

STATE OF NEW MEXICO
SECRETARY OF ENVIRONMENT

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

NO. AQB DCP-0595-1602-R1 (NOV)

DCP MIDSTREAM LP,
Respondent.

SETTLEMENT AGREEMENT AND STIPULATED FINAL COMPLIANCE ORDER

This Settlement Agreement and Stipulated Final Compliance Order (“Final Order”) is entered into between the Environmental Protection Division (“Division”) of the New Mexico Environment Department (the “Department”) and the Respondent, DCP Midstream LP (“Respondent”) (collectively, the “Parties”) to resolve alleged statutory, regulatory, and permit violations by Respondent. The Department alleges violations of the New Mexico Air Quality Control Act (“AQCA”), NMSA 1978, Sections 74-2-1 to -17; the Air Quality Control Regulations (“AQCR”), 20.2. NMAC (“Regulations”), and Air Quality Title V Permit Number P086-R2 (“Permit”).

I. BACKGROUND

A. PARTIES

1. The Department is an agency of the executive branch of the State of New Mexico, created pursuant to NMSA 1978, § 9-7A-4. The Division is an organizational unit of the Department. The Secretary of the Department has delegated to the Director of the Division the authority to seek administrative enforcement of the AQCA and the AQCR, including assessing

civil penalties for violations thereof. NMSA 1978, § 74-2-12. The Air Quality Bureau (“Bureau”) is an organizational unit of the Division.

2. Respondent is a limited partnership doing business in New Mexico at the Eunice Gas Plant (“Facility”), located in Lea County, New Mexico.

B. HISTORY AND ALLEGED VIOLATIONS

3. Permit Condition A107.A, Table 107.A provides in relevant part, “The maximum allowable SSM and Malfunction emission limits for this facility are listed in Table 107.A and were relied upon by the Department to determine compliance with applicable regulations.”

4. Between September 1, 2016 and December 31, 2016, the Air Quality Bureau received seven (7) Final Excess Emission Reports (“EERs”) from Respondent for the Facility. The EERs included excess emissions calculated above the permit limits contained in Table 107.A of the Permit. A total of 30,950 pounds of excess emissions were reported in the seven (7) EERs.

5. On March 15, 2017, the Bureau issued to Respondent Notice of Violation DCP-0595-1602 (“NOV”), alleging one hundred twenty-four (“124”) violations of the AQCA, the AQCR, and the Permit. The alleged violations were based on the failure to maintain emissions within allowable SSM and Malfunction limits, which is a violation of Permit Condition A107.A, Table 107.A.

6. On May 25, 2017, the Bureau issued to the Respondent Notice of Violation DCP-0595-1602-R1 (“NOV”), alleging fifty-six (“56”) violations of the AQCA, the AQCR, and the Permit. The alleged violations were based on the failure to maintain emissions within allowable SSM and Malfunction limits, which is a violation of Permit Condition A107.A, Table 107.A.

7. The NOV included a Corrective Action Verification (“CAV”) requiring the Respondent to submit to the Bureau measures taken to ensure future compliance with the permit conditions.

8. On June 19, 2017, the Bureau received the CAV from Respondent. The CAV was determined to be satisfactory by the Bureau on August 21, 2017.

9. The Parties have engaged in settlement discussions to resolve the NOV without further proceedings.

II. COMPROMISE AND SETTLEMENT

A. GENERAL

10. Respondent does not admit any of the allegations in the NOV. To avoid further legal proceedings, the Division and Respondent agree to the terms and conditions in this Final Order to resolve the alleged violations in the NOV.

11. The Parties admit jurisdiction and consent to the relief specified herein.

B. CIVIL PENALTY

12. In compromise and settlement of the alleged violations set forth in the NOV and upon consideration of the seriousness of the alleged violations and Respondent’s good faith efforts to comply, the Parties agree that Respondent shall pay a civil penalty of \$40,294.09 to the State of New Mexico within 30 calendar days after the effective date of this Final Order.

13. Payment shall be made to the *State of New Mexico General Fund* by certified or corporate check and sent to the following address:

New Mexico Environment Department
Air Quality Bureau
c/o Compliance and Enforcement Manager
525 Camino de los Marquez, Suite 1
Santa Fe, New Mexico 87505

14. If Respondent fails to make timely and complete payment of the civil penalty, Respondent shall pay a stipulated penalty of \$250.00 per day for each day a payment is not timely or complete. Respondent shall not contest or dispute in any way the stipulated penalty of \$250.00 per day in the event that the Department brings an action against Respondent for the failure to make timely or complete payment.

III. OTHER TERMS AND CONDITIONS

A. RESERVATION OF RIGHTS AND DEFENSES

15. This Final Order shall not be construed to prohibit or limit in any way the Department from requiring Respondent to comply with any applicable state or federal requirement not resolved herein. This Final Order shall not be construed to prohibit or limit in any way the Department from seeking any relief authorized by the AQCA for violation of any state or federal requirement applicable to Respondent not resolved herein. This Final Order shall not be construed to prohibit or limit in any way Respondent from raising any defense to a Department action seeking such relief.

B. MUTUAL RELEASE

16. The Parties mutually release each other from all claims that each party raised or could have raised against the other regarding the facts and violations alleged in the NOV. Such release applies only to civil liability.

C. WAIVER OF STATE LIABILITY

17. Respondent shall assume all costs and liabilities incurred in performing all obligations under this Final Order. The Department, on its own behalf and on behalf of the State of New Mexico, does not assume any liability for Respondent's performance of any obligation under this Final Order.

D. EFFECTIVE DATE AND TERMINATION DATES

18. This Final Order shall become effective on the date it has been signed by the Department Secretary.

19. Except as otherwise provided in this Paragraph, the terms of this Final Order shall terminate when Respondent has fulfilled the requirements of this Final Order. The reservations of rights and defenses and the mutual release in Paragraphs 16 and 17 shall survive the execution and performance of this Final Order, and shall remain in full force and effect as an agreement between the Parties.

E. INTEGRATION

20. This Final Order merges all prior written and oral communications between the Parties concerning the subject matter of this Final Order, contains the entire agreement between the Parties, and shall not be modified without the express written agreement of the Parties.

F. BINDING EFFECT

21. This Final Order shall be binding on the Parties and their officers, directors, employees, agents, subsidiaries, successors, assigns, trustees, or receivers.

G. AUTHORITY OF SIGNATORIES

22. The persons executing this Final Order on behalf of Respondent and the Division, respectively, represent that he or she has the authority to execute this Final Order on behalf of Respondent and the Division.

H. SIGNATURE AND COUNTERPARTS


23. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

ENVIRONMENTAL PROTECTION DIVISION
NEW MEXICO ENVIRONMENT DEPARTMENT

By: 
RICHARD L. GOODYEAR, P.E.
DIRECTOR

Date: 6 Oct 2017

DCP MIDSTREAM LP

By: 
Print Name: John Cook
Print Title: Environmental manager

Date: 9-21-17

STIPULATED FINAL COMPLIANCE ORDER

This Settlement Agreement and Stipulated Final Compliance Order, agreed to by the Division and the Respondent DCP Midstream LP, is hereby incorporated herein and **APPROVED AS A FINAL COMPLIANCE ORDER** issued pursuant to NMSA 1978, §74-2-12.

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SECRETARY
ENVIRONMENT DEPARTMENT

Date: 10/10/17