(A) only authorizes a compliance order to require “compliance immediately or within a specified time period.” The actions authorized by Paragraph 114 are beyond the authority granted by § 74-2-12(A).

115. In response to Paragraph 115, Ameredev states that no answer is necessary. Ameredev notes that § 74-2-12(A) only authorizes a compliance order to require “compliance

immediately or within a specified time period.” The actions authorized by Paragraph 115 are beyond the authority granted by § 74-2-12(A).

Order 4: Propose Mitigation Projects for NMED Approval

116. In response to Paragraph 116, Ameredev states that no answer is necessary. Ameredev states that that in the three to four years since the AQB and Ameredev first discussed compliance issues, Ameredev has expended over \$30 million on projects that have reduced emissions and continue to reduce emissions in New Mexico, as described in Ameredev’s September 2, 2022 response to the AQB’s NOV. Ameredev notes that § 74-2-12(A) only authorizes a compliance order to require “compliance immediately or within a specified time period.” The actions required by Paragraph 116 are beyond the authority granted by § 74-2-12(A).

CIVIL PENALTIES

117. In response to Paragraph 117, Ameredev states that § 74-2-12(A) speaks for itself, and no answer is necessary.

118. In response to Paragraph 118, Ameredev states that § 74-2-12(B) speaks for itself, and no answer is necessary.

119. In response to Paragraph 119, Ameredev is without sufficient information to admit or deny the factual assertions, and therefore denies the assertions.

120. In response to Paragraph 120, Ameredev is without sufficient information to admit or deny the factual assertions, and therefore denies the assertions.

121. In response to Paragraph 121, Ameredev admits that the Division has calculated and assessed a civil penalty, but contests all legal conclusions and denies that the assessed penalty is reasonable, appropriate, or consistent with the Air Quality Control Act and/or the New Mexico Administrative Code. Ameredev further denies that the civil penalties are consistent with AQB

enforcement precedent and the AQB's Civil Penalty Policy. Ameredev further denies that the Civil Penalty Policy is applicable to this proceeding or binding on the Secretary.

122. In response to Paragraph 122, Ameredev states that no answer is necessary. Ameredev notes that, pursuant to § 74-2-12(C), the Compliance Order is not effective and the proposed penalties are not due and owing.

123. In response to Paragraph 123, Ameredev states that no answer is necessary.

124. In response to Paragraph 124, Ameredev states that no answer is necessary. Ameredev notes that the obligation specified in Paragraph 124 is inconsistent with § 74-2-12(J), which specifies that “[i]f a person fails to pay an assessment of a civil penalty, the secretary . . . may commence a civil action in district court to collect the civil penalties assessed in the order.” Ameredev further notes that the proposed “stipulated penalty” has not been agreed to by Ameredev and is therefore not “stipulated.”

125. In response to Paragraph 125, Ameredev states that no answer is necessary. Ameredev notes that the obligation specified in Paragraph 125 is inconsistent with § 74-2-12(I), which specifies that “[i]f a person fails to comply with an administrative order, the secretary . . . may initiate an action to suspend or revoke the permit, or portion thereof, alleged to have been violated or to commence a civil action in district court to enforce the order, or to suspend or revoke the permit, or both.” Ameredev further notes that the proposed “stipulated penalty” has not been agreed to by Ameredev and is therefore not “stipulated.”

ADMINISTRATIVE COMPLIANCE COSTS

126. In response to Paragraph 126, Ameredev states that no answer is necessary. Ameredev notes that the obligation specified in Paragraph 126 is inconsistent with the relief authorized under § 74-2-12 and beyond the scope of the Secretary's authority.

NOTICE OF OPPORTUNITY TO ANSWER AND REQUEST A HEARING

127. In response to Paragraph 127, Ameredev states that no answer is necessary. Ameredev further states that it is requesting a hearing on the Compliance Order pursuant to § 74-2-12(C) and 20.1.5.200.A NMAC.

128. In response to Paragraph 128, Ameredev states that no answer is necessary.

129. In response to Paragraph 129, Ameredev states that no answer is necessary.

SETTLEMENT CONFERENCE

130. In response to Paragraph 130, Ameredev states that no answer is necessary.

TERMINATION

131. In response to Paragraph 131, Ameredev states that no answer is necessary.

DEFENSES

1. The orders and civil penalties assessed in the Compliance Order for excess emissions issues known by the AQB in August 2019 (Paragraph 15) and/or September 2019 (Paragraphs 16 and 17), for excess emissions issues reported to AQB by Ameredev in October 2019, for any other excess emissions events reported to the AQB prior to November 3, 2019, and for any other compliance issues known by, or that should have been known by, the AQB prior to November 3, 2019, are barred by the 1-year statute of limitations for administrative compliance orders under § 74-2-12(A)(1).

2. The orders and civil penalties assessed in the Compliance Order for alleged Violation 1 and for alleged Violation 7 (with respect to the alleged failure to only combust gas streams represented in the application) are barred by the 1-year statute of limitations for administrative compliance orders under § 74-2-12(A)(1).

3. The orders and civil penalties assessed in the Compliance Order for alleged violations known by the AQB for excess emissions events reported to the AQB in December 2019 or as a result of or following their December 30 & 31, 2019 on-site inspections, are barred by the 1-year statute of limitation for administrative compliance orders under § 74-2-12(A)(1).

4. The civil penalties assessed in the Compliance Order are not reasonable, appropriate, or consistent with the Air Quality Control Act and/or the New Mexico Administrative Code, and are not consistent with AQB enforcement precedent. The penalties are also inconsistent with the AQB's Civil Penalty Policy, including with respect to penalty reductions for self-reported violations under (a) the adjustment factor matrix and (b) Appendix D: Voluntary Disclosure Policy.

5. The civil penalties assessed in the Compliance Order do not “take into account . . . any good-faith efforts to comply with the applicable requirements and other relevant factors” as required by the Air Quality Control Act, § 74-2-12(G).

6. The penalties assessed in the Compliance Order are not proportional to the violations alleged, and therefore, violate due process under the Fourteenth Amendment of the United States Constitution and Article II, Section 18 of the New Mexico Constitution.

7. The Air Quality Control Act, § 74-2-12(A)(1), authorizing the Secretary to issue a compliance order assessing a civil penalty for past and current violations, or both, violates the Separation of Powers provision of the New Mexico Constitution, Article III, Section 1. The authority to assess sanctions for violations of laws and regulations is reserved under the New Mexico Constitution to the judicial branch of government.

8. The requirement for specific compliance measures, including the requirement to submit construction permit applications (Paragraphs 106-109), conduct third-party audits of all

Ameredev New Mexico facilities (Paragraphs 110-115), and propose mitigation projects for NMED approval (Paragraph 116), are beyond the requirement of compliance authorized by the Air Quality Control Act, § 74-2-12(A)(1).

9. The assessment of administrative compliance costs is not authorized by the Air Quality Control Act, § 74-2-12(A), and therefore, fails to state a claim upon which relief can be granted.

10. The substantial time between the AQB's alleged observation of violations and the assessment of penalties for these alleged violations violates due process under the Fourteenth Amendment of the United States Constitution and Article II, Section 18 of the New Mexico Constitution.

11. The orders and the penalty assessment in the Compliance Order are barred by the doctrines of laches and estoppel because of the substantial delay between alleged observed violations and the assessment of penalties based on those violations.

PRAYER FOR RELIEF

Ameredev respectfully requests that the Secretary grant the following relief:

1. Denial of the violations alleged in the Compliance Order, to the extent contested by Ameredev;
2. Denial of the relief requested in the Compliance Order, including the specified corrective actions, the assessed civil penalties, and the assessed compliance costs; and,
3. Such other relief as the Secretary deems just and proper, including, but not limited to, reduction of the penalty assessment.

Respectfully submitted,

MONTGOMERY & ANDREWS, P.A.

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CERTIFICATE OF SERVICE

I hereby certify that on July 28, 2023, a true copy of the foregoing ***Respondent Ameredev II, LLC's Request for Hearing and Answer to Compliance Order*** was served via electronic mail to the following:

Chris Vigil
Assistant General Counsel
Christopherj.vigil@env.nm.gov

Attorney for New Mexico Environment Department

By: /s/ Louis W. Rose