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8 THE SUPERIOR COURT OF THE STATE OF ARIZONA  
9 FOR MARICOPA COUNTY

10 **STATE OF ARIZONA, ex rel.**  
11 **STEPHEN A. OWENS, Director,**  
Arizona Department of  
Environmental Quality,

12 Plaintiffs,

13 vs.

14 **EL PASO NATURAL GAS**  
15 **COMPANY, a Delaware Corporation,**

16 Defendant.

Civil Action No.

**CONSENT JUDGMENT**

**(Non-classified Civil)**

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17 **I. PARTIES**

18 A. The State of Arizona ex rel. Stephen A. Owens, Director, Arizona Department of  
19 Environmental Quality (“the State”), has filed the Complaint alleging violations by the  
20 Defendant of Arizona Revised Statutes (“A.R.S.”) Title 49, Chapter 3, Article 2 and rules  
21 promulgated thereunder. The State brought claims pursuant to A.R.S.§49-463 seeking civil  
22 penalties.  
23  
24  
26

1           B.     Stephen A. Owens is the Director of the Arizona Department of Environmental  
2 Quality (“ADEQ”) and has been duly authorized by the State to enter into this Consent  
3 Judgment for and on behalf of the State.  
4

5           C.     El Paso Natural Gas Company (“EPNG”) owns and operates a system of interstate  
6 natural gas pipelines, a portion of which is located in the State of Arizona. EPNG’s principal  
7 place of business is located at 2 North Nevada Avenue, Colorado Springs, Colorado 80903.  
8

9           D.     On or about \_\_\_\_\_, the State filed the Complaint (\_\_\_\_\_) in the  
10 Superior Court of Arizona, County of Maricopa against EPNG. EPNG acknowledges through  
11 its authorized representative it has been provided with a copy of the Waiver of Service and  
12 Complaint in this action and has been fully advised of its right to a trial in this matter and waives  
13 the same.  
14

15           E.     EPNG admits the jurisdiction of this Court and that venue is proper in Maricopa  
16 County.  
17

18           F.     EPNG has consented to the terms and entry of this Consent Judgment and  
19 acknowledges that the State has made no promise of any kind or nature other than what is set  
20 forth in this Consent Judgment, and that EPNG has entered into this Consent Judgment  
21 voluntarily and after due consideration.  
22

23           G.     It is in the best interests of the State and the public to enter into this Consent  
24 Judgment. The parties hereby intend to completely and finally settle and release the civil  
25 liability of EPNG for the violations described in the Complaint, and hereby move the Court to  
26 enter this Consent Judgment according to the terms set forth herein.

1           **NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED**

2 as follows:

3  
4                                   **II. JURISDICTION AND VENUE**

5           A.     The Court has jurisdiction over the subject matter of this action and the parties  
6 pursuant to A.R.S. §§ 49-462, 49-463, and 12-123. The Complaint states claims upon which  
7 relief may be granted against EPNG.

8           B.     Venue is proper in Maricopa County pursuant to A.R.S. §§ 12-401(17).

9  
10                                   **III. BINDING EFFECT**

11           A.     This Consent Judgment constitutes and embodies the full and complete  
12 understanding of the parties and supersedes all prior understandings or agreements, whether oral  
13 or in writing, which pertain to the subject matter contained herein.

14           B.     The State and EPNG hereby consent to the terms and entry of this Consent  
15 Judgment, and agree not to contest its validity in any subsequent proceeding. This Consent  
16 Judgment applies to and is binding upon the State and upon EPNG and their respective officers,  
17 directors, agents, servants, employees, attorneys, successors, assigns and all persons, firms and  
18 corporations acting in active concert or participation with both the State and EPNG.

19           C.     The State and EPNG certifies that their respective undersigned representatives are  
20 fully authorized to enter into the terms and conditions of this Consent Judgment, to execute it on  
21 behalf of the State and EPNG and to legally bind the State and EPNG to its terms.

22                   ///

23                   ///

1 **IV. DEFINITIONS**

2 The terms used in this Consent Judgment shall have the same meanings as defined in  
3 Title 49 A.R.S., Chapter 3, Articles 1 and 2 and all applicable regulations enacted thereunder.  
4

5 **“Complaint”** means the civil complaint no. \_\_\_\_\_ filed by the State in the Superior  
6 Court of Arizona, County of Maricopa against EPNG on or about \_\_\_\_\_.

7 **“Day”** shall mean a calendar day, unless otherwise noted. In computing any period under  
8 this Consent Judgment, where the last day would fall on a Saturday, Sunday, or a State or  
9 Federal holiday, the period shall run until the close of business of the next working day.  
10

11 **“Effective Date”** shall be the date that the Consent Judgment is entered by this Court.

12 **“Parties”** means the State of Arizona ex rel. Stephen A. Owens, Director, Arizona  
13 Department of Environmental Quality and El Paso Natural Gas Company.  
14

15 **“State”** means the Plaintiffs, State of Arizona ex rel. Stephen A. Owens, Director,  
16 Arizona Department of Environmental Quality. For purposes of this Consent Judgment, the  
17 State does not include any other Agency, Board, Commission, Department, Officer or  
18 employees of the State of Arizona.  
19

20 **V. CIVIL PENALTY AND AGREEMENTS**

21 A. EPNG shall pay to the State the sum of Two Hundred Twenty-five Thousand  
22 United States dollars (\$225,000.00) as a civil penalty pursuant to A.R.S. §49-463 within fifteen  
23 (15) days from the Effective Date.  
24

25 B. EPNG may make any payment required by this Consent Judgment at any time  
26 prior to the deadline specified in this Consent Judgment without premium or penalty.

1 C. EPNG and the State agree that the civil penalty imposed by the State and agreed to  
2 by EPNG constitutes a debt for a fine, penalty or forfeiture payable to and for the benefit of a  
3 governmental unit, is not compensation for actual pecuniary loss, and is specifically non-  
4 dischargeable under 11 U.S.C. § 523(a)(7). Upon entry of this Consent Judgment, the State shall  
5 be deemed a judgment creditor for purposes of collecting the civil penalty.  
6

7 D. EPNG agrees to have on its staff at all times subsequent to the entry of this  
8 Consent Judgment at least one employee responsible for supervising Asbestos NESHAP  
9 compliance on projects involving the renovation or demolition of pipelines who is certified as an  
10 Asbestos Hazardous Emergency Response Act (“AHERA”) building inspector/management  
11 planner. EPNG further agrees that any future training of EPNG staff on the proper management  
12 of such pipeline demolition or renovation projects shall be performed by a certified AHERA  
13 building inspector/management planner.  
14  
15

16 E. The State shall have the right to record this Consent Judgment in every County in  
17 Arizona.  
18

19 **VI. MANNER OF PAYMENT**

20 All payments made to the State under this Consent Judgment, including the monetary  
21 judgment and interest payments, shall be made by EPNG company check, cashier’s check, or  
22 money order payable to “State of Arizona” and shall be hand-delivered or mailed and  
23 postmarked, postage prepaid, to:  
24

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26 ///

1 Michael Clark  
2 Chief Financial Officer  
3 Arizona Department of Environmental Quality  
4 ATTN: Accounts Receivable  
5 1110 W. Washington Street  
6 Phoenix, AZ 85007

7 together with a letter tendering the payment. In the alternative, upon prior written notification to  
8 the Chief Financial Officer at the above address, the payments may be made by wire transfer to  
9 “State of Arizona”, Bank of America, Account No. 122101706-001-000-985. All letters  
10 regarding payment shall identify this case by the names of the Parties and the Court docket  
11 number. Copies of the letters shall be sent to the Office of the Attorney General at:

12 Barbara U. Pashkowski  
13 Assistant Attorney General  
14 Environmental Enforcement Section  
15 Office of the Attorney General  
16 1275 W. Washington Street  
17 Phoenix, Arizona, 85007

18 and to ADEQ at:

19 Manager, Air Quality Compliance Section  
20 Arizona Department of Environmental Quality  
21 1110 W. Washington Street  
22 Phoenix, AZ 85007

## 23 **VII. SUBMISSIONS**

24 Documents, materials or notices submitted in accordance with this Consent Judgment  
25 shall be deemed submitted when postmarked, return receipt requested, accepted for delivery by  
26 a commercial delivery service, sent by telecopy, or hand delivered.

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1 **VIII. MATERIAL BREACH**

2 Any failure by EPNG to pay the monetary judgment within the times specified by Section  
3 V shall constitute a material breach and violation of this Consent Judgment. The State, in its  
4 sole discretion, shall have the option of either:  
5

6 A. Enforcing this Consent Judgment through the Court, in which case EPNG shall be  
7 liable for interest and additional penalties pursuant to the provisions of A.R.S. § 49-113(B) and  
8 the State's costs and attorneys' fees incurred in enforcing this Consent Judgment;  
9

10 B. Declaring the Consent Judgment null and void, and the State may pursue the  
11 Complaint or refile this action against EPNG. In this event EPNG shall be barred from alleging  
12 the affirmative defenses of estoppel, laches, or the expiration of any statute of limitations. In  
13 any future actions for the violations contained in the Complaint, EPNG shall receive credit for  
14 any civil penalties paid to the State pursuant to this Consent Judgment.  
15

16 **IX. RELEASE**

17 A. Upon fulfillment of its obligations under Section V, EPNG is hereby released from  
18 any and all civil liability to the State for any and all violations alleged in the Complaint.  
19

20 B. This release does not cover criminal liability under any local, state or federal  
21 statute or regulation.

22 C. EPNG releases the State of Arizona, its agencies, departments, officials,  
23 employees or agents from any and all claims or causes of action, known or unknown, arising  
24 under or related to the allegations contained in the Complaint.  
25  
26



1 thereunder, or any other violation of Arizona state law, occurring after the Effective Date and  
2 not set forth in the Complaint.

3  
4 B. This Consent Judgment does not encompass issues regarding violations, sources,  
5 operations, facilities or processes of EPNG not expressly covered by the terms of this Consent  
6 Judgment and are without prejudice to the rights of the State of Arizona arising under any of the  
7 environmental statutes and rules of Arizona with regard to such matters. The State reserves the  
8 right to take any and all appropriate legal action against EPNG for violations which are not  
9 alleged in the Complaint. The State reserves the right to take any and all appropriate action  
10 necessary to protect the public health, welfare, or the environment.

11  
12 C. Nothing in this Consent Judgment shall constitute a permit of any kind, or a  
13 modification of any permit of any kind, under federal, state or local law. Nothing in this  
14 Consent Judgment shall in any way alter, modify or revoke federal, state or local statutes,  
15 regulations, rules or requirements. Nor shall this Consent Judgment affect or relieve EPNG in  
16 any manner of its obligations to apply for, obtain and comply with applicable federal, state and  
17 local permits. Compliance with the terms of this Consent Judgment shall be no defense to an  
18 action to enforce any such permits or requirements. The State does not by its consent to the  
19 entry of this Consent Judgment, warrant or aver that compliance with this Consent Judgment  
20 will constitute or result in compliance with Arizona law. Notwithstanding the State's review  
21 and approval of any materials submitted pursuant to this Consent Judgment, EPNG shall remain  
22 solely responsible for compliance with any other applicable federal, state or local law or  
23 regulation. Any submissions made to the State pursuant to this Consent Judgment shall not be  
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1 interpreted as a waiver or limitation of the State’s authority to enforce any federal, state, or local  
2 statute or regulation including permit conditions.

3  
4 D. The State shall have the right to take enforcement action for any and all violations  
5 of this Consent Judgment and reserves the right to pursue all legal and equitable remedies.

6 E. This Consent Judgment does not affect any Consent Orders in effect between the  
7 State and EPNG.

8  
9 F. The entry of this Consent Judgment shall not serve as a basis for any defenses of  
10 claim splitting, estoppels, laches, res judicata, or waiver challenging the State’s legal right to  
11 bring an action regarding matters not expressly covered by this Consent Judgment.

12 **XIV. MODIFICATIONS**

13  
14 Any modification of this Consent Judgment must be in writing and approved by the  
15 parties and the Court, except that any extensions for the performance of any requirement of this  
16 Consent Judgment may be requested in writing by EPNG and consented to in writing by the  
17 State.

18 **XV. RETENTION OF JURISDICTION**

19  
20 The Court shall retain jurisdiction over both the subject matter of this Consent Judgment  
21 and the Parties to effectuate and enforce this Consent Judgment, or to provide further orders,  
22 direction, or relief as may be necessary or appropriate for the construction, modification, or  
23 execution of this Consent Judgment.

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1 **CONSENT TO JUDGMENT**

2  
3 Thomas Morgan, on behalf of EPNG, hereby acknowledges that he is authorized to sign  
4 this Consent Judgment and bind EPNG to its entry, has read the foregoing Consent Judgment in  
5 its entirety, agrees with the statements made therein, consents to its entry by the Court and agrees  
6 that EPNG will abide by the same.

7 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

8  
9  
10 \_\_\_\_\_  
11 Thomas P. Morgan, Vice President  
12 El Paso Natural Gas Company

13 Nancy Wrona, on behalf of State of Arizona, hereby acknowledges that she is authorized  
14 by the Director of ADEQ to sign this Consent Judgment, has read the foregoing in its entirety,  
15 agrees with the statements made therein, consents to its entry by the Court and agrees that the  
16 State will abide by the same.

17 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

18 \_\_\_\_\_  
19 Nancy Wrona, Director  
20 Air Quality Division  
21 Arizona Department of Environmental Quality

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23  
24 #298030ke  
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