

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the Matter Of:

EQM Gathering OPCO, LLC	:	Violations of the Clean Streams Law;
2200 Energy Drive	:	Dam Safety and Encroachments Act;
Canonsburg, Pennsylvania 15317	:	2012 Oil and Gas Act;
	:	Solid Waste Management Act; and
	:	Regulations

**CONSENT ORDER AND AGREEMENT**

This Consent Order and Agreement is entered into this 1st day of September 2020, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”) 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 Enforcements Act, Act of November 26, 1978, P.L. 1375, No. 325, *as amended*, 32 P.S. §§ 693.1 – 693.27 (“Encroachments Act”); the Oil and Gas Act, Act of February 14, 2012, P.L. 87, No. 13, 58 Pa.C.S. §§ 3201 – 3274 (“2012 Oil and Gas Act”); the Solid Waste Management Act, Act of July 7, 1980 P.L. 380, *as amended*, 35 P.S. §§ 6018.101 – 6018.1003 (“Solid Waste Management 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. Pursuant to a delegation agreement from the United States Environmental Protection Agency, the Department also administers the National Pollutant

Discharge Elimination System (“NPDES”) Program of Federal Water Pollution Control Act, 33 U.S.C § 1342.

B. EQM is a foreign limited partnership doing business in Pennsylvania and maintains a local mailing address of 2200 Energy Drive, Canonsburg, Pennsylvania 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.

C. EQM is the owner and operator of an oil and gas pipeline construction project, NIMA D001/S004/S005 located in Franklin, Washington, and Morgan Townships, Greene County (“Site G”); NIMA D001/S004/S005 located in Amwell Township, Washington County (“Site W”); and TP-4555 located in Derry Township, Westmoreland County, Pennsylvania (“Site WE”). Activities at the Sites are subject to Erosion and Sediment Control General Permit ESG-00-059-15-0007 for Greene and Washington Counties and ESG-00-129-16-0001 for Westmoreland County (“ESCGP Permits”).

D. 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 Permits, EQM developed an Erosion and Sedimentation Control Plan (“E&S Plan”) for the Sites to minimize the potential for accelerated erosion and sedimentation.

E. Discharges from Site G enter Ruff Creek and an Unnamed Tributary (“UNT”) to Boyd Creek, both having a Warm Water Fishery (“WWF”) protected use, as designated by Section 93.9v of the Regulations, 25 Pa. Code § 93.9v. Discharges from Site W enter Tenmile Creek, Little Chartiers Creek, a UNT to Little Tenmile Creek, and Little Tenmile Creek, all having a Trout Stocked Fishery (“TSF”) protected use, as designated by Section 93.9v of the

Regulations, 25 Pa. Code § 93.9v. Discharges from Site WE enter Loyalhanna Creek, a WWF protected use, as designated by Section 93.9v of the Regulations, 25 Pa. Code § 93.9v.

F. At all times relevant to the matters set forth in this Consent Order and Agreement, EQM has been the “operator” of the Sites as that term is defined in Section 102.1 of the Regulations, 2 Pa. Code § 102.1; EQM has been the “owner” of the Sites as that term is defined in Section 3 of the Encroachments Act, 32 P.S. § 693.3; and EQM was engaged in “operations” as that term is defined in Section 105.1 of the Regulations, 25 Pa. Code § 105.1.

G. During specific projects, EQM utilizes Horizontal Directional Drilling (“HDD”) techniques, a steerable trenchless method used for installation of an underground pipe in an arc along a prescribed path by using a surface launched drilling rig. This allows EQM to install pipeline under various geographic and geologic structures such as roads, waterways, and wetlands. During the NIMA D001/S004/S005 project EQM utilized HDD to install pipeline under Interstate 79.

H. Unplanned releases of drilling fluids and drilling wastewater discharges into waterbodies can occur during HDD operations. An unplanned and unauthorized discharge of drilling fluids to surface waters, including wetlands, associated with HDD is known as an inadvertent return. The drilling fluid containing drilling mud, either alone or mixed with municipal water, constitutes “industrial waste” and “pollution” as those terms are defined by Section 1 of The Clean Streams Law, 35 P.S. § 691.1., and “pollutants” as that term is defined by Section 91.1 of the Regulations, 25 Pa. Code § 91.1, and is a “residual waste” as that term is defined in Section 103 of the Solid Waste Management Act, 35 P.S. § 6018.103.

H. The Greene County Conservation District (“GCCD”), Washington County Conservation District (“WCCD”), and Westmoreland Conservation District (“WCD”) 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*, 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.

I. The Department has delegated to the GCCD, WCCD, and WCD 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 of 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),.

J. From April 4, 2016 to August 6, 2019, the GCCD conducted at least nine (9) inspections at Site G; the WCCD conducted at least ten (10) inspections at Site W; and the WCD conducted at least four (4) inspections at Site WE to determine compliance with the E&S Plan, the ESCGP Permits, The Clean Streams Law, the Encroachments Act, and Chapters 102 and 105 of the Regulations., 25 Pa. Code §§ 102.1-102.51 and §§ 105.1-105.452.

K. On May 13, 2016, June 28, 2016, July 29, 2016, August 1, 2016, September 29, 2016, May 30, 2019, and May 30, 2019, EQM failed to implement and/or maintain effective E&S Best Management Practices (“BMPs”) to minimize the potential for accelerated erosion and

sedimentation at Sites G and W, 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).

L. On May 30, 2019, EQM failed to implement the Preparedness, Prevention, and Contingency Plan for Site G, which constitutes 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.

M. On May 30, 2019, EQM failed to perform reporting and recordkeeping for Site G, which constitutes violations of Section 402 the Clean Streams Law, 35 P.S. § 691.402, and Section 102.8 of the Regulations, 25 Pa. Code § 102.8.

N. On April 4, 2016, April 8, 2016, May 17, 2019, May 29, 2019, and May 30, 2019, EQM failed to comply with conditions of the ESCGP Permits for the Sites G and W, 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.

O. On July 29, 2016, November 23, 2016, March 12, 2019, May 17, 2019, May 23, 2019, May 29, 2019, May 30, 2019 and July 12, 2019, EQM failed to permanently stabilize areas of earth disturbance at Site G to protect Ruff Creek and a UNT to Boyd Creek, at Site W to protect Tenmile Creek, Little Chartiers Creek, a UNT to Little Tenmile Creek, and Little Tenmile Creek; and at Site WE to protect Loyalhanna Creek, all 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.

P. On May 13, 2016, August 1, 2016, May 17, 2019, May 29, 2019, and May 30, 2019, EQM conducted earth disturbance activities at Sites G and W that created the potential for

sediment pollution to waters of the Commonwealth, which constitutes violations of Sections 402 and 611 of the Clean Streams Law, 35 P.S. §§ 691.402 and 691.611.

Q. On April 4, 2016 and April 8, 2016, 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 bentonite-laden water from an inadvertent return to discharge to a UNT to Boyd Run at Site G, which constitute violations of Sections 301 and 307 of The Clean Streams Law, 35 P.S. §§ 691.301 and 691.307, Section 301 of the Solid Waste Management Act, 35 P.S. § 6018.301, and Section 91.34(a) of the Regulations, 25 Pa. Code § 91.34(a).

R. On July 29, 2016 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 be discharged to Tenmile creek at Site W, which constitute violations of Sections 401 and 611 of The Clean Streams Law, 35 P.S. §§ 691.401 and 691.611.

S. The violations described in Paragraphs K through O, and R, above, constitute unlawful conduct pursuant to Section 3259 of the 2012 Oil and Gas Act, 58 Pa. C.S. § 3259, and Section 611 of the Clean Streams Law, 35 P.S. § 691.611.

T. The violations described in Paragraph Q, above, subject EQM to a claim for civil penalties pursuant to Section 3256 of the 2012 Oil and Gas Act, 58 Pa. C.S. § 3256, and Section 605 of the Clean Streams Law, 35 P.S. § 691.605.

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 EQM as follows:

1. Authority. This Consent Order and Agreement is an Order of the Department, authorized and issued pursuant to Sections 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; Section 3253 of the 2012 Oil and Gas Act, 58 Pa. C.S. § 3253; Sections 104(7) and 602 of the Solid Waste Management Act, 35 P.S. §§ 6018.104(7) and 6018.602; and Section 1917-A of the Administrative Code, 71 P.S. § 510-17.

2. Findings.

a. EQM agrees that the findings in Paragraphs A through R and T 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 any other persons to use the findings in this Consent Order and Agreement in any matter or proceeding.

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

a. EQM shall repair the following slips that have not been repaired at the time of execution of this document and provide written monthly updates to include the commencement of repairs as well notice of completion of said repairs to the Department and the appropriate County Conservation District. All seven repairs at the locations set forth below should be completed on or before December 31, 2020.

Permit NIMA D001/S004/S005

1. Station 608+50

2. Station 488+00

3. Station 649+10
4. Station 61+00
5. Station 53+50
6. Station 52+00
7. Station 46+00

b. EQM shall immediately notify the Department and appropriate conservation district upon discovery of any new slips and provide a timeframe and schedule for their repair.

c. 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 EIGHTY-TWO THOUSAND SIX HUNDRED AND FIFTY DOLLARS (\$82,650). This payment is in settlement of the Department's claim for civil penalties for the violations set forth in Paragraphs K through R above, for the dates specified therein and no others. In addition, EQM shall pay cost recovery and oversight cost totaling FOUR HUNDRED AND EIGHT DOLLARS (\$408.00) to the GCCD; EQM shall pay cost recovery and oversight cost totaling ONE THOUSAND FOUR HUNDRED AND NINETY DOLLARS (\$1,490.00) to the WCCD; and EQM shall pay cost recovery and oversight cost totaling TWO HUNDRED AND SIXTY-SIX DOLLARS (\$266.00) to the WCD. 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 FIFTY THREE THOUSAND AND FIFTY DOLLARS (\$53,050).

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-NINE THOUSAND SIX HUNDRED DOLLARS (\$29,600.00).

c. Submittal of a corporate check or the like made payable to "Greene County Conservation District - Clean Water Fund" in the amount of FOUR HUNDRED AND EIGHT DOLLARS (\$408.00).

d. 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).

e. Submittal of a corporate check or the like made payable to "Westmoreland County Conservation District - Clean Water Fund" in the amount of TWO HUNDRED AND SIXTY-SIX DOLLARS (\$266.00).

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, EQM shall be 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. Stipulated civil penalties shall be due automatically and without notice.

e. 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. EQM shall also be liable for any violation of this Consent Order and Agreement caused by, contributed to, or allowed by their 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:

EQM Gathering OPCO, LLC  
Megan Stahl, Manager - Environmental  
2200 Energy Drive  
Canonsburg, Pennsylvania 15317. Telephone: (412) 553-5700

11. 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.

12. 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. In any subsequent litigation, EQM shall have the burden of proving that the Department's refusal to grant the requested extension was an abuse of discretion based upon the information then available to it.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

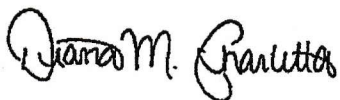
18. Decisions Under Consent Order. Any decision which the Department makes under the provisions of this Consent Order and Agreement, including a notice that stipulated civil penalties are due, is intended to be neither a final action under 25 Pa. Code § 1021.2, nor an adjudication under 2 Pa. C.S. §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

19. 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 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

consents to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that EQM 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:



7/27/2020

Diana Charletta  
President & Chief Operating Officer

FOR THE COMMONWEALTH OF  
PENNSYLVANIA, DEPARTMENT OF  
ENVIRONMENTAL PROTECTION:



9/1/2020

Dana Drake, Program Manager  
Waterways and Wetlands Program



Tobin Nelson  
Secretary/Treasurer



Robert Pichardo  
Counsel for EQM Gathering OPCO, LLC



Charney Regenstein JOHN H. HERMAN  
Assistant Regional Counsel