

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**IN THE MATTER OF:**

ETC Northeast Pipeline, LLC	:	The 2012 Oil and Gas Act
6051 Wallace Road Extension, 3 <sup>rd</sup> Floor	:	The Clean Streams Law
Wexford, PA 15090	:	Dam Safety and Encroachments Act

**CONSENT ORDER AND AGREEMENT**

This Consent Order and Agreement is entered into this 3<sup>rd</sup> day of January 2020, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”) and ETC Northeast Pipeline, LLC (“ETC”).

The Department has found and determined the following:

A. The Department is the agency with the duty and authority to administer and enforce The Clean Streams Law, Act of June 22, 1937, P.L. 1987, *as amended*, 35 P.S. §§ 691.1 – 691.1001 (“The Clean Streams Law”); the Oil and Gas Act, Act of February 14, 2012, P.L. 87, No. 13, 58 Pa. C.S. §§ 3201 – 3274 (“2012 Oil and Gas Act”); the Dam Safety and Encroachments Act, Act of November 26, 1978, P.L. 1375, *as amended*, 32 P.S. §§ 693.1 – 693.27 (“Dam Safety Act”); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. § 510-17 (“Administrative Code”); and the rules and regulations (“Regulations”) promulgated thereunder.

B. ETC is a Delaware limited liability company doing business in Pennsylvania with a local mailing address of 6051 Wallace Road Extension, 3<sup>rd</sup> Floor, Wexford, PA 15090. ETC owns and operates multiple pipelines in Pennsylvania used to transport natural gas products, including the Revolution Pipeline.

C. At all times relevant to the matters set forth in this Consent Order and Agreement, ETC has been a “person” and the “owner” and “operator” of the Revolution Pipeline, as those terms are defined in Section 1 of The Clean Streams Law, 35 P.S. § 691.1, Section 3 of the Dam Safety Act, 32 P.S. § 693.3, and Sections 102.1 and 105.1 of the Regulations, 25 Pa. Code §§ 102.1 and 105.1.

D. With a length of approximately 40.5 miles, the Revolution Pipeline is located in Jackson Township, Butler County; New Sewickley, Conway, Center, Raccoon, and Independence Townships, Beaver County; Findlay Township, Allegheny County; and Robinson and Smith Townships, Washington County. Construction of the Revolution Pipeline was permitted to disturb approximately 700 acres of land. Construction of the Revolution Pipeline commenced in 2017. Site work and restoration of the Revolution Pipeline is continuing as of the date of this Consent Order and Agreement.

E. Earth disturbances necessary for the construction of the Revolution Pipeline are subject to Erosion and Sedimentation Control General Permit authorizations ESG 00007160001, ESG 000716001, and ESG 00007170002 (collectively “ESCGPs”). The ESCGPs provide that “[a]ny permit non-compliance constitutes a violation of The Clean Streams Law, the 2012 Oil and Gas Act....” The ESCGPs also require ETC to assure that the all earth disturbance activity is done in accordance with the drawings contained in the permit applications as well as the terms and conditions set forth in the ESCGPs.

F. The ESCGPs include the boundary/limit of earth disturbance within which ETC can perform earth disturbance activities (including installation of best management practices (“BMPs”) to construct the Revolution Pipeline (“LOD”)). The earth disturbance permitted under the ESCGP generally included the installation of the BMPs to minimize accelerated erosion and

sedimentation and manage stormwater, moving earth to install the pipeline, and stabilizing the site within the LOD.

G. ETC also received general permit registrations granted pursuant to the Dam Safety Act (“Encroachment Permits”) for limited “encroachments” upon specified waters of the Commonwealth.

H. The earth disturbance associated with the construction of the Revolution Pipeline, including the placement of the pipe below the surface of the ground, the welding of the pipe, and the covering of the pipe, commenced on or about March 14, 2017. ETC reported that the Revolution Pipeline was mechanically complete and ready to be placed into commercial service on or about June 1, 2018. ETC had attempted to stabilize some areas of the LOD; however, neither temporary nor permanent stabilization, as required pursuant to 25 Pa. Code Chapter 102, had been achieved within all areas of the LOD, as of September 10, 2018.

I. On September 10, 2018, a landslide occurred at approximate pipeline station 1116+09, about 0.4 miles southwest of the intersection of Ivy Lane and Brodhead Road in Center Township, Beaver County, Pennsylvania (“Incident Site”). The landslide originated from unstabilized areas within the Revolution Pipeline LOD at that location. The landslide overtopped BMPs beyond the LOD, and caused a sediment discharge into Raccoon Creek, a water of the Commonwealth. When the landslide occurred, a section of the Revolution Pipeline separated. Gas escaped from the Revolution Pipeline and ignited, causing a conflagration that: burned 2 to 4 acres of trees; destroyed a single-family home, a barn, and numerous vehicles; resulted in the evacuation of the residents living nearby; and caused six high voltage electric transmission towers to collapse.

J. Between September 10 and October 28, 2018, at certain sections along the length of the Revolution Pipeline, ETC:

- i. Failed to properly implement and maintain BMPs;
- ii. Failed to either temporarily or permanently stabilize numerous sections of the LOD along the length of the pipeline;
- iii. Impacted numerous streams and wetlands without authorization;
- iv. Conducted earth disturbance activities outside the approved LOD along numerous sections of the pipeline;
- v. Failed to install numerous BMPs in accordance with the ESCGPs; and
- vi. Permitted sediment laden discharges to waters of the Commonwealth to occur.

K. On October 29, 2018, the Department issued a Compliance Order (“2018 Order”) to ETC addressing erosion and sedimentation and stability issues with the Revolution Pipeline LOD. The 2018 Order required ETC to, *inter alia*, cease all earth disturbance activities other than those necessary to repair and maintain existing BMPs, immediately cease all sediment laden discharges to waters of the Commonwealth, and prepare submittals for Department review. The 2018 Order is attached hereto as Exhibit A.

L. Pursuant to the requirements of the Department’s October 29, 2018 Compliance Order, ETC submitted its Stabilization Plan, Landslide Plan, and Updated ESC Plan on December 3, 2018. Between March 1, 2019 and December 9, 2019, ETC submitted six (6) revisions of its Stabilization Plan, Landslide Plan, and Updated ESC Plan, which the Department reviewed, and issued deficiency letters on April 30, 2019, May 24, 2019, September 12, 2019, November 14, 2019, and December 3, 2019.

M. On January 10, 2019, ETC was notified via letter that it had failed to comply with the 2018 Order (“Noncompliance Notice”). The Noncompliance Notice is attached hereto as fully incorporated into this Consent Order and Agreement as Exhibit B. As of the date of the Noncompliance Notice, ETC:

i. Failed to cease sediment laden discharges to waters of the Commonwealth at certain sections along the Revolution Pipeline;

ii. Failed to install flagging, markers, or signs at the site;

iii. Failed to temporarily stabilize disturbed areas, including areas of ongoing mass earth movement at certain sections along the Revolution Pipeline;

iv. Failed to submit a Temporary Stabilization Plan describing all temporary stabilization activities and sequences, including the proper placing, grading, constructing, reinforcing, lining, and covering of soil, rock, or earth to ensure their resistance to erosion, sliding, or other movement;

v. Failed to submit an updated Erosion and Sediment Control Plan (“E&S Plan”) that fully complied with the requirements of 25 Pa. Code §102.4(b)(5)(i-xv); and

vi. Failed to submit an updated Post Construction Stormwater Management Plan (“PCSM Plan”) that fully complied with the requirements of 25 Pa. Code §102.8(f)(1-15) and 102.8(g).

N. On February 8, 2019, the Department petitioned Commonwealth Court to enforce the 2018 Order. On March 26, 2019, the Department and ETC resolved the petition to enforce through a Stipulated Order entered before the Commonwealth Court at docket number 69 M.D. 2019 (“Stipulated Order”). The Stipulated Order is attached hereto as Exhibit C.

O. Also on February 8, 2019, the Department issued a letter providing: “[E]ffective immediately the Department of Environmental Protection (Department) will be withholding the issuance of any approvals (as specified below) requested by ETC Northeast Pipeline LLC (ETC); Sunoco Pipeline LLP; Energy Transfer LP (ET); and any other subsidiary of ET.” (“Permit Bar”). The Permit Bar further provided that “[t]his hold on approvals applies to any requests for approvals/permits or permit amendments made by ET or its subsidiaries pursuant to...the August 10, 2017 Corrected Stipulated Order docketed with the Pennsylvania Environmental Hearing Board at 2017-009-L.” The Permit Bar is attached as Exhibit D. ETC, Sunoco, and ETLP appealed the Department’s action to the Environmental Hearing Board. The appeal was subsequently docketed at 2019-021-R.

P. On or about April 30, 2019, ETC submitted an updated PCSM Plan. Review of the PCSM Plan has been pending while the Department reviewed ETC’s multiple revisions of its Temporary Slope Stabilization Plan (“Stabilization Plan”), Landslide Hazard Evaluation and Temporary Slope Stabilization Plan (“Landslide Plan”), and the Updated Erosion and Sedimentation Pollution Control Plan (“ESC Plan”) that were required by the Department.

Q. On December 13, 2019, the Department issued a letter, attached hereto as Exhibit E (the “Letter”), conditionally approving ETC’s Stabilization Plan, Landslide Plan, and ESC Plan.

R. Based upon the subsequent revisions to ETC’s Temporary Slope Stabilization Plan, Landslide Hazard Evaluation and Temporary Slope Stabilization Plan, and Erosion and Sedimentation Pollution Control Plan noted in Paragraph Q, above, and approved in the Letter, the PCSM Plan submitted on April 30, 2019 will require revisions.

S. The violations identified in Paragraphs M.i. and M.iii. through M.v., above, were ongoing as of December 9, 2019.

T. In addition, from February 5, 2018 to December 13, 2019, the following occurred at the Revolution Pipeline:

i. At least nineteen (19) distinct sections of the Revolution Pipeline were not temporarily or permanently stabilized, which resulted in numerous slides within and outside of the LOD;

ii. At least 352 separate occurrences of accelerated erosion and sedimentation;

iii. At least 868 BMPs were not properly implemented or maintained;

iv. Construction of the Revolution Pipeline went beyond the approved LOD in at least 823 distinct areas;

v. Sediment laden water was discharged on at least 540 different occasions into, at minimum, the following waters of the Commonwealth and/or their tributaries – Raccoon Creek, Service Creek, Frames Run, Pine Run, Crows Run, Brush Creek, Obney Run, and wetlands;

vi. At least 1,359 BMPs were either not installed or installed improperly, contrary to the ESCGPs; and

vii. On at least 244 occasions, ETC did not submit corrective action reports after BMP failures.

U. On or before the effective date of this Consent Order and Agreement, while constructing the Revolution Pipeline project, ETC, *inter alia*:

i. Eliminated at least twenty-three (23) streams by removing and/or filling the stream channels with soil during construction activities, resulting in a loss of approximately 1,857 linear feet of stream channel;

ii. Changed the length of at least one hundred twenty (120) streams by manipulating and/or filling the stream channels with soil during construction activities resulting in a net loss of approximately 1,310 feet of stream channel; and

iii. Eliminated at least seventeen (17) and altered at least seventy (70) wetland areas by manipulating and/or filling wetlands with soil.

iv. These encroachments and water obstructions are collectively referred to herein as the “Unpermitted Water Obstructions and Encroachments.” (The list of ETC’s stream and wetland impacts identified to date is attached as Exhibit F).

V. The Unpermitted Water Obstructions and Encroachments were not identified in ETC’s application materials for the Encroachment Permits and were not permitted in either the ESCGPs or the Encroachment Permits.

W. On May 14, 2019 the Department issued a second Compliance Order (“2019 Order”) to ETC regarding the violations identified in Paragraph U, above. ETC appealed the 2019 Order to the Environmental Hearing Board. That appeal was docketed at 2019-054-R. The 2019 Order required ETC to, *inter alia*,

i. Identify all waters of the Commonwealth impacted by the Revolution Pipeline;

ii. Submit a report to the Department summarizing its investigation (“Waters Restoration Plan”);



iii. Submit a plan and schedule to restore impacted waters of the Commonwealth (“Waters Restoration Plan”); and

iv. Submit permit applications to conduct restoration and mitigation work needed to achieve compliance. (The 2019 Order is attached hereto as Exhibit G).

X. In January 2016, ETC analyzed the geology of the Revolution Pipeline and concluded that the area of the Incident Site had a high susceptibility to slope failure (“Geohazard Report”).

Y. Section 2.3 of the narrative portion (“Narrative”) of the ESCGPs states that “Construction activities in areas susceptible to slope failure should be investigated and evaluated by a licensed Geotechnical Engineer to address any stability issues. Underdrains are to be installed at locations determined by the Geotechnical Engineer, if saturated zones are encountered....” (“ESCGP Geohazard Requirements”). The Department’s investigation found that ETC did not inform the engineers who sealed the ESCGP application with their P.E. seal of the Geohazard Report or the findings contained therein.

Z. In April 2018, during the restoration of the Revolution Pipeline, an internal ETC report stated that:

[a] slip that developed from the unrestored right of way near station 1115+00 went down the slope of the right of way under the power transmission line all the way down to Raccoon Creek. . . . The slip broke off at the edge of the right of way very close to the ditch line and there is a significant and very steep drop off on the edge of the ditch-line which will make it difficult to restore properly.

This “slip” occurred approximately thirty (30) feet from the landslide at Incident Site. ETC was in the process of attempting to stabilize the area by drying out saturated soil, moving that soil back uphill, and installing underdrains without a permit at locations in this saturated zone as determined by persons in the field. The Department’s investigation found that neither an

engineer nor any other geotechnical expert was consulted by field staff when this work was performed.

AA. The Narrative contained in the ESCGP permit application and incorporated into the ESCGP required ETC to follow a construction sequence (the “Construction Sequence”) by having only fifty (50) feet of excavated trench open at any one time and requiring ETC to backfill the trench and apply soil supplements, mulch, and seed to the filled trench within seven (7) days after installation of the pipeline. More specifically, Section 2.7.2, No. 11, of the Narrative stated that, “The total length of excavated trench open at any one time should not be greater than the total length of the pipeline that can be placed in the trench and back-filled in one (1) working day.” ETC did not follow those requirements.

BB. The Department’s investigation found that, from the commencement of construction on March 14, 2017 to September 10, 2018, ETC failed to inform the people that performed construction work on the Revolution Pipeline of the ESCGP Geohazard Requirements, the Construction Sequence, or any other part of the Narrative of the ESCGP.

CC. On the dates and at the locations set forth above, ETC:

- i. Violated 25 Pa. Code §§ 78a.53 and 102.22(b)(1) by failing to implement and maintain temporary stabilization of the Revolution Pipeline;
- ii. Violated 25 Pa. Code §§ 78a.53 and 102.22(a) by failing to permanently stabilize areas of the Revolution Pipeline and protect it from accelerated erosion and sedimentation;
- iii. Violated 25 Pa. Code §§ 78a.53, 102.4(b)(1), and 102.11(a)(1) by failing to implement and maintain BMPs on areas of the Revolution Pipeline to minimize the potential for accelerated erosion and sedimentation;

iv. Violated 25 Pa. Code §§ 78a.53 and 102.5(m)(4) by failing to comply with the terms of the ESCGPs;

v. Violated 25 Pa. Code §§ 78a.53 and 102.5(c) by failing to obtain modifications to its Erosion and Sediment Control General Permits prior to exceeding the LOD;

vi. Violated Sections 301 and 401 of The Clean Streams Law, 35 P.S. §§ 691.301 and 691.401, by discharging industrial waste into waters of the Commonwealth in a manner not authorized by the rules and regulations of the Department;

vii. Violated 25 Pa. Code § 78a.68(b) by failing to maintain flagging, markers, or signs throughout earth disturbance activities and restoration or PCSM activities;

viii. Violated Section 6 of the Dam Safety Act, 32 P.S. § 693.6, and 25 Pa. Code § 105.11(a) by encroaching upon waters of the Commonwealth without a permit;

ix. Violated Section 401 of The Clean Streams Law, 35 P.S. § 691.401, by polluting waters of the Commonwealth by filling streams and wetlands with soil, resulting in their alteration and/or elimination; and

x. Violated Section 3259 of the 2012 Oil and Gas Act, 58 Pa. C.S. § 3259 by failing to comply with the 2018 Order.

DD. The violations described in Paragraph CC, above, constitute unlawful conduct under Section 3259 of the 2012 Oil and Gas Act, 58 Pa. C.S. § 3259, Section 18 of the Dam Safety Act, 32 P.S. § 693.18, and Section 611 of The Clean Streams Law, 35 P.S. § 691.611; a statutory nuisance under Section 3252 of the 2012 Oil and Gas Act, 58 Pa. C.S. § 3252, Section 19 of the Dam Safety Act, 32 P.S. § 693.19, and Section 307 of The Clean Streams Law, 35 P.S. § 691.307; and subject ETC to a claim for civil penalties under Section 3256 of the 2012 Oil and

Gas Act, 58 Pa. C.S § 3256, Section 21 of the Dam Safety Act, 32 P.S. § 693.21, and Section 605 of The Clean Streams Law, 35 P.S. § 691.605.

### **ORDER and AGREEMENT**

After full and complete negotiation of all matters set forth in this Consent Order and Agreement and upon mutual exchange of covenants contained herein, the parties desiring to avoid litigation and intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by ETC as follows:

1. **Authority.** This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to Section 20 of the Dam Safety and Encroachments Act, 32 P.S. § 693.20; Sections 5, 402, and 610 of The Clean Streams Law, 35 P.S. §§ 691.5, 691.402, and 691.610; Section 3253 of the 2012 Oil and Gas Act, 58 Pa. C.S. § 3253; and Section 1917-A of the Administrative Code, 71 P.S. § 510-17.

2. **Findings.**

a. ETC agrees that the findings in Paragraphs A through G, above, are true and correct, and, in any matter or proceeding involving ETC and the Department, ETC shall not challenge the accuracy or validity of these findings.

b. The parties do not authorize any other persons to use the findings in this Consent Order and Agreement in any matter or proceeding.

3. **Corrective Action.**

a. **Implementation of Plans.** ETC shall fully implement the approved Temporary Slope Stabilization Plan, Landslide Hazard Evaluation, and Erosion and Sedimentation Pollution Control Plan as required in the Letter.

- i. The terms and conditions of the Letter are hereby incorporated herein as if fully set forth.
- ii. The terms and conditions of the Letter constitute an Order of the Department.
- iii. ETC shall fully comply with the terms and conditions of the Letter in accordance with the schedule set forth therein.
- iv. Upon approval of the PCSM Plan and/or the Permanent Stabilization Plan by the Department, any outstanding work remaining under the Temporary Slope Stabilization Plan, Landslide Hazard Evaluation, and Erosion and Sedimentation Pollution Control Plan shall be superseded, and ETC shall implement the PCSM Plan and/or the Permanent Stabilization Plan.

b. EHB Appeals, Permit Bar.

- i. Within five (5) days of the effective date of this Consent Order and Agreement, ETC shall settle the appeals docketed at 2019-021- R and 2019-054-R through a “Homes of Distinction” settlement on a form attached hereto as Exhibit H. ETC shall cause Sunoco Pipeline LP, and Energy Transfer LP to join in the settlement of the appeal docketed at 2019-021-R.

- ii. Upon the Environmental Hearing Board marking the docket in all of these matters as settled and discontinued and not retaining jurisdiction, the Permit Bar shall be automatically lifted.

- iii. Upon the appeals docketed at 2019-021- R and 2019-054-R being marked closed and discontinued, the Department shall proceed with the timely processing of any requests for approvals/permits or permit amendments

("Requests") addressed by the Permit Bar that have been reviewed by the Department and found to satisfy the requirements of applicable law and regulation. Approvals, permits, and permit amendments for pending Requests shall be issued in accordance with the requirements of law and regulation.

c. Wetland Verification.

i. The Department's contracted consultant ("Consultant") will conduct a wetland and stream evaluation of each site where ETC proposes to conduct on-site restoration and of all sites where off-site mitigation has been selected to confirm that the delineations submitted to the Department pursuant to the 2019 Order were accurate and that all damaged resources are being restored and/or mitigated under this Consent Order and Agreement ("Wetland/Stream Evaluation"). The Wetland/Stream Evaluation shall follow wetlands classification and delineation accepted by the U.S. Army Corps of Engineers. ETC will be notified of any field work conducted by the Consultant or the Department and have the opportunity but not the obligation to accompany the wetlands and stream specialist during all field work. ETC shall reimburse the Department for all expenses associated with the Wetland/Stream Evaluation within thirty (30) days of ETC's receipt of invoice for the Consultant's services described in this paragraph.

ii. ETC will be provided a copy of the Wetland/Stream Evaluation upon issuance. If the Wetland/Stream Evaluation determines that more water resources that were adversely impacted by the Revolution Pipeline Project than

has been represented by ETC, ETC shall create additional mitigation equal to the additional water resources identified in the Wetland/Stream Evaluation.

d. Off-Site Mitigation.

i. On or before January 15, 2020, ETC shall submit full and complete plans, including, but not limited to, waivers, registrations, and/or permit applications (“Mitigation Plans”) to address off-site mitigation (“Mitigation Site”) for those impacts described above that cannot be restored on-site. ETC shall also submit a plan to monitor the success of ETC’s proposed mitigation at the Mitigation Site, setting forth the quantitative performance measures that ETC proposes to use to verify the success of the proposed mitigation measures (“Monitoring Plan”). The Mitigation Plans and Monitoring Plan are collectively referred to herein as “Plans”.

ii. Upon approval of the Plans, ETC shall fully implement the work authorized by the Department consistent with the mitigation measures proposed in the Mitigation Plans and the terms and conditions of the Department’s approvals.

iii. ETC shall initiate construction of the mitigation measures included in the Mitigation Plans within forty-five (45) days of approval of the Plans by the Department and the U.S. Army Corps of Engineers. On the day construction commences, ETC shall verify the commencement of construction by sending a status report describing the work that is being performed and photographs documenting that work.

iv. ETC shall complete construction of all proposed mitigation measures at the Mitigation Site within one hundred twenty (120) days of commencement of construction.

v. ETC shall monitor the Mitigation Site for not less than five (5) years and provide annual reports in the manner set forth in the Monitoring Plan.

e. On-Site Restoration.

i. Upon approval of the Chapter 105 Joint Permit Application permit (“Joint Permit”) for on-site restoration, ETC shall fully implement the work authorized by the Joint Permit consistent with all terms and conditions contained therein and with the plans set forth in the joint permit application.

ii. ETC shall initiate construction of the restoration measures authorized by the Department and the U.S. Army Corp of Engineers within thirty (30) days of Joint Permit issuance. On the day construction commences, ETC shall verify the commencement of construction by sending a status report describing the work that is being performed and photographs documenting that work.

iii. ETC shall complete construction of all restoration measures proposed in its permit applications and approved by the Department within one hundred twenty (120) days of the issuance of the Joint Permit; however, if the approval date thereof falls between June 1<sup>st</sup> and March 15<sup>th</sup>, ETC shall begin implementing the work no later than the following April 1<sup>st</sup>, and such work shall be completed in conformance with the authorization within one hundred twenty (120) days from commencement of the work.



iv. ETC shall monitor the on-site restoration sites for not less than five (5) years and provide annual reports in the manner required in the Joint Permit and by the supporting permit application materials.

f. In addition to the Eleventh Amendment of the United States Constitution or other statutory and constitutional governmental immunities, ETC hereby releases the Department and any Department employee or agent of and for liability or responsibility, if any, related to this matter or ETC's failure to meet any of deadlines set forth herein through the date of this Consent Order and Agreement.

g. Mitigation Reserve for On-Site Restoration. Upon execution of this Consent Order and Agreement, ETC must reserve within forty-five (45) days of the execution of this Consent Order and Agreement the equivalent of eight times the total on-site acreage that ETC proposes to restore, in mitigation credits to cover all on-site restoration acres. These credits shall be within the Revolution Pipeline watershed unless no such credits are available. ETC must hold those credits until the Department approves the year 5 report and the on-site restoration has been deemed successful and viable long term, at which time ETC can release, sell, or otherwise use those mitigation credits.

h. Deadlines, Compliance, Notice of Violations.

i. If ETC fails to meet any deadline contained in this Consent Order and Agreement or an approved plan addressed by this Consent Order and Agreement, upon receiving written notice from the Department of ETC's failure to meet a deadline or deadlines herein, ETC must stop all non-remedial work previously approved by the Department on the Revolution Pipeline, and ETC

shall cease and desist all such work until ETC achieves compliance with the missed deadline, as determined by the Department.

ii. If the Department issues a Notice of Violation regarding the Revolution Pipeline project for conditions arising after the date of this Consent Order and Agreement, then the Department may hold a telephonic hearing no less than 24 hours after the issuance of the Notice of Violation in order to determine whether to invoke the penalty provision set forth in Section 609 of The Clean Streams Law, 35 P.S. § 691.609 (“Section 609”), until ETC achieves compliance with the matters set forth in the Notice of Violation, as determined by the Department.

iii. If, following the telephonic hearing set forth above, the Department invokes the penalty provision set forth in Section 609, ETC reserves the right to immediately raise any and all factual and legal issues it could have raised notwithstanding this Consent Order and Agreement in a proceeding before the Pennsylvania Environmental Hearing Board, subject to the Environmental Hearing Board’s rules and regulations and state law. However, the parties agree that the Department shall not raise the defense of administrative finality.

iv. The parties, on behalf of their subsidiaries also, hereby agree and confirm that in any future action the Department may take pursuant to pursuit of a permit bar under Section 609, both parties will not be prevented from and have mutually agreed upon rights to present evidence and legal arguments related to all prior CSL actions and activities by ETC and its related entities in support of or opposing the imposition of a Section 609 permit bar. This and other prior

settlements shall not preclude consideration of the full factual history of this matter by a court or tribunal.

i. On or before May 1, 2020, or within sixty (60) days after the Department approves the Permanent Stabilization Plan, whichever is later, ETC shall submit to the Department for review and approval an updated PCSM Plan that is consistent with the revisions in the approved Temporary Slope Stabilization Plan, Landslide Hazard Evaluation and Temporary Slope Stabilization Plan, and Erosion and Sedimentation Pollution Control Plan, and the requirements of 25 Pa. Code Chapter 102. The Department may approve, approve with modifications, or deny the PCSM Plan. Upon approval by the Department, ETC shall implement the PCSM Plan as approved in accordance with the approved implementation schedule and construction sequences.

j. If the Department notifies ETC in writing of deficiencies in any document submitted pursuant to this Consent Order and Agreement, ETC shall respond to those deficiencies in writing within fourteen (14) days of its receipt of the deficiency notice, unless the Department has indicated a different time for response or unless ETC requests in writing and receives from the Department a written extension of time for responding to the deficiencies, which extension shall not be unreasonably withheld.

k. Except as expressly addressed herein, nothing in this Consent Order and Agreement shall be construed to supersede ETC's compliance with the Stipulated Order.

4. **Civil Penalty Settlement and Community Environmental Project.**

a. Within 30 days of signing this Consent Order and Agreement, ETC shall pay and consents to the assessment of a civil penalty of TWENTY-EIGHT MILLION, SIX HUNDRED ELEVEN THOUSAND, NINE HUNDRED DOLLARS (\$28,611,900.00). This

payment is in settlement of the Department's claim for civil penalties for the violations set forth in Paragraph CC, above, covering the period from initiation of construction to the entry of this Consent Order and Agreement. The payment shall be paid by corporate check or the like, made payable to the "Commonwealth of Pennsylvania" and sent to: Daniel F. Counahan, District Manager, Pennsylvania Department of Environmental Protection Southwest District Oil and Gas Operations, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, or by wire transfer to the account number provided by the Department for deposit by the Department into the appropriate special funds, as identified by the Department.

b. In addition to the civil penalty set forth in Paragraph 4.a, above, ETC shall pay and consents to the assessment of TWO MILLION DOLLARS (\$2,000,000.00) which may be paid by ETC by performing a community environmental project or projects (individually or collectively, "Community Environmental Project") acceptable to the Department. If the Department does not approve ETC's proposed Community Environmental Project within ninety (90) days of execution of this Consent Order and Agreement, then ETC shall pay the civil penalty amount in this Paragraph 4.b. within one hundred twenty (120) days of execution of this Consent Order and Agreement.

c. Within sixty (60) days of execution of this Consent Order and Agreement, ETC may submit a detailed proposal for a Community Environmental Project that will benefit to the environment of Pennsylvania and the waters of the Commonwealth for the Department's review. No funds utilized under the Community Environmental Project shall be expended for administrative or oversight costs, nor used to fulfill any activity required of ETC under law. Any funds that have not been utilized to fulfill the purpose of the approved Community Environmental Project within three (3) years from the execution of this Consent Order and

Agreement shall be paid to the Department as civil penalties pursuant to Paragraph 4.b. and to the address and person set forth in Paragraph 4.a., within sixty (60) days of termination of that time period.

d. ETC shall not deduct any costs incurred in connection with or in any way associated with the Community Environmental Project described in Paragraph 4.c for any tax purpose or otherwise obtain favorable tax treatment for those costs. If requested to do so by the Department, ETC shall submit an affidavit of the official responsible for the financial affairs of ETC certifying that ETC has not deducted or otherwise obtained favorable tax treatment of any of the costs of the Community Environmental Project.

e. ETC agrees that whenever it publicizes, in any way, the Community Environmental Project, it will state that the Project was undertaken as part of the settlement of an enforcement action with the “Commonwealth of Pennsylvania, Department of Environmental Protection.”

f. ETC shall submit to the Department an affidavit of the official responsible for overseeing the Project every ninety (90) days, beginning upon the approval by the Department of ETC’s proposed Community Environmental Project. The affidavit shall describe the dates and amounts of all funds allocated and expended on the Community Environmental Project, including but not limited to details sufficient to indicate the uses of the funds and the progress of the Community Environmental Project. ETC shall provide the Department with any other documentation and information requested by the Department. This requirement does not waive any power the Department has to require ETC to provide documentation pursuant to law.

5. **Stipulated Civil Penalties.**

a. In the event ETC fails to comply in a timely manner with any term or provisions of this Consent Order and Agreement, ETC shall be in violation of this Consent Order and Agreement and, in addition to other applicable remedies, shall pay a civil penalty in the amount of \$20,000 per day for each violation.

b. Stipulated civil penalty payments shall be payable monthly on or before the fifteenth day of each succeeding month, and shall be forwarded as described in Paragraph 4 (Civil Penalties), above.

c. Any payment under this paragraph shall neither waive the ETC's duty to meet its obligations under this Consent Order and Agreement, nor preclude the Department from commencing an action to compel ETC's compliance with the terms and conditions of this Consent Order and Agreement. The payment resolves only ETC's liability for civil penalties arising from the violations of this Consent Order and Agreement for which the payment is made.

d. Stipulated civil penalties shall be due automatically and without notice.

6. **Additional Remedies.**

a. In the event ETC fails to comply with any provision of this Consent Order and Agreement, the Department may, in addition to the remedies prescribed herein, pursue any remedy available for a violation of an order of the Department, including an action to enforce this Consent Order and Agreement.

b. The remedies provided by this paragraph and Paragraph 5 (Stipulated Civil Penalties) are cumulative, and the exercise of one does not preclude the exercise of any other. The failure of the Department to pursue any remedy shall not be deemed to be a waiver of

that remedy. The payment of a stipulated civil penalty, however, shall preclude any further assessment of civil penalties for the violation for which the stipulated penalty is paid.

7. **Reservation of Rights.** The Department reserves all other rights with respect to any matter addressed by this Consent Order and Agreement, including the right to require abatement of any conditions resulting from the events described in the Findings. ETC reserves the right to challenge any action which the Department may take, but waives the right to challenge the content or validity of this Consent Order and Agreement.

8. **Liability of Operator.** ETC shall be liable for any violations of the Consent Order and Agreement, including those caused by, contributed to, or allowed by its officers, agents, employees, or contractors. ETC also shall be liable for any violation of this Consent Order and Agreement caused by, contributed to, or allowed by its successors and assigns.

9. **Transfer of Site.**

a. The duties and obligations under this Consent Order and Agreement shall not be modified, diminished, terminated, or otherwise altered by the transfer of any legal or equitable interest in the Revolution Pipeline Project or any part thereof.

b. If ETC intends to transfer any legal or equitable interest in the Revolution Pipeline Project which is affected by this Consent Order and Agreement, ETC shall serve a copy of this Consent Order and Agreement upon the prospective transferee of the legal and equitable interest at least thirty (30) days prior to the contemplated transfer and shall simultaneously inform the Southwest Oil and Gas District Office of the Department of such intent.

c. The Department in its sole discretion may agree to modify or terminate ETC's duties and obligations under this Consent Order and Agreement upon transfer of the

Revolution Pipeline Project. ETC waives any right that it may have to challenge the Department's decision in this regard.

10. **Correspondence with Department.** All correspondence with the Department concerning this Consent Order and Agreement shall be addressed to:

April Weiland, Environmental Group Manager  
Pennsylvania Department of Environmental Protection  
Southwest District Oil and Gas Operations  
Cambria District Office  
286 Industrial Park Road  
Ebensburg, PA 15931-4119  
814-472-1820  
apweiland@pa.gov

11. **Correspondence with ETC.** All correspondence with ETC concerning this Consent Order and Agreement shall be addressed to:

Eric Tkacik  
ETC Northeast Pipeline, LLC  
6051 Wallace Run Extension  
Wexford, PA 15090  
412-375-7542  
Eric.Tkacik@energytransfer.com

ETC shall notify the Department whenever there is a change in the contact person's name, title, or address. Service of any notice or any legal process for any purpose under this Consent Order and Agreement, including its enforcement, may be made by mailing a copy by first class mail to the above address.

12. **Force Majeure.**

a. In the event that ETC is prevented from complying in a timely manner with any time limit imposed in this Consent Order and Agreement solely because of a strike, fire, flood, act of God, or other circumstance beyond ETC's control and which ETC, by the exercise of all reasonable diligence, is unable to prevent, then ETC may petition the Department for an



extension of time. An increase in the cost of performing the obligations set forth in this Consent Order and Agreement shall not constitute circumstances beyond ETC's control. ETC's economic inability to comply with any of the obligations of this Consent Order and Agreement shall not be grounds for any extension of time.

b. ETC shall only be entitled to the benefits of this paragraph if it notifies the Department within five (5) working days by telephone and within ten (10) working days in writing of the date it becomes aware or reasonably should have become aware of the event impeding performance. The written submission shall include all necessary documentation, as well as a notarized affidavit from an authorized individual specifying the reasons for the delay, the expected duration of the delay, and the efforts which have been made and are being made by ETC to mitigate the effects of the event and to minimize the length of the delay. The initial written submission may be supplemented within ten working days of its submission. ETC's failure to comply with the requirements of this paragraph specifically and in a timely fashion shall render this paragraph null and of no effect as to the particular incident involved.

c. The Department will decide whether to grant all or part of the extension requested on the basis of all documentation submitted by ETC and other information available to the Department. In any subsequent litigation, the ETC shall have the burden of proving that the Department's refusal to grant the requested extension was an abuse of discretion based upon the information then available to it.

13. **Severability.** The paragraphs of this Consent Order and Agreement shall be severable, and should any part hereof be declared invalid or unenforceable, the remainder shall continue in full force and effect between the parties.

14. **Entire Agreement.** This Consent Order and Agreement shall constitute the entire integrated agreement of the parties regarding the matters set forth herein. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or extent of any provisions herein in any litigation or any other proceeding.

15. **Attorney Fees.** The parties shall bear their respective attorney fees, expenses, and other costs in the prosecution or defense of this matter or any related matters, arising prior to execution of this Consent Order and Agreement. For purposes of this paragraph, related matters will be limited to the appeals docketed at EHB Docket numbers 2018-118-R, 2019-021-R, 2019-054-R, and 2019-108-B, and the petition to enforce docketed before the Commonwealth Court at docket number 69 M.D. 2019.

16. **Modifications.** No changes, additions, modifications, or amendments of this Consent Order and Agreement shall be effective unless they are set out in writing and signed by the parties hereto.

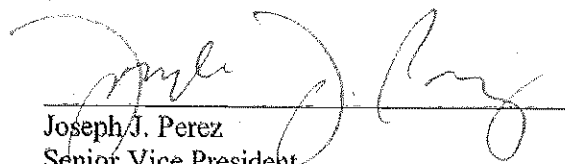
17. **Titles.** A title used at the beginning of any paragraph of this Consent Order and Agreement may be used to aid in the construction of that paragraph, but shall not be treated as controlling.

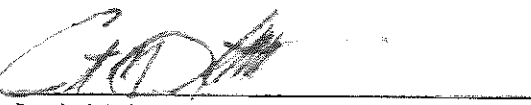
18. **Decisions Under Consent Order.** Any decision which the Department makes under the provisions of this Consent Order and Agreement, including a notice that stipulated civil penalties are due, is intended to be neither a final action under 25 Pa. Code § 1021.2, nor an adjudication under 2 Pa. C.S. § 101. Any objection which ETC may have to the decision will be preserved until the Department enforces this Consent Order and Agreement.

19. Execution of Agreement. This Consent Order and Agreement may be signed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

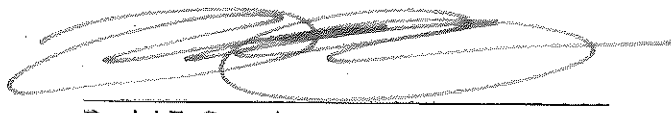
IN WITNESS WHEREOF, the parties hereto have caused this Consent Order and Agreement to be executed by their duly authorized representatives. The undersigned representatives of ETC certify, under penalty of law, as provided by 18 Pa. C.S. § 4904, that they are authorized to execute this Consent Order and Agreement on behalf of ETC; that ETC consent to the entry of this Consent Order and Agreement as an Order of the Department; that ETC hereby knowingly waive any right to a hearing under the statutes referenced in this Consent Order and Agreement; and that ETC knowingly waive their right to appeal this Consent Order and Agreement, which rights may be available under Section 4 of the Environmental Hearing Board Act, Act of July 13, 1988, P.L. 530, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A; or any other provision of law. Signature by ETC attorney certifies only that the agreement has been signed after consulting with counsel.

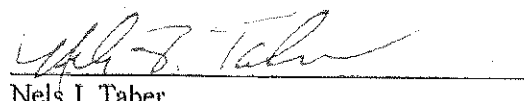
FOR ETC NORTHEAST PIPELINE, LLC:

  
\_\_\_\_\_  
Joseph J. Perez  
Senior Vice President

  
\_\_\_\_\_  
Curtis N. Stambaugh  
Attorney for ETC Northeast Pipeline, LLC

FOR THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION:

  
\_\_\_\_\_  
Daniel F. Counahan  
District Manager  
Southwest District Oil and Gas Operations

  
\_\_\_\_\_  
Nels J. Taber  
Senior Litigation Counsel