

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

IN THE MATTER OF:

ETC Northeast Field Services, LLC	:	The Clean Streams Law
6051 Wallace Road Extension, 3 rd Floor	:	The 2012 Oil and Gas Act
Wexford, PA 15090	:	Dam Safety and Encroachments Act

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 16th day of July, 2021, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”) and ETC Northeast Field Services, LLC (“ETC”).

Findings

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 ("Clean Streams Law"); Chapter 32 of Title 58 of the Pennsylvania Consolidated Statutes, 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 promulgated thereunder.

B. ETC, a Delaware limited liability company, is engaged in various oil and gas midstream activities in Pennsylvania. ETC’s business address is 6051 Wallace Road Extension, 3rd Floor, Wexford, PA 15090. ETC is a wholly owned subsidiary of Energy Transfer LP. Energy Transfer LP’s business address is 3738 Oak Lawn Ave, Dallas, TX 75219.

C. ETC owns and operates the B15 Well Connect Pipeline construction project (the “Pipeline Project”), located in Economy Borough and New Sewickley Township, Beaver County.

D. ETC is the permittee of the Erosion and Sediment Control General Permit authorization for earth disturbance associated with the Pipeline, number ESX17-007-0005 (“B15 ESCGP-2”). The B15 ESCGP-2 includes limits on the earth disturbance that may occur in constructing the Pipeline (“B15 LOD”).

E. ETC is the permittee of Water Obstruction and Encroachment General Permits for utility line and temporary road crossings associated with the Pipeline, numbers GP05040717-007 and GP08040717-007 (“B15 General Permits”).

F. As of July 15, 2019, a slide of approximately 30 feet in length occurred within the B15 LOD (“Slide”). In addition, a separate section of the Pipeline Project exhibited accelerated erosion and sedimentation.

G. On the date and at the locations set forth in Paragraph F, ETC:

1. Violated 25 Pa. Code §§78a.53 and 102.5(m)(4) by failing to maintain the E & S BMPs contrary to the terms and conditions of the B15 ESCGP-2;
2. Violated 25 Pa. Code §§ 78a.53, 102.4(b)(1) and 102.11(a)(1) by failing to implement effective E & S BMPs to minimize accelerated erosion and sedimentation; and
3. Violated 25 Pa. Code § 102.22(a) by failing to implement and maintain permanent stabilization of the Pipeline Project.

H. As of September 15, 2019, ETC stabilized the Pipeline Project, including the Slide and second unstabilized area, thus correcting the conditions described in Paragraph F.

I. As of March 23, 2020, stormwater was being discharged from the Pipeline Project, and flowing downslope through a wooded area, and onto private property and a public road. The stormwater discharge emanated from an area of the Pipeline Project where a waterbar was incorrectly installed, and near where a permitted waterbar (a structure that is intended to direct stormwater safely across the Pipeline Project right of way) was not constructed.

J. As of April 10, 2020, certain sections of the Pipeline Project were not temporarily stabilized, certain areas of the Pipeline exhibited signs of accelerated erosion and sedimentation, certain waterbars were not installed or were not installed as approved in the B15 ESCGP-2, certain Erosion and Sedimentation Control Best Management Practices (“E&S BMPs”) were inoperable or ineffective and that ETC did not notify the Department of these inoperable or ineffective E & S BMPs, contrary to condition 8.e. of the B15 ESCGP-2. Four (4) wetlands not identified in the B15 ESCGP-2 or the B15 General Permits may have been present at the time of construction and impacted by the construction of the Pipeline Project without Water Obstruction and Encroachment Permits (“Unpermitted Water Obstructions and Encroachments”), and the Pipeline Project right of way was not flagged at certain locations. In addition, sediment laden water from unstabilized sections of the Pipeline Project flowed outside of the B15 LOD and into an unnamed tributary to Crows Run.

K. The sediment laden water described in Paragraph J constitutes “pollution” and a “pollutant” and its discharge to tributaries constitutes “pollution” as those terms are defined in Section 1 of the Clean Streams Law, 35 P.S. § 691.1 and 25 Pa. Code § 102.1. Tributaries are “waters of the Commonwealth” and “surface waters” as those terms are defined in Section 1 of the Clean Streams Law, 35 P.S. § 691.1, 25 Pa. Code § 102.1.

- L. On the date and at the locations set forth in Paragraphs I and J, ETC:
1. Violated 25 Pa. Code §§78a.53 and 102.5(m)(4) by failing to maintain the E & S BMPs contrary to the terms and conditions of the B15 ESCGP-2;
 2. Violated 25 Pa. Code §§ 78a.53, 102.4(b)(1) and 102.11(a)(1) by failing to implement effective E & S BMPs to minimize accelerated erosion and sedimentation;
 3. Violated 25 Pa. Code § 102.22(a) by failing to implement and maintain permanent stabilization of the Pipeline Project;
 4. Violated 25 Pa. Code §§ 78a.53 and 102.5(m)(4) by failing to notify the Department of inoperative or ineffective E & S BMPs, contrary to the terms and conditions of the B15 ESCGP-2;
 5. Violated 25 Pa. Code § 105.11 by failing to obtain a Water Obstruction and Encroachment Permit prior to conducting activities in streams and wetlands;
 6. Violated 25 Pa. Code §§ 78a.53, 102.5(c) and (m)(4) by failing to comply with the terms of the B15 ESCGP-2 and by failing to obtain a new ESCGP or modifications to the B15 ESCGP-2 prior to changing the scope of earth disturbance associated with the Pipeline Project;
 7. Violated 25 Pa. Code § 105.42(c) by failing to make available a copy of the General Permit approvals at the work site;
 8. Violated 25 Pa. Code §§ 78a.53 and 102.4(b)(5)(v) by failing to describe the location of all surface waters of this Commonwealth which may receive runoff within or from the project site and their classification under 25 Pa. Code Chapter 93;

9. Violated 25 Pa. Code § 78a.68(b) by failing to maintain highly visible flagging, markers or signs to identify the shared boundaries of the B15 LOD with wetlands and locations of threatened or endangered species habitat; and

10. Discharged sediment laden water to waters of the Commonwealth in a manner not authorized by the rules and regulations of the Department, in violation of Section 401 of The Clean Streams Law, 35 P.S. § 691.401.

M. On April 2, 2020, the Department issued a 102 Field Order (“Compliance Order”) to ETC in response to the conditions described in Paragraphs I and J, above. The Compliance Order required ETC to, among other things, temporarily stabilize the B15 LOD and develop a plan to properly manage the excess stormwater being generated from the Pipeline Project.

N. The violations described in Paragraphs G and L, 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.

O. As of the date of this Consent Order and Agreement, the violations described in Paragraph L, above, have not been resolved.

P. As requested by the Compliance Order, on April 16, 2020, ETC submitted a Remedial Action Plan (“RAP”) setting forth alternative erosion and sedimentation control Best Management Practices (“BMPs”) for all locations within or affected by the Project that have

failing or inoperative BMPs, or where there is a potential for pollution from sediment. In addition, in response to five Surface Use Activity Reports issued by the Department, ETC on May 8, 2020, ETC submitted to the Department a “Corrective Action Plan” as a supplement to the RAP.

Q. On May 11, 2020, ETC submitted a Joint Water Obstruction and Encroachment Permit (“JPA”) application for temporary and permanent impacts to a newly formed wetland identified during remedial action investigations associated with the slope repair activities at station 2+00.

ORDER

After full and complete negotiation of all matters set forth in this Consent Order and Agreement, and upon mutual exchange of the 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 3253 of the 2012 Oil and Gas Act, 58 Pa. C.S. § 3253; Sections 5, 316, and 610 of The Clean Streams Law, 35 P.S. §§ 691.5, 691.316, and 691.610; Section 20 of the Dam Safety and Encroachments Act, 32 P.S. § 693.20; 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 F, H through K, M and O through Q 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 Actions.** ETC shall take the following corrective actions in regard to the Pipeline Project:

a. Within 60 days of the date of this Consent Order, ETC shall submit to the Department an ESCGP-3 Notice of Intent (“NOI”) for Coverage of all earth disturbance and any other applications for authorizations necessary to implement the RAP. The NOI shall include, at a minimum, the areas identified in the RAP, the access roads, and any areas needed to implement the RAP.

b. Within **thirty (30) calendar days** after the later of the Department’s approval of the NOI that was submitted pursuant to Paragraph 3.a., above, the approval by the Department and the United States Army Corps of Engineers of the JPA identified in Paragraph Q, above, (the “Approval Date”), and any necessary local approvals, ETC shall begin work needed to achieve compliance with the NOI and JPA (“Commencement Date”). If the Approval Date falls after September 15, 2021, then the Commencement Date shall be April 15, 2022.

c. ETC shall submit written “Progress Reports” to the Department. The Progress Reports shall be due quarterly by the 30th day of the month following each calendar quarter (i.e., April 30 and July 30) and shall describe the actions taken in the previous quarter to comply with the requirements set forth in Paragraphs 3.a. through 3.b., above, of this Consent Order and Agreement.

d. In all cases, ETC shall fulfill all of the obligations set forth in this Consent Order and Agreement by October 15, 2022. If ETC fails to comply with any obligation under

this Consent Order and Agreement by the October 15, 2022, the Department, in its sole discretion, may terminate this Consent Order and Agreement.

4. **Submission and Review of Documents.** If Department deems the JPA or NOI, or any portion thereof, deficient, ETC shall provide a revised JPA or NOI, as applicable, to the Department that addresses the deficiencies within **thirty (30) calendar days**.

5. **Civil Penalties.** Upon signing this Consent Order and Agreement, ETC shall pay a civil penalty of ONE HUNDRED FORTY THOUSAND DOLLARS (\$140,000.00). This payment is in settlement of the Department’s claim for civil penalties for the violations set forth above, covering the dates set forth herein. The payment shall be by corporate check or the like made payable to “Commonwealth of Pennsylvania” and sent to the address set forth in Paragraph 9 (Correspondence with the Department), below.

6. **Stipulated Civil Penalties.**

a. If ETC fails to comply with any applicable term or provision of this Consent Order and Agreement, ETC shall be in violation of this Consent Order and Agreement. In addition to other applicable remedies, ETC shall pay the following penalties for the following violations:

- i. \$1,000 for each day for failing to complete all obligations set forth in Paragraph 3.b., above within the time frames set forth in this COA; and,
- ii. \$500 for each day for failing to complete the obligation set forth in Paragraphs 3.a., 3.c., and 3.d., above, within the time frames set forth in this COA.

b. Stipulated civil penalty payments shall be payable monthly on or before the 15th day of each succeeding month. Stipulated civil penalty payments shall be by corporate

check or the like made payable to “Commonwealth of Pennsylvania” and sent to the address set forth in Paragraph 9 (Correspondence with the Department), below.

c. Any payment under this Paragraph shall neither waive 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 violation(s) of this Consent Order and Agreement for which the payment is made.

d. Stipulated civil penalty payments shall be due automatically and without notice.

7. **Additional Remedies.**

a. If 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 6 (Stipulated Civil Penalties), above, 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 civil penalty is paid.

8. **Reservation of Rights.** The Department reserves the right to require additional measures to achieve compliance with applicable law. ETC reserves the right to challenge any action which the Department may take to require those measures.

9. **Correspondence with the Department.** All correspondence with the Department concerning this consent Order and Agreement and documents submitted in compliance with this Consent Order and Agreement shall be addressed to:

Attn. April Weiland
Southwest District Oil and Gas Operations
Pennsylvania Department of Environmental Protection
286 Industrial Park Road
Ebensburg, PA 15931
Phone 814.472.1820

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

Nicholas J. Bryan
ETC Northeast Field Services, LLC
101 W. Third St., 3rd Floor
Williamsport, PA 17701

ETC shall notify the Department in writing 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.

11. **Transfer of Pipeline Project.**

a. ETC's 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 Pipeline Project, or any part thereof.

b. If ETC intends to transfer any legal or equitable interest in the 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 District Office of the Department of such intent.

12. **Decisions Under Consent Order and Agreement.** 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.A. § 101. Any objection that ETC may have to the decision will be preserved until the Department enforces this Consent Order and Agreement.

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. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or intent 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.

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.

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. **Termination of Consent Order and Agreement.** ETC's obligations, but not the Findings, of this Consent Order and Agreement shall terminate when ETC has: 1) completed all of the requirements of this Consent Order and Agreement; and 2) paid any outstanding stipulated civil penalties due under Paragraph 6 (Stipulated Civil Penalties), above. In all cases, ETC shall complete all obligations set forth under this Consent Order and Agreement no later than **October 15, 2022.**

19. **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 of 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.

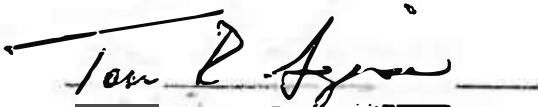
c. The Department will decide whether to grant all or part of the extension requested on the basis of all documentation submitted by ETC and other information available to the Department. In any subsequent litigation, ETC shall have the burden of proving that the Department's refusal to grant the requested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

20. **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.

21. **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.

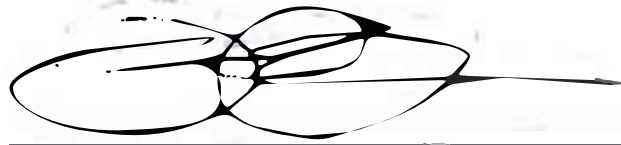
IN WITNESS WHEREOF, the Parties have caused this Consent Order and Agreement to be executed by their duly authorized representatives. ETC certifies under penalty of law, as provided by 18 Pa.C.S.A. § 4904, that it consents to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that it hereby knowingly waives its right to appeal this Consent Order and Agreement and to challenge its content or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, No. 1988-94, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa.C.S.A. § 103(a) and Chapters 5A and 7A; or any other provision of law. Signature by ETC's attorney certifies only that the agreement has been signed after consulting with counsel.

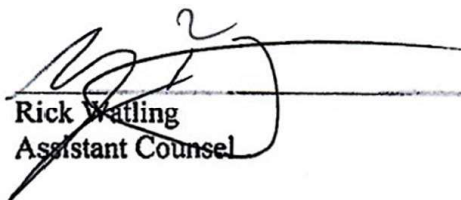
FOR ETC NORTHEAST FIELD SERVICES, LLC:


Name Tom R. Siguan
President or Vice President


Name Jim Wright
Attorney for ETC Northeast Field Services, LLC

FOR THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION:


Name Daniel F. Counahan
District Oil and Gas Manager
Southwest District Oil and Gas Operations


Name Rick Watling
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