



December 14, 2018

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

Attn: Harold Ward, Acting Director

Re: Administrative Consent Order No. 8889

Director Ward:

West Virginia Rivers Coalition, on behalf of our members, respectfully submit the following comments on the Administrative Consent Order No. 8889 with Columbia Gas Transmission, LLC (Columbia).

The Order documents the company received 21 violation notices from DEP. Order No. 8889 only pertains to the violations received by September 12, 2018 and does not include 3 of the most recent violations that the company received on September 25th, October 4th and October 17th. The order was written on October 2nd but was signed by Columbia on November 8th. The consent order should also include the 3 most recent violations and be accompanied with a Cease and Desist Order until the corrective action plan is in place so that the company's negligent construction practices do not continue.

Columbia was repeatedly cited for the same violations. Specifically, Columbia created conditions not allowable in state waters approximately 37 times. They were cited for failing to prevent sediment-laden water from leaving the site approximately 13 times at numerous locations each time. They were cited for failing to comply with their approved Stormwater Pollution Prevention Plan. Silt fences, filter socks, water bars, water bar outlets and other erosion control devices were either not installed at all, not installed properly, or not maintained as required. They did not protect fill slopes allowing earthen slips to occur. On three separate occasions, they failed to report the non-compliant slips endangering health and the environment. The repeated nature of these violations is inexcusable. It signals that this is a company that harbors total disregard for the law and the people who stand to be adversely impacted by that disregard. As a result of these repetitive and egregious negligence, approximately 37 streams were flooded with dirt and debris. Based on these actions, Columbia does not deserve the privilege of doing business in West Virginia.

With their repeated negligence and blatant disregard for the environmental laws they agreed to abide by, they should receive the most severe monetary penalty. They should also

be banned from applying to construct further projects in the State of West Virginia.

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

- Loss of enjoyment of the environment
- Size of the violator
- Economic benefits derived by the responsible party
- Public interest
- Staff investigative costs

Loss of enjoyment of the environment. The penalty does not begin to cover the costs needed to repair and restore all the impacts that have degraded the watersheds in which the construction occurred. To not consider this factor suggests that no person experienced a loss of enjoyment due to Columbia's damages. We know directly from local residents, this is not true. The penalty should be revised to cover the cost of restoring degraded streams and areas where erosion continues to occur, so that the loss of enjoyment of the impacted watersheds may be fully restored for the people who rely on and wish to use those waters.

Size of violator. For a project with \$2 billion construction costs, the \$122,350 penalty equates to a meager 0.006% of Columbia's costs. The problem with this proportion is that it is not an effective deterrent. It allows bad-acting companies to consider violations of laws as a small part of the cost of doing business in West Virginia. The size of the violator should clearly be considered in this Order. TransCanada, the parent company of Columbia, had \$13.5 billion in annual revenue in 2017 and grossed \$5.15 billion in profits. This is not your mom-and-pop operation. They stand to make millions/billions more from the operation of this pipeline for years to come. The penalty is a drop in the bucket considering the size of the violator. With more multi-billion-dollar pipeline construction projects underway, those 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 0.01% line-item in these project budgets – that will not ultimately move us ahead in holding these huge 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.***

Economic benefits derived by the responsible party. Often "cutting-corners," such as we have seen with Columbia, provides cost-savings to a project. Penalties must consider this reality, otherwise it sets up a system where there is economic benefit for bad actors to be non-compliant – because the cost of a penalty is less than the cost of compliance. ***The cost of implementing all of the measures that Columbia failed to implement to be in compliance should be calculated and then multiplied by at least a factor of 3 and added to the penalty.***

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 could not be more contrary. 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 otherwise clear rivers and streams. Those streams' designated uses were not achievable during the construction period and the communities that relied on those waters suffered as a result.

The public interest in Columbia from our members has been strong, and they share concerns that the penalty does not seem to be enough of an incentive to assure future compliance on other pipeline projects also of public interest. In fact, there is already public concern the Mountain Valley Pipeline is following in Columbia's footsteps, receiving 20 violations since construction commenced. Their violations are along the very same lines for which Columbia was cited; erosion control devices not installed and not maintained, failing to prevent sediment-laden water from leaving the site, conditions not allowable in state waters, etc. We want DEP's enforcement role to be taken seriously by these companies 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 pipeline projects.***

Staff investigative costs. It is baffling to see that the DEP did not consider staff investigative costs in determining the penalty, as Columbia's repeated negligence clearly must have required hundreds of hours of DEP staff time for site visits, inspection reports, violation notices, administrative processing, follow-up meetings, and the presumed negotiations that went into crafting the Order. We are acutely aware that DEP's enforcement staff is stretched very thin with the oversight required for major pipeline development currently happening across the state. We are also aware that the permit fees associated with pipelines like Columbia 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. Out of 41 inspections logged in the DEP's online database, including one aerial flight, they received violations over half of the 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 has to be used to pay the costs of a dealing with a repeat violator – especially a violator of this scale. ***DEP should provide a calculation of the total agency-wide staff costs to deal with 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. We appreciate your thorough consideration of these comments and look forward to your response.

Signed,

Angie Rosser, Executive Director
West Virginia Rivers Coalition