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8 **SUPERIOR COURT OF ARIZONA**  
9 **COUNTY OF MARICOPA**

11 STATE OF ARIZONA, *ex rel.*, STEPHEN A. )  
OWENS, Director, Arizona Department of )  
12 Environmental Quality, )  
13 )  
Plaintiff, )

Case No:

**CONSENT JUDGMENT**

14 vs. )  
15 )

16 EL PASO NATURAL GAS COMPANY, )  
a Delaware corporation, )  
17 )  
18 Defendant. )

19 **I. PARTIES**

20 A. The Plaintiff State of Arizona, ex rel. Stephen A. Owens, Director, Arizona  
21 Department of Environmental Quality (the “State”), has filed the Complaint alleging  
22 violations by the Defendant of Arizona Revised Statutes (“A.R.S.”) Title 49, Chapter 2 and  
23 rules promulgated thereunder. The State brought claims pursuant to A.R.S. §§ 49-924 and  
24 49-926, seeking civil penalties.  
25  
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.     Defendant El Paso Natural Gas Company (“EPNG”) owns and operates a  
6 system of natural gas pipelines, a portion of which is located in the State of Arizona. EPNG’s  
7 principal place of business is located at 2 North Nevada, Colorado Springs, Colorado 80903.  
8

9           D.     On or about \_\_\_\_\_, 2006, the State filed the Complaint in the  
10 Superior Court of Arizona, County of Maricopa, against EPNG. EPNG acknowledges that it  
11 has been provided with a copy of the Complaint in this action and waives service of process.  
12 EPNG further acknowledges that it has been fully advised of its right to a trial in this matter  
13 and has waived the same.  
14

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

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

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



1 **IV. DEFINITIONS**

2 The terms used in this Consent Judgment shall have the same meanings defined in  
3 A.R.S. Title 49, Chapter 5 and all applicable regulations enacted thereunder.

4 “**Complaint**” means the civil complaint no. \_\_\_\_\_, filed by the  
5 State in the Superior Court of Arizona, County of Maricopa against EPNG on or about  
6 \_\_\_\_\_, 2006.

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

12 “**Defendant**” shall mean El Paso Natural Gas Company (“EPNG”), a Delaware  
13 corporation.

14 “**Effective Date**” shall mean the day this Consent Judgment is entered by the Court.

16 “**Parties**” means the State of Arizona ex. rel., Stephen A. Owens, Director, Arizona  
17 Department of Environmental Quality, and EPNG.

18 “**State**” means the Plaintiff, State of Arizona, ex. rel., Stephen A. Owens, Director,  
19 Arizona Department of Environmental Quality. For the purposes of this Consent Judgment,  
20 the State does not include any other Agency, Board, Commission, Department, Officer or  
21 employee of the State of Arizona.  
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1 **V. CIVIL PENALTY AND AGREEMENTS**

2 A. EPNG shall pay to the State the sum of One Hundred Fifteen Thousand United  
3 States dollars (\$115,000.00 U.S.) as a civil penalty pursuant to A.R.S. § 49-924(A) within  
4 fifteen (15) days from the Effective Date.  
5

6 B. EPNG may make any payment required by this Consent Judgment at any time  
7 prior to the deadline specified in this Consent Judgment without premium or penalty.  
8

9 C. EPNG and the State agree that the civil penalty imposed by the State and agreed  
10 to by EPNG constitutes a debt for a fine, penalty or forfeiture payable to and for the benefit of  
11 a governmental unit, is not compensation for actual pecuniary loss, and is specifically non-  
12 dischargeable under 11 U.S.C. § 523(a)(7). Upon entry of this Consent Judgment, the State  
13 shall be deemed a judgment creditor for purposes of collecting the civil penalty.  
14

15 D. The State shall have the right to record this Consent Judgment in every County  
16 in Arizona.

17 **VI. MANNER OF PAYMENT**

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

22  
23 Michael D. Clark  
24 Chief Financial Officer  
25 Arizona Department of Environmental Quality  
26 ATTN: Accounts Receivable  
1110 W. Washington Street  
Phoenix, AZ 85007

1 together with a letter tendering the payment. In the alternative, upon prior written notification  
2 to the Chief Financial Officer at the above address, the payments may be made by wire  
3 transfer to "Sate of Arizona," Bank of America, Account No. 122101706-001-000-985. All  
4 letters regarding payment shall identify this case by the name of the Parties and the Court  
5 docket number. Copies of the letters shall be sent to the Office of the Attorney General at:  
6

7  
8 Jamee Maurer Klein  
9 Assistant Attorney General  
10 Environmental Enforcement Section  
11 Office of the Attorney General  
12 1275 W. Washington Street  
13 Phoenix, AZ 85007

14 And to ADEQ at:

15 Carol Hibbard, Manager  
16 Hazardous Waste Inspections and Compliance Unit  
17 Waste Programs Division  
18 Arizona Department of Environmental Quality  
19 1110 W. Washington Street  
20 Phoenix, AZ 85007

## 21 **VII. SUBMISSIONS**

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

## 26 **VIII. MATERIAL BREACH**

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



1 **X. SEVERABILITY**

2 This Consent Judgment is not severable. If any Section of this Consent Judgment is  
3 declared invalid or unenforceable by this Court, the entire Consent Judgment is rendered  
4 invalid and the Parties shall return to the positions they occupied before the execution of this  
5 Consent Judgment.  
6

7 **XI. APPLICABLE LAW**

8 The validity, meaning, interpretation, enforcement and effect of this Consent Judgment  
9 shall be governed by the law of the State of Arizona.  
10

11 **XII. COSTS OF SUIT**

12 Each party shall bear its own costs and attorneys' fees in this action, except that  
13 pursuant to Section VIII, EPNG shall be liable to the State for any costs and/or attorneys' fees  
14 incurred in enforcing this Consent Judgment.  
15

16 **XIII. RESERVATION OF RIGHTS**

17 A. Entry of this Consent Judgment is solely for the purpose of settling the  
18 Complaint, and except as expressly set forth herein, does not preclude the State or any other  
19 agency or officer or subdivision of the State of Arizona, from instituting other administrative,  
20 civil or criminal proceedings as may be appropriate now or in the future, initiating a civil or  
21 criminal action against EPNG for violations of Title 49, Article 5, or the rules promulgated  
22 thereunder, or any other violation of Arizona state law, occurring after the Effective Date and  
23 not set forth in the Complaint or September 10, 2004 Notice of Violation.  
24  
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1           B.     This Consent Judgment does not encompass issues regarding violations,  
2 sources, operations, facilities or processes of EPNG not expressly covered by the terms of this  
3 Consent Judgment and are without prejudice to the rights of the State of Arizona arising  
4 under any of the environmental statutes and rules of Arizona with regard to such matters. The  
5 State reserves the right to take any and all appropriate legal action against EPNG for  
6 violations which are not alleged in the Complaint. The State reserves the right to take any  
7 and all appropriate action necessary to protect the public health, welfare, or the environment.  
8

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

4  
5 E. This Consent Judgment does not affect any Consent Orders in effect between  
6 the State and EPNG.

7 F. The entry of this Consent Judgment shall not serve as a basis for any defense of  
8 claim splitting, estoppel, laches, res judicata, or waiver challenging the State's legal right to  
9 bring an action regarding matters not arising from the facts alleged in the Complaint.  
10

#### 11 **XIV. MODIFICATIONS**

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

#### 17 **XV. RETENTION OF JURISDICTION**

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

#### 23 **XVI. NON-ADMISSION OF VIOLATIONS: USE IN FUTURE PROCEEDINGS**

24 EPNG does not admit to any of the factual or legal determinations contained in the  
25 Complaint or this Consent Judgment and neither EPNG's concurrence with this Consent  
26

1 Judgment nor any action undertaken by EPNG pursuant to this Consent Judgment shall be  
2 deemed to constitute an admission of liability with respect to the matters contained in the  
3 Complaint or this Consent Judgment. Notwithstanding the previous sentence, the alleged  
4 violations that are the subject of the Complaint and this Consent Judgment may be used by  
5 the State in any future enforcement proceedings brought against EPNG for the sole purpose  
6 of determining appropriate penalties in such future proceedings.  
7

8 **XVII. TERMINATION**  
9

10 The provisions of this Consent Judgment shall be deemed satisfied and shall terminate  
11 after EPNG has paid the civil penalties due under Section V of this Consent Judgment.

12 After satisfaction of this Consent Judgment, after due course, the State shall execute  
13 and file a satisfaction of judgment with this Court and in every County that this Judgment was  
14 recorded.  
15

16 SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

17  
18 \_\_\_\_\_  
19 Judge of the Superior Court  
20  
21  
22  
23  
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1 **CONSENT TO JUDGMENT**

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

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

8  
9 \_\_\_\_\_  
10 El Paso Natural Gas Company

11 By its \_\_\_\_\_  
12 (title)

13 Amanda E. Stone, on behalf of Plaintiff State of Arizona, hereby acknowledges that  
14 she is authorized by the Director of ADEQ to sign this Consent Judgment, has read the  
15 foregoing in its entirety, agrees with the statements made therein, consents to its entry by the  
16 Court and agrees that the State and ADEQ will abide by the same.  
17

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

19  
20 \_\_\_\_\_  
21 Amanda E. Stone, Director  
22 Waste Programs Division  
23 Arizona Department of Environmental Quality  
24

25 296037