



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
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Austin Caperton, Cabinet Secretary
www.dep.wv.gov

**CONSENT ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11**

TO: Columbia Gas Transmission, LLC
Attn: Jason Chambers
1700 McCorkle Avenue
Charleston, WV 25314

DATE: February 22, 2019

ORDER NO.: 8943

INTRODUCTION

This Consent Order is issued by the Director of the Division of Water and Waste Management (hereinafter "Director"), under the authority of West Virginia Code, Chapter 22, Article 11, Section 1 et seq. to Columbia Gas Transmission, LLC (hereinafter "CGT").

FINDINGS OF FACT

In support of this Order, the Director hereby finds the following:

1. CGT is conducting land disturbance activity associated with the WB Xpress Project in Seneca Rocks, Pendleton County, West Virginia. On November 14, 2017, CGT was issued Water Pollution Control Permit No. WV0116815, Registration No. WVR310884, for Stormwater Associated With Oil and Gas Related Construction Activities.
2. On October 22, 2018, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV Legislative Rules and the permit were observed and documented:
 - a. Section G.4.e.2. – CGT failed to properly implement controls at the upstream pump-around dam across the North Fork of the South Branch of the Potomac River near the Seneca Rocks Compressor Station crossing.

- b. Section F.2.a. – CGT failed to report noncompliance, which may have endangered health or the environment, to the designated WVDEP spill alert telephone number. Specifically, controls for the aforementioned pump-around dam failed, and it was not properly reported.
- c. Section G.4.e.2.A.ii.j – CGT failed to prevent sediment-laden water from leaving the site without going through an appropriate device. Specifically, the upstream dam failed, and pumps were overwhelmed, thus allowing sediment laden water to leave the site.
- d. 47CSR2 Section 3.2.a.- CGT caused conditions not allowable in waters of the State by creating distinctly visible settleable solids in the North Fork of the South Branch of the Potomac River (38° 50' 56.0" X 79° 22' 27.0"), which is a trout stream. The settleable solids continued nineteen (19) miles downstream into the South Branch of the Potomac River (38° 59' 24.0" X 79° 11' 06.0").

As a result of the aforementioned violations, Notice of Violation (NOV) No. W18-36-055-TAG was issued to CGT.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with Chapter 22, Article 11, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

1. CGT shall immediately take all measures to initiate compliance with all terms and conditions of its permit and pertinent laws and rules.
2. Within twenty (20) days of the effective date of this Order, CGT shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when CGT will achieve compliance with all terms and conditions of its permit and pertinent laws and rules. The plan of corrective action shall include, but not be limited to, provisions for proper remediation of all areas identified in this Order where conditions not allowable were observed and documented in waters of the State, as defined in WV Legislative Rule 47CSR2 Section 3.2. In addition, the plan of corrective action shall include, but not be limited to, provisions for submittal of a report which documents that proper remediation of the aforementioned areas has occurred. The plan of corrective action shall make reference to Permit No. WV0116815, Registration No. WVR310884, and Order No. 8943. The plan of corrective action shall be submitted to:

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WVDEP
601 57th Street SE
Charleston, WV 25304**

Upon approval, the plan of corrective action and schedule shall be incorporated into and become part of this Order, as if fully set forth herein. Failure to submit an approvable

plan of corrective action and schedule or failure to adhere to the approved schedule is a violation of this Order.

3. Because of CGT's Legislative Rule and permit violations, CGT shall be assessed a civil administrative penalty of thirteen thousand three hundred forty dollars (\$13,340) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within thirty (30) days of the effective date of this Order. Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall include a reference to the Order No. and shall be mailed to:**


**Chief Inspector
Environmental Enforcement - Mail Code #031328
WV-DEP
601 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

1. CGT hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21 of the Code of West Virginia. Under this Order, CGT agrees to take all actions required by the terms and conditions of this Order and consents to and will not contest the Director's jurisdiction regarding this Order. However, CGT does not admit to any factual and legal determinations made by the Director and reserves all rights and defenses available regarding liability or responsibility in any proceedings regarding CGT other than proceedings, administrative or civil, to enforce this Order.
2. The Director reserves the right to take further action if compliance with the terms and conditions of this Order does not adequately address the violations noted herein and reserves all rights and defenses which he may have pursuant to any legal authority, as well as the right to raise, as a basis for supporting such legal authority or defenses, facts other than those contained in the Findings of Fact.
3. If any event occurs which causes delay in the achievement of the requirements of this Order, CGT shall have the burden of proving that the delay was caused by circumstances beyond its reasonable control which could not have been overcome by due diligence (i.e., force majeure). Force majeure shall not include delays caused or contributed to by the lack of sufficient funding. Within three (3) working days after CGT becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and CGT shall, within ten (10) working days of initial notification, submit a detailed written explanation of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and a timetable by which CGT intends to implement these measures. If the Director agrees that the delay has been or will be caused by circumstances beyond the reasonable control of CGT (i.e., force majeure), the time for performance hereunder shall be extended for a period of time equal to the delay resulting from such circumstances. A force majeure amendment granted by the Director

shall be considered a binding extension of this Order and of the requirements herein. The determination of the Director shall be final and not subject to appeal.

4. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving CGT of the obligation to comply with any applicable law, permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may subject CGT to additional penalties and injunctive relief in accordance with the applicable law.
5. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.
6. This Order is binding on CGT, its successors and assigns.
7. This Order shall terminate upon CGT's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.


Rodney Kimble
Columbia Gas Transmission, LLC

2/1/19
Date

Public Notice begin:

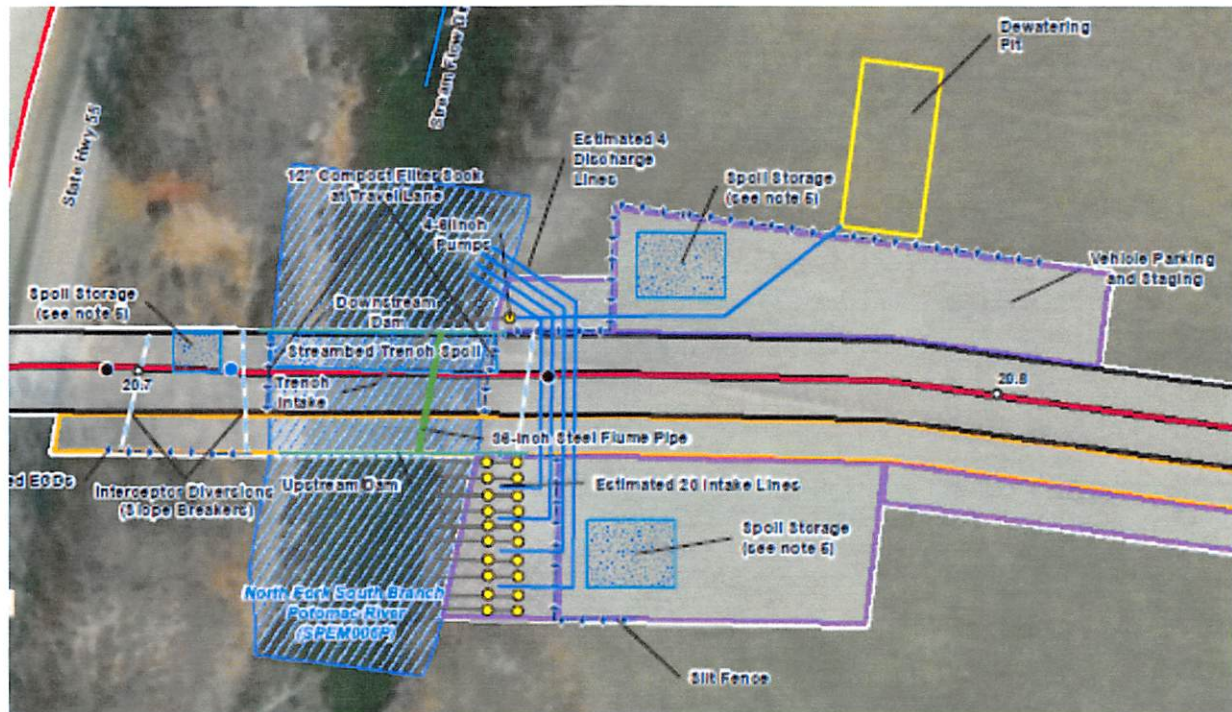
Date

Public Notice end:

Date

Harold D. Ward, Acting Director
Division of Water and Waste Management

Date



Overview of the site specific pump around plan.

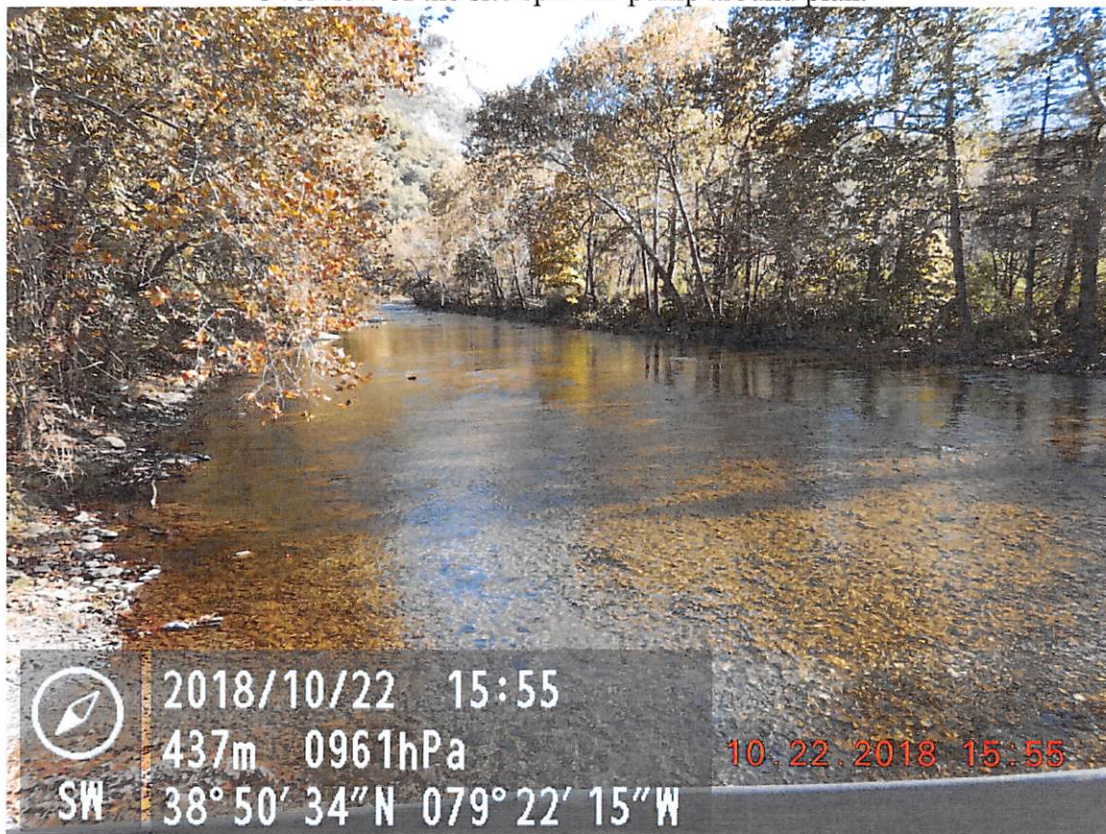


Photo taken off of the TAR 45 access bridge. This location is approximately ½ mile upstream of the pump around operation. The North Fork of the South Branch of the Potomac was flowing clear.



The North Fork of the South Branch of the Potomac was flowing clear directly above the pump around area adjacent to the Seneca Rocks Pumping station.



Approximately 20 intake lines pictured above upstream dam. Upstream dam control failed.



Close-up view of failed upstream dam.



Sediment laden water was leaving the site without going through an appropriate device and causing conditions not allowable (CNA) in the North Fork of the South Branch of the Potomac (38° 50' 56.0" X 79° 22' 27.0").



Equipment working in the stream with failed upstream dam control.



CNA and sediment laden water between the upstream dam and the discharge lines.



The North Fork of the South Branch of the Potomac River - turbid 3.6 miles downstream of the failed controls.



The North Fork of the South Branch of the Potomac River - turbid 5 miles downstream of the failed controls.



Photo taken off of the TAR 45 access bridge on 10/23/18. This location is approximately ½ mile upstream of the pump around operation. The North Fork of the South Branch of the Potomac was flowing clear.



Equipment finishing pipe installation. Water was still turbid.



Water was still turbid. Upstream and downstream dam had been removed.



The North Fork of the South Branch of the Potomac River was turbid approx. 5 miles downstream of the failed controls.



The North Fork of the South Branch of the Potomac River was turbid near Cabins, approximately 12 miles downstream of the failed controls.



The North Fork of the South Branch of the Potomac River was turbid near Smoke Hole Bridge, approximately 15.5 miles downstream of the failed controls.



The North Fork of the South Branch of the Potomac River was turbid approximately 17.5 miles downstream of the failed controls.



The South Branch of the Potomac River was turbid approximately 19 miles downstream of the failed controls.

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Columbia Gas Transmission, LLC Receiving Stream:

Treatment System Design Maximum Flow: MGD

Treatment System Actual Average Flow: MGD (if known)

Enter FOF# and rate each finding as to Potential and Extent.

1)	Potential for Harm Factor	Factor Range	FOF#											
			2a	2b	2d									
a)	Amount of Pollutant Released	1 to 3	1	1	3									
b)	Toxicity of Pollutant	0 to 3	1	0	1									
c)	Sensitivity of the Environment	0 to 3	1	0	3									
d)	Length of Time	1 to 3	1	1	1									
e)	Actual Exposure and Effects thereon	0 to 3	1	0	3									
	Average Potential for Harm Factor		1	0.4	2.2	No	No	No	No	No	No	No	No	No
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 3	3	3	3									

Potential for Harm Factors:

1)c - Sensitivity of the Environment Potentially Affected (0 for "dead" stream)

1)d - Length of Time of Violation

1)e - Actual Human/Environmental Exposure and Resulting Effects thereon

Examples/Guidance:

Note: Rate as 1 for Minor, 2 for Moderate and 3 for Major. Rate as 0 if it does not apply.

Minor = exceedance of permit limit by $\leq 40\%$ for Avg. Monthly or $\leq 100\%$ for Daily Max., exceed numeric WQ standard by $\leq 100\%$, or report doesn't contain some minor information.

Moderate = exceedance of permit limit by $\geq 41\%$ and $\leq 300\%$ for Avg. Monthly, $\geq 101\%$ and $\leq 600\%$ for Daily Max., exceed numeric WQ standard by $\geq 101\%$ and $\leq 600\%$ or report doesn't fully address intended subject matter.

Major = exceedance of permit limit by $\geq 301\%$ for Avg. Monthly, $\geq 601\%$ for Daily Max., exceed numeric WQ standard by $\geq 601\%$, failure to submit a report, failure to obtain a permit, failure to report a spill, etc. Note that a facility in SNC should be rated as major for length of time and degree of non-compliance.

Narrative WQ standard violations - case-by-case.

Continue rating Findings of Facts (FOF) here, if necessary. Otherwise, continue on Page 3.

[illegible]

		Extent of Deviation from Requirement		
		Major	Moderate	Minor
Potential for Harm to Human Health or the Environment	Major	\$8,000 to \$10,000	\$6,000 to \$8,000	\$5,000 to \$6,000
	Moderate	\$4,000 to \$5,000	\$3,000 to \$4,000	\$2,000 to \$3,000
	Minor	\$1,500 to \$2,000	\$1,000 to \$1,500	Up to \$1,000

FOF #	Potential for Harm	Extent of Deviation	Penalty	Multiple Factor	Base Penalty
2a	Minor	Major	\$2,000	1	\$2,000
2b	Minor	Major	\$1,700	1	\$1,700
2d	Major	Major	\$8,400	1	\$8,400
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
Total Base Penalty					\$12,100

Penalty Adjustment Factors

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor

6.2.b.1 - Degree of or absence of willfulness and/or negligence - 0% to 30% increase

6.2.b.4 - Previous compliance/noncompliance history - 0% to 100% increase - based upon review of last three (3) years - Warning = maximum of 5% each, N.O.V. = maximum of 10% each, previous Order = maximum of 25% each - Consistent DMR violations for <1 year = 10% maximum, for >1 year but <2 years = 20% maximum, for >2 years but <3 years = 30% maximum, for >3 years = 40 % maximum

6.2.b.6 - Economic benefits derived by the responsible party (increase to be determined)

6.2.b.7 - Public Interest (increase to be determined)

6.2.b.8 - Loss of enjoyment of the environment (increase to be determined)

6.2.b.9 - Staff investigative costs (increase to be determined)

6.2.b.10 - Other factors

Size of Violator: 0 - 50% decrease

NOTE: This factor is not available to discharges that are causing a water quality violation. This factor does not apply to a commercial or industrial facility that employees or is part of a corporation that employees more than 100 individuals.

Avg. Daily WW Discharge Flow (gpd)	% Reduction Factor
< 5,000	50
5,000 to 9,999	40
10,000 to 19,999	30
20,000 to 29,999	20
30,000 to 39,999	10
40,000 to 99,999	5
> 100,000	0

Additional Other factors to be determined for increases or decreases on a case-by-case basis.

Public Notice Costs (cost for newspaper advertisement)

6.2.b.2 - Good Faith - 10% decrease to 10% increase

6.2.b.3 - Cooperation with the Secretary - 0% to 10% decrease

6.2.b.5 - Ability to pay a civil penalty - 0% to 100% decrease

Base Penalty Adjustments

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor	% Increase	% Decrease	Base Penalty Adjustments
6.2.b.1 - Willfulness and/or negligence -	10		\$1,210
6.2.b.4 - Compliance/noncompliance history			\$0
6.2.b.6 - Economic benefits - (flat monetary increase)			\$0
6.2.b.7 - Public Interest - (flat monetary increase)			\$0
6.2.b.8 - Loss of enjoyment - (flat monetary increase)			\$0
6.2.b.9 - Investigative costs - (flat monetary increase)			\$0
6.2.b.10 - Other factors (size of violator)			\$0
6.2.b.10 - Additional Other Factors - Increase (flat monetary increase)			\$0
6.2.b.10 - Additional Other Factors - Decrease (flat monetary decrease)			\$0
Public Notice Costs (flat monetary increase)	\$30		\$30
6.2.b.2 - Good Faith - Increase			\$0
6.2.b.2 - Good Faith - Decrease			\$0
6.2.b.3 - Cooperation with the Secretary			\$0
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			\$1,240
Penalty =			\$13,340

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	
Installation & Maintenance of Pollution Control Equipment	
O&M expenses and cost of equipment/materials needed for compliance	
Permit Application or Modification	
Competitive Advantage	
Estimated Economic Benefit	\$0
Comments: Economic benefit not warranted.	