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REGIONAL HEARING CLERK  
EPA REGION VI

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS**

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IN THE MATTER OF:

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§

ETC TEXAS PIPELINE, LTD.

EPA DOCKET NUMBER  
TSCA-06-2021-6140

CONSENT AGREEMENT  
AND FINAL ORDER

RESPONDENT

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**CONSENT AGREEMENT**

The Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant), and ETC Texas Pipeline, Ltd. (Respondent) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

**I. PRELIMINARY STATEMENT**

1. This proceeding for the assessment of civil penalties pursuant to section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), is simultaneously commenced and concluded by the issuance of this CAFO against Respondent pursuant to 40 C.F.R. §§ 22.13(b), and 22.18(b)(2) and (3).

2. For the purposes of this proceeding, Respondent admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific factual allegations contained in this CAFO. Respondent explicitly waives any right to contest the allegations and its right to

appeal the proposed Final Order set forth herein and waives all defenses which have been raised or could have been raised to the claims set forth in this CAFO.

3. Compliance with all the terms and conditions of this CAFO shall resolve federal civil liability for only those violations which are set forth herein.
4. Respondent consents to the issuance of this CAFO, and to the assessment and payment of the stated civil penalty in the amount and by the method set forth in this CAFO.
5. Respondent represents it is duly authorized to execute this CAFO and the party signing this CAFO on behalf of Respondent is duly authorized to bind Respondent to the terms and conditions of this CAFO.
6. Respondent agrees the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.
7. Respondent hereby certifies that as of the date of the execution of this CAFO, Respondent has corrected the violations alleged in this CAFO and is now, to the best of its knowledge, in compliance with the applicable provisions of the 40 C.F.R. Part 711 TSCA Chemical Data Reporting requirements for the 2016 submission period.

## **II. STATUTORY AND REGULATORY BACKGROUND**

8. Section 8(a) of TSCA, 15 U.S.C. § 2607(a), requires that each person (other than a small manufacturer or processor) who manufactures or processes or proposes to manufacture or process a chemical substance (other than a chemical substance described in subparagraph (B)(ii)) shall maintain such records, and shall submit to the Administrator such reports, as the Administrator may reasonably require.

9. Each of the TSCA Chemical Data Reporting ("CDR") requirements codified in 40 C.F.R. Part 711 constitutes a rule promulgated under section 8(a) of TSCA, 15 U.S.C. § 2607(a).
10. According to 40 C.F.R. § 711.5, information must be reported for any chemical substance that is in the Master Inventory File at the beginning of a submission period described in section 711.20, unless the chemical substance is specifically excluded by section 711.6.
11. 40 C.F.R. § 711.8 requires that, except as provided in sections 711.9 and 711.10, any person who manufactured (including imported) for commercial purposes 25,000 pounds or more of a chemical substance described in section 711.5 at any single site owned or controlled by that person during any calendar year since the last principal reporting year is subject to the requirements of this Part, except where the chemical substance is the subject of a rule proposed or promulgated under TSCA section 5(a)(2), 5(b)(4), or 6, or is the subject of an order in effect under TSCA section 4, 5(e) or 5(f), or is the subject of relief that has been granted under a civil action under TSCA sections 5 or 7 is subject to reporting as described in §711.8(a), in which case the applicable production volume threshold is 2,500 pounds.
12. Per 40 C.F.R. § 711.20, information on the chemical substance must be submitted during the applicable Chemical Data Reporting submission period. For 2016 Chemical Data Reporting, the submission period was from (and including) June 1, 2016 to September 30, 2016 (hereinafter, the "submission period"). 40 C.F.R. § 711.20 was extended to October 31, 2016, pursuant to 81 Fed. Reg. 65,924 (September 26, 2016).
13. Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), provides that it is unlawful for any

person to fail or refuse to submit any reports, notices or information required by TSCA, 15 U.S.C. § 2601 et seq., or a rule promulgated thereunder.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

#### **A. PRELIMINARY ALLEGATIONS**

14. For the period including calendar years 2012 through 2015, Respondent, or its subsidiaries, was (and continues to be) a limited partnership organized under the laws of the State of Texas, and was (and continues to be) authorized to do business in the State of New Mexico.

15. For the period including calendar years 2012 through 2015, Respondent, or its subsidiaries, was (and continues to be) a "person" as defined by 40 C.F.R. § 704.3.

16. For the period including calendar years 2012 through 2015, Respondent, or its subsidiaries, owned and controlled the Jal #3 Gas Plant facility (and continues to do so) at 115 Sid Richardson Road, Jal, New Mexico, 88252.

17. For the period including calendar years 2012 through 2015, Respondent, or its subsidiaries, has been (and continues to be) a "manufacturer" as defined by 40 C.F.R. §§ 704.3 and/or 711.3.

18. In calendar years 2012, 2013, 2014, and 2015, Respondent, or its subsidiaries, manufactured at its facility for commercial purposes the following chemical substance in a quantity exceeding 25,000 pounds, identified by name and Chemical Abstract Services Registry Number [CASRN]: Sulfur, CASRN 7704-34-9.

19. Sulfur is a "chemical substance" within the meaning of section 3(2)(A) of TSCA, 15

U.S.C. § 2602(2)(A) and a "reportable chemical substance" within the meaning of 40 C.F.R. § 711.3.

20. The subject chemical substance was on the Master Inventory File (as defined in 40 C.F.R. § 711.3) as of June 1, 2016, and it was not excluded from the TSCA Chemical Data Reporting requirements by 40 C.F.R. § 711.6.

21. On or about October 30, 2020, a representative of EPA Region 6 initiated an off-site investigation of the Respondent's facility to evaluate compliance with TSCA.

22. On March 9, 2021, the EPA sent Respondent a Notice of Potential Violation and Opportunity to Confer letter concerning Respondent's compliance with the 2016 CDR requirements. Thereafter, Respondent and EPA held several conferences and exchanged information to clarify their respective positions and facilitate settlement.

## **B. VIOLATIONS**

### **Count 1**

23. Paragraphs 1 through 22 are hereby restated and incorporated by reference for this count.

24. During calendar years 2012, 2013, 2014, and 2015, Respondent, or its subsidiaries, manufactured sulfur, identified in Paragraph 18, at the Respondent's facility in excess of the applicable threshold quantities for reporting.

25. Respondent failed to report to EPA for sulfur during the 2016 CDR submission period.

26. Respondent violated section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), by failing to submit this report required by a rule promulgated under TSCA.

#### IV. TERMS OF SETTLEMENT

##### A. CIVIL PENALTY

27. For the reasons set forth above, Respondent has agreed to pay a civil penalty which has been determined in accordance with section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1).<sup>1</sup> Upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the nature, circumstances, extent and gravity of the alleged violations, and with respect to Respondent's ability to pay, history of prior TSCA violations, the degree of culpability, economic benefit or savings (if any) resulting from the violations, and other factors as justice may require, it is **ORDERED** that Respondent be assessed a civil penalty of **Twenty-Three Thousand, Four Hundred Sixty Dollars and no cents (\$23,460.00)**.

28. Within thirty (30) days of the effective date of this CAFO, Respondent shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal Service mail (including certified mail), overnight mail, or wire transfer.

For U.S. Postal Service mail, the check(s) should be remitted to:

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<sup>1</sup> The statutory maximum penalty level under section 16(a)(1) of TSCA, 42 U.S.C. § 2615(a)(1) has been adjusted over time as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101-410), as amended by the Debt Collection Improvement Act of 1996, and most recently, by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (28 U.S.C. § 2461 note; Pub. L. 114-74, Section 701). EPA implements these adjustments through rulemaking which are codified in 40 CFR Part 19. As adjusted by the Civil Monetary Penalty Inflation Adjustment, 85 Fed. Reg. 83818 (December 23, 2020), 40 C.F.R. § 19.4, the Administrator may assess a civil penalty of up to \$41,056 per violation per day of violation occurring after November 2, 2015, where penalties are assessed on or after December 23, 2020.

*ETC Texas Pipeline Ltd.*  
Docket No. TSCA-06-2021-6140

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

U.S. Bank  
Government Lockbox 979077 US EPA Fines & Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental  
Protection Agency"

Payments may also be made electronically. For information on electronic payments, please visit

<https://www.epa.gov/financial/makepayment>

The above web site may also be referenced for making payments via debit, credit card, or  
checking account for any dollar amount up to \$24,999.99.

**PLEASE NOTE: Docket number TSCA-06-2021-6140 shall be clearly typed on the check,  
or other method of payment, to ensure proper credit. If payment is made by check, the check  
shall also be accompanied by a transmittal letter and shall reference Respondent's name and**

*ETC Texas Pipeline Ltd.*  
Docket No. TSCA-06-2021-6140

address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference Respondent's name and address, the case name, and docket number of the CAFO. Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

David Riley  
Core TSCA Enforcement Coordinator  
U.S. EPA, Region 6  
Toxic Enforcement Section (ECDST)  
1201 Elm Street, Suite 500  
Dallas, TX 75270-2102  
*riley.david@epa.gov*

and

Lorena Vaughn  
Regional Hearing Clerk  
U.S. EPA, Region 6  
1201 Elm Street, Suite 500  
Dallas, TX 75270-2102  
*vaughn.lorena@epa.gov*

Respondent's adherence to this request will ensure proper credit is given when penalties are received by EPA and acknowledged in the Region.

29. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

30. If Respondent fails to submit payment within thirty (30) days of the effective date of this Order, Respondent may be subject to a civil action to collect the penalty in full, in an appropriate district court of the United States pursuant to section 16(a)(4) of TSCA, 15 U.S.C. § 2615(a)(4).

31. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United



States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. See 40 C.F.R. § 13.11(b)

32. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent (6%) per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. See 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. See 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

33. This Consent Agreement and Final Order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

34. This document is a "Final Order" as that term is defined in the "Enforcement Response Policy for Reporting and Recordkeeping Rules and Requirements for TSCA Sections 8, 12 and 13", revised March 31, 1999, and effective June 1, 1999, for the purpose of demonstrating a history of "prior such" violations.

### **B. RETENTION OF ENFORCEMENT RIGHTS**

35. EPA does not waive any rights or remedies available to EPA for any violations by Respondent of Federal or State laws, regulations, or permitting conditions.
36. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of TSCA.
37. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at, or from Respondent's facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of Federal, State, or local agencies or departments to obtain penalties or injunctive relief under Federal, State, or local laws or regulations.

### **C. COSTS**

38. Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. §504 and 40 C.F.R. Part 17.

### **D. EFFECTIVE DATE**

39. This CAFO becomes effective upon filing with the Regional Hearing Clerk.
40. The EPA and Respondent agree to the use of electronic signatures for this matter. The EPA and Respondent further agree to electronic service of this Consent Agreement and Final

*ETC Texas Pipeline Ltd.*  
Docket No. TSCA-06-2021-6140

Order, pursuant to 40 C.F.R. § 22.6, by email to the following addresses:

To EPA:

*riley.david@epa.gov*

To Respondent:

*William.Yenke@energytransfer.com*

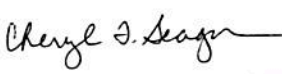
ETC Texas Pipeline Ltd.  
Docket No. TSCA-06-2021-6140

**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:**

**FOR THE RESPONDENT:**

Date: 8/19/2021  \_\_\_\_\_

**FOR THE COMPLAINANT:**

Date: August 24, 2021  \_\_\_\_\_

Cheryl T. Seager  
Director  
Enforcement and Compliance Assurance  
Division  
U.S. EPA Region 6  
Dallas, TX 75270-2102

Digitally signed by CHERYL SEAGER  
DN: c=US, o=U.S. Government, ou=Environmental  
Protection Agency, cn=CHERYL SEAGER,  
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Date: 2021.08.24 15:55:54 -05'00'

**FINAL ORDER**

Pursuant to section 16(a) of TSCA, 15 U.S.C. § 2615(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Consent Agreement. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated \_\_\_\_\_

**THOMAS  
RUCKI**

Digitally signed by THOMAS RUCKI  
DN: c=US, o=U.S. Government,  
ou=Environmental Protection Agency,  
cn=THOMAS RUCKI,  
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Thomas Rucki  
Regional Judicial Officer

*ETC Texas Pipeline Ltd.*  
Docket No. TSCA-06-2021-6140

### **CERTIFICATE OF SERVICE**

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order was delivered to the Regional Hearing Clerk, U.S. EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270-2102, and that a true and correct copy was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

*riley.david@epa.gov,*  
and  
*vaughn.lorena@epa.gov*

Copy via Email to Respondent:

*William.Yenke@energytransfer.com*

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Nathan Taylor  
Assistant Regional Counsel  
U.S. EPA Region 6  
Dallas, TX 75270-2102