



COMMONWEALTH of VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

**COLUMBIA GAS TRANSMISSION
CORPORATION**

(No Permit)

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.15(8a), (8d) and (11), between the State Water Control Board and Columbia Gas Transmission Corporation, for the purpose of resolving certain violations of environmental laws and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.
6. "Columbia Gas" and "Company" means Columbia Gas Transmission Corporation, the operator of the directional drilling site along the Swift Run.
7. "Site" means the site where Columbia Gas Transmission Corporation conducted directional drilling and pipeline installation under Swift Run along State Route 634 between its intersections with Route 33 and Route 819 near Lydia in Greene County, Virginia.
8. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.
9. "DGIF" means the Department of Game and Inland Fisheries, an Agency of the Commonwealth of Virginia.
10. "NOV" means Notice of Violation.
11. "Regulation" means the VPDES Permit Regulation 9 VAC 25-31-10 et seq.

SECTION C: Findings of Fact and Conclusions of Law

1. Columbia Gas is constructing a natural gas transmission line project to provide transportation of gas from its storage fields in West Virginia. The transmission line is approximately 30 miles in length, divided into four segments, and is located in Shenandoah, Rockingham, Page, Greene, and Louisa Counties, Virginia. As part of this project, Columbia Gas conducted horizontal directional drilling (HDD) under certain reaches of Swift Run in Greene County to lay the gas transmission line.
2. The Company obtained proper federal permits prior to conducting this work. No DEQ permits were required to conduct this work. Though the Company received permit approval to install the pipeline beneath Swift Run by using typical "dry ditch" construction techniques, Columbia Gas determined that HDD could be utilized at the Site and that its use could minimize or avoid impacts to Swift Run and its population of James spiny mussels, a federally-listed endangered species. The James spiny mussel population is located greater than 5 miles downstream from the HDD activities.
3. On August 30, 2007, Columbia Gas reported a spill of approximately 10 gallons of drilling clay or bentonite to Swift Run. The spill occurred during HDD under a road. The Company reported that most of the spill was contained by sand bags and the contained bentonite was cleaned up.

4. On September 1, 2007, Columbia Gas reported a spill of approximately 200 gallons of bentonite to Swift Run. The Company reported that the spill occurred during HDD under Swift Run when the drilling process encountered a rock fracture that allowed the bentonite a passage up to the stream. The Company reported that it had installed a coffer dam to help contain the spill and was using an on-site vacuum truck to clean up the captured portion of the spill. The Company reported that these actions were completed by September 8, 2007.
5. On September 17, 2007, DEQ received a pollution complaint about a fish kill and a release of bentonite to Swift Run which occurred on or about September 15, 2007, as a result of Columbia Gas's pipeline work. The same day, DEQ conducted an initial fish kill investigation during which staff observed a few dead fish and sediment/bentonite in the stream.
6. On September 17 20, 2007, DEQ received a voice mail message from Columbia Gas reporting a pollution incident at its Swift Run stream crossing site in Greene County. DEQ staff responded to the report. DGIF staff was also on site doing an investigation. During the investigation, DEQ staff observed a few dead fish remaining within a stream reach of approximately 80 meters. The fish kill took place primarily in the stream reach where the Company had installed coffer dams to contain the bentonite and pumped around that section, thereby dewatering the stream reach to facilitate cleanup of the bentonite. During the investigation, DEQ staff observed signs that crows and other animals may have already scavenged dead fish.

DEQ staff collected benthic samples at 3 stations downstream of the bentonite release. These stations ranged from showing no apparent impact, with the clear water and no sediment, to moderately turbid water, to opaque water with suspended sediment. At a fourth site the clay was so thick that there were no interstitial spaces between the cobbles.

7. DEQ issued NOV No. W2007-09-V-003 on September 26, 2007, to Columbia Gas for unpermitted /unauthorized discharge to State waters which resulted in adverse water quality impacts including a fish kill in apparent violation of the Code of Virginia § 62.1-44.5. and 9VAC25-210-50).
8. On October 10, 2007, Columbia Gas reported another release of an unknown quantity of a 90% water and 10% bentonite mixture/slurry to Swift Run which escaped the company's containment structures.
9. On October 16, 2007, DEQ met with Columbia Gas representatives in an informal conference to discuss a resolution of the September 26, 2007 NOV. During the October 16, 2007 meeting, the Company discussed the situations that led up to the bentonite releases and the related cleanup attempts.
10. Columbia Gas has represented that while conducting HDD it has experienced what the Company refers to as "frac outs". According the Company, a "frac out" occurs when

during the drilling process a fracture in the underling rock is hit which causes the drilling lubricant (bentonite) to discharge out through the fracture. The Company attributes some of the bentonite spills to "frac outs" and others to the release of water and bentonite from the drill hole, as described below.

According to the Company, the bentonite generally swells and seals up the fractures that are encountered in the drilling process, such that "frac outs" are normally not a frequent occurrence.

In addition to the loss of bentonite out the fracture to the stream, the drilling process encountered groundwater that overwhelmed the Company's attempt to dewater the drill hole. The Company responded by installing secondary containment which was also overrun, and sediment-laden drill spoils passed through the silt fence and into Swift Run. The Company also constructed coffer dams in Swift Run to help contain the releases.

11. On November 16, 2007, DEQ received Columbia Gas' initial written plan of corrective actions to complete cleanup and mitigation of the spills and to prevent future spills from the project reaching State waters.
12. On November 26, 2007, Columbia Gas reported that its drilling hole had collapsed resulting in the entire stream flow entering its bore hole and exiting about 1000 meters downstream through the drilling's exit hole, thus dewatering the stream through that segment for a period of less than 24 hours. The same day, DEQ staff conducted a site investigation to determine if there were any further adverse impacts on Swift Run. In the process of conducting the site investigation, DEQ staff observed that a fish kill had taken place in the dewatered stream segment. DEQ staff initiated a fish kill count and counted 1013 dead fish on the dewatered stream reach.
13. DEQ issued NOV No. W2007-12-V-004 on November 29, 2007, to Columbia Gas for unauthorized alterations of the physical properties of State waters which resulted in a fish kill in apparent violation of the Code of Virginia § 62.1-44.5
14. By letters dated December 20, 2007 and January 18, 2008, Columbia Gas submitted a revised plan of corrective actions to complete cleanup and mitigation of the spills, which also discussed interim measures aimed at preventing further releases to the stream during the project. Sections of these documents have been utilized in Appendix A of this Order.
15. Columbia Gas voluntarily abandoned the HDD technique to lay the pipeline under Swift Run because it could not assure completion of the HDD pipe installation without further frac outs. The Company completed laying the pipeline under Swift Run utilizing conventional, previously permitted, dry ditch stream crossing methods.
16. Based on verbal approval from DEQ and DGIF, Columbia Gas conducted cleanup and monitoring activities in accordance with the January 18, 2008 revised plan. Columbia Gas also conducted stream assessments during the periods prior to and subsequent to

the cleanup. In addition, Columbia Gas conducted assessments of the James Spiny Mussel population downstream from the releases in January and March 2008, showing no impacts.

17. Columbia Gas has agreed to conduct certain additional monitoring of the stream as set forth in Appendix A of this Order. In addition, Columbia Gas has agreed to conduct certain additional assessments of the James Spiny Mussel population located approximately 5 miles downstream of the project.

SECTION D: Agreement and Order

1. Accordingly, the Board, by virtue of the authority granted it in Va. § 62.1-44.15(8a), (8d) and (11), orders Columbia Gas, and Columbia Gas agrees, to pay the civil charge and costs listed in D (2) and (3) below and to perform the actions described in Appendix A of this Order.
2. Within 30 days of the effective date of this Order, Columbia Gas shall pay a civil charge of **\$35,100** in settlement of the violations cited in this Order. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Columbia Gas shall also include its federal identification number (FIN) with the check, certified check, money order, or cashier's check.

3. Submit to the Department, at the address shown above, three **separate checks** payable to the "Treasurer of Virginia", one check in the amount of **\$1,557.83** to cover DEQ's costs in the fish kill investigations, one check in the amount of **\$2,883.35** to cover DGIF's costs in the fish kill investigations and a check in the amount of **\$94.39** to cover the fish replacement costs. Columbia Gas shall submit the checks **within 30 days** of the effective date of the Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Columbia Gas, for good cause shown by Columbia Gas, or pursuant to the Administrative Procedures Act, Va. Code §§ 2.2-4019 after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations represented by the facts in Section C. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations;

- (2) seeking subsequent remediation of the Site as may be authorized by law based on new information received by the Board; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Columbia Gas` admits the jurisdictional allegations. Columbia Gas neither admits nor denies the factual findings, and conclusions of law contained herein.
 4. Columbia Gas consents to venue in the Circuit Court of Richmond for any civil action taken to enforce the terms of this Order.
 5. Columbia Gas declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
 6. Failure by Columbia Gas to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
 7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
 8. Columbia Gas shall be responsible for failure to comply with any of the terms and conditions of this Order unless its failure to comply was caused by earthquake, flood, other acts of God, war, strike, or such other occurrence. Columbia Gas shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Columbia Gas shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and

- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

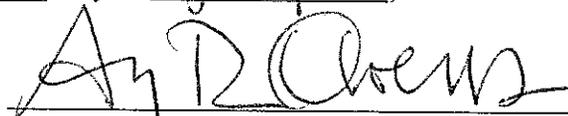
Failure to so notify the Director of the Valley Regional Office within 24 hours of learning of any condition above, which Columbia Gas intends to assert will result in its failure to comply, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Columbia Gas. Notwithstanding the foregoing, Columbia Gas agrees to be bound by any compliance date in Appendix A which precedes the effective date of this Order.
11. This Order shall continue in effect until:
- a. Columbia Gas petitions the VRO Director to terminate the Order after it has completed all requirements of this Order, and the Regional Director determines that all requirements of the Order have been satisfactorily completed; or
- b. The Director, his designee, or the Board may terminate this Order in his or its sole discretion upon 30 days written notice to Columbia Gas.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Columbia Gas from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. The undersigned representative of Columbia Gas certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Columbia Gas to this document. Any documents to be submitted pursuant to this Order shall be submitted by a responsible official of Columbia Gas.
13. By its signature below, the Columbia Gas Transmission Corporation voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 29th day of July, 2008.



Amy T. Owens, Regional Director
Department of Environmental Quality

Columbia Gas Transmission Corporation agrees to the issuance of this Order.

By: Victor Eaglio

Title: SR. VP

Date: 5/15/08

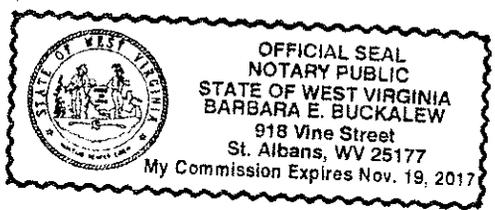
~~Commonwealth of Virginia~~ State of West Virginia
City/County of Kanawha

The foregoing document was signed and acknowledged before me this
15th day of May, 2008, by Victor Eaglio.
(name)

who is SR. VP of Columbia Gas Transmission Corporation, on
(title)
behalf of said company.

Barbara E. Buckalew
Notary Public

My commission expires: Nov. 19, 2017



APPENDIX A
SCHEDULE OF COMPLIANCE
COLUMBIA GAS TRANSMISSION CORPORATION

1. **Beginning April 15, 2008**, Columbia Gas will conduct photographic monitoring of the area of Swift Run associated with the stream collapse located approximately 0.1 miles east of Temple Hill Church near Lydia, Virginia (38° 19' 55"N, 78° 29' 57")(Standardsville (VA) Quadrangle) on Swift Run once per month for the first three months and quarterly thereafter for a period of two years.

During the above mentioned monitoring events, and ending April 15, 2010, Columbia Gas will also review the entrance and exit points of the HDD, to evaluate the continuing effectiveness of the abandonment measures installed.

2. Columbia Gas shall submit reports on the photographic stream monitoring associated with the stream collapse by **April 15, 2008, July 15, 2008, October 15, 2008, January 15, 2009, April 15, 2009, July 15, 2009, October 15, 2009, January 15, 2010, and April 15, 2010.**