

**STATE OF NEW MEXICO  
SECRETARY OF ENVIRONMENT**

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

v.

**NO. AQB DCP-0593-1202 (NOV)**

**DCP MIDSTREAM, LP,  
Respondent.**

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**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 (“DCPM”) (collectively, the “Parties”) to resolve alleged statutory, regulatory, and permit violations by DCPM. The Department alleges violations of the New Mexico Air Quality Control Act (“AQCA”), NMSA 1978, Sections 74-2-1 to 74-2-17; the Air Quality Control Regulations (“AQCR”), 20.2. NMAC (“Regulations”), and Air Quality Permit Numbers P059-R1M1, 0123-M5 and 0123-M6 (“Permits”).

**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. DCPM is a limited partnership doing business in New Mexico at the Monument Booster Station (“Facility”). The purpose of the Facility is to compress pipeline quality natural gas using reciprocating natural gas fired compressor engines. The Facility is located in Lea County, New Mexico.

## **B. HISTORY AND ALLEGED VIOLATIONS**

### **VIOLATION 1**

3. Permit 0123-M5, Condition B101.A states in relevant part, “... [t]he contents of a permit application specifically identified by the Department shall become the terms and conditions of the permit or permit revision. Unless modified by conditions of this permit, the permittee shall construct or modify and operate the Facility in accordance with all representations of the application and supplemental submittals that the Department relied upon to determine compliance with applicable regulations and ambient air quality standards ...”

4. In the permit application received by the Air Quality Bureau (“Bureau”) on February 2, 2011 for Permit 0123-M5, DCPM represented the capacity of Unit TK-8 at the Facility to be 300 barrels (bbl).

5. The Bureau relied upon this information to determine compliance with applicable regulations and ambient air quality standards. The representation of the capacity of Unit TK-8 as 300 bbl was incorporated in Permit 0123-M5, Condition A104.

6. On June 26, 2012, Bureau personnel conducted an inspection of the Facility and discovered that the capacity of Unit TK-8 was 400 bbl, which differs from the capacity of 300 bbl as represented in Permit 0123-M5.

7. The failure of DCPM to construct and operate Unit TK-8 in accordance with the unit's capacity submitted in the permit application is a violation of Permit 0123-M5, Condition B101.A.

### **VIOLATION 2**

8. Permit 0123-M5, Condition A207.A states in relevant part, "... Operation (Unit FLARE) ... Monitoring: ... The permittee shall also perform Method 22 annually to certify compliance with the visible emission requirements ..."

9. Permit 0123-M5 was issued May 31, 2011. Therefore, the first annual Method 22 test was required to be performed no later than May 31, 2012. On June 26, 2012, Bureau personnel inspected the Facility and discovered that the annual Method 22 test on the Flare required by Permit 0123-M5, Condition A207.A had not been conducted.

10. The failure of DCPM to conduct an annual Method 22 test on the Flare during the period from June 1, 2011 to May 31, 2012 is a violation of Permit 0123-M5, Condition A207.A.

### **VIOLATION 3**

11. Permit 0123-M5, Condition A207.A states in relevant part, "... Requirement: ... The permittee shall install a flow meter to continuously measure the flow of gas to the flare ..."

12. Permit 0123-M5, Condition B108.G states in relevant part, "... [i]f monitoring is new or is in addition to monitoring imposed by an existing applicable requirement, it shall become effective 120 days after the date of permit issuance."

13. Permit 0123-M5 was issued May 31, 2011. Because the flow meter required by Permit 0123-M5, Condition A207.A was a new monitoring requirement, Permit 0123-M5, Condition B108.G required that the flow meter be installed by September 28, 2011, which is 120 days after the date of Permit 0123-M5 issuance.

14. On June 26, 2012, Bureau personnel inspected the Facility and discovered that a flow meter to continuously measure the flow of gas to the Flare had not been installed.

15. In a Semi-Annual Monitoring Report received by the Bureau on July 5, 2013 and pertaining to operations at the Facility during the period September 1, 2012 to May 31, 2013, DCPM reported that the flow meter required by Permit 0123-M5, Condition A207.A had been installed on March 28, 2013. This Semi-Annual Monitoring Report also included hourly flow rate monitoring data from the meter beginning April 1, 2013.

16. Because the flow meter was required to be installed by September 28, 2011, but was not installed until March 28, 2013, the installation of the flow meter was 547 days late.

17. The failure of DCPM to install a flow meter to continuously measure the flow of gas to the Flare within 120 days after permit issuance is a violation of Permit 0123-M5, Conditions A207.A and B108.G.

#### **VIOLATION 4**

18. 20.2.7.110.A NMAC states in relevant part, “[t]he owner or operator of a source having an excess emission shall report the following information to the department ... (2) Final report: the owner or operator shall file a final report that contains specific and detailed information for each item in Subsection B of 20.2.7.110 NMAC, no later than ten (10) days after the end of the excess emission.”

19. NMSA 1978, Section 12-2A-7 states in relevant part, “[i]n computing a period of time prescribed or allowed by a statute or rule, the following rules apply ... E. if the period is less than eleven days, a Saturday, Sunday or legal holiday is excluded from the computation ...”

20. On July 13, 2012, the Bureau received from DCPM a Semi-Annual Monitoring Report pertaining to operations at the Facility during the period March 12, 2012 to May 31,

2012. In this report, DCPM reported that the allowable Startup, Shutdown and Maintenance (SSM) emission limit of 3.9 tons per year of VOC, calculated as a monthly rolling annual total, had been exceeded by 0.01 tons per year at the end of May 2012.

**21.** DCPM included in the Semi-Annual Monitoring Report an Initial/Final Excess Emissions Report (EER), which had not been submitted earlier, which reported the exceedence of the SSM VOC limit for the 12-month period ending May 2012.

**22.** The excess emission event ended on May 31, 2012, and according to 20.2.7.110.A(2) NMAC and NMSA 1978, Section 12-2A-7, the Final EER was required to be filed with the Bureau no later than June 14, 2012. The Final EER was filed 29 days late.

**23.** The failure of DCPM to file with the Bureau a final report of the excess emission of VOC from Startup, Shutdown and Maintenance activities within the time required is a violation of 20.2.7.110.A NMAC.

#### **VIOLATION 5**

**24.** Permit 0123-M6, Condition B110 states in relevant part, "... C. The permittee shall notify the Department's Permitting Program Manager, in writing of, or provide the Department with (20.2.72.212.C and D) ... (2) any necessary update or correction no more than sixty (60) days after the operator knows or should have known of the condition necessitating the update or correction of the permit."

**25.** On June 27, 2013, Bureau personnel inspected the Facility, and from an inspection of the nameplate on Unit TK-8 determined that the serial number is 00494 and the date of manufacture is given as 9-1983. This serial number and manufacture date differ from Permit 0123-M6, Condition A104.A, which states that the serial number of Unit TK-8 is 1370-30 and the manufacture date is 1988. On July 16, 2013, Bureau personnel emailed DCPM a Post

Inspection Notice which included notice of this discrepancy in serial number and manufacture date for Unit TK-8. Therefore, the notification required by NSR Permit 0123-M6, Condition B110.C(2) was due by September 14, 2013, which is at least sixty (60) days after the DCPM knew of the condition necessitating the update or correction of the permit.

26. The failure of DCPM to notify the Department of discrepancies in the serial number and manufacture date of Unit TK-8 as listed in Permit 0123-M6 is a violation of Permit 0123-M6, Condition B110.C(2).

#### **VIOLATION 6**

27. Permit P059-R1M1, Condition B110.E states in relevant part, “[r]esults of emission tests and monitoring for each pollutant (except opacity) shall be reported in pounds per hour ... and tons per year ....”

28. On July 10, 2013, Bureau personnel conducted a review of the following two Semi-Annual Monitoring Reports for the Facility: 1) a report received December 19, 2012, for the period June 1, 2012 to November 30, 2012; and 2) a report received July 5, 2013, for the period December 1, 2012 to May 31, 2013. Periodic emission test reports included in both of these Semi-Annual Monitoring Reports failed to include a report of emissions in tons per year for each pollutant.

29. The failure of DCPM to report periodic emission test results in tons per year is a violation of Permit P059-R1M1, Condition B110.E.

#### **NOTICE OF VIOLATION**

30. On October 9, 2013, the Bureau issued Notice of Violation DCP-0593-1202 (“NOV”). The NOV alleged six violations. The six violations alleged were: 1) the failure to construct and operate Unit TK-8 in accordance with representation of the unit’s capacity in the

permit application, which is a violation of Permit 0123-M5, Condition B101.A; 2) the failure of DCPM to conduct an annual Method 22 test on the Flare during the period from June 1, 2011 to May 31, 2012, which is a violation of Permit 0123-M5, Condition A207.A; 3) the failure to install a flow meter to continuously measure the flow of gas to the Flare within 120 days after permit issuance, which is a violation of Permit 0123-M5, Conditions A207.A and B108.G; 4) the failure to file with the Bureau a final report of the excess emission of VOC from Startup, Shutdown and Maintenance activities within the time required, which is a violation of 20.2.7.110.A NMAC; 5) the failure to notify the Department of discrepancies in the serial number and manufacture date of Unit TK-8 as listed in Permit 0123-M6, which is a violation of Permit 0123-M6, Condition B110.C(2); and 6) the failure to report periodic emission test results in tons per year, which is a violation of Permit P059-\$1M1, Condition B110.E.

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

32. On November 21, 2013, the Bureau received the CAV from DCPM. The CAV was determined to be satisfactory by the Bureau December 10, 2013.

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

## **II. COMPROMISE AND SETTLEMENT**

### **A. GENERAL**

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

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

## **B. CIVIL PENALTY**

36. 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 DCPM shall pay a civil penalty of \$38,900.00 to the State of New Mexico within 30 calendar days after the effective date of this Final Order.

37. 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

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

## **III. OTHER TERMS AND CONDITIONS**

### **A. RESERVATION OF RIGHTS AND DEFENSES**

39. This Final Order shall not be construed to prohibit or limit in any way the Department from requiring DCPM 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 DCPM not resolved herein. This Final Order shall not be construed to



prohibit or limit in any way DCPM from raising any defense to a Department action seeking such relief.

**B. MUTUAL RELEASE**

40. 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**

41. DCPM 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 DCPM's performance of any obligation under this Final Order.

**D. EFFECTIVE DATE AND TERMINATION DATES**

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

43. Except as otherwise provided in this Paragraph, the terms of this Final Order shall terminate when DCPM has fulfilled the requirements of this Final Order. The reservations of rights and defenses and the mutual release in Paragraphs 39 and 40 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**

44. 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**

45. 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**

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


**H. SIGNATURE AND COUNTERPARTS**

47. 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:  Date: 11/21/14  
MICHAEL VONDERHEIDE  
DIRECTOR

**DCP MIDSTREAM, LP**

By:  Date: 11-12-14  
Print Name: Steven Harless  
Print Title: GM

**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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**RYAN FLYNN**  
**SECRETARY**  
**ENVIRONMENT DEPARTMENT**

Date: 12/1/2014

**APPROVED AS TO FORM:**



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**WILLIAM G. GRANTHAM**  
**Attorney for the Division**



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**LOUIS W. ROSE**  
**Attorney for DCP Midstream**