

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the Matter of:

Diversified Production LLC	:	
1800 Corporate Drive	:	Oil and Gas Act
Birmingham, AL 35242	:	

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 1ST day of August 2021, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department") and Diversified Production LLC.

Findings

The Department has found and determined the following:

A. The Department is the agency with the duty and authority to administer and enforce the Oil and Gas Act, Act of February 14, 2012, P.L. 87, No. 13, 58 Pa. C.S. §§ 3201-3274 ("Oil and Gas Act"); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. § 510-17 ("Administrative Code"); and the rules and regulations promulgated thereunder ("Regulations").

B. Diversified Production LLC is an Alabama limited liability company, registered to do business in Pennsylvania and is engaged in various oil and gas exploration and production activities in Pennsylvania ("Diversified"). Diversified's business address is 1800 Corporate Drive, Birmingham, Alabama 35242.

C. EQT Production Company ("EQT") is a Pennsylvania corporation that is engaged in various oil and gas exploration activities in Pennsylvania. EQT's business address is 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222.

D. EQT was the “owner” and/or “operator,” as those terms are defined in Section 3203 of the Oil and Gas Act, 58 Pa. C.S. § 3203, of the 15 wells identified in Exhibit A (“EQT Wells”). The site on which the well is located shall be referred to herein as the “Well Site” as that term is defined in Section 3216(h) of the 2012 Oil and Gas Act, 58 Pa. C.S. § 3216(h), and 25 Pa. Code § 78a.1.

E. On March 7, 2019, Diversified entered into a consent order and agreement with the Department regarding its acquisition of certain oil and or gas wells in the Commonwealth of Pennsylvania that were abandoned or not producing (“Diversified COA”). The Diversified COA is attached as Exhibit B.

F. Paragraph 4.j. of the Diversified COA provides that prior to acquiring any additional abandoned wells or wells not in production, Diversified shall enter into a consent order and agreement with the Department regarding the plugging and bonding of those acquired additional abandoned wells prior to their acquisition and any such consent order and agreement shall include a performance bond of \$20,000 for each additional well acquired.

G. Paragraph 4.k. of the Diversified COA provides an exception to entering a fully bonded consent order and agreement as required in Paragraph 4.j. of the Diversified COA, if Diversified puts any acquired additional abandoned wells into production, as “production” is defined in Paragraph 4.f.(ii) of the Diversified COA, within six months of said acquisition (the “Grace Period”).

H. Paragraph 4.k. further provides that if after the Grace Period, Diversified fails to demonstrate the acquired additional wells are capable of producing five hundred thousand (500,000) cubic feet of natural gas per year, Diversified shall enter into a consent order and

agreement with an administratively complete performance bond for such acquired abandoned wells as set forth in Paragraph 4.j. of the Diversified COA.

I. In November 2020, Diversified acquired the EQT Wells and on December 4, 2020, the Department received a Department Form 5500-PM-OG0010 “Application for Transfer of Well Permit or Registration” to transfer the permits for the EQT Wells from EQT to Diversified.

J. Diversified placed three of the EQT Wells, Royal, Huey 590561 (API No. 031-25449), Royal, Huey 590562 (API No. 031-25450), and the Hurd, Chetwin 591186 (API No. 033-27031) into production as defined in Paragraph 4.f.(ii) of the Diversified COA prior to December 31, 2020.

K. Diversified did not enter into a consent order and agreement with the Department prior to acquiring the EQT Wells and did not place twelve (12) of the EQT Wells into production as set forth in Paragraph 4.f.(ii) of the Diversified COA within the Grace Period provided by Paragraph 4.k. of the Diversified COA. These twelve (12) EQT Wells that were not placed into production are identified in Exhibit C (“Abandoned Wells”).

L. Contemporaneously with the execution of this Consent Order and Agreement, the Department transferred the permits for the EQT Wells from EQT to Diversified.

Applicable Law

M. Diversified is the “owner” and “operator,” as those terms are defined in Section 3203 of the Oil and Gas Act, 58 Pa. C.S. § 3203, of the EQT Wells.

N. The Abandoned Wells are each an “abandoned well” as that term is defined in Section 3203 of the Oil and Gas Act, 58 Pa. C.S. § 3203.

O. Pursuant to Section 3220(a) of the Oil and Gas Act, 58 Pa. C.S. § 3220(a), upon abandoning any well, the owner or operator thereof shall plug the well in a manner prescribed by regulation of the Department.

P. Pursuant to Section 3211(k) of the Oil and Gas Act, 58 Pa. C.S. § 3211(k), approval of a transfer request shall permanently transfer responsibility to plug the wells under Section 3220 to the recipient of the transferred permit or registration.

Q. The Diversified COA is an Order of the Department authorized and issued pursuant to Section 3253 of the Oil and Gas Act, 58 Pa. C.S. § 3253, and Section 1917-A of the Administrative Code, 71 P.S. § 510-17.

R. This Consent Order and Agreement is the consent order and agreement required by Paragraph 4.k. of the Diversified COA for the Abandoned Wells.

Order

After full and complete negotiation of all matters set forth in this Consent Order and Agreement, and upon mutual exchange of the covenants contained herein, the Parties desiring to avoid litigation and intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by Diversified as follows:

1. **Authority.** This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to Section 3253 of the Oil and Gas Act, 58 Pa. C.S. § 3253, and Section 1917-A of the Administrative Code, 71 P.S. § 510-17.

2. **Findings.**

a. Diversified agrees that the Findings in Paragraphs A through R, above, are true and correct and, in any matter or proceeding involving Diversified and the Department, Diversified shall not challenge the accuracy or validity of these Findings.

b. The parties do not authorize any other persons to use the Findings in this Consent Order and Agreement in any matter or proceeding.

3. ***Performance Bond.***

a. Within **30 days** after the date of this Consent Order and Agreement, Diversified shall submit to the Department an administratively complete performance bond in the amount of Two Hundred Forty Thousand Dollars (\$240,000.00) for the Abandoned Wells (“Performance Bond”).

b. Forfeiture of the Performance Bond shall not be governed by the forfeiture provisions of Section 3225 of the Oil and Gas Act, 58 Pa. C.S. § 3225, but by the terms of Paragraph 6, below.

c. *If Diversified fully performs its obligations under this Consent Order and Agreement, and if Diversified’s obligations under this Consent Order and Agreement have been terminated in accordance with Paragraph 19, below, Diversified may, in writing, request release of the Performance Bond from the Department. No release of or reduction in the amount of the Performance Bond may be sought by Diversified so long as any obligation(s), current or future, under this Consent Order and Agreement remain to be addressed.*

4. ***Corrective Actions.*** Diversified shall take all actions necessary to bring the Abandoned Wells into compliance with all applicable Pennsylvania Laws, including the Oil and Gas Act and the Regulations. Such actions shall include:

a. Well Plugging/Production Schedule. Diversified shall completely plug the Abandoned Wells or place the Abandoned Wells into production according to the following schedule:

i. Within one year after the date of this Consent Order and Agreement, Diversified shall completely plug or place into

production six (6) Abandoned Wells;

- ii. Within two years after the date of this Consent Order and Agreement, Diversified shall completely plug or place into production all remaining Abandoned Wells.

b. Well Production Definition. For purposes of the Consent Order and Agreement, an Abandoned Well shall be “back in production,” “in production,” or “into production” if the Abandoned Well is equipped to produce and is producing gas in amounts greater than or equal to 500,000 cubic feet of natural gas per year.

- c. Well Production Obligations.

- i. Within **90 days** after placing an Abandoned Well “into production,” as that term is defined in Paragraph 4.b., above, Diversified shall submit a written documents that such Abandoned Well is “in production” as defined in Paragraph 4.b. Such written documentation includes, but is not limited to, a copy of the well production chart covering the 90 days after placing the Abandoned Well “into production” and a signed statement that each reported Abandoned Well is “in production” as defined in Paragraph 4.b., above.
- ii. Diversified shall ensure that each Abandoned Well that it places “back in production” continues to meet the definition set forth in Paragraph 4.b., above, until this Consent Order and Agreement is terminated or the Abandoned Well is plugged in accordance with Paragraph 4.c.v., below.
- iii. For each Abandoned Well, Diversified shall submit the annual production reports in accordance with 58 Pa. C.S. § 3222(a) and conduct a mechanical integrity assessment that meets the requirements of 25 Pa. Code § 78a.88.
- iv. The Department will review the production reports submitted by Diversified and will provide written notice to Diversified for any Abandoned Well that was placed back in production but no longer meets the definition of “in production” set forth in Paragraph 4.b., above.
- v. Diversified shall plug any Abandoned Well that is no longer “in production,” as that term is defined in Paragraph 4.b., above,

within six months after receiving written notice from the Department as described in Paragraph 4.c.iv., above.

- vi. The provisions of this Paragraph 4.c. will be deemed to be satisfied for the purposes of termination of the Consent Order and Agreement under Paragraph 19, below, when Diversified submits the annual production report for the production year 2023, provided that the annual production report demonstrates that each Abandoned Well returned to production remained “in production,” as that term is defined in Paragraph 4.b., above, for the entirety of production year 2023. This Paragraph 4.c.vi. does not limit Diversified’s ability to plug and/or place the Abandoned Wells into production sooner than provide for in the schedule set forth in Paragraph 4.a., above. In that event, the provisions of this Paragraph 4.c. will be deemed to be satisfied for purposes of termination of the Consent order and agreement under Paragraph 19, below, if (1) all the Abandoned Wells have been plugged and/or place “in production” as defined in Paragraph 4.b., above, and (2) all Abandoned Wells returned to production maintain production for one full year following the calendar year that the Abandoned Wells were returned to production, as demonstrated by the annual production report submitted for the applicable production year.

d. Well Plugging. With respect to any Abandoned Well required to be plugged under this Paragraph 4, Diversified shall fully plug each such Abandoned Well in accordance with the requirements of 25 Pa. Code §§ 78a.91-78a.98 and Paragraphs 4.d.i. through 4.d.iv., below:

- i. Notice of Intent to Plug. At least three days, but not more than 30 days before the scheduled plugging date for each Abandoned Well to be plugged, Diversified shall submit to the Department Form 5500-FM-OG0005, “Notice of Intention by Well Operator to Plug a Well,” a well location plat, and other relevant information to the Department.
- ii. Well Markers. No less than seven days after plugging, Diversified shall install a permanent well marker for each Abandoned Well plugged as required by 25 Pa. Code § 78a.96.

- iii. Plugging Certificates. Within 30 days after plugging a Well, Diversified shall submit to the Department Form 5500-FM-OG0006, "Certificate of Well Plugging," for each Abandoned Well plugged as required by 25 Pa. Code § 78a.124.
- iv. Well Site Reclamation. Within nine (9) months after plugging each Abandoned Well, Diversified shall completely reclaim the well site pursuant to Section 3216 of the Oil and Gas Act, 58 Pa. C.S. § 3216, and 25 Pa. Code § 78a.65.

5. ***Submission of Documents.*** With regard to any document Diversified may submit pursuant to this Consent Order and Agreement, the Department will review the document and will approve or disapprove the document, or portion thereof, in writing. If the document, or any portion thereof, is disapproved by the Department, Diversified shall submit a revised document to the Department that addresses the Department's concerns within a reasonable time, as specified by the Department. The Department will approve, or modify and approve, the document in writing. Upon approval by the Department, the document shall become a part of this Consent Order and Agreement for all purposes and shall be enforceable as such.

6. ***Stipulated Civil Penalties.***

a. If Diversified fails to comply in a timely manner with any provision of Paragraph 4, above, of this Consent Order and Agreement, Diversified shall be in violation of this COA and, in addition to other applicable remedies, shall pay a civil penalty in the amount of One Hundred Dollars (\$100.00) per day for each violation.

b. Stipulated civil penalty payments shall be payable monthly on or before the fifteenth (15th) day of each succeeding month, and shall be made by corporate check or the like made payable to the Commonwealth of Pennsylvania and sent to the address set forth in Paragraph 11, below.

c. Any payment under this paragraph shall neither waive Diversified's duty to meet its obligations under this Consent Order and Agreement nor preclude the Department from commencing an action to compel Diversified's compliance with the terms and conditions of this Consent Order and Agreement. The payment resolves only Diversified's liability for civil penalties arising from the violation of this Consent Order and Agreement for which the payment is made.

d. Stipulated civil penalties shall be due automatically and without notice.

7. ***Non-compliance with this Consent Order and Agreement.*** If Diversified fails to comply in a timely manner with the obligations set forth in Paragraph 4 or 5, above, of this Consent Order and Agreement, the Department, in its sole discretion, and in accordance with the procedure set forth in this Paragraph 7 may forfeit the Performance Bond.

a. Upon Diversified's receipt of a written notice of its failure to comply in a timely manner with any obligation set forth in Paragraph 4 or 5, above, from the Department ("Notice of Breach"), Diversified shall correct the violations identified in the Notice of Breach within 30 calendar days or within such period of time as approved by the Department in writing.

b. If Diversified fails to timely correct the violations identified in the Notice of Breach, the Department, in its sole discretion, may forfeit the entire Performance Bond. Diversified waives its right to appeal such forfeiture, and such forfeiture shall be in addition to any civil penalty liability that may be assessed for failure to comply with an order of the Department or other violations and stipulated penalties as set forth in Paragraph 6, above.

8. ***Additional Remedies.***

a. If Diversified fails to comply with any provision of this Consent Order and Agreement, the Department may, in addition to the remedies prescribed herein, pursue any

remedy available for a violation of an order of the Department, including an action to enforce this Consent Order and Agreement.

b. The remedies provided by this paragraph, Paragraph 5, above, and Paragraph 7, above, are cumulative and the exercise of one does not preclude the exercise of any other. The failure of the Department to pursue any remedy shall not be deemed to be a waiver of that remedy. The payment of a stipulated civil penalty, however, shall preclude any further assessment of civil penalties for the violation for which the stipulated civil penalty is paid.

9. ***Reservation of Rights.*** The Department reserves the right to require additional measures to achieve compliance with applicable law. Diversified reserves the right to challenge any action which the Department may take to require those measures.

10. ***Liability of Operator.*** Diversified shall be liable for any violations of this Consent Order and Agreement, including those caused by, contributed to, or allowed by its officers, agents, employees, or contractors. Diversified also shall be liable for any violation of this Consent Order and Agreement caused by, contributed to, or allowed by its successors and assigns.

11. ***Correspondence with the Department.*** All correspondence with the Department concerning this Consent Order and Agreement shall be addressed to:

Jennifer Kosco, Compliance Specialist
Northwest District Oil and Gas Operations
Pennsylvania Department of Environmental Protection
230 Chestnut Street
Meadville, PA 16335-3481
jkosco@pa.gov

12. ***Correspondence with Diversified.*** All correspondence with Diversified concerning this COA shall be addressed to:

Mr. Paul M. Espenan
Vice President – Environment, Health & Safety
Diversified Production LLC
414 Summers Street
Charlestown, WV 25301

Diversified shall notify the Department whenever there is a change in the contact person's name, title, address, e-mail address, and phone or fax numbers. Service of any notice or any legal process for any purpose under this Consent Order and Agreement, including its enforcement, may be made by mailing a copy by first class mail to the above address.

13. ***Transfer of Abandoned Wells.***

a. The duties and obligations under this Consent Order and Agreement shall not be modified, diminished, terminated or otherwise altered by the transfer of any legal or equitable interest in the Abandoned Wells, or any part thereof.

b. If Diversified intends to transfer any legal or equitable interest in the Abandoned Wells or any part thereof which is affected by this Consent Order and Agreement, Diversified shall serve a copy of this Consent Order and Agreement upon the prospective transferee of the legal and equitable interest at least thirty (30) days prior to the contemplated transfer and shall simultaneously inform the Department of such intent.

c. If Diversified seeks to pursue a transfer of any legal or equitable interest in the Abandoned Wells, or any part thereof which is affected by this Consent Order and Agreement, it may seek to modify this Consent Order and Agreement to authorize assignment of the respective obligations hereunder to such transferee. The Department in its sole discretion may agree to modify or terminate Diversified's duties and obligations under this Consent Order

and Agreement upon transfer of the Abandoned Wells or any part thereof which is affected by this Consent Order and Agreement. Diversified waives any right that it may have to challenge the Department's decision in this regard.

14. ***Severability.*** The paragraphs of this Consent Order and Agreement shall be severable and should any part hereof be declared invalid or unenforceable, the remainder shall continue in full force and effect between the parties.

15. ***Entire Agreement.*** This Consent Order and Agreement shall constitute the entire integrated agreement of the parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or intent of any provisions herein in any litigation or any other proceeding.

16. ***Attorney Fees.*** The parties shall bear their respective attorney fees, expenses, and other costs in the prosecution or defense of this matter or any related matters, arising prior to execution of this Consent Order and Agreement.

17. ***Modifications.*** No changes, additions, modifications, or amendments of this Consent Order and Agreement shall be effective unless they are set out in writing and signed by the parties.

18. ***Titles.*** A title used at the beginning of any paragraph of this Consent Order and Agreement may be used to aid in the construction of that paragraph, but shall not be treated as controlling.

19. ***Decisions Under Consent Order and Agreement.*** Diversified waives its rights to appeal to the Environmental Hearing Board any decision which the Department makes under the provisions of this Consent Order and Agreement, including a notice that stipulated civil penalties are due, which rights may be available under Section 4 of the Environmental Hearing Board Act,

the Act of July 13, 1988, P.L. 530, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A; or any other provision of law. Except as otherwise provided in Paragraph 13.c., above, the Department agrees that any objection Diversified may have to the decision may be raised as a defense in any Court where the Department enforces this Consent Order and Agreement.

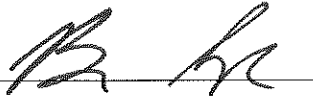
20. *Termination of Consent Order and Agreement.* Diversified's obligations, but not the findings under this Consent Order and Agreement shall terminate when Diversified has: 1) complied with all of the requirements of this Consent Order and Agreement; and 2) paid any outstanding penalties due under Paragraph 6, above. Diversified's compliance with this Consent Order and Agreement shall be determined by the Department and shall not be appealable by Diversified.

IN WITNESS WHEREOF, the parties hereto have caused this Consent Order and Agreement to be executed by their duly authorized representative. The undersigned representative(s) of Diversified certify under penalty of law, as provided by 18 Pa. C.S. § 4904, that they are authorized to execute this Consent Order and Agreement on behalf of Diversified; that Diversified consents to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that Diversified hereby knowingly waives its right to appeal this Consent Order and Agreement and to challenge its content or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A; or

any other provision of law. Signature by Diversified's attorney certifies only that the agreement has been signed after consulting with counsel.

FOR DIVERSIFIED PRODUCTION LLC:

Name
Title



Name
Attorney for Diversified Production LLC

**FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:**

Richard L. Neville
Regional Manager
Oil and Gas Management
Northwest Region

Michael A. Braymer
Supervisory Counsel

Exhibit A
Diversified Wells

Permit Number	Well Name	Municipality	County
031-25297	Wedekind, F. 590389	Elk	Clarion
031-25448	Royal, Huey 590560	Toby	Clarion
031-25449	Royal, Huey 590561	Toby	Clarion
031-25450	Royal, Huey 590562	Toby	Clarion
031-25516	Royal, Huey 590563	Toby	Clarion
047-24541	Longhorn, A. 590830	Horton	Elk
047-24537	Longhorn, A. 590835	Horton	Elk
047-24545	Longhorn, C. 590842	Jay	Elk
047-24546	Longhorn, C. 590844	Jay	Elk
047-24547	Longhorn, C. 590845	Jay	Elk
047-24548	Longhorn, C. 590846	Jay	Elk
033-27031	Hurd, Chetwin 591186	Ferguson	Clearfield
031-25404	Ashbaugh, John Unit A 1H	Ashland	Clarion
031-25405	Emrick, Neil Unit A 1H	Elk	Clarion
023-20157	Whippoorwill 590873	Shippen	Cameron

Exhibit C

Abandoned Wells

Permit Number	Well Name	Municipality	County
031-25297	Wedekind, F. 590389	Elk	Clarion
031-25448	Royal, Huey 590560	Toby	Clarion
031-25516	Royal, Huey 590563	Toby	Clarion
047-24541	Longhorn, A. 590830	Horton	Elk
047-24537	Longhorn, A. 590835	Horton	Elk
047-24545	Longhorn, C. 590842	Jay	Elk
047-24546	Longhorn, C. 590844	Jay	Elk
047-24547	Longhorn, C. 590845	Jay	Elk
047-24548	Longhorn, C. 590846	Jay	Elk
031-25404	Ashbaugh, John Unit A 1H	Ashland	Clarion
031-25405	Emrick, Neil Unit A 1H	Elk	Clarion
023-20157	Whippoorwill 590873	Shippen	Cameron