



COLORADO

Department of Public Health & Environment



AIR POLLUTION CONTROL DIVISION

COMPLIANCE ORDER ON CONSENT

CASE NO. 2019-091

AIRS NO. 123-0107

IN THE MATTER OF DCP OPERATING COMPANY, LP - LUCERNE NATURAL GAS PROCESSING PLANT

The Colorado Department of Public Health and Environment (“CDPHE”), through the Air Pollution Control Division (“Division”), issues this Compliance Order on Consent (“Consent Order”), pursuant to the Division’s authority under § 25-7-115(3)(b), C.R.S. of the Colorado Air Pollution and Prevention and Control Act, §§ 25-7-101 to 1309, C.R.S. (“the Act”), and its implementing regulations, 5 C.C.R. § 1001, *et seq* (“the Regulations”) with the express consent of DCP Operating Company, LP (“DCP”). The Division and DCP may be referred to collectively as “the Parties.”

I. STATEMENT OF PURPOSE

The mutual objectives of the Parties in entering into this Consent Order are:

1. To establish compliance requirements and criteria for the continued operation of DCP’s Lucerne Gas Processing Plant, which consists of two separate plants, Lucerne 1 and Lucerne 2, located at 31495 Weld County Road 43, Weld County, Colorado (“Facility”); and
2. To resolve the violations of the Act cited herein and in a Compliance Advisory issued to DCP by the Division on June 21, 2019.

II. DIVISION’S FINDINGS OF FACT AND DETERMINATION OF VIOLATIONS

Based upon the Division’s investigation into and review of the compliance issues identified herein, and in accordance with § 25-7-115(3), C.R.S., the Division has made the following determinations regarding violations of regulatory, statutory, and/or permit requirements associated with the Facility.



3. At all times relevant to the violations cited herein, DCP was a Limited Partnership in good standing and registered to conduct business in the State of Colorado.

4. DCP owns and operates the Facility.

5. The Facility is or was subject to the terms and conditions of the following: Colorado Operating Permit Number 95OPWE100, issued to DCP on November 1, 1998 and last revised April 1, 2010; Colorado Construction Permit Number 12WE2024 Issuance 3, Final Approval issued to DCP on September 28, 2016 (“Permit Number 12WE2024”); Colorado Construction Permit Number 12WE2024 Issuance 4, Initial Approval issued to DCP on May 3, 2019; 40 CFR Part 60—Standards of Performance for New Stationary Sources, Subpart Kb—Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984 (“Subpart Kb”); Colorado Air Quality Control Statutes; and Colorado Air Quality Control Commission (“AQCC”) Regulations. On July 8, 2019, DCP submitted an application to the Division to obtain Colorado Construction Permit Number 19WE0732 for the Lucerne 1 plant flare (AIRS Point 060).

6. On September 20, 2018, Alexander Scherer, of the Division, conducted an inspection, pursuant to the Division's authority under § 25-7-111(2)(c), C.R.S., at the Facility for the purpose of determining compliance with permit requirements, the Act and the Regulations. Based on the inspection, and a review of records related to the Facility, the Division issued a Compliance Advisory to DCP on June 21, 2019. On August 8, 2019, DCP submitted a source response to the Division with additional information related to the issues identified in the Compliance Advisory.

7. On August 21, 2019, the Division and DCP met to discuss the issues identified in the Compliance Advisory.

8. Based upon a review of information including the inspection, records related to the Facility, and the information provided by DCP, the Division has determined the following:

- A. Pursuant to AQCC Regulation Number 3, Part A, § II.A, no person shall allow emission of air pollutants from, or construction, modification or alteration of, any facility, process, or activity which constitutes a stationary source, except residential structures, from which air pollutants are, or are to be, emitted unless and until an Air Pollutant Emission Notice (“APEN”) and the associated APEN fee has been filed with the Division with respect to such emission. Pursuant to AQCC Regulation Number 3, Part A, § II.B.3.a, for criteria pollutants, APENs

are required for each individual emission point in a nonattainment area with uncontrolled actual emissions of one ton per year or more of any individual criteria pollutant (pollutants are not summed) for which the area is nonattainment. In 2018, the Lucerne 1 plant flare emitted actual uncontrolled VOC as follows:

- i. 0.6 tons from purge and pilot gas;
- ii. 5.22 tons from reported malfunction and startup/shutdown events; and
- iii. 2.88 tons from maintenance blowdowns.

In total, the Lucerne 1 plant flare emitted approximately 8.7 tons of VOC in 2018, exceeding the APEN-required threshold. Additionally, DCP stated that VOC emissions from the Lucerne 1 plant flare (AIRS Point 060) have exceeded the APEN threshold since at least June 2015. VOC emissions from the Lucerne 1 plant flare exceeded the APEN-required threshold since at least June 2015 but DCP failed to file an APEN until July 8, 2019, violating AQCC Regulation Number 3, Part A, § II.A.

- B. Pursuant to AQCC Regulation Number 3, Part B, § II.A.1, no person shall commence construction of any stationary source or modification of a stationary source without first obtaining or having a valid construction permit from the Division. As described in Paragraph A, VOC emissions from the Lucerne 1 plant flare totaled approximately 8.7 tons in 2018, exceeding the one ton per year APEN threshold. Additionally, DCP stated that VOC emissions from the Lucerne 1 plant flare (AIRS Point 060) have exceeded the permit threshold since at least June 2015. DCP has not yet obtained a permit for the Lucerne 1 plant flare as was required since at least June 2015, violating AQCC Regulation Number 3, Part B, § II.A.1.

On July 8, 2019, DCP submitted an application to the Division to obtain Colorado Construction Permit Number 19WE0732 for the Lucerne 1 plant flare.

- C. Pursuant to AQCC Regulation Number 3, Part A, § II.A, no person shall allow emission of air pollutants from, or construction, modification or alteration of, any facility, process, or activity which constitutes a stationary source, except residential structures, from which air pollutants are, or are to be, emitted unless and until an APEN and the associated APEN fee has been filed with the Division with respect to such emission. Pursuant to AQCC Regulation Number 3, Part A, § II.B.3.a, for criteria pollutants, APENs are required for each individual emission point in a nonattainment area with uncontrolled actual emissions of one ton per year or more of any individual criteria

pollutant (pollutants are not summed) for which the area is nonattainment. DCP submitted an APEN to the Division on October 5, 2018 indicating the Lucerne 2 produced water tank (AIRS Point 057) emitted 2.42 tons actual uncontrolled VOC in 2017. VOC emissions from the Lucerne 2 produced water tank (AIRS Point 057) exceeded the APEN-required threshold since at least 2017 but DCP failed to file an APEN until October 5, 2018, violating AQCC Regulation Number 3, Part A, § II.A.

- D. Pursuant to AQCC Regulation Number 3, Part A, § II.A, no person shall allow emission of air pollutants from, or construction, modification or alteration of, any facility, process, or activity which constitutes a stationary source, except residential structures, from which air pollutants are, or are to be, emitted unless and until an APEN and the associated APEN fee has been filed with the Division with respect to such emission. Pursuant to AQCC Regulation Number 3, Part A, § II.B.3.b, for non-criteria reportable pollutants, Air Pollutant Emission Notices are required for each individual emission point with uncontrolled actual emissions equal to or greater than 250 pounds per year or more of any individual non-criteria reportable pollutant. According to an APEN DCP submitted on October 5, 2018, the Lucerne 2 methanol tank (AIRS Point 058) emitted .14 tons (280 pounds) of methanol in 2017. Methanol emissions from the Lucerne 2 methanol tank (AIRS Point 058) exceeded the APEN-required threshold in 2017 but DCP failed to file an APEN until October 5, 2018, violating AQCC Regulation Number 3, Part A, § II.A.

- E. Pursuant to Permit Number 12WE2024, Condition 34 and Subpart Kb § 60.112b, for the Lucerne 2 condensate storage tanks (AIRS Point 050), the closed vent system shall be designed to collect all VOC vapors and gases discharged from the storage vessel and operated with no detectable emissions as indicated by an instrument reading of less than 500 ppm above background and visual inspections, as determined in part 60, subpart VV, §60.485(b). As detailed in Table 1 below, DCP failed to operate two thief hatches at the Lucerne 2 condensate storage tanks (AIRS Point 050) with no detectable emissions from May 9, 2018 to August 21, 2018, violating Permit Number 12WE2024, Condition 34 and Subpart Kb § 60.112b.

Thief Hatch ID	Reading Date	VOC (ppm)	Repair Date
3459-000	5/9/2018	10,800	8/21/2018
	5/10/2018	67,600	



	8/21/2018	0	
3467-000	5/9/2018	41,800	8/21/2018
	5/10/2018	75,300	
	8/21/2018	0	

9. Based on information provided by DCP, the Division will no longer pursue enforcement for the issue identified in Paragraph D of the Compliance Advisory issued to DCP on June 21, 2019.

10. The Division and DCP entered into settlement discussions for the violations as determined by the Division. The Parties reached a settlement that is detailed in this Consent Order.

III. ORDER and AGREEMENT

Based on the foregoing factual and legal determinations, pursuant to its authority under § 25-7-115, C.R.S., and as a result of the violations cited herein, the Division orders DCP to comply with all provisions of this Consent Order, including all requirements set forth below.

11. DCP agrees to the terms and conditions of this Consent Order. DCP agrees that this Consent Order constitutes an order issued pursuant to § 25-7-115, C.R.S., and is an enforceable requirement of Part 1 of the Act. DCP also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division to enforce this Consent Order or by DCP 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.

12. Notwithstanding the above, DCP does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by DCP pursuant to this Consent Order shall not constitute an admission of liability by DCP with respect to the condition of the Facility.

Compliance Requirements

13. Effective immediately, and without limitation, DCP shall comply with

Permit Number 12WE2024, Subpart Kb, the Act and the Regulations in the regulation and control of air pollutants.

14. DCP shall design, procure, and install an updated metering system for the Lucerne 1 plant flare (AIRS Point 060) within six (6) months of the effective date of this Consent Order. The updated metering system will upgrade meter sensitivity to allow observation of flow rates at least as low as the purge gas and pilot gas flow volume limits in the pending Colorado Construction Permit Number 19WE0732. DCP assumes all of the risks associated with construction and operation of the updated metering system, which could include necessary modifications to the equipment and site design, among others, that may be necessary as part of the permit process or otherwise.

15. On July 8, 2019, DCP filed a construction permit application for Colorado Construction Permit Number 19WE0732 to authorize the Lucerne 1 plant flare (AIRS Point 060). DCP shall obtain Colorado Construction Permit Number 19WE0732 within six (6) months of the effective date of this Consent Order. DCP shall cooperate with the Division in obtaining Permit Number 19WE0732. Cooperation will include, but not be limited to, responding to all Division requests for information within fourteen calendar days of receipt or by an alternate deadline provided by the Division.

16. All documents submitted under this Consent Order shall use the same titles as stated in this Consent Order, and shall reference both the case number and the number of the paragraph pursuant to which the document is required. Unless otherwise specifically provided herein, no document submitted for Division approval under this Consent Order may be implemented unless and until written approval is received from the Division. Any approval by the Division of a document submitted under this Consent Order is effective upon receipt by DCP. All approved documents, including all procedures and schedules contained in the documents, are hereby incorporated into this Consent Order, and shall constitute enforceable requirements under the Act.

Administrative Penalty Requirements

17. Based upon the factors set forth in § 25-7-122, C.R.S., the Division has determined an administrative penalty in the amount of **Sixty-Six Thousand Five Hundred Dollars (\$66,500.00)** against DCP is appropriate and consistent with the Division's policies for violations of the Act and the Regulations cited in Section II of this Consent Order. DCP agrees to pay the sum of **\$66,500.00** in administrative penalties. Payment is due within thirty (30) calendar days of the effective date of this Consent Order by certified, corporate or cashier's check drawn to the order of "Colorado Department of Public Health and Environment" and delivered to the attention of the Enforcement Unit Supervisor, Air Pollution Control Division, 4300 Cherry Creek Drive South, APCD-SS-B1, Denver, Colorado 80246-1530.

IV. SCOPE AND EFFECT OF CONSENT ORDER

18. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the violations cited herein. This Consent Order is final agency action. DCP agrees not to challenge the terms and conditions of this Consent Order in any proceeding before any administrative body or any judicial forum, whether by way of direct judicial review or collateral challenge.

19. This Consent Order shall be enforceable by either party in the same manner as if the Division had entered this Consent Order without agreement by DCP. The Parties agree that any violation of the provisions of this Consent Order by DCP concerning the Act, or the Regulations, shall be a violation of a final order of the Division for the purposes of §§ 25-7-115, 121, and 122, C.R.S., and may result in the assessment of civil penalties of up to Fifteen Thousand Dollars (\$15,000.00) per day for each day of such violation.

20. The Parties' obligations under this Consent Order are limited to the matters expressly stated herein or in approved submissions required hereunder. All submissions made pursuant to this Consent Order are incorporated into this Consent Order and become enforceable under the terms of this Consent Order as of the date of approval by the Division.

21. The Division's approval of any submission, standard, or action under this Consent Order shall not constitute a defense to, or an excuse for, any prior violation of any requirement under the Act, the Regulations, or any subsequent violation of any requirement of this Consent Order, the Act, or the Regulations.

22. Entering into this settlement shall not constitute an admission of violation of the air quality laws by DCP, nor shall the Division or any third party infer it to be such an admission by DCP in any administrative or judicial proceeding. Notwithstanding the foregoing or anything in this Consent Order to the contrary, the described violation will constitute part of DCP's compliance history for any purpose for which such history is relevant, including considering the violation described above in assessing a penalty for any subsequent violations, in accordance with the provisions of § 25-7-122, C.R.S., against DCP.

23. DCP shall comply with all applicable Federal, State, and/or local laws and regulations and shall obtain all necessary approvals or permits to conduct the investigation and remedial activities required by this Consent Order and perform its obligations required hereunder. The Division makes no representation with respect to approval and permits required by Federal, State, or local laws or regulations other than those specifically referred to herein.

24. Nothing herein shall be construed as prohibiting, altering, or in any way limiting the ability of the Division to seek any other remedies or sanctions available by virtue of DCP's violation of this Consent Order or of the statutes and regulations upon which this Consent Order is based, or for DCP's violation of any applicable provision of law.

V. LIMITATION RELEASES AND RESERVATION OF RIGHTS AND LIABILITY

25. 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 the violations cited herein. This Consent Order does not grant any release of liability for any violations, regardless of when they occurred, that are not cited in this Consent Order. The Division reserves the right to bring any action it deems necessary to enforce this Consent Order, including actions for penalties and/or injunctive relief.

26. Nothing in this Consent Order shall preclude the Division from imposing additional requirements necessary to protect human health or the environment and to effectuate the purposes of this Consent Order. Nor shall anything in this Consent Order preclude the Division from imposing additional requirements in the event that additional information is discovered that indicates such requirements are necessary to protect human health or the environment.

27. DCP reserves its rights and defenses regarding liability in any proceedings regarding the Facility other than proceedings to enforce this Consent Order.

28. Upon the effective date of this Consent Order, DCP releases and covenants not to sue the State of Colorado as to all common law or statutory claims or counterclaims arising from, or relating to, the violations of the Act or the Regulations specifically addressed herein.

29. DCP 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 DCP, or those acting for or on behalf of DCP, including its officers, employees, agents, successors, representatives, contractors or consultants in carrying out activities pursuant to this Consent Order. DCP shall not hold out the State of Colorado or its employees, agents or representatives as a party to any contract entered into by DCP 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.

30. The Division reserves the right to bring any action or to seek civil or administrative penalties for any past, present, or future violations of the Act and the Regulations, not specifically addressed herein. Further, the Division has the right to bring any action to enforce this Consent Order and to seek authorized penalties for any violation of this Consent Order.

VI. FORCE MAJEURE

31. DCP shall perform the requirements of this Consent Order within the schedules and time limits set forth herein and in any approved plan unless the performance is prevented or delayed by events that constitute a force majeure. A force majeure is defined as any event arising from causes which are not reasonably foreseeable, which are beyond the control of DCP, and which cannot be overcome by due diligence.

32. Unless otherwise provided in the Act or the Regulations, within seventy-two (72) hours of the time that DCP knows or has reason to know of the occurrence of any event which DCP has reason to believe may prevent DCP from timely compliance with any requirement under this Consent Order, DCP shall provide verbal notification to the Division. Within seven (7) calendar days of the time that DCP knows or has reason to know of the occurrence of such event, DCP shall submit to the Division a written description of the event causing the delay, the reasons for and the expected duration of the delay, and actions which will be taken to mitigate the duration of the delay.

33. The burden of proving that any delay was caused by a force majeure shall at all times rest with DCP. If the Division agrees that a force majeure has occurred, the Division will so notify DCP. The Division will also approve or disapprove of DCP's proposed actions for mitigating the delay. If the Division does not agree that a force majeure has occurred, or if the Division disapproves of DCP's proposed actions for mitigating the delay, it shall provide a written explanation of its determination to DCP.

34. Delay in the achievement of one requirement shall not necessarily justify or excuse delay in the achievement of subsequent requirements. In the event any performance under this Consent Order is found to have been delayed by a force majeure, DCP shall perform the requirements of this Consent Order that were delayed by the force majeure with all due diligence.

VII. DISPUTE RESOLUTION

35. If the Division determines that additional requirements are necessary, that a violation of this Consent Order has occurred, that a force majeure has not occurred, or that the actions taken by DCP to mitigate the delay caused by a force

majeure are inadequate, the Division shall provide a written explanation of its determination to DCP. Within fifteen (15) calendar days of receipt of the Division's determination, DCP shall:

- a. Submit a notice of acceptance of the determination; or
- b. Submit a notice of dispute of the determination.

If DCP fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Division's determination.

36. If DCP files any notice of dispute, the notice shall specify the particular matters in the Division's determination that DCP seeks to dispute, and the basis for the dispute. Matters not identified in the notice of dispute shall be deemed accepted by DCP. The Division and DCP shall have thirty (30) calendar days from the receipt by the Division of the notification of dispute to reach an agreement. If agreement cannot be reached on all issues within this thirty (30) day period, the Division shall confirm or modify its decision within an additional fourteen (14) days, and the confirmed or modified decision shall be deemed effective and subject to appeal in accordance with the Act and the Colorado Administrative Procedure Act, Article 4, Title 24, Colorado Revised Statutes.

VIII. NOTICES

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

For the Division: Enforcement Unit Supervisor
Colorado Department of Public Health and Environment
APCD-SS-B1-1400
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

For DCP: Keith Warren
DCP Operating Company, LP
3026 4th Avenue
Greeley, CO 80631

IX. OBLIGATIONS UNAFFECTED BY BANKRUPTCY

38. The obligations set forth herein are based on the Division's police and regulatory authority. These obligations require specific performance by DCP of corrective actions carefully designed to prevent on-going or future harm to public health or the environment, or both. Enforcement of these obligations is not stayed by

a petition in bankruptcy. DCP agrees that the penalties set forth in this Consent Order are not in compensation of actual pecuniary loss. Further, the obligations imposed by this Consent Order are necessary for DCP and the Facility to achieve and maintain compliance with State law.

X. MODIFICATIONS

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

XI. BINDING EFFECT, AUTHORIZATION TO SIGN AND EFFECTIVE DATE

40. This Consent Order is binding upon the Parties to this Consent Order and their corporate subsidiaries or parents, their officers, directors, agents, attorneys, employees, contractors, successors in interest, affiliates and assigns. The undersigned warrant that they are authorized to bind legally their respective principals to this Consent Order, and that the Parties have the authority to enter into this Consent Order. This Consent Order shall be effective upon the date signed by the last party. 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.

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

By:  Date: 12/11/19
Shannon McMillan
Compliance and Enforcement Program Manager
Air Pollution Control Division

DCP OPERATING COMPANY, LP

By:  Date: 12/14/19
NAME: Tawna Rignall
TITLE: General Manager of Operations

cc: Shannon McMillan, APCD
Jennie Morse, APCD
Chris Laplante, APCD
Michael Stovern, US EPA
Tom Lovell, APCD

Alexander Scherer, APCD
Jen Mattox, APCD
Heather Wuollet, APCD
Tom Roan, Office of Attorney General
File

