

January 11, 2022

**VIA ELECTRONIC MAIL TO: matthew.ramsey@energytransfer.com**

Mr. Matt Ramsey  
Chief Operating Officer  
Energy Transfer LP  
DAPL-ETCO Operation Management, LLC  
8111 Westchester  
Dallas, TX 75225

**CPF No. 3-2021-5008**

Dear Mr. Ramsey:

Enclosed please find a Consent Order incorporating the terms of the Consent Agreement between the Pipeline and Hazardous Materials Safety Administration (PHMSA) and your subsidiary, DAPL-ETCO Operation Management, LLC, which was executed on January 10, 2022. Service of the Consent Order and Consent Agreement by electronic mail is deemed effective upon the date of transmission, or as otherwise provided under 49 C.F.R. § 190.5.

Sincerely,

Alan K Mayberry  
Associate Administrator  
for Pipeline Safety

Enclosures: Consent Agreement and Consent Order

Cc: Mr. Gregory Ochs, Director, Central Region, Office of Pipeline Safety, PHMSA  
Mr. Greg Mcilwain, Senior Vice President, Operations, Energy Transfer,  
Gregory.Mcilwain@energytransfer.com  
Ms. Catherine Little, Outside Counsel, DAPL, catherin.little@troutman.com  
Ms. Annie Cook, Outside Counsel, DAPL, annie.cook@troutman.com

**CONFIRMATION OF RECEIPT REQUESTED**

**U.S. DEPARTMENT OF TRANSPORTATION  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION  
OFFICE OF PIPELINE SAFETY  
WASHINGTON, D.C. 20590**

|   |   |                         |
|---|---|-------------------------|
| In the Matter of                        | ) |                         |
|   | ) |                         |
| DAPL-ETCO Operation Management,<br>LLC, | ) | CPF No. 3-2021-049-NOPV |
|   | ) |                         |
| Respondent.                             | ) |                         |
|   | ) |                         |

**CONSENT ORDER**

By letter dated July 22, 2021, the Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety (PHMSA), issued a Notice of Probable Violation, Proposed Civil Penalty and Proposed Compliance Order (Notice) to DAPL-ETCO Operations Management, LLC (Respondent).

In response to the Notice, Respondent requested a hearing and an informal settlement conference. Beginning on November 9, 2021, and in subsequent meetings in November and December, PHMSA and Respondent (collectively referred to as the Parties) engaged in good faith settlement discussions that have resulted in the Consent Agreement attached to this Consent Order which settles all of the allegations in the Notice.

Accordingly, the Consent Agreement is hereby approved and incorporated by reference into this Consent Order. Respondent is hereby ordered to comply with the terms of the Consent Agreement, effective immediately.

Pursuant to 49 U.S.C. 60101, *et seq.*, failure to comply with this Consent Order may result in the assessment of civil penalties as set forth in 49 C.F.R. § 190.223.

The terms and conditions of this Consent Order are effective upon service in accordance with 49 C.F.R. § 190.5.

\_\_\_\_\_  
Alan K. Mayberry  
Associate Administrator  
for Pipeline Safety

\_\_\_\_\_  
January 11, 2022  
Date Issued

**U.S. DEPARTMENT OF TRANSPORTATION  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION  
OFFICE OF PIPELINE SAFETY  
WASHINGTON, D.C. 20590**

|                                       |   |                         |
|---------------------------------------|---|-------------------------|
| In the Matter of                      | ) |                         |
| DAPL-ETCO Operations Management, LLC, | ) |                         |
| Respondent.                           | ) | CPF No. 3-2021-049-NOPV |

**CONSENT AGREEMENT**

From April 29, 2019 through August 30, 2019, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), pursuant to Chapter 601 of 49 United States Code (U.S.C.) inspected the procedures, facilities, and records of the Dakota Access Pipeline, owned and operated by DAPL-ETCO Operations Management, LLC (DAPL or Respondent), beginning at Stanley, North Dakota and continuing to the east state line of South Dakota.

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated July 22, 2021, a Notice of Probable Violation, Proposed Civil Penalty and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice alleged that Respondent committed probable violations of seven particular pipeline safety provisions of 49 C.F.R. Part 195, and proposed ordering Respondent to take measures to correct certain alleged violations and pay a proposed civil penalty in the amount of \$93,200 associated with two items. Two of the alleged violations were brought as warning items. The allegations in the Notice are expressly applicable to certain locations along the DAPL pipeline as stated therein, and through this Agreement and are fully resolved.

After requesting and receiving an extension of time to respond to the Notice, DAPL responded to the Notice and requested a hearing on the alleged violations set forth in the Notice (Response) by letter dated September 21, 2021. DAPL contested all seven Notice items, even though it had without admission remedied all of the issues and associated Proposed Compliance Order items by the time it responded to the Notice. Three of the seven items were addressed at the time of the inspection and before the Notice was filed. In its Response, DAPL also requested an informal settlement conference to discuss the alleged violations and warning items in the Notice in advance of a hearing. Beginning on November 9, 2021 and on subsequent dates, DAPL and PHMSA (collectively the Parties) met telephonically to discuss a possible resolution of the case

in lieu of proceeding to a hearing. During the meetings, the Parties offered additional information regarding the allegations, and reached an agreement that resolves all of the issues in the Notice.

Having agreed that settlement of this proceeding will avoid further administrative proceedings or litigation and will serve the public interest by promoting safety and protection of the environment, pursuant to 49 C.F.R. Part 190, and upon consent and agreement of Respondent and PHMSA, the Parties hereby agree as follows:

**I. General Provisions**

1. Respondent acknowledges that as the operator of the Dakota Access Pipeline system in North Dakota and South Dakota, Respondent and the Dakota Access Pipeline system are subject to the jurisdiction of the Federal pipeline safety laws, 49 U.S.C. § 60101, *et seq.*, and the regulations and administrative orders issued thereunder. For purposes of this Agreement, Respondent acknowledges that it received proper notice of PHMSA's action in this proceeding and that the Notice states claims upon which relief may be granted pursuant to 49 U.S.C. 60101, *et seq.*, and the regulations and orders issued thereunder.

2. After Respondent returns this signed Agreement to PHMSA, the Agency's representative will present it to the Associate Administrator for Pipeline Safety, recommending that the Associate Administrator adopt the terms of this Consent Agreement by issuing an administrative order (Consent Order) incorporating the terms of this Agreement. The terms of this Agreement constitute an offer of settlement until accepted by the Associate Administrator. Once accepted, the Associate Administrator will issue a Consent Order incorporating the terms of this Agreement.

3. Respondent consents to the issuance of the Consent Order, and hereby waives any further procedural requirements with respect to its issuance. Respondent waives all rights to contest the adequacy of notice, or the validity of the Consent Order or this Agreement, including all rights to administrative or judicial hearings or appeals, except as set forth herein.

4. This Agreement shall apply to and be binding upon PHMSA and Respondent, its officers, directors, and employees, and its successors, assigns, or other entities or persons otherwise bound by law. Respondent agrees to provide a copy of this Agreement and any incorporated work plans and schedules to all of Respondent's officers, employees, and agents whose duties might reasonably include compliance with this Agreement.

5. This Agreement constitutes the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to settlement other than those expressly contained in this Agreement, except that the terms of this Agreement may be construed by reference to the Notice.

6. Nothing in this Agreement affects or relieves Respondent of its responsibility to comply with all applicable requirements of the Federal pipeline safety laws, 49 U.S.C. § 60101,

*et seq.*, and the regulations and orders issued thereunder. Nothing in this Agreement alters PHMSA's right of access, entry, inspection, and information gathering or PHMSA's authority to bring enforcement actions against Respondent pursuant to the Federal pipeline safety laws, the regulations and orders issued thereunder, or any other provision of Federal or State law.

7. For all transfers of ownership or operating responsibility of Respondent's pipeline system referenced herein, Respondent will provide a copy of this Agreement to the prospective transferee at least 30 days prior to such transfer. Respondent will provide written notice of the transfer to the PHMSA Central Regional Director no later than 60 days after the transfer occurs.

8. This Agreement does not waive or modify any Federal, State, or local laws or regulations that are applicable to Respondent's pipeline system. This Agreement is not a permit, or a modification of any permit, under any Federal, State, or local laws or regulations. Respondent remains responsible for achieving and maintaining compliance with all applicable Federal, State, and local laws, regulations and permits.

9. This Agreement does not create rights in, or grant any cause of action to, any third party not party to this Agreement. The U.S. Department of Transportation is not liable for any injuries or damages to persons or property arising from acts or omissions of Respondent or its officers, employees, or agents carrying out the work required by this Agreement. Respondent agrees to hold harmless the U.S. Department of Transportation, its officers, employees, agents, and representatives from any and all causes of action arising from any acts or omissions of Respondent or its contractors in carrying out any work required by this Agreement.

10. This Agreement does not constitute a finding of violation of any Federal law or regulation, except as specifically noted as such in this Agreement, and may not be used in any civil proceeding of any kind as evidence or proof of any fact, fault or liability, or as evidence of a violation of any law, rule, regulation or requirement, except in a proceeding to enforce the provisions of this Agreement or in future PHMSA enforcement actions.

11. PHMSA further acknowledges that DAPL has, without admission, already addressed the issues raised in the Notice including the Proposed Compliance Order items to PHMSA's satisfaction.

12. Respondent neither admits nor denies any allegation or conclusion in the Notice or this Agreement, but agrees for purposes of this Agreement to comply with the terms of this Agreement.

13. Upon issuance of the Consent Order, the Parties agree to the following terms.

## **II. Items 2 and 5 of the Notice – Warning Items**

14. ***Allegation of Violation - § 195.401(b)(1):*** With respect to Item 2 of the Notice, the Parties agree that this item, specific to a nitrogen system at certain gathering system terminal

locations (upstream of the mainline at Johnson's Corner, Watford City, Trenton, Ramberg, Stanley and Epping), shall be reduced to a Warning Item based on additional information reviewed by PHMSA regarding compliance with 49 C.F.R. § 195.401(b)(1), including the actions taken by the DAPL, DAPL's commitment to continue to monitor the nitrogen system through the same alarming capabilities previously in place for the control room during all seasons. Specifically, DAPL installed insulation around the nitrogen bottles located at Johnson's Corner, Watford City, Trenton, Ramberg, Stanley and Epping and this will reduce nitrogen system fluctuations due to temperature. PHMSA acknowledges that DAPL, without admission, implemented remedial measures in response to and in satisfaction of the Proposed Compliance Order item summarized below in Section VI. Because this item will be issued as a Warning Item, it will not constitute a finding of violation for any purpose, and no further action by DAPL is necessary to achieve compliance.

15. ***Allegation of Violation - § 195.428(a):*** With respect to Item 5 of the Notice, the Parties agree that this item shall be issued as a Warning Item, as set forth in the Notice. DAPL provided information regarding improvements that have since been put in place, including the scheduling of required inspection and maintenance via a computerized maintenance management system and maintenance of completed inspection forms in an electronic database. This Warning Item does not constitute a finding of violation for any purpose, and no further action by DAPL is necessary to achieve compliance.

### **III. Items 4 and 6 of the Notice – Items Withdrawn**

16. ***Allegation of Violation - § 195.406(b):*** With respect to Item 4 of the Notice, the Parties agree that this Warning Item shall be withdrawn in its entirety in light of further information provided by DAPL which confirms that the protective equipment at the Johnson's Corner pump station was set at the time of inspection to control the pressure from exceeding 110% maximum operating pressure as required by 49 C.F.R. § 195.406(b). Based on additional information provided by Respondent and reviewed by PHMSA, PHMSA also agrees that DAPL took steps, without admission, to address PHMSA's concerns. DAPL will update its management of change (MOC) procedures to provide for additional quality assurance / quality control measures to ensure a cross-check between its engineering staff and field personnel for the establishment and implementation of setpoints for pressure control. DAPL must provide an updated procedure to the Director, Central Region within 30 days of the ***Effective Date*** of this Agreement. Because this Warning Item will be withdrawn, it will not constitute a finding of violation for any purpose. As such, the allegation of violation for Item 4 is withdrawn.

17. ***Allegation of Violation - § 195.440(c):*** With respect to Item 6, the Parties agree that this item should be withdrawn in its entirety following PHMSA's review of information provided by DAPL confirming that supplemental enhancements were considered at the time of inspection in compliance with 49 C.F.R. § 195.440(c), and applicable portions of industry standards incorporated by reference. PHMSA further agrees that DAPL, without admission, completed the actions set forth in the associated Proposed Compliance Order item and addressed in Section VI below. Because this item will be withdrawn, it will not constitute a finding of

violation for any purpose, and no further action by Respondent is necessary to achieve compliance. As such, the allegation of violation for Item 6, the related proposed civil penalty associated with this item, and the Proposed Compliance Order associated with this item are withdrawn.

#### **IV. Item 1, 3, and 7 of the Notice – Findings of Violation**

18. ***Allegation of Violation - § 195.264(b)(1)(i):*** With respect to Item 1 of the Notice, and based upon further information provided by DAPL, the Parties agree that the terminal facilities at issue were designed to use a nitrogen discharged foam fire suppression system in lieu of water given the unavailability of water firefighting resources in the region. Based on that unique design, the valves inside the dikes were not intended to control drainage in the event of fire or be operated during a fire event. Respondent nevertheless acknowledges that 49 C.F.R. § 195.264(b)(1)(i) and, through incorporation by reference, National Fire Protection Association Code 30 (NFPA-30) Section 22.11.2.7.1, requires that “control of drainage shall be accessible under fire conditions from outside the dike.” As such, PHMSA finds a violation of 49 C.F.R. § 195.264(b)(1)(i) (Item 1). This violation shall be considered by PHMSA as a prior offense in any future PHMSA enforcement action taken against DAPL. PHMSA acknowledges that DAPL has undertaken remedial measures, without admission, to satisfy the associated Proposed Compliance Order item as set forth in Section VI below, and DAPL has additionally agreed that going forward it will install any future stormwater dike valves outside of the dike. Within 30 days of the ***Effective Date*** of this Agreement, DAPL must provide a written design procedure to the Director, Central Region, which will require any stormwater dike valves to be installed outside of the dike areas for its aboveground breakout tanks.

19. ***Allegation of Violation - § 195.402(a):*** With respect to Item 3 of the Notice, the Parties acknowledge, as recognized in PHMSA guidance such as PHMSA’s *Gas Transmission Integrity Management FAQ-10*, that it is a detailed and time intensive effort to integrate new assets into existing Operations and Maintenance (O&M) procedures and Integrity Management (IM) plans. While DAPL believes the retired O&M procedures referenced in the DAPL IM plan at the time of inspection were nevertheless compliant with applicable requirements of 49 C.F.R. Part 195 at the time, PHMSA finds a violation of 49 C.F.R. § 195.402(a). This violation shall be considered by PHMSA as a prior offense in any future PHMSA enforcement action taken against DAPL. PHMSA recognizes that DAPL corrected this issue without admission during the underlying inspection by updating the procedures to remove reference to the previously included retired procedures that were no longer applicable, and that no further action is required by DAPL to achieve compliance.

20. ***Allegation of Violation - § 195.452(f)(1):*** With respect to Item 7 of the Notice, DAPL explained that the risk of high consequence areas (HCAs) was considered in the original facility design through preventative and mitigative measures which addressed the risk of impacting additional HCAs. Respondent has, without admission, satisfied the associated Proposed Compliance Order item as set forth in Section VI below. While no additional action is required of Respondent, PHMSA finds a violation of 49 C.F.R. § 195.452(f)(1). This violation

shall be considered by PHMSA as a prior offense in any future PHMSA enforcement action taken against DAPL.

## V. Proposed Civil Penalty

21. The Notice alleged one instance of violation for Items 3 and 6 and proposed a civil penalty of \$46,600 for each violation, for a total of \$93,200. During the informal meetings between the Parties, and as summarized above, DAPL provided additional documentation for PHMSA review demonstrating that a reduced penalty is appropriate from Item 3, and that no violation occurred for Item 6, resulting in no civil penalty for that item.

Accordingly, the civil penalty for Item 3 shall be **\$20,000** and the proposed civil penalty for Item 6 of \$46,600 is withdrawn in its entirety.

## VI. Proposed Compliance Order Items

22. **Item 1:** The Parties agree that DAPL, without admission, has demonstrated that it satisfied the associated Proposed Compliance Order by relocating the relevant valves for the drainage of stormwater outside of the diking at Epping Terminal, Johnson's Corner Terminal, Ramberg Terminal, Stanley Terminal, Trenton Terminal, and Watford City Terminal.

23. **Item 2:** The Parties agree that DAPL, without admission, has satisfied PHMSA's Proposed Compliance Order seeking modifications to its nitrogen operated relief valves operations for Johnson's Corner, Watford City, Trenton, Ramburg, Stanley, and Epping locations.

24. **Item 6:** The Parties agree that DAPL, without admission, has satisfied PHMSA's Proposed Compliance Order regarding supplemental program enhancements greater than the standard 660-foot buffer where warranted.

25. **Item 7:** The Parties agree that DAPL, without admission, has previously demonstrated compliance with the Proposed Compliance Order by developing procedures to review spill volume calculations and the potential impact to an HCA or could affect area, pursuant to the requirements of 49 CFR § 195.452, including evaluation of drain down volumes associated with common station valve configurations, operations, and elevations should a failure occur outside of secondary containment such as in the manifold area of facilities.

## VII. Enforcement

26. This Agreement is subject to all enforcement authorities available to PHMSA under 49 U.S.C. § 60101, *et seq.*, and 49 C.F.R. Part 190, including administrative civil penalties under 49 U.S.C. § 60122, of up to \$225,134 per violation for each day the violation continues and referral of the case to the Attorney General for judicial enforcement, if PHMSA determines that Respondent is not complying with the terms of this Agreement in accordance with determinations made by the Director, or if appealed, in accordance with decisions of the



Associate Administrator. The maximum civil penalty amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223.

**VIII. Dispute Resolution**

27. The Director and Respondent will informally attempt to resolve any disputes arising under this Agreement, including but not limited to any decision of the Director. If Respondent and the Director are unable to informally resolve the dispute within 15 calendar days after the dispute is first raised, in writing, to the Director, Respondent may submit a written request for a determination resolving the dispute from the Associate Administrator for Pipeline Safety, PHMSA. Such request must be made in writing and provided to the Director, counsel for the Central Region, and to the Associate Administrator for Pipeline Safety, no later than 10 calendar days from the 15 day deadline for informal resolution referenced in this paragraph. Along with its request, Respondent must provide the Associate Administrator with all information Respondent believes is relevant to the dispute. Decisions of the Associate Administrator under this paragraph will constitute final agency action. The existence of a dispute and PHMSA's consideration of matters placed in dispute will not excuse, toll, or suspend any term or timeframe for completion of any work to be performed under this Agreement during the pendency of the dispute resolution process, except as agreed by the Director or the Associate Administrator in writing, or ordered by a court of competent jurisdiction.

**IX. Effective Date**

28. The term "Effective Date," as used herein, is the date on which the Consent Order is issued by the Associate Administrator, PHMSA, incorporating the terms of this Agreement.

**X. Modification**

29. The terms of this Agreement may be modified by mutual agreement of the Parties. Such modifications must be in writing and signed by both parties.

**X. Ratification**

30. The Parties' undersigned representatives certify that they are fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such party to this document.

31. The Parties hereby agree to all conditions and terms of this Agreement.

[Signature Lines on Following Page]

**For DAPL-ETCO Operations, LLC:**

\_\_\_\_\_

\_\_\_\_\_

Date \_\_\_\_\_

**For PHMSA:**

\_\_\_\_\_

Date \_\_\_\_\_