



# RAILROAD COMMISSION OF TEXAS

## HEARINGS DIVISION

### AMENDED PROPOSAL FOR DECISION

OIL AND GAS DOCKET No. 03-0304094

**ENFORCEMENT ACTION AGAINST DCP MIDSTREAM, LP FOR VIOLATIONS OF STATEWIDE RULES ON THE W-1-2-5-4 INCH NATURAL GAS GATHERING LINE, BUCKEYE RANCH, FAYETTE COUNTY, TEXAS**

### APPEARANCES

#### FOR THE RAILROAD COMMISSION OF TEXAS:

David Bell, Enforcement Attorney, Enforcement Section  
Aimee Beveridge, OCP Team Lead, Site Remediation Section

#### FOR DCP MIDSTREAM, LP

Phil Gamble, Attorney at Law  
Jay Stewart, Attorney at Law  
Terry Webster, REW Group, LLC  
Dale E. Miller, Engineer  
Tracey O'Shay, Geoscientist

#### PROCEDURAL HISTORY:

Notice of Hearing:	August 26, 2017
Hearing on the merits:	November 16 & 17, 2017
Transcript Received:	December 5, 2017
Proposal for Decision issued:	January 9, 2018
Amended PFD issued	February 27, 2018

Heard by: Clayton J. Hoover,  
*Administrative Law Judge*

Robert Musick  
*Technical Examiner*

### SUMMARY

In Docket No. 03-0304094, the Railroad Commission of Texas (“Enforcement”) alleges that DCP Midstream, LP (Operator No. 162726), (“DCP”), is in violation of Statewide Rules on the W-1-2-5-4 Inch Natural Gas Gathering Line on the Buckeye Ranch in Fayette County, Texas, as a result of a condensate release, estimated at 42 barrels, beginning sometime prior to December 2013 and discovered in 2014. This Amended Proposal for Decision is issued to more accurately describe the spill at issue.

The preponderance of the record evidence supports all violations as alleged by Enforcement. Enforcement seeks an administrative penalty of \$10,000.00 and for DCP Midstream, LP to be ordered to place the subject gathering line and the condensate spill site on the Buckeye Ranch into compliance with all Commission Rules and Regulations.

DCP’s counsel, Phil Gamble and Jay Stewart, presented documentary evidence and expert witness testimony regarding the subject spill from the W-1-2-5-4 Inch natural gas gathering line on the Buckeye Ranch, but failed to present evidence sufficient to demonstrate by a preponderance of the evidence that DCP is not in violation of Commission Rules and the Texas Natural Resources Code, as alleged by Enforcement.

### APPLICABLE AUTHORITY

SWR 8(b), titled *No Pollution*:

No person conducting activities subject to regulation by the commission may cause or allow pollution of surface or subsurface water in the state.

### EVIDENCE PRESENTED

#### ENFORCEMENT’S CASE

Enforcement offered into evidence fourteen exhibits and the testimony of Aimee Beveridge—the Railroad Commission of Texas’ Operator Cleanup Program (OCP) Team Lead. Enforcement presented exhibits showing DCP’s P-5 status; a Commission Form T-4 permit (No. 02160) dated December 5, 2013; details of the pre December 2013 condensate release on the Buckeye Ranch, including a series of District Office inspection reports of the Buckeye Ranch site at issue; copies of the evaluation and recommendations of the REW Group, LLC, an independent contractor hired by DCP; and, a copy of letters from the Commission to DCP, requesting additional groundwater testing to supplement initial sampling data provided by DCP which confirmed a release of petroleum hydrocarbons to shallow groundwater (a.k.a., groundwater-bearing unit at 30-50 feet below ground surface, bgs) proximal to the condensate spill site.<sup>1</sup>

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<sup>1</sup> Enforcement Exh. 1-14

Exhibit 3 is the November 13, 2014, letter from the Commission to DCP requesting a groundwater assessment within the area of the condensate spill site, which has not been fulfilled by DCP.<sup>2</sup> Exhibit 4 is a follow-up letter from the Commission to DCP dated February 22, 2016, which again requests a groundwater assessment to characterize petroleum hydrocarbon impacts at the condensate spill site and request testing data to be submitted by May 31, 2016, again not fulfilled by DCP.<sup>3</sup>

Enforcement contends that the Railroad Commission filings, the above-described Inspection Reports and the REW Group, LLC reports demonstrate violations of Statewide Rule 8(b), that the extent of groundwater contamination cannot yet be known because of lack of reliable data and that the pipeline and condensate spill site have therefore not been brought into compliance.

The August 25, 2014 report from REW Group, LLC states:

"The analytical results indicate benzene (at 0.028 mg/l) was detected above the RRC's action level for Class 1/Class 2 groundwater, but below action levels for Class 3 groundwater."

"Groundwater classification at the 50-foot horizon at the site has not been determined."

"Based on the field observations and interpretation of results and the quality of data collected to-date, REW recommends further investigation by expanding the previous limited scope of the groundwater sampling."

"Therefore, REW recommends a further investigation under RRC guidance."<sup>4</sup>

Enforcement maintains that DCP violated Statewide Rule 8(b) by reason of the condensate release beginning pre-December 2013, and by not performing additional groundwater testing through the installation of more monitor wells to determine the extent of any groundwater contamination and the necessary remedial measures indicated by such further testing as requested by District 03 and Site Remediation Staff. In fact, the REW report cited above essentially acknowledges that excavation is not an adequate means of evaluation of such groundwater contamination.

Enforcement requests that DCP be assessed administrative penalties in the amount of \$10,000.00 and ordered to place the subject gathering line into compliance with all Commission Rules and Regulations.

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<sup>2</sup> Enforcement Exhibit. 3

<sup>3</sup> Enforcement Exhibit 4

<sup>4</sup> Enforcement Exhibit 12

## DCP'S CASE

DCP's witness Terry Webster testified about his companies' (REW and SET) inspection, soil excavation and evaluation of the condensate release on the Buckeye Ranch; the reports issued concerning such spill; and, his recommendations for site remediation. With respect to the statements made in Enforcement Exhibit 12 cited above, Mr. Webster testified as follows:

SET's [REW's] recommendation was only addressing the methodology to be employed in conducting a thorough investigation to obtain credible groundwater information, but not whether such an investigation was necessary, or it should be undertaken in this case.<sup>5</sup>

Mr. Webster then testified that it is his opinion that the benzene contamination was likely caused by historical oil and gas operations proximate to the condensate spill site.<sup>6</sup>

Dale Miller, DCP's engineering expert, then testified and presented numerous exhibits about historical oil and gas operations on the two wells closest to the condensate spill site, including a detailed analysis and critique of past operations for the drilling, production, re-entry and/or plugging of the two nearby wells and the possibility of the benzene contamination being caused by such historical drilling and production operations. Mr. Miller detailed several inconsistencies in Commission filings on such wells and the possibilities of groundwater contamination because of thousands of feet of open hole or improper plugging procedures in the two wells.<sup>7</sup> He also reviewed evidence of spills at each well and gas leaking from the stuffing box on one of the wells.<sup>8</sup>

Tracey O'Shay, DCP's geologist, testified about the subsurface geology in the area of the subject condensate release, the possibility and likelihood that any such contamination originated from historical oil and gas operations on the two wells in the area and her opinion that the benzene contamination did not originate from the condensate release at issue in this case.<sup>9</sup>

However, she confirmed that there is only one soil boring data point (TMW-1) documenting the depth and characteristic of the clay barrier aquitard located at about 19 feet bgs. Ms. O'Shay indicated in her testimony that there is no way to know whether the structure or stratigraphy of such aquitard layers are consistent with surface geology and features.<sup>10</sup> She also confirmed that the slickenside intervals described in the log of TMW-

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<sup>5</sup> Transcript Vol. I Page 185, lines 5-10

<sup>6</sup> Transcript Vol. I Page 185, lines 11-21

<sup>7</sup> Transcript Vol. I Page 234, line 13 – Vol. II Page 88, line 8

<sup>8</sup> Transcript Vol. I Page 248, lines 23-25

<sup>9</sup> Transcript Vol. II Page 89, line 22 – Page 129, line 2

<sup>10</sup> Transcript Vol. II Page 159, line 8 – Page 161, line 13

1 could be a preferential pathway for vertical migration of fluids.<sup>11</sup> Hence, it cannot be known whether the clay layer was an effective barrier for vertical migration.

### OPINION

Enforcement maintains that SWR 8(b) was violated by the condensate release and that the violation of SWR 8(b) has not been brought into compliance because of DCP's failure to perform additional groundwater testing through the installation of monitor wells to delineate confirmed groundwater contamination.<sup>12</sup>

District 03 and Site Remediation Staff's requests for further testing are consistent with Commission guidance with regard to the enforcement of SWR 8(b). The Commission's web page has links to Commission guidance that specifically address soil and groundwater assessment expectations once soil and/or groundwater impacts have been confirmed through sampling and analysis.<sup>13 14</sup> The "Field Guide" document titled, "*Field Guide for the Assessment and Cleanup of Soil and Groundwater Contaminated with Condensate from a Spill Site*" located on the Commission's web page includes guidance regarding soil and groundwater impacts; groundwater protection; cleanup standards; delineation and remediation protocol.<sup>15 16</sup>

At the request of the District Office, DCP installed one temporary monitor well, TMW-1, drilled on August 15, 2014, within 10 feet of the suspected spill to determine any petroleum hydrocarbon impacts to groundwater from the leaking pipeline.<sup>17 18</sup> Sampling and analysis of TMW-1 confirmed impacts to the groundwater beneath the spill site.<sup>19</sup>

To be compliant with Rule 8(b), once groundwater impacts have been confirmed through initial groundwater sampling, the Field Guide requires a site assessment be performed to delineate, remediate and protect groundwater based on the groundwater resource classification of the impacted aquifer.<sup>20 21</sup> The Field Guide requires horizontal and vertical delineation of a condensate spill by installing permanent groundwater monitor wells and

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<sup>11</sup> Transcript Vol. II Page 167, lines 17 – 20

<sup>12</sup> DCP Exhibit 3, Page 1

<sup>13</sup> Transcript Vol. I Page 86, lines 16-25

<sup>14</sup> Transcript Vol. I Page 87, lines 1-12

<sup>15</sup> DCP Exhibit 3

<sup>16</sup> Transcript Vol. I Page 86, lines 16-25

<sup>17</sup> Transcript Vol. I Page 232, lines 8-10

<sup>18</sup> Transcript Vol. I Page 49, lines 7-15

<sup>19</sup> Transcript Vol. I Page 48, lines 15-19

<sup>20</sup> DCP Exhibit 3

<sup>21</sup> Transcript Vol. I Page 48, lines 15-19

collecting groundwater samples for laboratory analyses.<sup>22</sup> Excavation is insufficient to investigate and remediate releases to groundwater.

Although DCP attempted to evaluate the extent of the contamination by excavation, it is clear from the testimony that soil excavation is a defective investigation method of evaluating releases to groundwater because of the arbitrary sample density and sample collection methods that cause some petroleum hydrocarbon constituents such as benzene to volatilize due to the very process of excavation. Soil borings and monitor wells are much more reliable and typically the industry standard to delineate the extent of deeper soil impacts and groundwater contamination. Hence, the Field Guide requires soil borings/monitor wells to investigate the extent of releases to environmental media.

DCP failed to perform additional investigations as recommended by their environmental consultant, REW, and as required by the RRC Site Remediation Section in correspondence dated November 13, 2014, and February 22, 2016.<sup>23</sup>

DCP also failed to assess risk and protect potentially affected wells and receptors in the area of the condensate spill site by performing a Receptor Survey required by Commission staff's correspondence dated November 13, 2014, and February 22, 2016.<sup>24</sup>

Witnesses testified for DCP that groundwater at 30 to 50 feet bgs was a Class 3 groundwater resource and analytical data indicate that constituents of concern (e.g., TPH and BTEX) are below the Class 3 groundwater resource protective concentration levels (PCLs), thus no further action for groundwater is necessary.<sup>25</sup> <sup>26</sup> Based on testimony from Ms. Aimee Beveridge for the RRC, a Class 3 groundwater resource demonstration was not submitted to the Operator Cleanup Program for consideration.<sup>27</sup> Also, Mr. Webster, a witness for DCP, confirmed in his testimony that a Class 3 groundwater resource demonstration was not submitted to the RRC for consideration.<sup>28</sup> It should be noted that the Field Guide does not minimize or eliminate the requirement of Rule 8(b) for a Class 3 groundwater resource aquifer. Also, the Field Guide requires a Class 3 groundwater resource aquifer be assessed, delineated and remediated to applicable protective standards based on the groundwater classification (Class 1, Class 2 or Class 3).<sup>29</sup>

The Field Guide specifies that for delineation of a Class 3 groundwater, a minimum of five soil sample locations are needed in the groundwater resource aquifer being investigated to delineate horizontally and vertically and samples should be analyzed for total petroleum hydrocarbons (TPH); and, benzene, toluene, ethylbenzene and total xylenes (BTEX).

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<sup>22</sup> DCP Exhibit 3

<sup>23</sup> Enforcement Exhibits 3 and 4

<sup>24</sup> Enforcement Exhibits 3 and 4

<sup>25</sup> Transcript Vol. I Page 179, lines 1-4

<sup>26</sup> Transcript Vol. I Page 48, lines 15-19

<sup>27</sup> Transcript Vol. I Page 102, lines 9-13

<sup>28</sup> Transcript Vol. I Page 231, lines 22-25 - Page 232, line 1

<sup>29</sup> DCP Exhibit. 3

Groundwater pollution must be fully characterized based on the Field Guide protocol prior to applying Class 3 groundwater resource cleanup standards.<sup>30</sup> Also, a Class 3 groundwater resource demonstration requires an assessment of groundwater yield and total dissolved solids (TDS) from appropriately installed wells. DCP failed to demonstrate a Class 3 groundwater resource based on minimum criteria for a demonstration; and failed to follow the Field Guide protocol for delineation and characterization of the aquifer. Hence, DCP's data is inherently unreliable.

Historical oil and gas production on the Buckeye Ranch has resulted in several sources of potential groundwater impacts.<sup>31</sup> Three witnesses, Mr. Terry Webster, Mr. Dale Miller and Ms. Tracey O'Shay testified for DCP during the hearing about historical oil and gas operations near the condensate spill site. Each witness testified about the likelihood of contamination originating from historical oil and gas operations proximal to the condensate spill site.<sup>32 33 34 35</sup> Mr. Miller indicated his examination of scientific data did not include any lab analysis, soil analysis, testing, PID readings which linked the groundwater impacts at the spill site to spill incidents at any nearby historical oil and gas operations such as the Yahweh No. 3 Well, a nearby cistern, and the Winchester B Well.<sup>36 37 38 39</sup> No quantitative data was submitted by DCP to support the theory that historical oil and gas operations were the source of the impacts to groundwater beneath the condensate spill site. DCP failed to demonstrate with reasonable certainty that nearby historical oil and gas operations were the cause of the impacts to groundwater proximal to the condensate spill site. DCP did not collect samples as required by the Field Guide to characterize impacts to groundwater and did not demonstrate by sampling that the release beneath the condensate spill site is associated with historical oil and gas operations. Hence, there is insufficient data to show an alternative source of benzene or to overcome Enforcement's case based on a preponderance of the evidence standard.

The groundwater monitor well, TMW-1, was installed in the area of highest impact near the pipeline release point and advanced to a depth of 50 feet with the well-screen interval across a groundwater-bearing unit at 30 to 50 feet bgs.<sup>40 41</sup> Soil borings, geotechnical samples, and the well log description of TMW-1, indicate the presence of stiff clay with a

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<sup>30</sup> DCP Exhibit 3

<sup>31</sup> Transcript Vol. I Page 14, lines 5-17

<sup>32</sup> Transcript Vol. I Page 135, lines 14-22

<sup>33</sup> Transcript Vol. I Page 229, lines 14-19

<sup>34</sup> Transcript Vol. II Page 129, lines 3-11

<sup>35</sup> Transcript Vol. I Page 52, lines 9-25

<sup>36</sup> Transcript Vol. II Page 74, lines 1-9

<sup>37</sup> Transcript Vol. II Page 78, lines 4-14

<sup>38</sup> Transcript Vol. II Page 79, lines 1-5

<sup>39</sup> Transcript Vol. II Page 87, lines 11-25

<sup>40</sup> Transcript Vol. I Page 232, lines 8-10

<sup>41</sup> Transcript Vol. I Page 49, lines 7-15

moderate plasticity beginning at approximately 19 feet bgs.<sup>42 43</sup> Based on the TMW-1 well log description presented in the hearing as DCP Exhibit No. 45, a silty clay barrier that is approximately 7 to 8 feet thick is located at about 19 feet bgs in the area beneath the condensate spill site. The description of the silty clay lense indicates a soil feature called "slickensides", described in the well log as a feature associated with the silty clay matrix beginning at 19 feet bgs.<sup>44</sup> Also, the log description identifies rusty stain, which Ms. O'Shay testified is indicative of oxidation.<sup>45</sup> Mr. Webster and Ms. O'Shay testified that the clay layer acts as a barrier preventing vertical migration of liquids and minimizing hydraulic connectivity between the shallow soils and groundwater located at 30 to 50 feet bgs.<sup>46 47</sup> During subsequent testimony, Ms. Tracey O'Shay testified that slickensides may be a preferential pathway for vertical migration through the clay barrier.<sup>48 49</sup> The testimony from Mr. Webster and Ms. O'Shay, and the well log information suggest cross-media impacts from near-surface soil to groundwater at 30 to 50 feet bgs may have occurred because of preferential pathways and oxidation within the clay barrier aquitard.<sup>50</sup> DCP failed to demonstrate that the approximately 7 to 8 feet silty clay layer situated at 19 feet bgs and proximal to the leak site is a competent barrier to inhibit vertical migration to shallow groundwater; the data in evidence also shows that slickensides, faults and fractures can provide alternative pathways for vertical migration

While DCP's evidence established a possibility that any groundwater pollution may have been caused by historical operations, spills or leaks from the two wells in the area nearest the condensate spill site at issue, such evidence did not amount to a preponderance of the evidence in the opinion of the Examiners. DCP's evidence on historical operations as a cause is ultimately speculative. It raises numerous possibilities for pollution to have originated from the nearby wells, but there is no direct proof of the volume or content of any such historical spills or the subsurface geology which would lead to pollution as a result. Any link to historical operations is not supported by substantial data.

The preponderance of evidence in this case shows that DCP committed the violation as alleged and proved by Enforcement. The spill has not been adequately evaluated.

DCP has no history of violations of Commission Rules and Regulations.

The Administrative Law Judge and Technical Examiner recommend that the Commission assess DCP an administrative penalty in the amount of \$10,000.00, and order DCP to

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<sup>42</sup> Transcript Vol. II Page 102, lines 1-15

<sup>43</sup> DCP Exhibit 45

<sup>44</sup> DCP Exhibit 45

<sup>45</sup> Transcript Vol. II Page 162, lines 10-25

<sup>46</sup> Transcript Vol. I Page 48, lines 8-14

<sup>47</sup> Transcript Vol. I Page 184, lines 4-21.

<sup>48</sup> Transcript Vol. II Page 140, lines 7-25

<sup>49</sup> Transcript Vol. II Page 141, lines 1-8

<sup>50</sup> DCP Exhibit 45



bring the gathering line and the condensate spill site into compliance with all Commission Rules and Regulations with further evaluation as requested. The maximum penalty available under Tex. Admin. Code §83.051(b)(1) would be \$10,000 per violation per day with each day constituting a separate violation under §83.051(b-1). The violations continued for over 1 year, and staff found no evidence of good faith. Enforcement used the Penalty Guidelines of Rule 107 to arrive at the recommended penalty contained herein of \$10,000.00.

### **CONCLUSION/RECOMMENDATION**

The Administrative Law Judge and Technical Examiner agree with Enforcement that, based on the preponderance of the evidence, DCP has violated Statewide Rule 8(b) has not brought such violation into compliance because of its failure to properly evaluate and remediate the site and makes the following Findings of Fact and Conclusions of Law:

### **FINDINGS OF FACT**

1. DCP Midstream, LP appeared at the hearing through counsel.
2. As established by DCP Midstream, LP's most recent Form P-5 *Organization Report*, DCP Midstream, LP is a Limited Liability Company.
3. DCP Midstream, LP designated itself as the operator of the W-1-2-5-4 Inch gathering line, by filing a Commission Form T-4 permit dated December 5, 2013.
4. The violation in this docket is a violation of Commission rules related to safety and the prevention or control of pollution.
5. DCP Midstream, LP violated Statewide Rule 8(b) as a result of the subject condensate spill discovered in 2014, its subsequent refusal to perform additional groundwater testing as requested by Commission staff and its failure to execute appropriate remedial measures indicated by such additional groundwater testing.
6. District Office field inspections conducted on July 28, 2014 and August 14, 2014 revealed the spill from DCP Midstream, LP's W-1-2-5-4 Inch pipeline is a violation of Statewide Rule 8(b) and has not been brought into compliance.
7. DCP Midstream, LP has no prior history of violations of Commission rules.
8. DCP Midstream, LP acted in bad faith because it failed to correct a Commission rule violation on the subject lease and failed adequately to explain its inaction to the Commission.

9. For purposes of TEX. NAT. RES. CODE § 91.114, at all times relevant hereto, Wouter Van Kempen, as President, and Brent L. Backes, as Vice President, were persons who held a position of ownership or control in DCP Midstream, LP.

#### CONCLUSIONS OF LAW

1. Proper notice of hearing was timely issued to the appropriate persons entitled to notice.
2. All things necessary to the Commission attaining jurisdiction have occurred.
3. DCP Midstream, LP violated Statewide Rule 8(b), 16 *Tex. Admin. Code* § 3.8(b), as a result of the subject condensate spill on the Buckeye Ranch, Fayette County, Texas, and has not brought such violation into compliance.
4. The documented violations committed by DCP Midstream, LP constitute acts deemed serious and a hazard to the public health and safety within the meaning of Texas Natural Resources Code § 81.0531.
5. DCP Midstream, LP did not demonstrate good faith within the meaning of Texas Natural Resources Code § 81.0531.

#### RECOMMENDATIONS

The Administrative Law Judge and Technical Examiner recommend that the above Findings of Fact and Conclusions of Law be adopted and that DCP Midstream, LP be assessed an administrative penalty of \$10,000.00, as discussed above.

The Administrative Law Judge and Technical Examiner also recommend that DCP Midstream, LP be directed to place the W-1-2-5-4 Inch pipeline fully into compliance with all Commission Rules and Regulations and requests for further investigation and remedial action within 30 days of the date this order becomes final

The Administrative Law Judge also recommends that DCP Midstream, LP, Wouter Van Kempen and Brent L. Backes be made subject to the restrictions of TEX. NAT. RES. CODE § 91.114.

RESPECTFULLY SUBMITTED,



CLAYTON J. HOOVER  
*Administrative Law Judge*



ROBERT MUSICK  
*Technical Examiner*