

**STATE OF NEW MEXICO
SECRETARY OF ENVIRONMENT**

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

Complainant,

v.

No. AQB 20-63 (CO)

ETC TEXAS PIPELINE, LTD.,

Respondent.

SETTLEMENT AGREEMENT AND STIPULATED FINAL COMPLIANCE ORDER

This Settlement Agreement and Stipulated Final Compliance Order (“Final Order”) is entered into between the Environmental Protection Division (“Division”) of the New Mexico Environment Department (“Department” or “NMED”) and Respondent, ETC Texas Pipeline, Ltd., (“ETC”) (collectively, the “Parties”) to resolve alleged statutory, regulatory, and permit violations by ETC at its Jal No. 3 Gas Plant, located in Lea County, New Mexico. The Department alleges violations of the New Mexico Air Quality Control Act (“AQCA”), NMSA 1978, Sections 74-2-1 to -17; the Air Quality Control Regulations (“Regulations”) at Title 20, Chapter 2 NMAC, and Air Quality Permit Number P090-R2M1 (“Permit”).

I. BACKGROUND

A. PARTIES

1. The Division is an organizational unit of the Department and has been delegated the authority to issue compliance orders under the AQCA, NMSA 1978, 74-2-12.A (2006). The Air Quality Bureau (“Bureau”) is an organizational unit of the Division.

2. ETC is a limited partnership doing business in New Mexico at the Jal No. 3 Gas

Plant Facility (“Facility”), located in Lea County, New Mexico. The Facility is a natural gas processing facility. At all times relevant to this Final Order, ETC owned and operated the Facility.

B. HISTORY AND ALLEGED VIOLATIONS

3. From December 23, 2014 to March 27, 2019, the Facility was authorized to operate under Title V Permit P090R2M1.

4. The following table from Title V Permit P090R2M1, Condition A106 lists the Facility emission units and their allowable emission limits. *See:* 40 CFR 50, 40 CFR 60, Subparts A, Db, and JJJJ, 40 CFR 63, Subparts A and ZZZZ, 40 CFR 64 CAM, 20.2.33 NMAC, 20.2.35 NMAC, 20.2.37 NMAC, and 20.2.72.210.A and B.1 NMAC and NSR Permit 1092-M8.

Table 106.A: Allowable Emissions

| Unit No. | NOx ¹ pph | NOx tpy | CO pph | CO tpy | VOC pph | VOC tpy | SO ₂ pph | SO ₂ tpy | TSP/PM ₁₀ /PM _{2.5} pph | TSP/PM ₁₀ /PM _{2.5} tpy |
|----------|----------------------|---------|--------|--------|---------|---------|---------------------|---------------------|---|---|
| 1A | 4.9 | 21.2 | 6.1 | 26.6 | 2.4 | 10.6 | < | < | < | 1.6 |
| 2A | 4.9 | 21.2 | 6.1 | 26.6 | 2.4 | 10.6 | < | < | < | 1.6 |
| 3A | 4.9 | 21.2 | 6.1 | 26.6 | 2.4 | 10.6 | < | < | < | 1.6 |
| 4A | 27.9 | 122.0 | 11.4 | 50.1 | 1.2 | 5.2 | < | < | < | 1.6 |
| 5A | 27.9 | 122.0 | 11.4 | 50.1 | 1.2 | 5.2 | < | < | < | 1.6 |
| C1 | 3.9 | 17.1 | 2.1 | 9.4 | 1.7 | 7.7 | < | 1.7 | < | 1.2 |
| C2 | 3.9 | 17.1 | 2.1 | 9.4 | 1.7 | 7.7 | < | 1.7 | < | 1.2 |
| C3 | 3.9 | 17.1 | 2.1 | 9.4 | 1.7 | 7.7 | < | 1.7 | < | 1.2 |
| C4 | 3.9 | 17.1 | 2.1 | 9.4 | 1.7 | 7.7 | < | 1.7 | < | 1.2 |
| S1 | 8.8 | 39.0 | 3.0 | 13.1 | 3.5 | 15.5 | < | 1.4 | < | 3.6 |
| S2 | 8.8 | 39.0 | 3.0 | 13.1 | 3.5 | 15.5 | < | 1.4 | < | 3.6 |
| S3 | 8.8 | 39.0 | 3.0 | 13.1 | 3.5 | 15.5 | < | 1.4 | < | 3.6 |
| S4 | 8.8 | 39.0 | 3.0 | 13.1 | 3.5 | 15.5 | < | 1.4 | < | 3.6 |
| S5 | 8.3 | 36.2 | 2.1 | 9.3 | 1.3 | 5.8 | < | 1.0 | < | 2.7 |
| 7H | < ² | 2.4 | < | 2.0 | < | < | < | < | < | < |
| 9S | 3.5 | 15.4 | 146.6 | 642.3 | 1.1 | 4.8 | 275.3 | 1205.9 | < | < |
| 11H | < | 3.3 | < | 2.8 | < | < | < | < | < | < |
| 31B | 3.3 | 14.3 | 3.4 | 14.7 | < | 4.0 | 1.3 | 5.7 | < | 4.0 |
| 32B | 4.7 | 20.6 | 10.0 | 43.6 | < | 2.9 | 1.7 | 7.4 | < | 3.9 |
| 8F | 0.05 | 0.22 | 0.04 | 0.18 | 0.0 | 0.1 | < | < | < | < |
| 9F | 0.25 | 1.1 | 2.0 | 8.8 | 2.2 | 9.5 | < | < | < | < |
| 10F | 0.08 | 0.33 | 0.06 | 0.28 | 0.0 | 0.1 | < | < | < | < |

| Unit No. | NOx ¹ pph | NOx tpy | CO pph | CO tpy | VOC pph | VOC tpy | SO ₂ pph | SO ₂ tpy | TSP/PM ₁₀ /PM _{2.5} pph | TSP/PM ₁₀ /PM _{2.5} tpy |
|----------|----------------------|---------|--------|--------|---------|-------------------|---------------------|---------------------|---|---|
| TK 1 | - | - | - | - | * | 2.2 | - | - | - | - |
| TK 2 | - | - | - | - | * | 1.2 | - | - | - | - |
| TK 3 | - | - | - | - | * | < | - | - | - | - |
| TK 4 | - | - | - | - | * | < | - | - | - | - |
| TK 46 | - | - | - | - | * | 0.2 | - | - | - | - |
| FUG1 | - | - | - | - | * | 34.8 ³ | - | - | - | - |
| FUG2 | - | - | - | - | * | 0.6 ³ | - | - | - | - |
| Loadout | - | - | - | - | < | 6.4 | - | - | - | - |

1 Nitrogen dioxide emissions include all oxides of nitrogen expressed as NO₂

2 “<” Indicates the application represented uncontrolled emissions are less than 1.0 pph or 1.0 tpy for this pollutant. Allowable limits are not imposed on this level of emissions, except for flares and pollutants with controls.

“-” Indicates the application represented emissions of this pollutant are not expected.

“*” Indicates hourly emission limits are not appropriate for this operating situation

3 FUG1 emissions are vented to Flares 8F or 10F; FUG2 emissions are vented to Flare 9F.

5. The following table from Title V Permit P090R2M1, Condition A107, lists the facility-wide startup, shutdown, and maintenance, and malfunction emission limits:

Table 107.A: Allowable SSM and Malfunction Units, Activities, and Emission Limits

| Unit No. | Description | ¹ NOx pph | NOx tpy | CO pph | CO tpy | VOC pph | VOC tpy | SO ₂ pph | SO ₂ tpy | H ₂ S pph | H ₂ S tpy |
|---------------------------------|---|----------------------|---------|----------------------|--------|----------------------|---------|----------------------|---------------------|----------------------|----------------------|
| Flare Unit 9F SSM ⁴ | Flare Combustion of SSM Emissions | 2.0 | | 16.4 | | 0.4 | | 3,820.9 | | 40.6 | |
| Flare Unit 10F SSM ⁴ | Non-turbine Flare Combustion of SSM Emissions | 430.1 ² | 7.6 | 1,630.6 ² | 25.1 | 1,008.6 ² | 6.6 | 2,773.2 ² | 130.4 ³ | 29.5 ² | 1.5 |
| Flare Unit 10F SSM | Turbine SSMs to 10F | | 12.0 | | 26.4 | | 25.6 | | 70.0 | | 4.7 |
| C1 – C4 SSM ⁵ | C1 – C4 SSM | | | 21.5 | 2.1 | 5.0 | 0.5 | | | | |
| Malfunction | Malfunction Emissions | * ³ | 10.0 | * ³ | 10.0 | * ³ | 10.0 | * ³ | 10.0 | * ³ | 10.0 |
| Totals ⁶ | | | 29.6 | | 63.6 | | 42.7 | | 210.4 | | 16.2 |

Nitrogen dioxide emissions include all oxides of nitrogen expressed as NO₂.

Indicates that non-turbine and turbine to flare pph emissions shall not exceed this rate.

*³ Indicates that the Malfunction emission rates shall not exceed the combined pph SSM emission limits for Units 9F and 10F.

his allowable SSM emission limit does not supersede emission standards required by 40 CFR 60, Subpart JJJJ and/or 40 CFR 63, part ZZZZ.

6. Between January 1, 2017 and August 31, 2018, ETC reported 685 excess emissions events for the Facility via the NMED Air Quality Bureau's online Compliance Reporting System. The originally reported excess emissions totaled 3,131,006 pounds, which amount was later changed to 2,444,736 pounds based on ETC's submittal of corrected excess emissions reports.

7. ETC claimed that eleven (11) of these events qualified as malfunctions under the Environmental Improvement Board's excess emission rule, 20.2.7.111 NMAC. The Department accepted three (3) of these affirmative defense demonstrations ("ADDs"), and rejected the remaining eight (8).

8. On August 26, 2020, the Division issued an Administrative Compliance Order consolidating all the alleged violations identified in the five Notices of Violation issued from June 2017 to November 2018.

9. On September 11, 2020, the Division issued a Corrected Administrative Compliance Order ("ACO"). The recalculated penalty amount is \$2,604,695.02.

10. On September 28, 2020, ETC filed its Request for Hearing and Answer to Administrative Compliance Order. ETC requested that the Secretary dismiss the ACO with prejudice.

11. On November 13, 2020, the Department issued a Notice of Docketing and the assignment of a hearing officer.

II. COMPROMISE AND SETTLEMENT

A. GENERAL

12. Following good faith settlement negotiations to resolve this matter without further costly litigation, the Parties agreed to a complete settlement of all the violations alleged in the

ACO, and have consented to the terms of this Final Order. ETC does not admit any of the violations alleged in the ACO, and the Department does not concede that ETC met its burden on the ADDs.

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

B. CIVIL PENALTY AND ADDITIONAL INJUNCTIVE RELIEF

14. In compromise and settlement of the alleged violations in the ACO, and upon consideration of the seriousness of the alleged violations and ETC's efforts to address the causes of excess emissions at the Facility, the Parties agree that ETC shall: (1) pay a civil penalty of \$1,302,347.51 in a cash payment to the State of New Mexico; (2) permanently shut down the sulfur recovery unit ("SRU") at the Facility; and (3) submit an application to revise the NSR and Title V permits for the Facility to remove authorization to operate the SRU.

Civil Penalty

15. ETC shall pay a civil penalty of \$1,302,347.51 to the State of New Mexico within 30 calendar days after the effective date of this Final Order.

16. Payment shall be made to the *State of New Mexico General Fund, New Mexico Environment Department, Air Quality Bureau, 525 Camino de los Marquez, Suite 1, Santa Fe, New Mexico*, by certified or corporate check, or by ACH deposit. On the date that delivery of funds by check or ACH is confirmed, ETC shall notify the Air Quality Bureau Enforcement Manager by electronic mail sent to: cindy.hollenberg@state.nm.us.

Certified or corporate checks shall be 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

ACH deposits shall be made to the order of the Wells Fargo Bank as follows:

Wells Fargo Bank, N.A.
100 W. Washington Street, Floor 20
Phoenix, AZ. 85003

Routing Transit Number: 121000248
Deposit Account Number: 4123107799
Descriptor: NMED-AQB-C&E

17. If ETC fails to make timely and complete payment of the civil penalty pursuant to paragraph 15, and unless the Parties agree to extend the time for payment of the civil penalty, ETC shall pay a stipulated penalty of \$1,500.00 per day for each day the payment is not timely or complete.

Shutdown of SRU

18. Within 60 days of the effective date of this Final Order, ETC shall permanently shut down the sulfur recovery unit (“SRU”) at the Facility. Upon completion of the shutdown of the SRU, ETC shall, within 30 days of such completion, submit a written certification to the Department that the SRU was properly and permanently decommissioned in accordance with applicable laws and rules. Certification shall include the following statement, signed by ETC’s responsible official:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and/or revocation of air quality operating permits for knowingly and willfully submitting a materially false statement.

19. If ETC fails to permanently shut down the SRU at the Facility within 60 days of the effective date of this Final Order, and unless the Parties agree to extend the time by which ETC

must permanently shut down the SRU, ETC shall pay a stipulated penalty of \$1,500.00 per day for each day thereafter until the date the SRU is completely and permanently shut down.

20. If ETC fails to submit the written certification specified in paragraph 18 within 30 days of permanently shutting down the SRU, and unless the Parties agree to extend the time by which ETC must submit the written certification, ETC shall pay a stipulated penalty of \$1,500.00 per day for each day thereafter until the date the required certification is submitted.

21. Within 60 days of the permanent shutdown of the SRU, ETC will submit an administrative revision pursuant to 20.2.72.219.A NMAC to the NSR and Title V permits to remove authorization to operate the SRU and any monitoring, recordkeeping, and reporting requirements related to operation of the SRU.

III. OTHER TERMS AND CONDITIONS

A. RESERVATION OF RIGHTS AND DEFENSES

22. This Final Order shall not be construed to prohibit or limit the Division in any way from requiring ETC to comply with any applicable state or federal requirement not resolved herein. This Final Order shall not be construed to prohibit or limit the Division in any way from seeking any relief authorized by the AQCA for violation of any state or federal requirement applicable to ETC not resolved herein. This Final Order shall not be construed to prohibit or limit in ETC in any way from raising any defense to a Department action seeking such relief.

B. MUTUAL RELEASE

23. 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's and the ACO. Such release applies only to civil liability.

C. WAIVER OF STATE LIABILITY

24. ETC shall assume all costs and liabilities incurred in performing all obligations under this Final Order. The Division, on its own behalf and on behalf of the State of New Mexico, does not assume any liability for ETC's performance of any obligation under this Final Order.

D. EFFECTIVE DATE AND TERMINATION DATES

25. This Final Order and any modifications thereto shall be effective when the Final Order or modification has been executed by both of the Parties.

26. Except as otherwise provided in this Paragraph, the terms of this Final Order shall terminate when ETC has fulfilled the requirements of this Final Order. The reservations of rights and defenses and the mutual release in Paragraphs 22 and 23 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

27. 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

28. 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

29. The persons executing this Final Order on behalf of ETC and the Division, respectively, represent that they have the authority to execute this Final Order on behalf of ETC and the Department.

H. SIGNATURE AND COUNTERPARTS

30. This Final Order is intended to be executed on separate signature pages. Faxed, emailed, electronic, or digital signatures shall constitute original signatures binding on the signing party.

31. This Final 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 agreement.

ETC TEXAS PIPELINE, LTD
By: LG PL, LLC, its general partner

By:  _____

Date: 8-25-21

Print Name: Clint Green

Print Title: Vice President, Operations

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NEW MEXICO ENVIRONMENT DEPARTMENT

By: _____

**JAMES C. KENNEY
SECRETARY**

Date: _____