

**STATE OF NEW MEXICO
SECRETARY OF ENVIRONMENT**

NEW MEXICO ENVIRONMENT DEPARTMENT

Complainant,

v.

No. AQCA 2020____(CO)

**DCP OPERATING COMPANY, LP,
ARTESIA GAS PLANT,
EUNICE GAS PLANT,
LINAM RANCH GAS PLANT,
ZIA II GAS PLANT,**

Respondent.

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 Compliance Order (“Order”) to DCP Operating Company, LP (“DCP”) 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 following facilities: Artesia Gas Plant, Eunice Gas Plant, Linam Ranch Gas Plant, and Zia II Gas Plant (collectively, the “Facilities”). The Secretary has delegated the authority to issue this Order to the Director of the Division.

As set forth in the detailed allegations below, between May 1, 2017 and August 31, 2018, DCP submitted five hundred and thirty-three (533) excess emission reports to the NMED Air Quality Bureau’s online Compliance Reporting System for the Facilities, totaling 1,638,305 pounds of pollutants. A summary of events and number of violations resulting from those events

is set forth in Table 1 below and described in further detail in Sections I through IV of this Order. This Order addresses the seriousness of these violations and the necessary corrective actions required to address them.

Table 1: Summary of Events and Number of Violations Organized by Facility

Facility	Total EE Reports Submitted per facility	Total number of EE Reports without accepted ADDs	Total number of Violations without accepted ADDs
Artesia Gas Plant	4	4	260
Eunice Gas Plant	131	116	1,882
Linam Ranch Gas Plant	163	135	2,336
Zia II Gas Plant	235	222	6,030

EE – excess emission

ADD – affirmative defense demonstration

DCP submitted affirmative defense demonstration (“ADD”) claims for all five hundred and thirty-three (533) excess emission events. Pursuant to 20.2.7 NMAC, it is DCP’s burden to prove that each excess emissions event was caused by an emergency, malfunction, startup, or shutdown. Additionally, DCP 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 the ADDs and rejects DCP’s claims for four hundred and seventy-seven (477) events that the Division determined do not satisfy the requisite criteria. An aggregated penalty was calculated for the 10,508 violations resulting from these four hundred and seventy-seven (477) excess emission events, consistent with the NMED Air Quality Bureau Civil Penalty Policy (“Penalty Policy”).

I. ARTESIA GAS PLANT ALLEGATIONS

A. Background

1. DCP owns and operates the Artesia Gas Plant, which is located approximately fifteen (15) miles southeast of Artesia in Eddy County, New Mexico.

2. The function of the Artesia Gas Plant facility is to process natural gas, including condensate removal, hydrogen sulfide (“H₂S”) and Carbon Dioxide (“CO₂”) removal with an amine unit, separation of natural gas liquids through the cryogenic plant, and inlet and residue compression.

3. Since June 27, 2017, the Artesia Gas Plant has been authorized to operate under Title V Permit P095-R3.

4. The following table from Title V Permit P095-R3, Condition A106 Facility: Allowable Emissions, lists, in part, the applicable emission units and their allowable emission limits (40 CFR 50; 40 CFR 60, Subparts A and JJJJ; 40 CFR 63, Subparts Kb and KKK; 40 CFR 63, Subparts A, HH, and ZZZZ; Paragraphs 1, 7, and 8 of 20.2.70.302.A NMAC; and NSR Permit 0434M10) (only applicable emission units listed):

Table 2: Artesia Gas Plant, Table 106.A, Allowable Emissions

Unit No.	NO_x¹ (pph)	NO_x (tpy)	CO (pph)	CO (tpy)	VOC (pph)	VOC (tpy)	SO₂ (tpy)	H₂S (tpy)
23	0.09	0.38	0.47	2.06	-	-	0.04	3.9E-5

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

² “-” indicates the application represented emissions of this pollutant are not expected

³ Compliance with emergency flare emission limits is demonstrated by limiting combustion to pilot and/or purge gas only.

5. The following table from Title V Permit P095-R3, Condition A107 Facility: Allowable Startup, Shutdown, and Maintenance (“SSM”) and Malfunction Emissions, lists the facility-wide startup, shutdown, and maintenance, and malfunction emission limits (only applicable emission units and information listed):

Table 3: Artesia Gas Plant, Table 107.A, Allowable SSM & M Units and Emission Limits

Unit No.	Description	NO_x (pph)	NO_x (tpy)	CO (pph)	CO (tpy)	VOC (pph)	VOC (tpy)	SO₂ (pph)	SO₂ (tpy)	H₂S (pph)	H₂S (tpy)
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SSM (23)	Flaring during routine and predictable startup, shutdown, and/or maintenance	10.4	2.4	56.6	13.2	<	<	2001.0	328.2	21.3	3.5
M	Venting of gas and combustion of gas flared due to malfunction	*	10.0	*	10.0	*	10.0	*	10.0	*	9.0

"<" Indicates that the application represented the uncontrolled mass emission rates are less than 1.0 pph or 1.0 tpy for this emissions unit and this air pollutant. The Department determined that allowable mass emission limits were not required for this unit and this pollutant.

"*" Pound per hour (pph) emission limits for SSM 23 shall apply during malfunction flaring events.

6. Between May 18, 2018 and June 14, 2018, DCP reported four (4) excess emission events at the Artesia Gas Plant. The Bureau issued Notice of Violation ("NOV") DCP-0199-1801 for these violations on March 18, 2019. A copy of this NOV is attached hereto as Exhibit 1.

7. DCP claimed that all the events described in Exhibit 1 qualify as malfunctions under the Act and the Penalty Policy. *See* Exhibit 1, Attachment 3: Affirmative Defense Evaluation.

B. Violations

8. DCP violated Title V Permit P095-R3, Condition A106.A by exceeding the permitted allowable emission limits of the emergency acid gas flare during four (4) excess emission events. These events resulted in a total of two hundred and sixty (260) violations ("Artesia Violations") as described in Exhibit 1.

9. The Artesia Violations resulted in the unlawful emission of 99,768 pounds of nitrogen oxide ("NO_x"), carbon monoxide ("CO"), sulfur dioxide ("SO₂"), volatile organic compounds ("VOC") and hydrogen sulfide ("H₂S").

10. The excess emissions events underlying the Artesia Violations do not qualify as malfunctions under the Act or the Penalty Policy, and DCP is therefore subject to penalties for those violations.

II. EUNICE GAS PLANT ALLEGATIONS

A. Background

11. DCP owns and operates the Eunice Gas Plant, which is located approximately 7 miles northwest of Eunice in Lea County, New Mexico.

12. The Eunice Gas Plant consists of equipment designed to process natural gas containing hydrocarbons, H₂S, and CO₂.

13. Since December 11, 2013, the Eunice Gas Plant has been authorized to operate under Title V Permit P086-R2.

14. The following table from Title V Permit P086-R2, Condition A106 Facility: Allowable Emissions, lists the emission units and their allowable emission limits (40 CFR 50; 40 CFR 60, Subpart A and GG, Kb, KKK; 40 CFR 63, Subpart A and HH, Paragraphs 1, 7, and 8 of 20.2.70.302.A NMAC; and NSR Permit 0044M10) (only applicable emission units listed):

Table 4: Eunice Gas Plant, Table 106.A, Allowable Emissions

Unit No.	NO_x¹ (pph)	NO_x¹ (tpy)	CO (pph)	CO (tpy)	VOC (pph)	VOC (tpy)	SO₂ (pph)	SO₂ (tpy)	H₂S (pph)	H₂S (tpy)
SRU Incinerator (31)	3.6	15.8	4.0	17.7	0.2	0.87	629.7 ³	2,758	6.8	29.9
ESD Flare (112A)	0.43	1.9	2.3	10.2	-	-	0.45	0.2	4.5E-05	2.0E-04
Acid Gas Flare (113)	0.1	0.36	0.45	2.0	-	-	0.0087	0.038	8.6E-06	3.8E-05
Booster Flare (114)	0.1	0.46	0.57	2.5	-	-	0.011	0.048	1.1E-05	4.8E-05

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

² “-” indicates the application represented emissions of this pollutant are not expected

³ “<” SO₂ emissions shall not exceed 629.7 pounds per hour during any three-hour period.

15. The following table from Title V Permit P086-R2, A107 Facility: Allowable Startup, Shutdown, & Maintenance (“SSM”) and Malfunction Emissions, lists the facility-wide startup, shutdown, and maintenance, and malfunction emission limits (only applicable emissions listed):

Table 5: Eunice Gas Plant, Table 107.A, Malfunction Emission Limit

Unit No.	NO _x (pph)	NO _x (tpy)	CO	CO (tpy)	VOC (pph)	VOC (tpy)	SO ₂ (pph)	SO ₂ (tpy)	H ₂ S (pph)	H ₂ S (tpy)
SSM-113	8.57	0.92	46.7	5.0	5.9	0.18	4233.9	128.8	52.9	1.37
Malfunction						10.0				

16. Between May 1, 2017 and August 16, 2018, DCP reported one hundred and thirty-one (131) excess emission events at the Eunice Gas Plant. Four NOVs were issued for these violations on January 29, 2018; March 7, 2018; November 19, 2018; and December 31, 2018. Copies of these NOVs are attached hereto as Exhibits 2, 3, 4, and 5, respectively. Exhibits 2, 3, and 4 also include DCP’s Corrective Action Verification responses.

17. DCP claimed that all one hundred and thirty-one (131) events described in Exhibits 2, 3, 4, and 5 qualify as emergencies, malfunctions, or scheduled SSM under the Act and the Penalty Policy. *See* Exhibits 2, 3, 4, and 5, Attachment 3: Affirmative Defense Evaluations.

B. Violations

18. DCP violated Title V Permit P086-R2, Conditions A106.A and A107A, by exceeding the permitted allowable emissions of a vent or the ESD or Acid gas flares during one hundred and thirty-one (131) events. These events resulted in a total of two thousand one hundred and seventy-two (2,172) violations (“Eunice Violations”) as described in Exhibits 2, 3, 4, and 5.

19. The Eunice Violations resulted in the unlawful emission of 396,664 pounds of NO_x, CO, SO₂, VOC, and H₂S.

20. One hundred and sixteen (116) of the one hundred and thirty-one (131) excess emission events underlying the Eunice Violations do not qualify as emergencies, malfunctions, or scheduled SSM under the Act or the Penalty Policy, and therefore DCP is subject to penalties for one thousand eight hundred and eighty-two (1,882) of the Eunice Violations.

III. LINAM RANCH GAS PLANT ALLEGATIONS

A. Background

21. DCP owns and operates the Linam Ranch Gas Plant, which is located approximately 7 miles west of Hobbs in Lea County, New Mexico.

22. The Linam Ranch Gas Plant consists of equipment designed and operated to process natural gas by removing H₂S, CO₂, and water from field gas, and separate natural gas liquids from the field natural gas stream.

23. Since April 28, 2014, the Linam Ranch Gas Plant has been authorized to operate under Title V Permit P094-R2.

24. The following table from Title V Permit P094-R2, Condition 106.A, Allowable Emissions, lists the emission units and their allowable emission limits:

Table 6: Linam Ranch Gas Plant, Table 106.A, Allowable Emissions

Unit No.	NO _x ¹ (pph)	NO _x ¹ (tpy)	CO (pph)	CO (tpy)	VOC (pph)	VOC (tpy)	SO ₂ (pph)	SO ₂ (tpy)
6	39.3	566	20	283	3.1	60.9	<	0.12
10	47.5	566	24	283	6.5	60.9	<	0.12
28	3.5	15.2	3.5	15.4	2.0	8.8	0.9	4.0
30	11.3	49.3	9.0	39.5	0.3	1.4	0.3	1.1
36	5.5	24.2	9.3	40.7	0.6	2.7	<	<
37	5.5	24.2	9.3	40.7	0.6	2.7	<	<

¹ Nitrogen dioxide emissions include all oxides of nitrogen expressed as NO_x. "<" indicates the application represented uncontrolled emissions less than 1.0 pph or 1.0 tpy for this pollutant.

25. The following table from Title V Permit P094-R2, A107 Facility: Allowable Startup, Shutdown, & Maintenance ("SSM") and Malfunction Emissions, lists the facility-wide

startup, shutdown, and maintenance, and malfunction emission limits (only applicable emissions listed):

Table 7: Linam Ranch Gas Plant, Table 107.A, Malfunction Emission Limit

Unit No.	NO _x ¹ (pph)	NO _x ¹ (tpy)	CO	CO (tpy)	VOC (pph)	VOC (tpy)	SO ₂ (pph)	SO ₂ (tpy)	H ₂ S (pph)	H ₂ S (tpy)
SSM 2	15.0	0.88	81.0	4.8	1.6	0.01	7,751	46.0	84.0	0.48
SSM AGI	18.0	0.71	97.0	44.0	1.90	0.00	9,301	4.1	101	0.048
Malfunction	288	10.0	1,565	10.0	3,029	10.0	9,301	10.0	101	9.0

¹ Nitrogen dioxide emissions include all oxides of nitrogen expressed as NO_x
Venting of gas due to malfunctions that does not include VOC combustion emissions

26. Between May 16, 2017 and April 30, 2018, DCP reported one hundred and sixty-three (163) excess emission events. Three NOV's were issued for these violations on January 30, 2018; March 7, 2018; and September 28, 2018. Copies of these NOV's are attached hereto as Exhibits 6, 7, and 8, respectively. Exhibits 6 and 7 also include DCP's Corrective Action Verification response.

27. DCP claimed that all the events described in Exhibits 6, 7, and 8 qualify as emergencies, scheduled SSM, or malfunctions under the Act and the Penalty Policy. *See* Exhibits 6, 7, and 8, Attachment 3: Affirmative Defense Evaluations.

B. Violations

28. DCP violated Title V Permit P094-R2, Conditions A106.A and 107.A, by exceeding the permitted allowable emission limits of multiple units during one hundred and sixty-three (163) excess emission events. These events resulted in a total of four thousand one hundred and forty-four (4,144) violations (“Linam Ranch Violations”), described in Exhibits 6, 7, and 8.

29. The Linam Ranch Violations resulted in the unlawful emission of 890,678 pounds of NO_x, CO, SO₂, VOC, and H₂S.

30. One hundred and thirty-five (135) of the one hundred and sixty-three (163) excess emissions events underlying the Linam Ranch Violations do not qualify as emergencies, SSM, or

malfunctions under the Act or the Penalty Policy, and therefore DCP is subject to penalties for two thousand three hundred and thirty-six (2,336) of the Linam Ranch Violations.

IV. ZIA II GAS PLANT ALLEGATIONS

A. Background

31. DCP owns and operates the Zia II Gas Plant, which is located approximately 28 miles northeast of Carlsbad in Lea County, New Mexico.

32. The Zia II Gas Plant consists of equipment designed and operated to process natural gas by removing H₂S, CO₂, and water from field gas, separating natural gas liquids from the field natural gas stream and reinjecting the acid gas.

33. Between December 22, 2016 and November 22, 2017, the Zia II Gas Plant was authorized to operate under PSD Permit PSD-5217M1-R2. Since November 22, 2017, the Zia II Gas Plant has been authorized to operate under PSD Permit PSD-5217M2.

34. The following table from PSD Permits PSD-5217M1-R2 and PSD-5217M2, Condition 107.A Facility: Allowable Startup, Shutdown, & Maintenance (“SSM”) Emissions, lists the facility-wide startup, shutdown, and maintenance emission limits:

Table 7: Zia II Plant, Table 107.A, Allowable SSM Emission Limits

Unit No.	NO _x ¹ (pph) BACT	NO _x ¹ (tpy)	CO (pph) BACT	CO (tpy)	VOC (pph) BACT	VOC (tpy)	SO ₂ (pph) BACT	SO ₂ (tpy)	H ₂ S (pph)	H ₂ S (tpy)	CO _{2e} (typ) BACT
SSM FL1	799.2	3.9	4,348.8	21.1	2,942.1	11.8	14,977.	59.9	162.9	0.7	6,518
SSM FL2	102.0	1.2	554.8	6.5	7.8	0.09	4,409.8	22.0	48.0	0.2	1,094
SSM Compressor Blowdown (CB)	-	-	-	-	358.8	0.8	-	-	-	-	15
SSM Plant Venting (PV)	-	-	-	-	1,500.0	12.0	-	-	-	-	3,355

- ¹ Nitrogen dioxide emissions include all oxides of nitrogen expressed as NO₂
- ² Pound per hour limits for NO_x, CO, VOC, and SO_x and the ton per year limit for CO₂e are PSD BACT limits for units FL1, FL2, and SSM Compressor Blowdown and Plant Venting.
- ³ Allowable SSM emission limits for FL1 and FL2 for all pollutants include pilot and purge emissions, except for CO₂e which has separate emission limits for SSM and pilot and purge. Emission limits for pilot and purge appear in Table 106B.
- ⁴ SSM for FL2 includes assist gas and acid gas (not pilot or purge).

35. Between September 6, 2017 and August 31, 2018, DCP reported two hundred and thirty-five (235) excess emission events at the Zia II Gas Plant. Three NOV's were issued for these violations on March 21, 2018; November 16, 2018; and February 20, 2019. Copies of these NOV's are attached hereto as Exhibits 9, 10, and 11, respectively.

36. DCP claimed that all events described in Exhibits 9, 10, and 11 qualify as emergencies, scheduled SSM, or malfunctions under the Act and the Penalty Policy. *See* Exhibits 9, 10, and 11, Attachment 3: Affirmative Defense Evaluations.

B. Violations

37. DCP violated PSD Permits PSD-5217M1-R2 and -M2, Condition A107.A by exceeding the permitted allowable emission limits for multiple units during two hundred and thirty-five (235) events. These events resulted in a total of six thousand seven hundred and one (6,701) violations ("Zia II Violations"), described in Exhibits 9, 10, and 11.

38. The Zia II Violations resulted in the unlawful emission of 251,197 pounds of NO_x, CO, SO₂, VOC, and H₂S.

39. Two hundred and twenty-two (222) of the two hundred and thirty-five (235) excess emissions events underlying the Zia II Violations do not qualify as emergencies, scheduled SSM, or malfunctions under the Act or the Penalty Policy, and therefore DCP is subject to penalties for six thousand and thirty (6,030) of the Zia II Violations.

COMPLIANCE ORDER

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

41. DCP is ordered to take the following corrective actions for the excess emission violations specified in Sections I through IV above:

- a. DCP shall operate each of the Facilities without exceeding designated permitted allowable limits.
- b. DCP 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

42. 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 condition of a permit issued under the Act.

43. 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).

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

Facility	NOV/Violations	Penalty Exhibit No.	Penalty Amount
Artesia Gas Plant	DCP-0199-1801	Exhibit 12	\$299,272.83
Eunice Gas Plant	DCP-0595-1702	Exhibit 13	\$28,343.45
	DCP-0595-1801	Exhibit 14	\$207,912.89
	DCP-0595-1802	Exhibit 15	\$669,957.62
	DCP-0595-1804	Exhibit 16	\$114,806.03
Linam Ranch Gas Plant	DCP-0589-1702	Exhibit 17	\$470,431.20
	DCP-0589-1801	Exhibit 18	\$142,233.68
	DCP-0589-1802	Exhibit 19	\$690,366.70
Zia II Gas Plant	DCP-32800-1801	Exhibit 20	\$149,832.79
	DCP-32800-1802	Exhibit 21	\$402,505.65
	DCP-32800-1803	Exhibit 22	\$149,760.85
TOTAL Excess Emissions Penalties			\$3,325,423.69

45. A chart summarizing the excess emissions and penalty totals for all the DCP Facilities is attached hereto as Exhibit 23.

NOTICE OF OPPORTUNITY TO ANSWER AND REQUEST A HEARING

46. Pursuant Section 74-2-12(C) of the Act and the Department’s adjudicatory procedures at 20.1.5.200 NMAC, DCP 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. DCP 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 DCP 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.

47. This Order shall become final upon DCP's receipt of the Order, unless DCP files a Request for Hearing and Answer as set forth above. DCP 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

48. 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 24.

SETTLEMENT CONFERENCE

49. DCP 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. DCP 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

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

NEW MEXICO ENVIRONMENT DEPARTMENT

BY: _____ **DATE:** _____
SANDRA ELY
DIRECTOR
ENVIRONMENTAL PROTECTION DIVISION

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of August, 2020, a copy of the foregoing Administrative Compliance Order was mailed via certified mail-return receipt requested to counsel for DCP:

Louis W. Rose
Montgomery & Andrews, PA
325 Paseo de Peralta
Santa Fe, New Mexico 87501
(505) 982-3873
lrose@montand.com

/s/ Lara Katz
Lara Katz