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UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS

FILED  
2015 07 15 11:00  
REGION 6 OFFICE  
EPA REGION VI

IN THE MATTER OF:

DCP MIDSTREAM, LP  
GOLDSMITH, TEXAS

RESPONDENT

DOCKET NO. CAA-06-2015-3353

**CONSENT AGREEMENT AND FINAL ORDER**

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant) and DCP Midstream, LP (Respondent or DCP Midstream) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

**I. PRELIMINARY STATEMENT**

1. This proceeding for the assessment of civil penalties is brought by EPA pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and is simultaneously commenced and concluded through the issuance of this CAFO pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.34.

2. For the purposes of this proceeding, the Respondent admits the jurisdictional allegations contained herein; however, the Respondent neither admits nor denies the specific factual allegations or conclusions of law contained in this CAFO.

3. The Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth therein, and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

4. Compliance with all the terms and conditions of this CAFO shall only resolve the Respondent's liability for civil penalties for those violations and facts which are set forth herein.

5. Recognizing the risks and costs of litigation, the Respondent and Complainant enter into this agreement to expeditiously resolve this matter.

6. The Respondent consents to the issuance of the CAFO, to the assessment and payment of the civil penalty in the amount and by the method set forth in this CAFO, and the conditions specified in the CAFO.

7. Each undersigned representative of the parties to this agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this agreement, to execute it, and to legally bind that party to it.

8. This CAFO shall apply to and be binding upon the Respondent, its officers, directors, servants, employees, agents, authorized representatives, successors and assigns.

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **A. PRELIMINARY ALLEGATIONS**

9. DCP Midstream, LP is a Delaware Limited Partnership authorized to do business in the State of Texas.

10. "Person" is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), as "an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency of the United States and any officer, agent, or employee thereof."

11. The Respondent is a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

12. The Respondent owns and operates a natural gas plant located on State Highway 158 about one mile west of Goldsmith, Texas.

13. "Stationary source" is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C.

§ 7412(r)(2)(C), and 40 C.F.R. § 68.3 as meaning:

any buildings, structures, equipment, installations or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

14. The Respondent's facility identified in Paragraph 12 is a "stationary source" as that term is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.

15. The Respondent is the owner and/or operator of the stationary source identified in Paragraph 12.

16. Ethane, Methane, Propane, Butane, Isopentane [Butane, 2-methyl-], Isobutane [Propane, 2-methyl-], and Pentane are each a "regulated substance", as set forth in 40 C.F.R. § 68.130.

17. "Process" is defined in 40 C.F.R. § 68.3 as meaning

any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of activities. For the purpose of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

18. The Respondent has one process at the stationary source identified in Paragraph 12: Natural Gas Processing.

19. 40 C.F.R. § 68.130 specifies the following threshold quantities for the regulated substances listed below:

- A. Flammable Mixtures containing one percent or greater<sup>1</sup> of one or more of the following: Ethane, Methane, Propane, Butane, Isopentane [Butane, 2-methyl-], Isobutane [Propane, 2-methyl-], and Pentane – 10,000 pounds; and
- B. Propane – 10,000 pounds.

20. The Respondent has exceeded the threshold quantity for one or more of the following regulated substances at the process identified in Paragraph 18:

- A. Flammable Mixtures containing one percent or greater of one or more of the following: Ethane, Methane, Propane, Butane, Isopentane [Butane, 2-methyl-], Isobutane [Propane, 2-methyl-], and Pentane; and
- B. Propane.

21. “Covered process” is defined in 40 C.F.R. § 68.3 as meaning “a process that has a regulated substance present in more than a threshold quantity as determined under § 68.115.”

22. The process identified in Paragraphs 18 and 20 is a “covered process” as that term is defined by 40 C.F.R. § 68.3.

23. The covered process identified in Paragraphs 18, 20, and 22 is subject to the “Program 3” requirements of the Risk Management Program (RMP) regulations and must, among other things, comply with the Program 3 Prevention Program of 40 C.F.R. Part 68, Subpart D.

24. On or about November 19-20, 2013, an EPA inspector conducted an inspection of the Respondent’s facility.

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<sup>1</sup> See 40 C.F.R. § 68.115.

25. Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), authorizes EPA to bring an administrative action when penalties that exceed \$320,000<sup>2</sup> or when the first alleged date of violation occurred more than twelve (12) months prior to the initiation of the action, if the Administrator and the United States Attorney General jointly determine that the matter is appropriate for administrative action.

26. EPA and the U.S. Department of Justice have jointly determined that the Complainant can administratively assess a civil penalty even though the penalty might exceed the statutory amount and the alleged violations have occurred more than twelve (12) months prior to the initiation of the administrative action.

## **B. VIOLATIONS**

### **Count One – Operating Procedures**

27. 40 C.F.R. § 68.69(a)(1) provides that owners and operators must develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information. These operating procedures must address, at a minimum, steps for each operating phase: (i) initial startup, (ii) normal operations, (iii) temporary operations, (iv) emergency shutdown, (v) emergency operations, (vi) normal shutdown, and (vii) start up after a turnaround or an emergency shutdown.

28. At least five of Respondent's written operating procedures failed to include steps addressing one or more of the required operating phases, including the following:

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<sup>2</sup> The maximum penalty that can be assessed (without a waiver) under Section 113 of the Clean Air Act was increased by the Civil Monetary Penalty Inflation Adjustment Rule codified at 40 C.F.R. Part 19 to \$220,000 for violations occurring between January 30, 1997 and March 15, 2004, to \$270,000 for violations occurring between March 15, 2004 and January 12, 2009, to \$295,000 for violations occurring between January 12, 2009 and December 6, 2013, and to \$320,000 for violations occurring after December 6, 2013.

- A. Inlet Gas Compression and Water Wash Systems;
- B. Cold Plant Liquids;
- C. Mol-Sieve Dehydration and Regeneration;
- D. SRU Ops; and
- E. Product Surge and Transfer.

29. Because Respondent failed to include required elements in written operating procedures for covered process activities, Respondent violated 40 C.F.R. § 68.69(a)(1).

**Count Two – Operating Procedures**

30. 40 C.F.R. § 68.69(c) requires operating procedures to be reviewed as often as necessary to assure that they reflect current operating practice, including changes that result from changes in process chemicals, technology, and equipment, and changes to the stationary source. Owners and operators must certify annually that the operating procedures are current and accurate.

31. In 2012, Respondent failed to certify the operating procedures were current and accurate.

32. Because the Respondent failed to make an annual certification, Respondent violated 40 C.F.R. § 68.69(c).

**Count Three – Mechanical Integrity**

33. 40 C.F.R. § 68.73(d)(3) requires that process equipment (i.e., pressure vessels and storage tanks, piping systems, relief and vent systems and devices, emergency shutdown systems, controls, and pumps) must be inspected and tested with a frequency consistent with applicable manufacturers' recommendation and good engineering practices, and more frequently if determined to be necessary by prior operating experience.

34. Respondent failed to conduct inspections or testing of the following process equipment components within their scheduled deadlines:

- A. Surge Tank Product North (pressure vessel);
- B. Twelve piping circuits; and
- C. Emergency Shutdown System.

35. Because the Respondent failed to conduct certain required inspections or testing of process equipment within its scheduled deadlines, Respondent violated 40 C.F.R. § 68.73(d)(3).

#### **Count Four – Compliance Audits**

36. 40 C.F.R. § 68.79 requires that owners and operators certify at least every three years that they have evaluated compliance with the provisions of 40 C.F.R. Part 68, Subpart D to ensure that the procedures and practices developed pursuant to subpart D are adequate and being followed.

37. Respondent timely completed the required compliance evaluation (audit) in 2010, but failed to properly certify that the evaluation was completed.

38. Because Respondent did not properly certify completion of the required compliance evaluation in 2010, Respondent violated 40 C.F.R. § 68.79 by failing make the required certification within the three year deadline.

39. Respondent states that subsequent to the inspection of the subject facility reflected in Paragraph 24 herein, and prior to the entry of this CAFO, DCP Midstream affirmatively redressed the violations set forth in Paragraphs 27 through 38, above.

**III. TERMS OF SETTLEMENT**

**A. CIVIL PENALTY**

40. For the reasons set forth above, and in lieu of the risks of litigation, the Parties agree that the Respondent will pay a civil penalty of **\$141,525 (one hundred forty-one thousand five hundred twenty-five dollars)**.

41. Within thirty (30) days of the effective date of this CAFO, the Respondent shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6." Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check should be remitted to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check should be remitted to:

U.S. Environmental Protection Agency  
Government Lockbox 979077  
US EPA Fines & Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account No. 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Beneficiary: US Environmental Protection Agency  
Field Tag 4200 of the Fedwire message should read  
"D 68010727 Environmental Protection Agency".

Additional payment guidance is available at:

<http://www2.epa.gov/financial/makepayment>.

**PLEASE NOTE: Docket Number CAA-06-2015-3353 shall be clearly typed on the check or other method of payment to ensure proper credit.** If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket number of the CAFO. The Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Tony Robledo  
Enforcement Officer  
Surveillance Section (6EN-AS)  
U.S. EPA, Region 6, Suite 1200  
1445 Ross Avenue  
Dallas, TX 75202

Lorena Vaughn  
Regional Hearing Clerk (6RC-D)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

The Respondent's adherence to this request will ensure proper credit is given when penalties are received in the Region.

42. The Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

43. If the Respondent fails to submit payment within thirty (30) days of the effective date of this Order, the Respondent may be subject to a civil action to collect any unpaid portion of the assessed penalty, together with interest, handling charges and nonpayment penalties as set forth below.

44. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. See 40 C.F.R. § 13.11(b).

45. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. See 40 C.F.R. § 13.11(c).

Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. See 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

46. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including but not limited to, attorneys' fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

47. This CAFO is considered a "prior violation" for the purpose of demonstrating a "history of noncompliance" under the CAA Stationary Source Penalty Policy, and the Combined Enforcement Policy for CAA Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68 (June 2012). This CAFO reflects resolution of certain CAA matters between Complainant and Respondent, settled in lieu of litigation (Para. 5 herein), and is inadmissible in any proceedings or actions brought by any person other than the United States.

#### **B. NOTIFICATION**

48. Unless otherwise specified elsewhere in this CAFO, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the addresses given (in addition to any action specified by

law or regulation), unless these individuals or their successors give notice in writing to the other party that another individual has been designated to receive the communication:

Complainant:

Tony Robledo  
Enforcement Officer  
Surveillance Section (6EN-AS)  
U.S. EPA, Region 6, Suite 1200  
1445 Ross Avenue  
Dallas, TX 75202

Respondent:

Paul R. Tourangeau  
Assistant General Counsel  
DCP Midstream, LP  
370 17<sup>th</sup> Street, Suite 2500  
Denver, CO 80202

**C. COMPLIANCE**

49. The Respondent hereby certifies that as of the date of the execution of this CAFO, that it has corrected the violations alleged herein, and is now, to the best of its knowledge, in compliance with all applicable requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68.

**D. MODIFICATION**

50. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement of the Complainant and the Respondent, and approved by the Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

**E. RETENTION OF ENFORCEMENT RIGHTS**

51. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondents of Federal or State laws, regulations, or permitting conditions.

52. Nothing in this CAFO shall relieve the Respondent of the duty to comply with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68.

53. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from the Respondent's facility whether related to the violations addressed in this CAFO or otherwise. Furthermore, nothing in this CAFO shall be construed or to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

54. The Complainant reserves all legal and equitable remedies available to enforce the provisions of this CAFO. In any such action to enforce the provisions of this CAFO, the Respondent shall not assert, and may not maintain, any defense of laches, statute of limitations, or any other equitable defense based on the passage of time. This CAFO shall not be construed to limit the rights of the EPA or United States to obtain penalties or injunctive relief under the CAA or its implementing regulations, or under other federal or state laws, regulations, or permit conditions.

55. In any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, to enforce the provisions of this CAFO, or other appropriate relief relating to this Facility, the Respondent shall not assert,

and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the Complainant or the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims for civil penalties that have been specifically resolved pursuant to this CAFO.

56. The Respondent waives any right it may possess at law or in equity to challenge the authority of the EPA or the United States to bring a civil action in a United States District Court to compel compliance with this CAFO and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action. The Respondent also consents to personal jurisdiction in any action to enforce this CAFO in the appropriate Federal District Court.

57. The Respondent also waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that the Respondent may have with respect to any issue of law or fact set forth in this CAFO, including any right of judicial review under Section 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1).

58. This CAFO is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The Respondent is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. The Respondent's compliance with this CAFO shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The Complainant does not warrant or aver in any manner that the Respondent's compliance with any aspect of this CAFO will result in compliance with provisions of the CAA or with any other provisions of federal, State, or local laws, regulations, or permits.

**F. COSTS**

59. Except as provided in Paragraph 46, each party shall bear its own costs and attorney's fees. Furthermore, the Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

**G. TERMINATION**

60. Upon receipt of the Respondent's notification to EPA Region 6 of its civil penalty payment as provided in Paragraph 41, EPA shall have thirty days (30) to raise any objections or evidence of noncompliance with this CAFO. This CAFO shall terminate when all actions required to be taken by this CAFO have been completed and the civil penalty has been paid unless EPA raises a timely objection as provided in this paragraph.

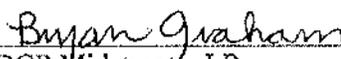
**H. EFFECTIVE DATE**

61. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:**

**FOR THE RESPONDENT:**

Date: 9/30/15

  
\_\_\_\_\_  
DCP Midstream, LP  
BRYAN GRAHAM  
GENERAL MANAGER, OPERATIONS

**FOR THE COMPLAINANT:**

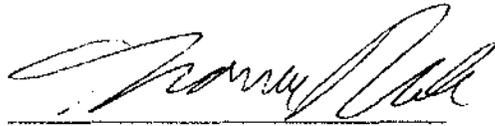
Date: 10-15-2015

  
\_\_\_\_\_  
John Blevins  
Director  
Compliance Assurance and  
Enforcement Division

**FINAL ORDER**

Pursuant to the Section 113 of the CAA, 42 U.S.C. § 7413, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive relief or other equitable relief for criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect the Respondent's (or their officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: 10/15/15

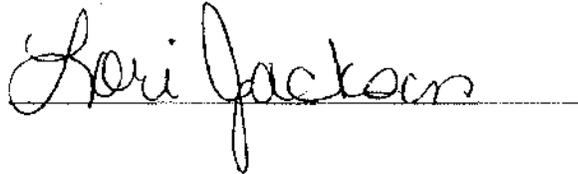


Thomas Rucki  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

I hereby certify that on the 15 day of October, 2015, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was sent to the following by certified mail, return receipt requested 704 0150 0000 245 49987:

Paul R. Tourangeau  
Assistant General Counsel  
DCP Midstream, LP  
370 17<sup>th</sup> Street, Suite 2500  
Denver, CO 80202

A handwritten signature in cursive script, reading "Keri Jackson", is written over a horizontal line.