

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the Matter of:

Shell Pipeline Company, LP	:	The Clean Streams Law
150 North Dairy Ashford	:	Dam Safety and Encroachments Act
Houston, TX 77079	:	Erosion & Sediment Control Regulations,
	:	Chapter 102
Minnesota Limited, LLC	:	Dam Safety and Water Management
PO Box 410	:	Regulations, Chapter 105
Big Lake, MN 55309	:	

CONSENT ASSESSMENT OF CIVIL PENALTY

This Consent Assessment of Civil Penalty (“CACP”) is entered into this 12th day of October 2022, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”), Shell Pipeline Company, LP (“Shell Pipeline”), and Minnesota Limited, LLC (“Minnesota Limited”).

The Department has found and determined the following:

A. The Department is the agency with the duty and authority to administer and enforce The Pennsylvania Clean Streams Law, Act of June 22, 1937, P.L. 1987, *as amended*, 35 P.S. §§ 691.1 - 691.1001 (“Clean Streams Law”); the Dam Safety and Encroachments Act, Act of November 26, 1978, P.L. 1375, *as amended*, 32 P.S. §§ 693.1 – 693.27 (“Encroachments Act”); and the rules and regulations promulgated thereunder (“Regulations”).

B. Shell Pipeline is a limited partnership doing business in Pennsylvania and maintains a business mailing address of 150 North Dairy Ashford, Houston TX 77079. Shell Pipeline is a “person” as 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, and Sections 102.1 and 105.1 of the Regulations, 25 Pa. Code §§ 102.1, 105.1. Alan Hunsberger is the Manager and is the person responsible for the day-to-day activities of Shell Pipeline.

C. Minnesota Limited is a limited liability company doing business in Pennsylvania and maintains a business mailing address of PO Box 410, Big Lake, MN 55309. Minnesota Limited is a “person” as 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, and Sections 102.1 and 105.1 of the Regulations, 25 Pa. Code §§ 102.1, 105.1.

D. The Allegheny County Conservation District (“ACCD”), Beaver County Conservation District (“BCCD”) and Washington County Conservation District (“WCCD”) are public bodies corporate and politic, exercising public powers of the Commonwealth as agencies thereof, as authorized by Section 5 of the Conservation District Law, Act of May 15, 1945, P.L. 547, *as amended*, 3 P.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 the Commonwealth.

E. The Department has delegated to the ACCD, BCCD and WCCD, and the ACCD, BCCD and WCCD have accepted, 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).

BACKGROUND

F. Shell Pipeline, acting through its primary contractor, Minnesota Limited, constructed a petrochemical pipeline connecting ethane production facilities in Houston, Pennsylvania, Scio, Ohio and Cadiz, Ohio, to a petrochemical facility in Monaca, Pennsylvania. The section of the pipeline within Pennsylvania is approximately 45.5 miles long (“Pipeline”) and crosses through portions of Allegheny, Beaver and Washington Counties (“Site”). Approximately 608 acres of land were disturbed during construction of the Pipeline. Pipeline construction activities are covered under Erosion and Sediment Control General Permit ESG00007170003 (“ESCG Permit”), which the Department issued on December 20, 2018 to Shell Pipeline.

Waterway encroachments, as that term is 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, constructed as a result of the Pipeline, in Allegheny, Beaver and Washington Counties are subject to coverage under Chapter 105 Permits E02-1773, E04-369 and E63-710 (collectively, “Joint Permits”), respectively, which the Department issued on December 20, 2018.

G. The ESCG Permit and Section 102.4(b)(2)(i) of the Regulations, 25 Pa. Code § 102.4(b)(2)(i), required Shell Pipeline and Minnesota Limited to prepare and implement an Erosion and Sediment Control Plan (“E&S Plan”) to minimize erosion at the Site as a result of earth disturbances.

H. The Joint Permits and Section 105.46 of the Regulations, 25 Pa. Code § 105.46, required Shell Pipeline and Minnesota Limited to implement the E&S Plan required by the conditions of ESCGP Permit and by Chapter 102 of the Regulations, 25 Pa. Code § 102.

I. The ESCG Permit and the Joint Permits required Shell Pipeline and Minnesota Limited to prepare and implement a Horizontal Directional Drilling Inadvertent Return, Assessment, Preparedness, Prevention, and Response Plan (“IR Plan”) that required Shell Pipeline and Minnesota Limited to, among other things, perform recordkeeping and reporting of drilling activities and inadvertent return events at the Site.

J. At all times relevant to the matters set forth in this CACP, Shell Pipeline and Minnesota Limited had oversight responsibility and day-to-day operational control over the earth disturbance activities associated with the Site, and therefore Shell Pipeline and Minnesota Limited have both been an “operator” of the Site, as that term is defined in Section 102.1 of the Regulations, 25 Pa. Code § 102.1. Shell Pipeline is the “owner” of the Site, as that term is 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.

K. Discharges from the Site entered the following “water[s] of the Commonwealth” as that term is defined in Section 1 of the Clean Streams Law, 35 P.S. § 691.1 and Section 102.1 of the Regulations, 25 Pa. Code § 102.1, and with the following protected use designations under Section 93.9w of the Regulations, 25 Pa. Code § 93.9w.

- a. Raccoon Creek, Warm Water Fishes (“WWF”) and High-Quality Waters Cold Water Fishes (“HQ-CWF”),
- b. two (2) unnamed tributaries (“UNTs”) to Raccoon Creek,
- c. Service Creek, HQ-CWF,
- d. Gums Run, WWF,
- e. UNT to Gums Run, WWF,
- f. UNT to Frames Run, WWF,
- g. Ambridge Reservoir, WWF,
- h. UNT to Haden Creek WWF,
- i. Mill Creek, Trout Stocking (“TSF”),
- j. two (2) UNTs to Mill Creek, TSF,
- k. Ohio River, WWF,
- l. four (4) UNTs to Potato Garden Run, WWF,
- m. two (2) UNTs to Raredon Run, WWF,
- n. two (2) UNTs to Millers Run, WWF,
- o. UNT to Westland Run, WWF, and
- p. UNT to Robinson Run, WWF.

L. The water bodies identified in Paragraph J are all “watercourses” or “streams” as those terms are defined in Section 3 of the Encroachments Act, 32 P.S. § 693.3, and “Regulated waters of this Commonwealth” as that term is defined in Section 105.1 of the Regulations, 25 Pa. Code § 105.1.

M. Section 102.4(b)(1) of the Regulations, 25 Pa. Code § 102.4(b)(1) requires that E&S best management practices (“BMPs”) be implemented and maintained at earth disturbance sites to minimize the potential for accelerated erosion and sedimentation.

N. Section 102.22 of the Regulations, 25 Pa. Code § 102.22, requires disturbed areas to be immediately seeded, mulched, or otherwise protected from accelerated erosion and sedimentation pending future earth disturbance activities (“Temporarily Stabilized”) upon temporary cessation of earth disturbance activity, or any stage or phase of an activity, where the cessation of earth disturbance activities will exceed four (4) days; and requires the site to have topsoil immediately restored, replaced, or amended, seeded, mulched or otherwise permanently stabilized (“Permanently Stabilized”) upon final completion of earth disturbance activity or any stage or phase of an activity.

O. Drilling fluids are an “industrial waste” as defined by Section 92.a.2 of the Regulations, 25 Pa. Code § 92a.2.

P. For purposes of this Consent Assessment of Civil Penalty, the terms “Horizontal Directional Drilling” and “Inadvertent Return” are defined as follows:

a. Horizontal Directional Drilling (“HDD”) is any steerable trenchless method used for installation of an underground pipe in an arc along a prescribed path by using a surface launched drilling rig.

b. An Inadvertent Return is an unauthorized discharge of drilling fluids to the ground or surface waters, including wetlands, associated with HDD or other trenchless construction methodologies.

Q. Section 105.46 of the Regulations, 25 Pa. Code § 105.46, requires the implementation of an approved E&S plan prepared according to Chapter 102 of the Regulations, 25 Pa. Code, Chapter 102, during construction of a water encroachment.

R. On or after December 20, 2018, Shell Pipeline and Minnesota Limited began construction of the Pipeline at the Site.

S. The ACCD, BCCD, WCCD and the Department, either solely or jointly, conducted at least sixty-seven (67) inspections of the Site between March 14, 2019 and April 9, 2021 to determine compliance with the ESCGP Permit, the Joint Permits, the Clean Streams Law, the Encroachments Act, and the Regulations.

VIOLATIONS

T. On April 22, 2019, Shell Pipeline and Minnesota Limited caused pollution to waters of the Commonwealth by discharging drilling fluids into two (2) UNTs to Potato Garden Run and into wetland W-PA-160405-JLK-001.

U. On May 29, 2019, Shell Pipeline and Minnesota Limited caused pollution to waters of the Commonwealth by discharging drilling fluids into two (2) UNTs to Potato Garden Run and into wetland W-PA-160405-JLK-001.

V. On July 22, 2019, Shell Pipeline and Minnesota Limited caused pollution to waters of the Commonwealth by discharging drilling fluids into Raccoon Creek and wetland W-PA-151013-MRK-003.

W. On September 14, 2019, Shell Pipeline and Minnesota Limited caused pollution to waters of the Commonwealth by discharging drilling fluids into Mill Creek.

X. On September 21, 2019, Shell Pipeline and Minnesota Limited caused pollution to waters of the Commonwealth by discharging drilling fluids into wetland W-PA-151123-JLK-001.

Y. The violations described in Paragraphs T through X, above, constitute violations of Section 301 of the Clean Streams Law, 35 P.S. § 691.301 and Section 92a.1(b) of the Regulations, 25 Pa. Code § 92a.1(b), a nuisance under Section 401 of the Clean Streams Law, 35 P.S. § 691.401, and unlawful conduct under Section 611 of the Clean Streams Law, 35 P.S. § 691.611 and Section 18 of the Encroachments Act, 32 P.S. § 693.18.

Z. On April 25, 2019, Shell Pipeline and Minnesota Limited caused pollution to waters of the Commonwealth by allowing sediment to discharge into a UNT to Gums Run and a UNT to Frames Run.

AA. On May 2, 2019, Shell Pipeline and Minnesota Limited caused pollution to a water of the Commonwealth by allowing sediment to discharge into a UNT to Potato Garden Run.

AB. On June 6, 2019 and July 11, 2019, Shell Pipeline and Minnesota Limited caused pollution to a water of the Commonwealth by allowing sediment to discharge into a UNT to Millers Run.

AC. On October 22, 2019, Shell Pipeline and Minnesota Limited caused pollution to waters of the Commonwealth by allowing sediment to discharge into two UNTs to Raccoon Creek.

AD. On December 3, 2019, Shell Pipeline and Minnesota Limited caused pollution to a water of the Commonwealth by allowing sediment to discharge into wetland W-PA-161205-WRA-001.

AE. On December 16 and 17, 2019, Shell Pipeline and Minnesota Limited caused pollution to a water of the Commonwealth by allowing sediment to discharge into a UNT to Westland Run.

AF. The conduct in Paragraphs Z through AE, above, constitute violations of Section 401 of The Clean Streams Law, 32 P.S. § 691.401.

AG. On March 18, 2019, March 29, 2019, April 16, 2019, April 24, 2019, April 25, 2019, May 2, 2019, May 10, 2019, May 24, 2019, June 27, 2019, July 9, 2019, July 11, 2019, July 17, 2019, August 19, 2019, August 26, 2019, September 25, 2019, December 2, 2019 and December 3, 2019, Shell Pipeline and Minnesota Limited failed to comply with the conditions of the ESCGP Permit and the Joint Permits.

AH. The conduct in Paragraph AG, above, constitute violations of Section 402 of The Clean Streams Law, 32 P.S. § 691.402, Section 18 of the Encroachments Act, 32 P.S. § 693.18,

Section 105.44 of the Regulations, 25 Pa. Code § 105.44, and Sections 102.4 and 102.5 of the Regulations, 25 Pa. Code §§ 102.4 and 102.5.

AI. On March 18, 2019, March 29, 2019, April 16, 2019, April 25, 2019, May 2, 2019, May 10, 2019, May 21, 2019, June 5, 2019, June 6, 2019, June 27, 2019, July 9, 2019, July 11, 2019, July 17, 2019, August 7, 2019, August 19, 2019, September 25, 2019, October 10, 2019, October 16, 2019, October 22, 2019, November 7, 2019, November 18, 2019, December 2, 2019 and December 3, 2019, December 16, 2019 and December 17, 2019, Shell Pipeline and Minnesota Limited failed to implement and/or maintain effective E&S BMPs at the Site.

AJ. The conduct in paragraph AI, above, 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).

AK. On April 16, 2019, July 9, 2019, July 11, 2019, July 17, 2017, August 27, 2019, September 25, 2019, November 7, 2019, December 3, 2019, December 16, 2019, December 17, 2019, and June 19, 2020, Shell Pipeline and Minnesota Limited failed to Temporarily Stabilize and/or Permanently Stabilize areas of the Site upon cessation of earth disturbance activity.

AL. The conduct in Paragraph AK, above, 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.

AM. The conduct in Paragraphs AG, AI and AK, above, created the potential for sediment pollution to the waters of the Commonwealth listed in paragraph K, which constitutes a violation of Sections 402 and 611 of the Clean Streams Law, 35 P.S. §§ 691.402 and 691.611.

AN. On April 25, 2019, Shell Pipeline and Minnesota Limited failed to notify the Department of an inadvertent return at HDD HOU-02, as required by the IR Plan.

AO. On May 9, 2019, Shell Pipeline and Minnesota Limited failed to notify the Department of an inadvertent return at HDD HOU-02, as required by the IR Plan.

AP. From September 30, 2019, through October 25, 2019, Shell Pipeline and Minnesota Limited failed to notify the Department of 48,000 gallons of drilling fluid losses at HDD HOU-01, failed to cease operations in accordance with the IR Plan, and used unauthorized containment structures at the Site.

AQ. The conduct in Paragraphs AN, AO, and AP constitute violations of Section 402 of the Clean Streams Law, 35 P.S. § 691.402, and unlawful conduct under Section 611 of the Clean Streams Law, 35 P.S. § 691.611 and Section 18 of the Encroachments Act, 32 P.S. § 693.18.

AR. The conduct in Paragraphs AN, AO, and AP hindered, obstruct, prevented and interfered with the Department and its personnel in the performance of their duties under the Clean Streams Law and the Encroachments Act. 35 P.S. § 691.611

AS. The violations described in Paragraphs T through X, Z through AE, AG, AI, AK, AN, AO, and AP, above, constitute unlawful conduct under Section 611 of The Clean Streams Law, 35 P.S. § 691.611; statutory nuisances under Section 402 of The Clean Streams Law, 35 P.S. § 691.402; and subject Shell Pipeline and Minnesota Limited to civil penalty liability under Section 605 of The Clean Streams Law, 35 P.S. § 691.605.

AT. The violations described in Paragraphs T through X, Z through AE, AN, AO, and AP, above, constitute unlawful conduct under Section 18 of the Encroachments Act, 32 P.S. § 693.18 and subject Shell Pipeline and Minnesota Limited 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 CACP and upon mutual exchange of the covenants herein, the parties desiring to avoid litigation and intending to be legally bound, it is hereby ASSESSED by the Department and AGREED to by Shell Pipeline as follows:

1. **Assessment.** In resolution of the Department's claim for civil penalties, which the Department is authorized to pursue under Section 605 of the Clean Streams Law, 35 P.S. § 691.605 and Section 21 of the Encroachments Act, 32 P.S. § 693.21, the Department hereby assesses a civil

penalty of SIX HUNDRED SEVENTY THOUSAND DOLLARS (\$670,000.00), a cost recovery to the Department of TWENTY-ONE THOUSAND THREE HUNDRED THIRTY-NINE DOLLARS (\$21,339.00), a cost recovery to the ACCD of ONE THOUSAND EIGHT HUNDRED TWENTY-FOUR DOLLARS (\$1,824.00), a cost recovery to the BCCD of ONE THOUSAND FOUR HUNDRED NINETY-SIX DOLLARS (\$1,496.00), and a cost recovery to the WCCD of TWO THOUSAND SIX HUNDRED ELEVEN DOLLARS (\$2,611.00), which Shell Pipeline and Minnesota Limited hereby agree to pay.

2. **Civil Penalty Settlement.** Upon signing this CACP, Shell Pipeline and Minnesota Limited shall pay the civil penalty and the cost recovery assessed in Paragraph 1. These payments are in settlement of the Department's claim for civil penalties for the violations set forth in T through X, Z through AE, AG, AI, AK, AN, AO and AP above, for the dates specified therein and no other. The payments shall be made as follows:

a. Submittal of a bank check, cashier's check or money order made payable to "Commonwealth of Pennsylvania – Clean Water Fund" in the amount of \$479,464.00;

b. Submittal of a bank check, cashier's check or money order made payable to "Commonwealth of Pennsylvania – Encroachments Fund" in the amount of \$211,875.00;

c. Submittal of a bank check, cashier's check or money order made payable to "Allegheny County Conservation District – Clean Water Fund" in the amount of \$1,824.00;

d. Submittal of a bank check, cashier's check or money order made payable to "Beaver County Conservation District – Clean Water Fund" in the amount of \$1,496.00; and

e. Submittal of a bank check, cashier's check or money order made payable to "Washington County Conservation District – Clean Water Fund" in the amount of \$2,611.00.

All checks shall be sent to:

Peter Burch, Environmental Compliance Specialist
PA Department of Environmental Protection
Waterways and Wetlands Program
400 Waterfront Drive
Pittsburgh, PA 15222-4745.

3. **Findings.**

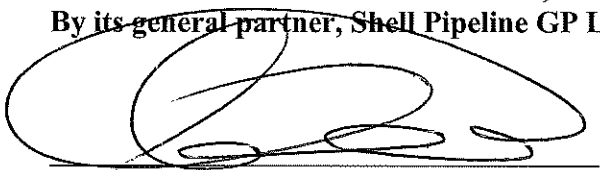
a. Shell Pipeline and Minnesota Limited agree that the findings in Paragraphs A through X, Z through AE, AG, AI, AK, AN, AO and AP are true and correct and, in any matter or proceeding involving Shell Pipeline and the Department, Minnesota Limited and the Department, and/or Minnesota Limited, Shell Pipeline, and the Department, Shell Pipeline and Minnesota Limited 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 CACP in any matter or proceeding.

4. **Reservation of Rights.** The Department reserves all other rights with respect to any matter addressed by this CACP, including the right to require abatement of any conditions resulting from the events described in the findings. Shell Pipeline and Minnesota Limited reserve the right to challenge any action which the Department may take but waives the right to challenge the content or validity of this CACP.

IN WITNESS WHEREOF, the parties have caused this CACP to be executed by their duly authorized representatives. The undersigned representatives of Shell Pipeline and Minnesota Limited certify, under penalty of law, as provided by 18 Pa. C.S. § 4904, that they are authorized to execute this CACP on behalf of Shell Pipeline and Minnesota Limited, that Shell Pipeline and Minnesota Limited consent to the entry of this CACP as an ASSESSMENT of the Department; that Shell Pipeline and Minnesota Limited hereby knowingly waive any right to a hearing under the statutes referenced in this CACP; and that Shell Pipeline and Minnesota Limited knowingly waive its right to appeal this CACP, 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 Shell Pipeline and Minnesota Limited's attorneys certify only that the agreement has been signed after consulting with counsel.

FOR SHELL PIPELINE COMPANY, LP:
By its general partner, Shell Pipeline GP LLC



Print Name: Sean Guillory
Authorized Representative, Vice-President
Shell Pipeline GP LLC, LP

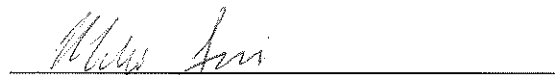


Print Name: LORI M. MURATA
Attorney for Shell Pipeline Company, LP

FOR THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION:



Dana Drake
Program Manager
Waterways and Wetlands



Melanie Seigel
Assistant Counsel

FOR MINNESOTA LIMITED, LLC:

Print Name: _____
Authorized Member, Minnesota Limited, LLC

Print Name: _____
Attorney for Minnesota Limited, LLC

IN WITNESS WHEREOF, the parties have caused this CACP to be executed by their duly authorized representatives. The undersigned representatives of Shell Pipeline and Minnesota Limited certify, under penalty of law, as provided by 18 Pa. C.S. § 4904, that they are authorized to execute this CACP on behalf of Shell Pipeline and Minnesota Limited, that Shell Pipeline and Minnesota Limited consent to the entry of this CACP as an ASSESSMENT of the Department; that Shell Pipeline and Minnesota Limited hereby knowingly waive any right to a hearing under the statutes referenced in this CACP; and that Shell Pipeline and Minnesota Limited knowingly waive its right to appeal this CACP, 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 Shell Pipeline and Minnesota Limited's attorneys certify only that the agreement has been signed after consulting with counsel.

**FOR SHELL PIPELINE COMPANY, LP:
By its general partner, Shell Pipeline GP LLC**

**FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:**

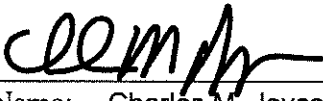
Print Name: _____
Authorized Representative,
Shell Pipeline GP LLC, LP

Dana Drake
Program Manager
Waterways and Wetlands

Print Name: _____
Attorney for Shell Pipeline Company, LP

Melanie Seigel
Assistant Counsel

FOR MINNESOTA LIMITED, LLC:



Print Name: Charles M. Joyce
Authorized Member, Minnesota Limited, LLC

Print Name: _____
Attorney for Minnesota Limited, LLC