

**STATE OF NEW MEXICO  
SECRETARY OF ENVIRONMENT**

**NEW MEXICO ENVIRONMENT DEPARTMENT**

**Complainant,**

v.

**No. AQCA 20\_\_\_\_(CO)**

**ETC TEXAS PIPELINE, LTD.  
JAL #3 NATURAL GAS PLANT,**

**Respondent.**

**CORRECTED ADMINISTRATIVE COMPLIANCE ORDER**

Pursuant to Section 74-2-12 of the New Mexico Air Quality Control Act (“Act”), NMSA §§ 74-2-1 through -17 (as amended through 2019), the Environmental Protection Division (“Division”) of the New Mexico Environment Department (“Department” or “NMED”) issues this Corrected Administrative Compliance Order (“Order”) to ETC Texas Pipeline, Ltd. (“ETTP”) to require compliance and assess a civil penalty for violations of the Act, the Air Quality Regulations at Title 20, Part 2 (“Regulations”) of the New Mexico Administrative Code (“NMAC”), and air permits at the Jal #3 Natural Gas Plant (“Facility”). The Secretary has delegated authority to issue this Order to the Director of the Division. This Order is issued to include the proper entity name for the Respondent, and replaces the previous Administrative Compliance Order issued August 28, 2020. The substantive allegations in this corrected Order are identical to the previous order, and therefore the timeline for ETTP to respond to those allegations and request a hearing is not extended by this Order.

As set forth in the detailed allegations below, between January 1, 2017 and August 31, 2018, ETTP submitted six hundred and eighty-five (685) excess emission reports for the Facility via the NMED Air Quality Bureau’s online Compliance Reporting System, totaling 3,131,006

pounds of pollutants. A summary of the excess emissions events and the number of violations resulting from those events is set forth in Table 1 below, and described in further detail in Section I of this Order. This Order addresses the seriousness of these violations and the necessary corrective actions required to address them.

**Table 1: Summary of Jal 3 Excess Emissions Events and Number of Violations Organized by Each Notice of Violation Enforcement Case**

<b>Notice of Violation Enforcement Case</b>	<b>Total EE Reports Submitted</b>	<b>Total ADDs Rejected*</b>	<b>Total Violations that occurred from Rejected ADD reviews</b>
REG-0569-1701	154	154	13,336
REG-0569-1702	164	164	10,768
REG-0569-1801	110	110	4,461
REG-0569-1802	100	100	9,184
REG-0569-1803	157	154	9,686

\*Minimal number of ADDs submitted by ETTP

EE – excess emissions

ADD – affirmative defense demonstration

ETTP submitted affirmative defense demonstrations (“ADDs”) for eleven (11) of the six hundred and eighty-five (685) excess emission events. Pursuant to 20.2.7 NMAC, it is ETTP’s burden to prove that each excess emissions event was caused by an emergency, malfunction, startup, or shutdown. Additionally, ETTP must demonstrate that it complied with the notification requirements and satisfied the criteria set forth in 20.2.7.111 through 113 NMAC. The Division has evaluated these ADDs and has rejected all but three (3) of ETTP’s affirmative defense claims, determining that the rejected claims do not satisfy the requisite criteria. An aggregated penalty was calculated for the remaining six hundred hundred and eighty-two (682) excess emissions events, consistent with the Act and the NMED Air Quality Bureau’s Civil Penalty Policy (“Penalty Policy”).

## **BACKGROUND**

1. ETTP owns and operates the Jal #3 Natural Gas Plant (“Jal 3”), which is located approximately four (4) miles north-northeast of Jal in Lea County, New Mexico.

2. Jal 3 consists of equipment designed and operated for treating and processing natural gas.

3. Since December 23, 2014, Jal 3 has been authorized to operate under Title V Permit P090-R2M1.

4. The following table from Title V Permit P090-R2M1, Condition A.106 - “Facility: Allowable Emissions,” lists the emission units and their allowable emission limits. See 40 CFR Part 50; 40 CFR Part 60, Subparts A, Db, and JJJJ; 40 CFR 63, Subparts A and ZZZZ; 40 CFR Part 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 2: Table 106.A Jal 3 Allowable Emissions Limits**

Unit No.	NOx <sup>1</sup> pph	NOx tpy	CO pph	CO tpy	VOC pph	VOC tpy	SO <sub>2</sub> pph	SO <sub>2</sub> tpy	TSP/PM <sub>10</sub> /PM <sub>2.5</sub> pph	TSP/PM <sub>10</sub> /PM <sub>2.5</sub> 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	< <sup>2</sup>	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	<	<	<	<
TK 1	-	-	-	-	*	2.2	-	-	-	-

Unit No.	NO <sub>x</sub> <sup>1</sup> pph	NO <sub>x</sub> tpy	CO pph	CO tpy	VOC pph	VOC tpy	SO <sub>2</sub> pph	SO <sub>2</sub> tpy	TSP/PM <sub>10</sub> /PM <sub>2.5</sub> pph	TSP/PM <sub>10</sub> /PM <sub>2.5</sub> tpy
TK 2	-	-	-	-	*	1.2	-	-	-	-
TK 3	-	-	-	-	*	<	-	-	-	-
TK 4	-	-	-	-	*	<	-	-	-	-
TK 46	-	-	-	-	*	0.2	-	-	-	-
FUG1	-	-	-	-	*	34.8 <sup>3</sup>	-	-	-	-
FUG2	-	-	-	-	*	0.6 <sup>3</sup>	-	-	-	-
Loadout	-	-	-	-	<	6.4	-	-	-	-

- 1 Nitrogen dioxide emissions include all oxides of nitrogen expressed as NO<sub>2</sub>
  - 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.
- Note: Title V annual fee assessments are based on the sum of allowable tons per year in Sections A106 and A107.

5. The following table from Title V Permit P090-R2M1, Condition A.107 - “Facility: Allowable Startup, Shutdown, and Maintenance (SSM) and Malfunction Emissions and Flare Pilot and Purge Emissions,” lists the facility-wide startup, shutdown, maintenance (“SSM”), and malfunction emission limits:

**Table 3: Jal 3, Table 107.A, Allowable SSM & Malfunction Units, Activities, and Emission Limits**

Unit No.	Description	<sup>1</sup> NO <sub>x</sub> pph	NO <sub>x</sub> tpy	CO pph	CO tpy	VOC pph	VOC tpy	SO <sub>2</sub> pph	SO <sub>2</sub> tpy	H <sub>2</sub> S pph	H <sub>2</sub> S tpy
Flare Unit 9F SSM <sup>4</sup>	Flare Combustion of SSM Emissions	2.0		16.4		0.4		3,820.9		40.6	
Flare Unit 10F SSM <sup>4</sup>	Non-turbine Flare Combustion of SSM Emissions	430.1 <sup>2</sup>	7.6	1,630.6 <sup>2</sup>	25.1	1,008.6 <sup>2</sup>	6.6	2,773.2 <sup>2</sup>	130.4 <sup>3</sup>	29.5 <sup>2</sup>	1.5
Flare Unit 10F SSM	Turbine SSMs to 10F		12.0		26.4		25.6		70.0		4.7
C1 – C4 SSM <sup>5</sup>	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 <sup>6</sup>			29.6		63.6		42.7		210.4		16.2

1. Nitrogen dioxide emissions include all oxides of nitrogen expressed as NO<sub>2</sub>.
2. 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.
4. This allowable SSM emission limit does not supersede emission standards required by 40 CFR 60, Subpart JJJJ and/or 40 CFR 63, Subpart ZZZZ.
5. Totals are for information only and not enforceable conditions.

6. Between January 1, 2017 and April 30, 2017, ETP reported one hundred and fifty-four (154) excess emission events. The Bureau issued Notice of Violation ("NOV") REG-0569-1701 for these violations on June 6, 2017. A copy of this NOV is attached hereto as Exhibit 1.

7. ETP claimed that one (1) event described in Exhibit 1 qualifies as a malfunction under the Act and the Penalty Policy.

8. Between May 1, 2017 and August 31, 2017, ETP reported one hundred and sixty-four (164) excess emission events. The Bureau issued Notice of Violation ("NOV") REG-0569-1702 for these violations on December 8, 2017. A copy of this NOV is attached hereto as Exhibit 2.

9. Between September 6, 2017 and December 29, 2017, ETP reported one hundred and ten (110) excess emission events. The Bureau issued Notice of Violation ("NOV") REG-0569-1801 for these violations on February 13, 2018. A copy of this NOV is attached hereto as Exhibit 3.

10. Between January 1, 2018 and April 30, 2018, ETP reported one hundred (100) excess emission events. The Bureau issued Notice of Violation ("NOV") REG-0569-1802 for these violations on July 25, 2018. A copy of this NOV is attached hereto as Exhibit 4.

11. Between May 1, 2018 and August 31, 2018, ETP reported one hundred and fifty-seven (157) excess emission events. The Bureau issued Notice of Violation ("NOV") REG-0569-1803 for these violations on November 8, 2018. A copy of this NOV is attached hereto as Exhibit 5.

12. ETTP claimed that ten (10) the events described in Exhibit 5 qualify as malfunctions under the Act and the Penalty Policy. *See* Notice of Violation REG-0569-1803 Affirmative Defense Evaluation Table, attached hereto as Exhibit 6.

### **VIOLATIONS**

13. ETTP violated NSR Permit 0612-M5, Conditions A106.A and A107.A, by exceeding the permitted allowable emission limits of multiple flares during six hundred and eighty-five (685) excess emission events. These events resulted in a total of forty-seven thousand six hundred and thirty-five (47,635) violations (“Jal 3 Violations”), as described in Exhibits 1, 2, 3, 4, and 5.

14. The Jal 3 Violations resulted in the unlawful emission of 3,131,006 pounds of nitrogen oxides (“NO<sub>x</sub>”), carbon monoxide (“CO”), volatile organic compounds (“VOC”), sulfur dioxide (“SO<sub>2</sub>”), and hydrogen sulfide (“H<sub>2</sub>S”).

15. Six hundred and eighty-two (682) excess emissions events underlying the Jal 3 Violations do not qualify as malfunctions under the Act or the Penalty Policy, and ETTP is therefore subject to penalties for those violations.

### **COMPLIANCE ORDER**

16. NMSA 1978, §74-2-12(A) authorizes the Secretary to issue a compliance order requiring compliance with a regulation or permit.

17. ETTP is ordered to take the following corrective actions for the excess emissions violations specified in Section I above:

1. ETTP shall operate Jal 3 as named in this Compliance Order without exceeding designated permitted allowable limits.

2. ETPP shall cease and desist from excess emissions that do not qualify for an affirmative defense under one or more of the following provisions: 20.2.7.111 NMAC (Affirmative Defense for an Excess Emission during Malfunction); 20.2.7.112 NMAC (Affirmative Defense for an Excess Emission during Startup or Shutdown); or 20.2.7.113 NMAC (Affirmative Defense for an Emergency).

**CIVIL PENALTY**

18. Section 74-2-12(A) of the Act authorizes the Secretary to issue a compliance order assessing a civil penalty for a violation of the Act, the Regulations, or a permit condition issued under the Act.

19. Section 74-2-12(B) of the Act authorizes the Secretary to assess a civil penalty of up to fifteen thousand dollars (\$15,000.00) per day of non-compliance for each violation under Section 74-2-12(A).

20. For the violations described in Section I, the Division has calculated, and hereby assesses, a civil penalty consistent with the Penalty Policy as follows:

<b>NOV/Violations</b>	<b>Exhibit No.</b>	<b>Penalty Amount</b>
REG-0569-1701	Exhibit 7	\$596,278.00
REG-0569-1702	Exhibit 8	\$602,137.79
REG-0569-1801	Exhibit 9	\$268,212.90
REG-0569-1802	Exhibit 10	\$1,151,498.78
REG-0569-1803	Exhibit 11	\$1,405,652.33
<b>TOTAL Excess Emissions Penalties</b>		<b>\$4,023,779.80</b>

21. A chart summarizing the excess emissions and penalty totals for all the Jal 3 enforcement cases contained herein is attached hereto as Exhibit 12.

## **NOTICE OF OPPORTUNITY TO ANSWER AND REQUEST A HEARING**

22. Pursuant Section 74-2-12(C) of the Act, and the Department's adjudicatory procedures at 20.1.5.200 NMAC, ETTP may request a hearing by filing a written request for a public hearing with the hearing clerk no later than thirty (30) days after receipt of this Order. The request for hearing shall include an Answer:

- a. Admitting or denying each allegation. Any allegation which is not specifically denied shall be deemed to be admitted. ETTP may assert that it has insufficient knowledge of any alleged finding of fact, and such finding shall be deemed to be denied;
- b. Asserting any affirmative defense upon which ETTP intends to rely. Any affirmative defense not asserted in the Answer, except an affirmative defense asserting lack of subject matter jurisdiction, shall be deemed waived.
- c. Signed under oath or affirmation that the information contained therein is true and correct to the best of the signatory's knowledge; and
- d. Attaching a copy of this Order.

23. This Order shall become final upon ETTP's receipt of the Order, unless ETTP files a Request for Hearing and Answer as set forth above. ETTP may file a Request for Hearing and Answer at the following address:

Administrator for Boards and Commissions  
New Mexico Environment Department  
P.O. Box 5469  
Santa Fe, New Mexico 87502  
Telephone: (505) 827-2428

24. The public hearing shall be governed by the Department's Adjudicatory Procedures at 20.1.5 NMAC, a copy of which is attached hereto as Exhibit 13.



**SETTLEMENT CONFERENCE**

25. ETPP may confer with the Division regarding settlement at any time, but a settlement conference or request for a settlement shall not extend or waive the deadline for filing a Request for Hearing or Answer. ETPP may appear at a settlement conference either pro se or through legal counsel. The Director of the Division shall execute any settlement as part of a Stipulated Final Order. Any Stipulated Final Order shall resolve all issues raised in this Order, shall bind all parties to this Order, and shall not be appealable. To confer regarding settlement, contact:

Lara Katz, Assistant General Counsel  
New Mexico Environment Department  
Office of General Counsel  
1190 S. Saint Francis Drive  
Santa Fe, New Mexico 87501  
Telephone: (505) 827-2985  
Email: lara.katz@state.nm.us

**TERMINATION**

26. This Order shall terminate upon approval of the Secretary of the Department of a Stipulated Final Order.

**NEW MEXICO ENVIRONMENT DEPARTMENT**

**BY:** \_\_\_\_\_  
**SANDRA ELY**  
**DIRECTOR**  
**ENVIRONMENTAL PROTECTION DIVISION**

**DATE:** \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I hereby certify that on this 11<sup>th</sup> day of September, 2020, a copy of the foregoing Administrative Compliance Order was mailed via certified mail-return receipt requested to the following ETPP representative:

Clint Green  
Vice President of Operations  
Energy Transfer Partners  
1300 Main Street  
Houston, Texas 75225  
(713) 989-7447  
Clint.Green@energytransfer.com

*/s/ Lara Katz*

\_\_\_\_\_  
Lara Katz