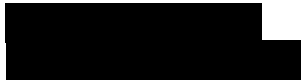


**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the Matter Of:


Mark D. Powell	:	Violations of the Clean Streams Law
	:	Dam Safety and Encroachments Act
	:	Erosion and Sediment Control Regulations,
	:	Chapter 102
EQM Gathering OPCO, LLC	:	Dam Safety and Water Management
625 Liberty Avenue, Suite 1700	:	Regulations, Chapter 105
Pittsburgh, PA 15222-3111	:	

**CONSENT ORDER AND AGREEMENT**

This Consent Order and Agreement is entered into this 17<sup>th</sup> day of December 2019, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”); Mr. Mark D. Powell (“Powell”); and EQM Gathering OPCO, LLC (“EQM”).

The Department has found and determined the following:

A. The Department is the agency of the Commonwealth with the duty and authority to administer and enforce The Clean Streams Law, Act of June 22, 1937, P.L. 1987, No. 394, *as amended*, 35 P.S. §§ 691.1 – 691.1001 (“The Clean Streams Law”); the Dam Safety and Encroachments Act, Act of November 26, 1978, P.L. 1375, No. 325, *as amended*, 32 P.S. §§ 693.1 – 693.27 (“Encroachments 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 regulations (“Regulations”) promulgated thereunder.

B. Powell is a “person” as defined in Section 3 of the Encroachments Act, 32 P.S. § 693.3; Section 1 of The Clean Streams Law, 35 P.S. § 691.1; and maintains a mailing address of . Powell owns 10 acres of property identified on

Washington County's tax parcel map as No. [REDACTED] ("Powell Property"). A portion of the Powell property is leased by EQM for the Pipeline Right-of-Way ("ROW").

C. EQM is a foreign limited partnership doing business in Pennsylvania and maintains a local mailing address of 2200 Energy Drive, Canonsburg PA 15317. Diana Charletta is the President and Chief Operating Officer of EQM and is the person responsible for the day-to-day activities of EQM.

D. EQM is the owner and operator of an oil and gas pipeline construction project, NIMA S001/S003 located in Amwell, North Bethlehem, and Somerset Townships, Washington County, Pennsylvania ("Site"). Activities at the Site are subject to Erosion and Sediment Control General Permit ESG-00-125-16-001 ("ESCGP Permit").

E. In accordance with the requirements of Section 102.4 of the Regulations, 25 Pa. Code § 102.4, and the terms and conditions of the ESCGP Permit, EQM developed an Erosion and Sedimentation Control Plan ("E&S Plan") for the Site to minimize the potential for accelerated erosion and sedimentation.

F. Discharges, including fill, from the Site enter Powell's private pond ("Powell Pond") and Little Tenmile Creek, both waters of the Commonwealth. Powell Pond is 0.37 acres in size, has a drainage area of approximately 16.6 acres, and is located down slope of the Site, near Station 178+50. Little Tenmile Creek has a trout stocked fishery protected use, as designated by Section 93.9v of the Regulations, 25 Pa. Code § 93.9v.

G. At all times relevant to the matters set forth in this Consent Order and Agreement, EQM has been the "owner" and "operator" of the Site, as those terms are defined in Section 1 of the Clean Streams Law, 35 P.S. § 691.1; Section 3 of the Encroachments Act, 32 P.S. § 693.3;

Section 102.1 of the Regulations, 25 Pa Code § 102.1; and the “owner” engaged in “operations” as those terms are defined in Section 105.1 of the Regulations, 25 Pa. Code § 105.1.

H. An “encroachment” is a structure or activity which in any manner changes, expands or diminishes the course, current or cross-section of any watercourse, floodway or body of water, as defined in Section 3 of the Encroachments Act, 32 P.S. §693.3, and Section 105.1 of the Regulations, 25 Pa Code §105.1. “Fill” is defined by Section 105.1 of the Regulations as “Sand, gravel, earth or other material placed or deposited to form an embankment or raise the elevation of the land surface. The term includes material used to replace an area with aquatic life with dry land or to change the bottom elevation of a regulated water of this Commonwealth. Section 105.1 of the Regulations, 25 Pa. Code §105.1, defines “Regulated waters of this Commonwealth” as “Watercourses, streams or bodies of water and their floodways wholly or partly within or forming part of the boundary of this Commonwealth.” Section 6 of the Encroachments Act, 32 P.S. §693.6, and Section 105.11 of the Regulations, 25 Pa. Code §105.11, require a prior written permit from the Department before any person can construct, operate or maintain an encroachment. The discharges of fill from the Site into the Powell Pond constitute an encroachment within the meaning of the Encroachments Act and Regulations, and require a Department Permit, prior to conducting the activity.

I. The Washington County Conservation District (“WCCD”) is a public body corporate and politic, exercising public powers of the Commonwealth as an agency thereof, as authorized by Section 5 of the Conservation District Law, Act of May 15, 1945, P.L. 547, *as amended*, 3P.S. §§ 849-864, § 853. Section 9 of the Conservation District Law, 3 P.S. § 857, Powers of Districts and Directors, allows Districts to accept delegated authority from municipal or county governments, the Commonwealth, or the Federal Government.

J. The Department has delegated to the WCCD authority to assist in the administration and enforcement of the erosion and sediment control program under the Clean Streams Law and the Regulations promulgated at Title 25, Chapter 102 (Erosion and Sediment Control) and in the permitting, inspection, and monitoring specific categories of water obstructions and encroachments under the Encroachments Act and the regulations promulgated at Title 25, Chapter 105 (Dam Safety and Waterway Management).

K. From September 14, 2016 to June 2, 2017, the WCCD conducted nine (9) inspections at the Site to determine compliance with the E&S Plan, the ESCGP Permit, the Clean Streams Law, the Encroachments Act, and Chapters 102 and 105 of the Regulations.

L. On September 14, 2016, October 7, 2016, January 24, 2017, March 14, 2017, April 17, 2017, May 9, 2017, and June 2, 2017, EQM failed to implement and/or maintain effective Best Management Practices (“BMPs”) to minimize the potential for accelerated erosion and sedimentation at the Site, which constitute violations of Section 402 of the Clean Streams Law, 35 P.S. § 691.402, and Section 102.4(b)(1) of the Regulations, 25 Pa. Code § 102.4(b)(1).

M. On September 14, 2016, March 14, 2017, April 17, 2017, May 9, 2017, and June 2, 2017, EQM failed to comply with conditions of the ESCGP Permit for the Site, which constitute violations of Section 402 the Clean Streams Law, 35 P.S. § 691.402, and Section 102.5 of the Regulations, 25 Pa. Code § 102.5.

N. On September 14, 2016, May 9, 2017, and June 2, 2017 EQM failed to stabilize areas of earth disturbance at the Site to protect Little Tenmile Creek, a trout stocked fishery protected use and Powell Pond, both waters of the Commonwealth, from accelerated erosion and sedimentation, which constitute violations of Section 402 of the Clean Streams Law, 35 P.S. § 691.402 and Section 102.22 of the Regulations, 25 Pa. Code § 102.22.

O. On October 7, 2016, January 24, 2017, May 9, 2017, and June 2, 2017, EQM conducted earth disturbance activities at the Site that created the potential for sediment pollution to Little Tenmile Creek, a trout stocked fishery protected use and Powell Pond, both waters of the Commonwealth, which constitute violations of Sections 402 and 611 of the Clean Streams Law, 35 P.S. §§ 691.402 and 691.611.

P. On September 14, 2017, March 14, 2017, and April 17, 2017, EQM caused “pollution” to “waters of the Commonwealth,” as those terms are defined in Section 1 of The Clean Streams Law, 35 P.S. § 691.1 by allowing sediment-laden water to discharge to Powell Pond, a water of the Commonwealth, which constitute violations of Sections 401 and 611 of The Clean Streams Law, 35 P.S. §§ 691.401 and 691.611.

Q. On September 14, 2017, March 14, 2017, and April 17, 2017, EQM caused sediment to be discharged to Powell Pond, a water of the Commonwealth, constituting an encroachment, without obtaining the proper Department Chapter 105 Water Obstruction and Encroachment Permit, which constitute violations of Sections 6 and 18 of the Encroachments Act, 35 P.S. §§ 693.6 and 693.18, and Section 105.11(a) of the Regulations, 25 Pa. Code §105.11(a).

R. On November 6, 2017, Powell and representatives from the Department, EQM, and WCCD conducted a Site meeting to view the outstanding violations and discuss EQM’s plan to remediate the issues and come into compliance. On November 16, 2017, the Department emailed EQM and requested the submission of a Pond Restoration Plan (“Pond Restoration Plan”) including an E&S Plan component on or before December 31, 2017.

S. On December 26, 2017, EQM submitted a Pond Restoration Plan to the Department and WCCD. The Department provided comments to the Pond Restoration Plan on

multiple occasions between January 2018 and April 2019, and EQM provided responses to the Department's comments. The Department is satisfied with the latest revision of the Pond Restoration Plan received on May 3, 2019, and hereby approves the Pond Restoration Plan upon execution of this Consent Order and Agreement. A copy of the approved Pond Restoration Plan is attached hereto as Exhibit A. The WCCD reviewed the E&S Plan component of the Pond Restoration Plan and approved the E&S Plan component on June 10, 2019.

T. On August 2, 2019, EQM submitted a revised permit amendment package to WCCD for the purposes of correcting stabilization deficiencies found along the ROW that discharges to the Powell Pond ("ESCGP Permit Amendment"). On May 17, 2018 EQM submitted a minor permit modification to WCCD. EQM has proof of delivery to WCCD on May 18, 2018. On August 2, 2019, EQM submitted a revised and current ESCGP Permit Amendment.

U. EQM's violations described in Paragraphs L through P and T constitute unlawful conduct under Section 611 of the Clean Streams Law, 35 P.S. § 691.611; statutory nuisances under Sections 401 and 402 of the Clean Streams Law, 35 P.S. §§ 691.401 and 691.402; and subject EQM to civil penalty liability under Section 605 of the Clean Streams Law, 35 P.S. § 691.605.

V. EQM's violations described in Paragraph Q constitute violations of Sections 6 and 18 of the Encroachments Act, 35 P.S. §§ 693.6 and 693.18; and subject EQM to civil penalty liability under Section 21 of the Encroachments Act, 32 P.S. § 693.21.

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

1. Authority. This Consent Order and Agreement is an Order of the Department, authorized and issued pursuant to Section 5, 316, 402, and 610 of the Clean Streams Law, 35 P.S. §§ 691.5, 691.316, 691.402, 691.610; Section 20 of the Encroachments Act, 32 P.S. § 693.20; and Section 1917-A of the Administrative Code, 71 P.S. § 510-17.

2. Findings.

a. EQM and Powell agree that the findings in Paragraphs A through V are true and correct and, in any matter or proceeding involving these parties and the Department, the parties shall not challenge the accuracy or validity of these findings.

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

3. Corrective Action. EQM and Powell shall undertake and perform the following tasks, according to the schedule established for each task:

a. On August 2, 2019 EQM submitted a complete ESCGP Permit Amendment to the WCCD. Upon receipt of WCCD's approval of the ESCGP Permit Amendment, EQM shall immediately implement the work authorized by the ESCGP Permit Amendment, and complete implementation within one hundred and twenty (120) days.

b. After the ROW work has been completed, stabilized and the notice of termination (NOT) for this portion of the Site is formally approved in writing by WCCD, in accordance with the ESCGP Permit Amendment, EQM shall implement the Restoration Plan for Powell Pond, and complete implementation within one hundred and eighty (180) days of NOT approval.

c. Powell shall allow EQM, or their respective agents and/or contractors, to utilize the most convenient Powell Property access available, such that EQM can fulfill their corrective action obligations under this Consent Order and Agreement.

d. EQM shall effectively monitor the Powell Pond for at least two years and EQM shall monitor the ROW until EQM receives either a NOT from the Department or a partial NOT is approved for this portion of the permit. EQM shall monitor the ROW and the area between the Powell Pond and the ROW quarterly for signs of erosion. Upon completion of Site restoration activity, the depth of the Powell Pond shall be measured as a baseline. Powell Pond monitoring will take place annually in the summer after the initial baseline event. A pond monitoring report will be prepared that includes both the ROW inspections and the pond sedimentation monitoring data (“Pond Monitoring Report”). The Pond Monitoring Report will be submitted to the Department and Powell within 30 days of completing the pond monitoring event. If, after two years there is no significant sediment accumulation in the Powell Pond, monitoring will cease. The Department will send EQM written notice that monitoring may cease. If there is sedimentation accumulation but there have been no erosion events on the EQM ROW, monitoring will cease. The Department will send EQM written notice that monitoring may cease. If the Department determines that significant sedimentation accumulation in the Powell Pond exists because of deficiencies by EQM to effectively maintain their ROW, EQM shall continue to perform quarterly monitoring and submission of the annual Pond Monitoring Report until the Department determines the restoration work is successful.

e. If the Department requires additional information for the review of any submittal pursuant to this Consent Order and Agreement, EQM shall provide such additional



information to the Department within fourteen (14) days of notification, unless a longer time is specified in the notice.

4. Civil Penalty Settlement. Upon execution of this Consent Order and Agreement, EQM shall pay a civil penalty of NINETY FIVE THOUSAND DOLLARS (\$95,000). This payment is in settlement of the Department’s claim for civil penalties for the violations set forth in Paragraphs J through O and R above, for the dates specified therein and no others. In addition, EQM shall pay cost recovery and oversight cost totaling ONE THOUSAND NINE HUNDRED AND SIXTY DOLLARS (\$1,960.00) to the WCCD. The payments shall be sent according to the instructions in Paragraph 9 (Correspondence with the Department). The payments shall be made as follows:

a. Submittal of a corporate check or the like made payable to the “Commonwealth of Pennsylvania – Clean Water Fund” in the amount of SEVENTY THREE THOUSAND AND FORTY DOLLARS (\$73,040).

b. Submittal of a corporate check or the like made payable to the “Commonwealth of Pennsylvania – Dams and Encroachments Fund” in the amount of TWENTY THOUSAND DOLLARS (\$20,000).

c. Submittal of a corporate check or the like made payable to “Washington County Conservation District - Clean Water Fund” in the amount of ONE THOUSAND NINE HUNDRED AND SIXTY DOLLARS (\$1,960.00).

5. Stipulated Civil Penalties.

a. In the event EQM fails to comply in a timely manner with any term or provisions of this Consent Order and Agreement, the Department shall give notice to EQM that

EQM is in violation of this Consent Order and Agreement and, in addition to other applicable remedies, shall pay a civil penalty in the amount of \$500.00 per day for each violation.

b. Stipulated civil penalty payments shall be payable monthly on or before the fifteenth (15<sup>th</sup>) day of each succeeding month and shall be made by submittal of a bank check, cashier's check or money order made payable to "The Commonwealth of Pennsylvania - Clean Water Fund" and shall be forwarded as described in Paragraph 9 (Correspondence with the Department).

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

d. In the event that the Department brings a successful action to collect payment required under this Consent Order and Agreement, EQM shall reimburse the Department for all costs of such action, including, but not limited to, reasonable attorney's fees.

6. Additional Remedies.

a. In the event EQM 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 civil penalty is paid.

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

8. Liability of Operator. EQM shall be liable for any violations of the Consent Order and Agreement, including those caused by, contributed to, or allowed by their officers, agents, employees, consultants or contractors. This Consent Order is binding on EQM, its successors and assigns.

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

Frank Calderon  
Environmental Protection Compliance Specialist  
Waterways and Wetlands  
Department of Environmental Protection  
Southwest Regional Office  
400 Waterfront Drive  
Pittsburgh, PA 15222-4745  
Telephone: (412) 442-4318  
Fax: (412) 442-4242  
[fcalderson@pa.gov](mailto:fcalderson@pa.gov)

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

Robert Pichardo, Counsel  
2200 Energy Drive  
Pittsburgh, PA 15317  
Telephone: [REDACTED]

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

Mark D. Powell

████████████████████  
████████████████████  
Telephone: ████████████████████  
████████████████████

12. 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 Site or any part thereof.

b. If EQM intends to transfer any legal or equitable interest in the Site which is affected by this Consent Order and Agreement, EQM 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 Regional Office of the Department of such intent.

13. Force Majeure.

a. In the event that EQM is prevented from complying in a timely manner with any time limit imposed in this Consent Order and Agreement solely circumstance beyond EQM's control and which EQM, by the exercise of all reasonable diligence, is unable to prevent, then EQM 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 EQM's control. EQM'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. EQM 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) workings days in

writing of the date they become 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 EQM 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. EQM'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 EQM and other information available to the Department.

14. 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.

15. 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 extent of any provisions herein in any litigation or any other proceeding.

16. 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.

17. 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.

18. 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.

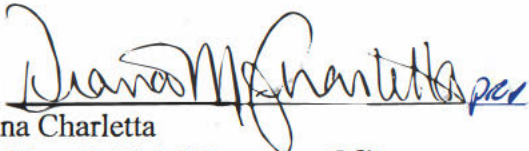
19. Decisions Under Consent Order. Any decision which the Department makes under the provisions of this Consent Order and Agreement, including a notice that stipulated civil penalties are due, is intended to be neither a final action under 25 Pa. Code § 1021.2, nor an adjudication under 2 Pa. C.S. §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

20. Termination of Obligations. The obligations of this Consent Order and Agreement shall terminate when the Department determines that EQM has complied in full with the requirements of Paragraphs 3, 4 and 5 of this Consent Order and Agreement, or, otherwise, at the sole discretion of the Department. The Department will provide written notice to EQM when the obligations of this Consent Order and Agreement are terminated.

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 EQM and Powell 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 the parties; that EQM and Powell consent to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that EQM and Powell knowingly waives their rights 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 SA and 7A; or any other provision of law. Signature by the parties' attorney certifies only that the agreement has been signed after consulting with counsel.

FOR EQM GATHERING OPCO, LLC:

FOR THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION:



Diana Charletta  
President & Chief Operating Officer



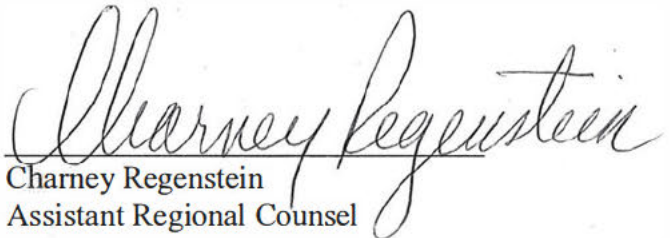
Dana Drake, Program Manager  
Waterways and Wetlands Program



Name:  
Secretary/Treasurer



Robert Pichardo  
Counsel for EQM Gathering OPCO, LLC



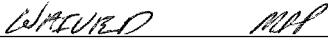
Charney Regenstein  
Assistant Regional Counsel

FOR MR. MARK D. POWELL:



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Mark D. Powell  
Property Owner



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Name:  
Counsel for Mark D. Powell