STATE OF COLORADO

Bill Ritter, Jr., Governor
Martha E. Rudolph, Executive Director

Dedicated to protecting and improving the health and environment of the people of Colorado

4300 Cherry Creek Dr. S.
Denver, Colorado 80246-1530
Phone (303) 692-2000
TDD Line (303) 691-7700
Located in Glendale, Colorado

Laboratory Services Division
8100 Lowry Blvd.
Denver, Colorado 80230-6928
(303) 692-3090

http://www.cdphe.state.co.us

Colorado Department
of Public Health
and Environment

December 15, 2010

XTO Energy Inc.
Attention: Sam Montoya
21603 Highway 12
Trinidad, Colorado 81082

RE: Compliance Order on Consent, Number: SC-101214-1

Dear Mr. Montoya:

Enclosed for XTO Energy Inc.'s records you will find your copy, with original signatures, of the recently executed Compliance Order on Consent. Please remember that this agreement is subject to a thirty-day public comment period (paragraph 39). Upon initiation, if the Division receives any comments during this period we will contact your office to discuss. Also, please be advised that the first page of the Order was changed in order to place the assigned Order Number on the final document.

If you have any questions, please don't hesitate to contact Joe Campbell at (303) 692-2356 or by electronic mail at joseph.campbell@state.co.us.

Sincerely,

Russell Zigler

Russell Zigler, Legal Assistant
Compliance Assurance Section
Enforcement Unit
WATER QUALITY CONTROL DIVISION

Enclosure(s)

cc: Las Animas-Huerfano Counties District Health Department
Corporation Service Company, 1560 Broadway Ste 2090, Denver, CO 80202

ec: Aaron Urdiales, EPA Region VIII
Dave Knope, Engineering Section, CDPHE

Dick Parachini, Watershed Program, CDPHE
Gary Beers, Permits Unit, CDPHE
Nathan Moore, Permits Unit, CDPHE
David Neslin, COGCC
Michael Beck, OPA
Joseph Campbell, Case Person
Tania Watson, Compliance Assurance, CDPHE

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

DIVISION OF ADMINISTRATION

WATER QUALITY CONTROL DIVISION

COMPLIANCE ORDER ON CONSENT **NUMBER: SC-101214-1**

IN THE MATTER OF: **XTO ENERGY INC.**
CDPS PERMIT NO. [COR–034312]
LAS ANIMAS COUNTY, COLORADO

The Colorado Department of Public Health and Environment ("Department"), through the Water Quality Control Division ("Division"), issues this Compliance Order on Consent ("Consent Order"), pursuant to the Division's authority under §§25-8-602 and 605, C.R.S. of the Colorado Water Quality Control Act ("the Act") §§25-8-101 to 703, C.R.S., and its implementing regulations, with the express consent of XTO Energy Inc. ("XTO"). The Division and XTO may be referred to collectively as "the Parties."

STATEMENT OF PURPOSE

1. The mutual objectives of the Parties in entering into this Consent Order are to resolve, without litigation, the civil penalties associated with the alleged violations cited herein and in the May 28, 2009 Notice of Violation / Cease and Desist Order (Number: SO-090528-1).

DIVISION'S FINDINGS OF FACT AND DETERMINATION OF VIOLATIONS

2. Based upon the Division's investigation into and review of the compliance issues identified herein, and in accordance with §§25-8-602 and 605, C.R.S., the Division has made the following determinations regarding XTO, the Facility and XTO's compliance with the Act and its permit.

3. At all times relevant to the violations cited herein XTO was a Delaware corporation in good standing and registered to conduct business in the state of Colorado.

4. XTO is a "person" as defined by §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).

5. On or about June 16, 2003, the Division received a Notice of Transfer for permit certification number COR-034312, issued under the Colorado Discharge Permit System ("CDPS") General Permit, Number COR-030000, for Stormwater Discharges Associated with Construction Activity from Williams Production RMT Company to XTO on June 2, 2003.

6. In a letter from the Division, dated June 25, 2003, the Division deemed the transfer of permit certification number COR-034312, from Williams Production RMT to XTO, effective for construction activities relating to the exploration and/or production of oil and gas on approximately 5 acres of land located in Las Animas County, Colorado (the "Project").

7. On March 3, 2007 the Division received a renewal form from XTO for the new 2007 CDPS General Permit, Number COR-030000, for Stormwater Discharges Associated with Construction Activity (the "Permit"). On June 20, 2007 the Division issued a renewal for permit certification number COR-034312 that was effective on July 1, 2007 and expires on June 30, 2012 or until XTO inactivates permit coverage.

8. Permit certification number COR-034312 authorized XTO to discharge stormwater from the construction activities associated with the Project the Purgatoire River under the terms and conditions of the Permit.

9. Purgatoire River is "state waters" as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2 (102).

10. Pursuant to 5 CCR 1002-61, §61.8, a permittee must comply with all terms and conditions of a permit and violators of the terms and conditions specified in a permit may be subject to civil and criminal liability pursuant to §§25-8-601 through 612, C.R.S.

11. On May 28, 2008 a representative from PG Environmental, LLC (the "Inspector") conducted an on-site inspection of the Project on behalf of the Division, pursuant to the Division's authority under §25-8-306, C.R.S., to determine XTO's compliance with the Act and the Permit. During the inspection the Inspector interviewed Project representatives, conducted a review of the Project's stormwater management system records, and performed a physical inspection of a portion of the project.

12. The Division transmitted a Stormwater Inspection Report ("Report") detailing the Division's inspector's findings to XTO on June 20, 2008, along with a Compliance Advisory relating to Best Management Practices ("BMPs") deficiencies.

13. On July 18, 2008, XTO sent the Division a letter and materials detailing the corrective actions taken for each alleged deficiency contained in the Report. XTO provided additional materials on August 28, 2008, XTO specifically regarding the implemented BMPs.

14. The Division acknowledges that XTO timely and satisfactorily performed all of the obligations and actions required under the May 28, 2009, Notice of Violation / Cease and Desist Order.

Deficient and/or Incomplete Stormwater Management Plan

15. Pursuant to Part I. B. of the Permit, XTO is required to prepare and maintain a Stormwater Management Plan ("SWMP") in accordance with good engineering, hydrologic, and pollution control practices. The SWMP is required to identify all potential sources of pollution, which may be reasonably expected to affect the quality of stormwater discharges associated with construction activity from the Project. In addition, the plan is required to describe and ensure the implementation

of Best Management Practices ("BMPs") at the Project, which will be used to reduce the pollutants in stormwater discharges associated with construction activity.

16. Pursuant to Part I. C. of the Permit, the Project's SWMP shall include, at a minimum, the following items:

    a. Site Description – The SWMP shall clearly describe the construction activity, including:

        i. The nature of the construction activity.
        ii. The proposed sequence for major activities.
        iii. Estimates of the total area of the site and the area of the site that is expected to undergo clearing, excavation or grading.
        iv. A summary of any existing data used in the development of the construction plans or SWMP that describe the soil or existing potential for soil erosion.
        v. A description of the existing vegetation at the site and an estimate of the percent vegetative ground cover.
        vi. The location and description of all potential pollution sources, including ground surface disturbance, vehicle fueling, storage of fertilizers or chemicals, etc.
        vii. The location and description of any allowable sources of non-stormwater discharge, such as springs, landscape irrigation return flow, construction dewatering, and concrete washout.
        viii. The name of the receiving water(s) and the size, type, and location of any outfall or, if the discharge is to a municipal separate storm sewer, the name of that system, the location of the storm sewer discharge, and the ultimate receiving water(s).

    b. Site Map – The SWMP shall include a legible site map(s), showing the entire site, identifying:

        i. Construction site boundaries.
        ii. All areas of ground surface disturbance.
        iii. Areas of cut and fill.
        iv. Areas used for storage of building materials, equipment, soil, or waste.
        v. Locations of dedicated asphalt or concrete batch plants.
        vi. Locations of all structural BMPs
        vii. Locations of all non-structural BMPs.
        viii. Locations of springs, streams, wetlands and other surface waters.

    c. Stormwater Management Controls - The SWMP must include a description of all stormwater management controls that will be implemented as part of the construction activity to control pollutants in stormwater discharges, including:

        i. SWMP Administrator – The SWMP shall identify a specific individual(s), position or title that is responsible for developing, implementing, maintaining, and revising the SWMP.
        ii. Identification of Potential Pollutant Sources – The SWMP shall identify and describe those sources determined to have the potential to contribute pollutants to stormwater discharges.
        iii. Best Management Practices (BMPs) for Stormwater Pollution Prevention – The SWMP shall identify and describe appropriate BMPs that will be implemented at the

facility to reduce the potential of pollution sources to contribute pollutants to stormwater discharges. The SWMP shall clearly describe the installation and implementation specifications for each BMP identified in the SWMP.

(1) Structural Practices for Erosion and Sediment Control – The SWMP shall clearly describe and locate all structural practices implemented at the site to minimize erosion and sediment transport. Practices may include, but are not limited to: straw bales, wattles/sediment control logs, silt fences, earth dikes, drainage swales, sediment traps, subsurface drains, pipe slope drains, inlet protection, outlet protection, gabions, and temporary or permanent sediment basins.

(2) Non-Structural Practices for Erosion and Sediment Control – The SWMP shall clearly describe and locate all non-structural practices implemented at the site to minimize erosion and sediment transport. Description must include interim and permanent stabilization practices, and site-specific scheduling for implementation of the practices. Non-structural practices may include, but are not limited to: temporary vegetation, permanent vegetation, mulching, geotextiles, sod stabilization, slope roughening, vegetative buffer strips, protection of trees, and preservation of mature vegetation.

(3) Phased BMP Implementation – The SWMP shall clearly describe the relationship between the phases of construction and the implementation and maintenance of BMPs. The SWMP must identify the stormwater management controls to be implemented during the project phases, which can include, but are not limited to, clearing and grubbing, road construction, utility and infrastructure installation, vertical construction, final grading and final stabilization.

(4) Materials Handling and Spill Prevention – The SWMP shall clearly describe and locate all practices implemented at the site to minimize impacts from procedures or significant materials that could contribute pollutants to runoff.

(5) Dedicated Concrete or Asphalt Batch Plants – The SWMP shall clearly describe and locate BMPs to control stormwater pollution from dedicated concrete batch plants or dedicated asphalt batch plants.

(6) Vehicle Tracking Control – The SWMP shall clearly describe and locate all practices implemented at the site to control potential sediment discharges from vehicle tracking.

(7) Waste Management and Disposal, Including Concrete Washout – The SWMP shall clearly describe and locate the practices implemented at the site to control stormwater pollution from all construction site wastes, including concrete washout activities.

(8) Groundwater and Stormwater Dewatering – The SWMP shall clearly describe and locate the practices implemented at the site to control stormwater pollution from the dewatering of groundwater or stormwater from excavations, wells, etc.

d. Final Stabilization and Long-Term Stormwater Management – The SWMP shall clearly describe the practices used to achieve final stabilization of all disturbed areas at the site, and any planned practices to control pollutants in stormwater discharges that will occur after construction operations have been completed at the site.

e. Inspection and Maintenance – The SWMP shall clearly describe the inspection and maintenance procedures implemented at the site to maintain all erosion and sediment control

practices and other protective practices in good and effective operating condition.

15. During the May 28, 2008 inspection, the Inspector reviewed the Project's SWMP and identified the following deficiencies, as described in paragraphs 15(a-d) below:

    a. The section in the SWMP on Site Description did not provide a clear location and description of all the potential pollution sources identified for the project (i.e., vehicle fueling and washing, solvents, sealants, waste storage, etc.) as required by Part I.C.1.f of the Permit. As provided by Carl Chavez (Construction Supervisor, XTO), for example, a mobile fueling truck had been used for equipment fueling but this practice was not described in the SWMP.
    b. The section in the SWMP on Site Description did not adequately provide the name of the receiving water(s) and the size, type and location of any outfall as required by Part I.C.1.h of the Permit. Specifically, Alamosito Creek is immediately adjacent to well pad AC 04-07. Alamosito Creek is a tributary to the South Fork Purgatoire River and subsequent Purgatoire River. Alamosito Creek, the South Fork Purgatoire River, and the Purgatoire River serve as receiving waters for the well pad AC 04-07 but were not identified in the Site Description.
    c. The Site Map for well pad AC 04-07 did not clearly identify areas of cut and fill as required by Part I.C.2.c of the Permit. Specifically, the site map did not clearly identify the existing and proposed contours of the site.
    d. The Site Map for well pad AC 04-07 did not adequately identify the location of all non-structural BMP's as required by Part I.C.2.g of the Permit. For example, the Site Map did not identify areas that had been hydro mulched and seeded on the site.

18. The Division has determined that XTO failed to prepare and maintain a complete SWMP for the Project which constitutes a violation of Part I.C. of the Permit.

Failure to Implement and/or Maintain
Best Management Practices to Protect Stormwater Runoff

17. Pursuant to Part I. C. 3. c. of the Permit, XTO is required to implement BMPs to reduce the potential of pollution sources from contributing pollutants to stormwater discharges, including minimizing erosion and sediment transport from the Project. The Permit specifies that structural site management practices may include, but are not limited to: straw bales, wattles/sediment control logs, silt fences, earth dikes, drainage swales, sediment traps, subsurface drains, pipe slope drains, inlet protection, outlet protection, gabions, and temporary or permanent sediment basins. The Permit specifies that non-structural site management practices may include, but are not limited to: temporary vegetation, permanent vegetation, mulching, geotextiles, sod stabilization, slope roughening, vegetative buffer strips, protection of trees and preservation of mature vegetation.

18. Pursuant to Part I. D. 1. c. of the Permit, XTO is required have secondary containment or equivalent adequate protection for bulk storage structures for petroleum products or any other chemicals.

19. Pursuant to Part I. D. 2. of the Permit, XTO is required to select, design, install, implement and maintain appropriate BMPs for all potential pollutant sources at the Project, following good engineering, hydrologic and pollution control practices.

20. The Division has determined that XTO failed to implement and/or maintain functional BMPs at each of the projects as described in paragraphs 21(a – d) below.

a. It was observed during the inspection that adequate BMPs were not implemented to prevent the discharge of sediment from the unstabilized "Alamasito Lease" Roadway and roadway shoulder located northwest of well pad AC 04-07. Up-gradient BMPs were not implemented along the roadway shoulder. Evidence of a previous runoff event discharging sediment from the roadway and the road shoulder was observed; including sediment deposition in the Alamosito Canyon waterway which is a tributary of the South Fork Purgatoire River (State Waters). Admittedly, Mr. Sam Montoya (EH&S Coordinator, XTO) explained that BMPs had not been installed prior to construction of well pas AC 04-07. As a result, there was a discharge of sediment to the Alamosito Canyon waterway which is a tributary of the South Fork Purgatoire River (State Waters).

b. It was observed during the inspection that adequate BMPs were not implemented to prevent the discharge of sediment from the unstabilized culvert crossing the "Lateral" Roadway located immediately northeast of well pad AC 04-07. BMPs were not implemented for the unstabilized area surrounding the culverts or the outlet protection. Sediment deposition was observed in the Alamosito Canyon waterway. As a result, there was a discharge of sediment to the Alamosito Canyon waterway which is a tributary of the South Fork Purgatoire River (State Waters).

c. It was observed during the inspection that adequate BMPs were not implemented to prevent the discharge of sediment from the unstabilized "Lateral" Roadway, roadway shoulder, and associated cut and fill slopes located southeast of well pad AC 04-07. Upgradient BMPs were not implemented along the cut and fill side of the roadway shoulder. In addition, the silt fence BMP located along the roadway was not installed according to specification and design meeting best engineering practice requirements. Specifically, sections of the silt fence were not installed on the contour and were directing flow toward an adjoining section of straw wattle to a low point. As a result, there was potential for the discharge of sediment to the Alamosito Canyon waterway which is a tributary of the South Fork Purgatoire River (State Waters).

d. It was observed during the inspection that adequate BMPs were not implemented to prevent the discharge of sediment from the unstabilized roadway and well pad fill slope located northeast of well pad NE 25-14. Evidence of erosion due to the combination of brow ditch and well pad runoff was observed; including erosion of the roadway surface and downgradient fill slope leading towards a section of silt fence BMP installed along the Left Fork Apache Canyon waterway. As a result, there was a potential for the discharge of sediment to the Left Fork Apache Canyon waterway which is a tributary of the Middle Fork Purgatoire River (State Waters).

21. XTO's failures to implement and maintain functional BMPs to protect stormwater quality during construction activities at the Project constitute violations of Part I.C.3.c., Part I.D.2., and PartI.B.3. of the Permit.

ORDER AND AGREEMENT

24. Based on the foregoing factual and legal determinations, pursuant to its authority under §§25-8-602 and 605, C.R.S., and in satisfaction of the civil penalties associated with the alleged violations cited herein and in the Notice of Violation / Cease and Desist Order (Number: SO-090528-1), the Division orders XTO to comply with all provisions of this Consent Order, including all requirements set forth

below.

25. XTO agrees to the terms and conditions of this Consent Order. XTO agrees that this Consent Order constitutes a notice of alleged violation and an order issued pursuant to §§25-8-602 and 605, C.R.S., and is an enforceable requirement of the Act. XTO also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by XTO against the Division:

    a. The issuance of this Consent Order;
    b. The factual and legal determinations made by the Division herein; and
    c. The Division's authority to bring, or the court's jurisdiction to hear, any action to enforce the terms of this Consent Order under the Act.

26. Notwithstanding the above, XTO does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by XTO pursuant to this Consent Order shall not constitute evidence of fault and liability by XTO with respect to the conditions of the Project.

Compliance Requirements

27. XTO shall continue to implement measures to maintain compliance with the Colorado Water Quality Control Act and the terms and conditions of the CDPS General Permit for Stormwater Discharges Associated with Construction Activity (Number: COR-030000), and the associated certifications issued to XTO for its Colorado construction projects or operations.

CIVIL PENALTY AND SUPPLEMENTAL ENVIRONMENTAL PROJECTS

28. In addition to all other funds necessary to comply with the requirements of this Consent Order, XTO shall pay Twenty Thousand and One Hundred Dollars ($20,100.00) in the form of civil penalties and expenditures on Supplemental Environmental Projects ("SEPs") in order to achieve settlement of this matter.

29. Based upon the application of the Division's Stormwater Civil Penalty Policy (January 25, 2007), and consistent with Departmental policies for violations of the Act, XTO shall pay Four Thousand and Twenty Dollars ($4,020.00) in civil penalties. The Division intends to petition the Executive Director, or her designee, to impose the Four Thousand and Twenty Dollars ($4,020.00) civil penalty for the above violation(s) and XTO agrees to make the payment within thirty (30) calendar days of the issuance of a Penalty Order by the Executive Director or her designee. Method of payment shall be by certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment," and delivered to:

    Joe Campbell
    Colorado Department of Public Health and Environment
    Water Quality Control Division
    Mail Code: WQCD-B2-CAS
    4300 Cherry Creek Drive South
    Denver, Colorado 80246-1530

30. XTO shall also perform the SEP identified below. XTO's total expenditure for the SEP shall be not less than Sixteen Thousand Eighty Dollars ($16,080.00).

31. XTO shall undertake the following SEP, which the Parties agree is intended to secure significant environmental or public health protection and improvements:

    a. XTO shall donate Sixteen Thousand Eighty Dollars ($16,080.00) to Las Animas County. The funds will be used for a pollution prevention/energy efficiency project in Las Animas County, as described in Attachment A.
    b. XTO shall make one or more payments totaling Sixteen Thousand Eighty Dollars ($16,080.00) and shall include with the payment(s) a cover letter(s) identifying the monies for the above-described project by January 1, 2011.
    c. XTO shall provide the Division with a copy of each cover letter and check concurrent with its transmittal(s) to Las Animas County. The Division reserves the right to accept or deny any of the specific energy efficiency projects selected by XTO for inclusion in this SEP. If a specific project is denied, the Division shall retain sole discretion for selecting an alternate project, as identified in Las Animas County's energy efficiency audit, for inclusion in this SEP.

32. XTO shall not deduct the expenses associated with the implementation of the above-described SEP for any tax purpose or otherwise obtain any favorable tax treatment of such payment or project.

33. XTO hereby certifies that, as of the date of this Consent Order, it is not under any existing legal obligation to perform or develop the SEP. XTO further certifies that it has not received, and will not receive, credit in any other enforcement action for the SEP. In the event that XTO has, or will receive credit under any other legal obligation for the SEP, XTO shall pay Sixteen Thousand Eighty Dollars ($16,080.00) to the Division as a civil penalty within thirty (30) calendar days of receipt of a demand for payment by the Division. Method of payment shall be as specified in paragraph 29 above.

34. XTO must perform the requirements of paragraph 31 of this Consent Order to the satisfaction of the Division by December 31, 2011. In the event that XTO fails to comply with any of the terms or provisions of this Consent Order relating to the performance of the SEP, XTO shall be liable for penalties as follows:

    a. Payment of a penalty in the amount of Sixteen Thousand Eighty Dollars ($16,080.00). The Division, in its sole discretion, may elect to reduce this penalty for environmental benefits created by the partial performance of the SEP.
    b. XTO shall pay this penalty within thirty (30) calendar days of receipt of written demand by the Division. Method of payment shall be as specified in paragraph 29 above.

35. XTO shall submit a SEP Completion Report to the Division by January 31, 2011. The SEP Completion Report shall contain the following information:

    a. A detailed description of the SEP as implemented;
    b. A description of any operating problems encountered and the solutions thereto;
    c. Itemized costs, documented by copies of purchase orders and receipts or canceled checks or other forms of proof of payment;

d. Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Order; and

e. A description of the environmental and public health benefits resulting from implementation of the SEP (with quantification of the benefits and pollutant reductions, if feasible).

36. Failure to submit a SEP Completion Report with the required information, or any periodic report, shall be deemed a violation of this Consent Order.

37. XTO shall include the following language in any public statement, oral or written, making reference to either SEP: "This project was undertaken in connection with the settlement of an enforcement action taken by the Colorado Department of Public Health and Environment for violations of the Colorado Water Quality Control Act."

SCOPE AND EFFECT OF CONSENT ORDER

38. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the civil penalties associated with the violations alleged herein and in the May 28, 2009 Notice of Violation / Cease and Desist Order (Number: SO-090528-1).

39. This Consent Order is subject to the Division's "Public Notification of Administrative Enforcement Actions Policy," which includes a thirty-day public comment period. The Division and XTO each reserve the right to withdraw consent to this Consent Order if comments received during the thirty (30) day period result in any proposed modification to the Consent Order.

40. This Consent Order constitutes a final agency order or action upon the date when the Executive Director or her designee imposes the civil penalty following the public comment period. Any violation of the provisions of this Consent Order by XTO, including any false certifications, shall be a violation of a final order or action of the Division for the purpose of §25-8-608, C.R.S., and may result in the assessment of civil penalties of up to ten thousand dollars per day for each day during which such violation occurs.

41. Notwithstanding paragraph 26 above, the violations described in this Consent Order will constitute part of XTO's compliance history for purposes where such history is relevant. This includes considering the violations described above in assessing a penalty for any subsequent violations against XTO. XTO agrees not to challenge the use of the cited violations for any such purpose.

42. This Consent Order does not relieve XTO from complying with all applicable Federal, State, and/or local laws in fulfillment of its obligations hereunder and shall obtain all necessary approvals and/or permits to conduct the activities required by this Consent Order. The Division makes no representation with respect to approvals and/or permits required by Federal, State, or local laws other than those specifically referred to herein.

LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY

43. Upon the effective date of this Consent Order, and during its term, this Consent Order shall stand in lieu of any other enforcement action by the Division with respect to civil penalties for the specific instances of violations cited herein and in the May 28, 2009 Notice of Violation / Cease and Desist Order (Number: SO-090528-1). The Division reserves the right to bring any action to enforce this Consent Order, including actions for penalties or the collection thereof, and/or injunctive relief.

44. This Consent Order does not grant any release of liability for any violations not specifically cited herein.

45. Nothing in this Consent Order shall preclude the Division from imposing additional requirements in the event that new information is discovered that indicates such requirements are necessary to protect human health or the environment.

46. Upon the effective date of this Consent Order, XTO releases and covenants not to sue the State of Colorado or its employees, agents or representatives as to all common law or statutory claims or counterclaims arising from, or relating to, the violations of the Act specifically addressed herein.

47. XTO shall not seek to hold the State of Colorado or its employees, agents or representatives liable for any injuries or damages to persons or property resulting from acts or omissions of XTO, or those acting for or on behalf of XTO, including its officers, employees, agents, successors, representatives, contractors, consultants or attorneys in carrying out activities pursuant to this Consent Order. XTO shall not hold out the State of Colorado or its employees, agents or representatives as a party to any contract entered into by XTO in carrying out activities pursuant to this Consent Order. Nothing in this Consent Order shall constitute an express or implied waiver of immunity otherwise applicable to the State of Colorado, its employees, agents or representatives.

NOTICES

48. Unless otherwise specified, any report, notice or other communication required under the Consent Order shall be sent to:

For the Division:

Colorado Department of Public Health and Environment
Water Quality Control Division / WQCD-CADM-B2
Attention: Joe Campbell
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: 303.692.2356
E-mail: joseph.campbell@state.co.us

For XTO:

XTO Energy Inc.
Attention: Sam Montoya
21603 Highway 12
Trinidad, Colorado 81082
Telephone: 719.845.2107
E-mail: Sam_Montoya@xtoenergy.com

MODIFICATIONS

49. This Consent Order may be modified only upon mutual written agreement of the Parties.

NOTICE OF EFFECTIVE DATE

50. This Consent Order shall be fully effective, enforceable and constitute a final agency action upon the date when the Executive Director or her designee imposes the civil penalty following closure of the public comment period referenced in paragraph 39. If the penalty as described in this Consent Order is not imposed, or an alternate penalty is imposed, this Consent Order becomes null and void.

BINDING EFFECT AND AUTHORIZATION TO SIGN

51. This Consent Order is binding upon XTO and its corporate subsidiaries or parents, their officers, directors, employees, successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this Consent Order. XTO agrees to provide a copy of this Consent Order to any contractors and other agents performing work pursuant to this Consent Order and require such agents to comply with the requirements of this Consent Order. In the event that a party does not sign this Consent Order within thirty (30) calendar days of the other party's signature, this Consent Order becomes null and void. This Consent Order may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Order.

FOR XTO ENERGY INC.:

_____ Date: 12/07/2010

Sam Montoya, Senior EH&S Coordinator
Raton Basin and Durango Districts
XTO ENERGY INC.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:

Lori M Gerzina _____ Date: 12/14/10

Lori M. Gerzina, Manager
Compliance Assurance Section
WATER QUALITY CONTROL DIVISION

Attachment A

SUPPLEMENTAL ENVIRONMENTAL PROJECTS (SEP) PROPOSAL/AGREEMENT

The regulated entity, identified below, submits the following SEP application to the Colorado Department of Public Health and Environment ("CDPHE") for SEP consideration.

Enforcement Action Information	In the Matter of XTO Energy, Inc Case No.: NOV/CDO SO-090528-1
Regulated Entity Contact Information	Sam E. Montoya Sr. EH&S Coordinator XTO Energy, Inc Phone # (719) 845-2107 Cell # (719) 859-1117 Sam_Montoya@xtoenergy.com
3rd Party SEP Recipient Contact	William Cordova, Administrator Las Animas County 200 East First Street, Room 110 Trinidad, CO 81082 719-845-2568 lasanimascounty@sensonics.org
CDPHE Contact Person	Rachel Wilson-Roussel, SEP Coordinator - (303) 692-2976
Geographical Area to Benefit Most Directly From Project	Las Animas County
Project Title	Energy Efficiency Projects for Public Buildings in Las Animas County
Project Type	Third Party SEP Donation
SEP Category	Pollution Prevention – Resource Efficiency
Project Summary	SEP funds will be used by Las Animas County to fund and implement energy efficiency projects for county owned buildings. Such buildings may include the courthouse, the justice center or the old jail building. Items eligible for reimbursement with the SEP funds may include: contractor fees, equipment and building materials costs, equipment lease payments (Energy Performance Contract buy-down), County oversight and post-construction energy efficiency monitoring costs. Energy Audit fees may not be covered under this SEP since they are being covered under a separate WQCD-approved SEP.

Attachment A

Project Description	Las Animas County (the "County"), in connection with the Governor's Energy Office (the "GEO"), is planning to conduct an energy efficiency audit of public buildings in Las Animas County using funds from a separate funding source. The County has selected Ameresco Inc. as the contractor for the technical energy audit and expects the audit to be completed by November 30, 2010. The audit will identify specific projects that will result in increased energy efficiency, including reduced use of electricity or natural gas. XTO will ensure that the CDPHE contact person receives a copy of the final audit report as soon as it is available. The County, in coordination with the GEO and XTO, will select specific projects on which the SEP funds will be used. The County and XTO will present these specific projects to the CDPHE contact person along with a plan setting forth in reasonable detail the expected use of SEP funds. Prior to SEP funds being spent for any projects, CDPHE will review the proposed projects and notify XTO in writing of its approval or disapproval of each project. If CDPHE disapproves of a particular project, SEP funds may not be spent on such project, but XTO and CDPHE will work in good faith to modify the existing project proposal to be acceptable to CDPHE or to develop a substitute project reasonably acceptable to CDPHE. Completion of such projects may include projects contracted for directly by the County (such as replacing boilers with more efficient boilers, replacing old windows with new energy efficient windows, or replacing older HVAC equipment with new energy efficient equipment) or they may take the form of an Energy Performance Contract (EPC) whereby an equipment provider approved by the GEO provides equipment (such as a new boiler or new furnace) for a County building and then recoups the cost of such equipment by retaining the energy savings for a period of time. SEP funds may be used to buy down the cost of an EPC and, therefore, decrease the time necessary for the provider to recoup its investments thus resulting in earlier savings to the County. The County expects to identify projects for which SEP funds will be used within 30 days after completion of the audit or no later than December 15, 2010. The County expects to commence the implementation of approved projects in January 2011 and complete such projects by December 31, 2011.
Expected Environmental and/or Public Health Benefits	Environmental benefits include reduced fossil fuel consumption and associated reductions in hydrocarbon, carbon dioxide and other greenhouse gas emissions.

Project Budget

Category	Description	Cost
Las Animas County Projects	Energy Efficiency Activities or EPC "buy-down"	$16,080
	Total:	**$16,080**

Budget Discussion	The funds will be donated directly to the County to fund the specific projects identified by the County/GEO audit on an as needed basis until the SEP budget is exhausted. XTO will not receive any financial benefit resulting from implementation of this project.

Attachment A

Project Schedule	Proposed Start Date:	October 1, 2010
	Completion of GEO Audit: (The audit will be paid for from a separate funding source.)	November 30, 2010
	Submit to CDPHE Specific Energy Efficiency Projects for approval:	December 15, 2010
	CDPHE Review of Specific Projects:	December 21, 2010
	Commencement of Projects:	January 1, 2011
	SEP Status Report Due to CDPHE:	June 30, 2011
	Projected Completion Date:	NLT December 31, 2011
	SEP Completion Report Due:	January 31, 2012
Reporting	Status Report The County will submit a brief biannual project status report to the CDPHE SEP Coordinator. The report will include the following information: a list of activities completed to date, a budget summary table listing funds expended to date, and a list of any anticipated changes to the project scope of timeline. Any major changes to the project scope or timeline must receive prior approval from the department. Final SEP Completion Report A full expense accounting, including proof of all payments, will be provided in the SEP Completion Report. The SEP Completion report will contain at a minimum: • A detailed description of the project as implemented; • A description of any operating problems encountered and the solutions thereto; • Itemized costs, documented by copies of purchase orders, contracts, receipts or canceled checks; • Certification and demonstration that the SEP has been fully implemented pursuant to the provisions of the Consent Order; and • A description of the environmental and public health benefits resulting from implementation of the SEP along with **quantification** of the outcomes.	
Other Relevant Information		
Has the applicant entered into any prior commitments to fund this project, voluntary or otherwise? If yes, please explain.	No.	