



April 12, 2019

WV Department of Environmental Protection
Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304

Attn: Harold Ward, Acting Director

Re: Administrative Consent Order No. 8943

Director Ward:

West Virginia Rivers Coalition, on behalf of our members and the co-signing organizations, respectfully submit the following comments on the Administrative Consent Order No. 8943 (Order) with Columbia Gas Transmission, LLC (Columbia) for construction of the WB Xpress project.

Pipeline related construction activities in our state have created a culture of non-compliance that must be reversed. The WV Department of Environmental Protection (DEP) has issued consent orders to Dominion G-150, Stonewall Gas Gathering, Rover Pipeline, and Mountaineer Xpress Pipeline. In each case, numerous violations were issued, a consent order and fine was agreed upon, and a corrective action plan was approved. While we appreciate DEP's steps in ensuring the companies comply with environmental regulations, it is becoming apparent that it is easier for the company to pay a relatively nominal fine than to do the job right in the first place. Therefore, we implore DEP to increase the fines and impose other appropriate sanctions to end the culture of non-compliance and deter future violations.

Account for all violations incurred by WB Xpress Project: Columbia's WB Xpress project was issued an Oil and Gas Construction General Stormwater permit (WVR310884) on November 14, 2017. The project was issued Notices of Violations (NOV) by DEP Inspectors on April 4 (W18-42-037-TJC), June 5 (W18-42-064-TJC) and October 23 (W18-36-055-TAG) of 2018. Order 8943 was dated January 28, 2019; however, the order only references the NOV issued on October 23, 2018. We request that DEP include all 3 of the NOVs that Columbia's WB Xpress project incurred to date within the Order and calculate the penalty accordingly.

Include 2c in penalty calculation: The Order contains Finding of Facts (FOF) 2a-d referencing the sections of the Stormwater Permit that Columbia violated. The penalty calculation only includes FOF 2a, 2b, and 2d. DEP should include all FOF within the penalty calculation including 2c, failure to prevent sediment laden water from leaving the site without going through an appropriate device.

Sensitivity of Environment Potentially Affected: The Base Penalty Calculation includes the Potential for Harm Factor 1c Sensitivity of the Environment. The factor ranges from 1-minor to 3-major. The FOF for 2a was rated 1, 2b was rated 0, and 2d was rated 3. The entire length of the North Fork is a documented trout stream. Trout are highly sensitive to increased sedimentation in the water. Sedimentation of trout waters smothers habitat and interferes with trout feeding and breeding. These water quality violations occurred on October 23, during the spawning season. In addition, a segment of the North Fork where impacts occurred is classified as Tier 3 high quality stream. As a result of Columbia's negligent construction practices, the pristine water quality was degraded during the most sensitive time of year for trout. Furthermore, the 19 miles of impacted water quality is within the source water protection area for the Town of Petersburg's public water system. Therefore, the North Fork of the South Branch of the Potomac River must be considered a highly sensitive environment and the potential harm factor should be rated as major for all FOF numbers.

Actual Exposure and Effects thereon: The Base Penalty Calculation includes the Potential for Harm Factor 1e Actual Exposure and Effects thereon. Columbia impacted approximately 20 miles of the North Fork. This is a significant length of the stream that was exposed to and effected by the sedimentation resulting from the failed dam at the stream crossing. The FOF for 2a was rated 1, 2b was rated 0, and 2d was rated 3. Because of the length of stream that was impacted, the potential harm should be rated as major for all FOF numbers.

Base Penalty Adjustments

The Order fails to make any adjustments to the penalty for:

- Previous compliance/noncompliance history
- Size of the violator
- Public interest
- Loss of enjoyment of the environment

- Staff investigative costs

Compliance/noncompliance History: Columbia has a history of noncompliance. Columbia is also constructing the Mountaineer Xpress Pipeline. They have been issued 37 NOV's by WVDEP on that project. Additionally, Columbia agreed to Consent Order 8889. Because Columbia has previous noncompliance history and a previous Order, they should incur the base penalty increase of 25% as specified under 6.2.b.4. The repeated nature of these violations is inexcusable. It signals that this is a company that harbors disregard for the law and the people who stand to be adversely impacted by that disregard. *The penalty must increase the base penalty by 25% for the history of noncompliance.*

Size of the Violator: TransCanada, the parent company of Columbia, had \$13.68 billion in annual revenue in 2018 and grossed \$3.54 billion in profits. They stand to make millions/billions more from the operation of this pipeline for years to come. For a 900 million-dollar project, the \$13,340 penalty is pocket change considering the size of the violator. With more multi-billion-dollar pipeline construction projects underway, these companies need to see that violations come with hefty consequences, which will hopefully serve as added incentive to adhere to the law and prevent damages. "Penalties" cannot just become a 0.001% line-item in these project budgets – that will not ultimately move us ahead in holding large corporations responsible for damage done to West Virginia's lands and waters. *The penalty should be substantially increased due to the size of the violator.*

Public Interest: By ignoring a penalty adjustment related to the public interest factor, it sends a message that the public has no interest or stake in the problems Columbia caused for their water, and that is simply incorrect. The WB Xpress project impacted the Monongahela National Forest, the iconic scenery of Seneca Rocks, a Tier 3 trout stream, a local swimming hole, and the source water for the Town of Petersburg. Columbia's damages impacted individual lives and entire communities. Local residents' right to clean water was compromised when Columbia continuously allowed sediment to be released into a pristine stream. The stream's designated uses were not achievable during the construction period and both the human and aquatic communities that relied on those waters suffered as a result. The penalty does not begin to cover the damage done to a stream that has had so much money invested in restoration to support a healthy trout population.

The public's interest in Columbia's accountability is strong, and they share concerns that the penalty does not seem to be enough of an incentive to assure future compliance on other oil and gas projects also of public interest. We want WVDEP's enforcement role to be taken seriously by this company to help ensure that they adhere to their permit requirements. *The public has an interest in seeing that the penalty is severe enough to prevent non-compliance in future construction projects.*

Loss of enjoyment of the environment Failure to consider this factor suggests that no person experienced a loss of enjoyment due to Columbia's damages to the stream. We know directly from a local citizen that this is not true. The citizen submitted a complaint to DEP on August 12, 2018. Muddy water in the stream prevented her from enjoying her favorite swimming hole. These impacts occurred in a popular trout stream. Anglers were unable to enjoy fishing this pristine stream while the sediment laden water impacted the 19-mile reach. The penalty should be revised to reflect the loss of enjoyment of the impacted stream for the people who rely on and wish to use those waters. *DEP must factor the citizens' loss of enjoyment of the environment into the penalty calculation.*

Staff investigative costs: Once again, as in past consent orders citing repeated violations, which required increased site visits and significant attention by DEP staff, it's baffling to see that the DEP did not consider staff investigative costs in determining the penalty. DEP Inspectors conducted 9 inspections of the WB Xpress project and observed issues of non-compliance half the time, requiring more frequent inspections from the agency. The number of hours required of DEP staff for repeated site visits, increased inspection reports, violation notices, administrative processing, and the presumed negotiations that went into crafting the Order should be made available and added to the penalty calculation. We are acutely aware that DEP's enforcement staff is stretched very thin with the oversight required for major pipeline development and other oil and gas construction activities currently happening across the state. We are also aware that the permit fees associated with the stormwater construction permits are scaled so low that they may help cover some permit writing staff, but they are not at all enough to extend into the permit oversight and enforcement costs.

Of the 9 inspections logged in the DEP's online database, Columbia received violations a third of the time and a warning one other time. This is one reason that accounting for extra time required of staff to deal with repeat violators must be factored into penalties

– otherwise, the taxpayers stand to cover the bill for corporate wrongdoing. It is a total injustice that taxpayers would shoulder the burden or that funding for other important DEP functions must be used to pay the costs of dealing with a repeat violator – especially a violator of this scale. *DEP should provide a calculation of the total agency-wide staff costs to address all aspects of Columbia's violations and add that figure to the penalty.*

We expressly commend DEP's vigilant and persistent oversight of this project and acknowledge the value of the intense work that went into responding to Columbia's repeat violations. This Order is of great significance for restitution for damages caused by Columbia's negligence and deterrence of future violations; however, \$13,340 doesn't even begin to cover the damage that has occurred as a result of their carelessness. We appreciate your thorough consideration of these comments and look forward to your response. Additionally, we request a copy of Columbia's plan of corrective action be included with DEP's response to comments.

Signed,

Angie Rosser

West Virginia Rivers Coalition