

**STATE OF NEW MEXICO  
SECRETARY OF ENVIRONMENT**

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

**NO. AQB DCP-0599-1601-R1 (NOV)**

**DCP OPERATING COMPANY, 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 Respondent, DCP Operating Company, LP (“Respondent”) (collectively, the “Parties”) to resolve alleged statutory, regulatory, and permit violations by the 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 Permit Number 0355M6 (“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 previously doing business in New Mexico at the Lusk Booster Station (“Facility”), located in Lea County, New Mexico. The Facility has ceased operations.

**B. HISTORY AND ALLEGED VIOLATIONS**

3. Permit Condition A107.E, Allowable Startup, Shutdown, & Maintenance (“SSM”) and Malfunction Emissions, provides in relevant part, "The permittee shall monitor all SSM and malfunction events that result in VOC emissions including the identification of the equipment or activity that is the source of emissions. The permittee shall record if the emissions are due to SSM and/or malfunction and a description of the equipment or activity that is the source of emissions. If emissions are due to a malfunction, the permittee shall indicate whether the emissions resulting from the event are included in the amount allowed by this permit or whether the event is reported under 20.2.7 NMAC."

4. On June 11, 2015, the Bureau received the Semi-Annual Report for the monitoring period ending April 30, 2015. Under Condition A107.E, Respondent stated the following: "DCP was unable to track compliance with SSM limits with respect to non-flare events (compressor blowdowns) due to missing records for the entire period."

5. Permit Condition A110.A, Fuel Sulfur Requirements, provides in relevant part "All combustion emission units shall combust only natural gas containing no more than 0.25 grains of total sulfur per 100 dry standard cubic feet. The permittee shall demonstrate compliance with the natural gas or fuel oil limit on total sulfur content by maintaining records of a current, valid purchase contract, tariff sheet or transportation contract for the gaseous or liquid fuel, or fuel gas analysis, specifying the allowable limit or less. If fuel gas analysis is used, the analysis shall not be older than one year."

6. On June 11, 2015, the Bureau received the Title V Semi-Annual Report for the monitoring period ending April 30, 2015. Respondent attached fuel gas analysis for two meters for the semi-annual period ending April 30, 2015. The total sulfur reported in the extended sulfur analysis was 12.7 (“parts per million”) ppm for meter 7163-00 and 10.8 ppm for meter 7134-00. Upon request from the Bureau, on December 27, 2015, Respondent provided the sulfur content in grains/100 dry standard cubic feet (“dscf”). According to Respondent, 12.7 ppm is equivalent to 0.75 grains of total sulfur per 100 dscf, and 10.87 ppm is equivalent to 0.638 grains of total sulfur per 100 dscf, which the Bureau determined were above the limit of 0.25 grains of total sulfur per 100 dry standard cubic feet.

7. Permit Condition A203.A, Tank Throughput and Separator Pressure, provides in relevant part, “to demonstrate compliance with the annual VOC allowable limits in Table 106.A, the monthly rolling 12-month total condensate throughput to the unit shall not exceed 400,000 gallons per year (9,523.8 barrels/year) and the average separator pressure shall not exceed 50 psia.”

8. On June 11 and August 31, 2015, the Bureau received the Title V Semi-Annual reports for the monitoring periods ending in April and August 2015, respectively. Respondent provided summaries of the facility’s condensate tank throughput and loadout data for these monitoring periods. Based on the data provided, the facility exceeded the monthly rolling 12-month total condensate throughput for the following months in 2015: February (9,827 barrels), March (9,769 barrels), April (10,237 barrels), June (9,583 barrels), July (9,969 barrels) and August (9,780 barrels).

9. Permit Condition A106.A, Facility: Allowable Emissions, provides in relevant part, “The following Section lists the emission units and their allowable emission limits.” Allowable emission limits are listed in Table 106.A.

**10.** On August 6, 2015, Respondent submitted a Final Excess Emission Report (“EER”) for the Facility. The EER reported emissions exceeding those allowed by the permit for the following: Nitrogen Oxides (1,291.6 pounds); Sulfur Dioxide (101.21 pounds); Carbon Monoxide (646.97 pounds); Volatile Organic Compounds (18.98 pounds); and Hydrogen Sulfide (1.1 pounds).

**11.** On February 16, 2017, the Bureau issued to Respondent Notice of Violation DCP-0599-1601 (“NOV”), alleging four (4) violations of the AQCA, the AQCR, and the Permit. The alleged violations consisted of: 1) failure to maintain records for SSM events, which is a violation of Permit Condition A107.E; 2) failure to meet fuel sulfur requirements, which is a violation of Permit Condition A110; 3) failure to limit condensate tank throughput to below allowable limits, which is a violation of Permit Condition A203; and 4) failure to limit emissions to below permitted allowable limits, which is a violation of Permit Condition A106.

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

**13.** On March 23, 2017, the Bureau received the CAV from Respondent. The CAV was determined to be satisfactory by the Bureau on April 14, 2017. With the CAV, Respondent submitted SSM records referenced missing in Paragraph 4. With receipt of these records, the Bureau withdrew this alleged violation. Also, with the CAV, information was submitted that demonstrated that the fuel sulfur limit referenced in Paragraph 6 was not exceeded as alleged in the NOV. The Bureau determined that a violation had not occurred.

**14.** On June 13, 2017, the Bureau issued Revised NOV DCP-0599-1601-R1 alleging two (2) violations of the AQCA, the AQCR, and the Permit. The alleged violations consisted of: 1) failure to limit condensate tank throughput to below allowable limits, which is a violation of Permit

Condition A203.B; and 2) failure to limit emissions to below permitted allowable limits, which is a violation of Permit Condition A106.A.

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

## **II. COMPROMISE AND SETTLEMENT**

### **A. GENERAL**

16. 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.

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

### **B. CIVIL PENALTY**

18. 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 \$12,240.00 to the State of New Mexico within 30 calendar days after the effective date of this Final Order.

19. 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

20. 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**

21. 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**

22. 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**

23. 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**

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

25. 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 21 and 22 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**

26. 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**

27. 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**

28. 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**

29. 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.

Date: 22 Feb 2018

INTERIM DIRECTOR

DCP OPERATING COMPANY, LP

By: *Von M<sup>c</sup>Callum*  
Print Name: *Von M<sup>c</sup>Callum*  
Print Title: *GENERAL MANAGER*

Date: *2/15/18*



**STIPULATED FINAL COMPLIANCE ORDER**

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

*Butch Tongate*

\_\_\_\_\_  
**BUTCH TONGATE**  
**SECRETARY**  
**ENVIRONMENT DEPARTMENT**

Date: 2/26/18