

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

IN THE MATTER OF:

CNX Gas Company LLC and	:	The 2012 Oil and Gas Act,
CNX Midstream Partners, LP	:	The Solid Waste Management Act,
1000 CONSOL Energy Drive	:	and The Clean Streams Law
Canonsburg, PA 15317	:	

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement (“COA”) is entered into this 22nd day of June, 2020 by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”), and CNX Gas Company LLC (“CNX”) and CNX Midstream Partners, LP (“CNXM”).

Findings

The Department has found and determined the following:

A. The Department is the agency with the duty and authority to administer and enforce Chapter 32 of Title 58 of the Pennsylvania Consolidated Statutes, 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”); the Clean Streams Law, Act of June 22, 1937, P.L. 1987, *as amended*, 35 P.S. §§ 691.1 – 691.1001 (“The Clean Streams Law”); 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 rules and regulations promulgated thereunder (“Regulations”).

B. CNX, a Virginia limited liability company, is engaged in various oil and gas exploration and production activities in Pennsylvania. CNXM, a Delaware limited partnership,

is engaged in various oil and gas midstream activities in Pennsylvania. Both CNX and CNXM have a mailing address of 1000 CONSOL Energy Drive, Canonsburg, PA 15317.

C. CNX owns and operates the water pipelines associated with the Morris to McQuay Phase 2 Reroute Pipeline, located in Morris Township, Greene County, and the MOR31 to Morris to McQuay Phase 2 Reroute Pipeline, located in East Finley Township, Washington County, collectively the “Morris to McQuay Pipeline Project.”

D. CNXM is the permittee of two Erosion and Sediment Control General Permit (“ESCGP”) authorizations for earth disturbance associated with the Morris to McQuay Pipeline Project: the Morris to McQuay Phase 2 Reroute ESCGP, number ESX14-059-0095, and the MOR31 to Morris to McQuay Phase 2 Reroute ESCGP, number ESX14-125-0091. Both ESCGPs were issued to construct natural gas gathering pipelines and water lines for well development activities. Both ESCGPs include limits on the earth disturbance that may occur in constructing each project (“LOD”). Neither ESCGP has been terminated. The ESCGPs provide that violations of these authorizations are violations of the 2012 Oil and Gas Act.

Morris to McQuay Phase 2 Reroute

E. On August 26, 2016, CNXM reported that it spilled one-gallon of drilling mud (bentonite slurry) to Boothe Run due to an inadvertent return to surface (“IRTS”) during horizontal directional drilling (“HDD”) on the Morris to McQuay Phase 2 Reroute.

F. On August 29, 2016, CNXM reported that it spilled approximately forty-two gallons of drilling mud to Boothe Run and outside the LOD of the Morris to McQuay Phase 2 Reroute.

G. On January 26, 2017, CNXM reported approximately 15 barrels (630 gallons) of brine spilled from a High-Density Polyethylene (“HDPE”) water line along the Morris to

McQuay Phase 2 Reroute. The spill was due to a failure of a tee fitting on the water line and impacted the trench in which CNXM was installing the water line, which was being rerouted at the time of the spill.

H. Drilling mud released to the environment and brine are each an “industrial waste,” as that term is defined in Section 1 of the Clean Streams Law, 35 P.S. § 691.1.

I. Brine is a “residual waste,” as that term is defined in Section 103 of the Solid Waste Management Act, 35 P.S. § 6018.103.

J. On the dates and at the locations set forth in Paragraph G, above, CNXM violated 25 Pa. Code § 78a.54 by failing to control and dispose of brine, a residual waste, in a manner that prevents pollution of waters of the Commonwealth.

K. On the date and at the location set for in Paragraphs E and F, above, CNXM violated Sections 301 and 307 of The Clean Streams Law, 35 P.S. §§ 691.301, 691.307, by discharging industrial waste into waters of the Commonwealth in a manner not authorized by the rules and regulations of the Department.

L. On the date and at the location set forth in Paragraph G, above, CNXM stored, transported, and disposed, by deposition onto the ground, residual waste in a manner not authorized by the rules and regulations of the Department, in violation of Sections 301 and 302 of the Solid Waste Management Act, 35 P.S. §§ 6018.301, 6018.302.

M. On February 28, 2017, CNXM submitted soil sampling data confirming the adequacy of the remediation of all impacts associated with the January 2017 brine release on the Morris to McQuay Phase 2 Reroute.

MOR 31 to Morris to McQuay Phase 2 Reroute

N. On January 11, 2017, two sections of cut slope along the construction of the MOR 31 to Morris to McQuay Phase 2 Reroute failed, causing slides outside the LOD. The slope failures were also contributing to the destabilization of the fill slope of a nearby well pad. The site's Erosion and Sedimentation Best Management Practices ("E&S BMPs"), specifically several sections of silt socks around the perimeter of the earth disturbance area, were ineffective and not adequately maintained and the construction area lacked temporary stabilization.

O. By February 22, 2017, CNXM repaired the E&S BMPs on the MOR 31 to Morris to McQuay Phase 2 Reroute and temporarily stabilized the slides and slope failures, thus correcting the issues identified in Paragraph N., above.

P. On August 16, 2018, CNX reported a brine spill from a buried 16-inch HDPE water line on the MOR 31 to Morris to McQuay Phase 2 Reroute after discovering pooling water with elevated conductivity on the right of way ("ROW"). CNX does not know the date that the release started. CNX excavated the water line on August 17, 2018, revealing a four- to six-inch crack at a weld location which leaked brine into the excavated trench. The spill also impacted an unnamed tributary ("UNT") to Enlow Fork. CNX estimated that the leak released 50 barrels (2,100 gallons) of brine.

Q. By August 30, 2018, CNX had excavated soil impacted by the brine release described in Paragraph P, collected confirmation soil samples from the excavation, and began backfilling the excavated area with clean fill. Groundwater was not encountered during excavation. Areas of stressed and dead vegetation near the release area were observed by the Department along with elevated field conductivity screenings in soil, a groundwater seep and the UNT to Enlow Fork. As a result, the Department issued a Compliance Order to CNXM on

September 5, 2018 that required CNXM to identify and monitor all water supplies within 3,000 feet of the release area and develop a plan to install monitoring wells to characterize groundwater impacts caused by the release.

R. CNX provided DEP with information regarding buried waste pipelines. The only Preparedness, Prevention and Contingency Plans (“PPC Plans”) that CNX provided solely addressed the earth movement associated with the construction of pipelines. CNX’s PPC Plans did not identify the waste fluids moved in the pipelines and did not identify measures to either monitor or respond to a release from any pipeline.

S. By September 18, 2018, CNX began additional soil characterization activities for the areas of stressed and dead vegetation near the spill area, as described in Paragraph P, above, in accordance with the September 5, 2018 Compliance Order.

T. By October 3, 2018, CNX identified and sampled ten water supplies within 3,000 feet of the spill area, as required by the September 5, 2018 Compliance Order, and found the post-release analytical data for the water supplies was comparable to the pre-release analytical data from the same water supplies.

U. By October 11, 2018, CNX installed three monitoring wells to monitor the groundwater in the area of the spill, as required by the September 5, 2018 Compliance Order. CNX collected samples from the groundwater monitoring wells on October 17, 2018, November 16, 2018 and November 30, 2018. Constituents associated with the brine spill were below their respective applicable Act 2 Medium Specific Concentrations (MSC).

V. Brine/reuse water is a “residual waste,” as that term is defined in Section 103 of the Solid Waste Management Act, 35 P.S. § 6018.103, and is an “industrial waste,” as that term is defined in Section 1 of the Clean Streams Law, 35 P.S. 691.1.

W. On the date and at the locations set forth in Paragraph N, above, CNXM violated 25 Pa. Code §§ 102.4(b)(1) and 102.11(a)(1) by failing to implement and maintain effective E&S BMPs.

X. On the date and at the locations set forth in Paragraph N, above, CNXM violated 25 Pa. Code § 102.22(b) by failing to implement and maintain temporary stabilization.

Y. On the dates and at the locations set forth in Paragraphs P, above, CNXM violated 25 Pa. Code §§ 78a.54,, and 91.34,by failing to take necessary measures to prevent the release of, to be aware of the release of, and to properly control and dispose of brine, a residual waste, in a manner that prevents pollution of waters of the Commonwealth.

Z. On the dates and at the locations set forth in Paragraphs P, above, CNXM violated Sections 301 and 302 of the Solid Waste Management Act, 35 P.S. §§ 6018.301, 6018.302, by storing, transporting, processing, and disposing of brine, a residual waste, in a manner not authorized by the Department's rules and regulations.

AA. On the dates and at the location set forth in Paragraphs N and P, above, CNXM violated Sections 301 and 307 of The Clean Streams Law, 35 P. §§ 691.301, 691.307, by discharging industrial waste into waters of the Commonwealth in a manner not authorized by the rules and regulations of the Department.

BB. On the dates and at the location set forth in Paragraph R, CNXM violated 25 Pa. Code §§ 78a.55(a), 91.34, and 102.5(l), by failing to implement and prepare an adequate PPC Plan for the Morris to McQuay Pipeline Project that combined elements of monitoring, spill or leak prevention response planning, including but not limited to an inspection program, a housekeeping program (*e.g.*, record keeping), and an evaluation of security or external factors, as

well as pipeline testing, fluid compatibility analyses, monitoring, pressure-testing, inspections, secondary containment, lining, or other environmentally protective measures.

CC. On March 27, 2019, the Department approved CNXM’s Act 2 Final Report for soil for substances remediated, as described in Paragraph S, to a combination of Statewide Health and Background Standards.

DD. The violations described in Paragraphs J through L and W through BB, above constitute unlawful conduct under Section 3259 of the 2012 Oil and Gas Act, 58 Pa. C.S. § 3259, Section 611 of the Clean Streams Law, 35 P.S. § 691.611, and Sections 302 and 610 of the Solid Waste Management Act, 35 P.S. §§ 6018.302 and 6018.610.

EE. The violations described in Paragraphs J through L and W through BB, above, subject CNXM to a claim for civil penalties under Section 3256 of the 2012 Oil and Gas Act, 58 Pa. C.S. § 3256, Section 605 of the Clean Streams Law, 35 P.S. § 691.605, and Section 605 of the Solid Waste Management Act, 35 P.S. § 6018.605. The violations described in Paragraphs L and Z constitute a public nuisance under Section 601 of the Solid Waste Management Act, 35 P.S. § 6018.601; and, the violations described in Paragraphs K and AA constitute a nuisance under Sections 307 and 402(b) of The Clean Streams Law, 35 P.S. §§ 691.307, 691.402(b).

Order

After full and complete negotiation of all matters set forth in this Consent Order and Agreement (“COA”), and upon mutual exchange of the covenants contained herein, the Parties desiring to avoid litigation and intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by CNX as follows:

1. **Authority.** This COA is an Order of the Department authorized and issued pursuant to Section 3253 of the 2012 Oil and Gas Act, 58 Pa. C.S. § 3253; Section 602 of the

Solid Waste Management Act, 35 P.S. § 6018.602; Sections 5, 316, and 610 of The Clean Streams Law, 35 P.S. §§ 691.5, 691.316, and 691.610; and Section 1917-A of the Administrative Code, 71 P.S. § 510-17.

2. Findings.

a. CNX agrees that the Findings in Paragraphs A through I, M through V, CC, and EE are true and correct and, in any matter or proceeding involving CNX and the Department, CNX 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 COA in any matter or proceeding.

3. Corrective Actions. CNX shall do the following:

a. Within thirty (30) days of execution of this COA, retain an independent, third-party firm to conduct an audit of all CNX's water management activities related to oil and gas well development in Pennsylvania (hereinafter "Audit").

b. Within sixty (60) days of this COA, submit adequate PPC Plans for all of CNX's oil and gas fluid pipelines in compliance with 25 Pa. Code §§ 78a.55(a), 91.34, and 102.5(l). At a minimum, PPC plans for oil and gas fluid pipelines shall identify the waste fluids moved and stored in the pipelines and measures to monitor and test pipeline integrity, identify a release from a pipeline immediately, and respond to a release from any pipeline immediately.

c. Within one hundred twenty (120) days of execution of this COA, complete the Audit. The Audit shall assess all aspects of water management for well development activities, including, but not limited to: the source of all water (both fresh and reuse); how water is transported (pipeline, truck, etc.); how water is stored before, during and after well development activities; and how water is disposed or reused. The Audit shall include

recommendations as to the drafting and implementation of PPC Plans for all of CNX's water management activities, including but not limited oil and gas fluid pipelines, in compliance with 25 Pa. Code §§ 78a.55(a), 91.34, and 102.5(l) and as set forth in Paragraph 3.b., above.

d. Within one hundred eighty (180) days of execution of this COA, submit the findings, results and conclusions of the Audit in a report to the Department for review ("Report"). The Report shall also include a plan and schedule to address any issues or problems with CNX's water management activities identified during the Audit. CNX shall submit PPC Plans for all of CNX's water management activities in compliance with 25 Pa. Code §§ 78a.55(a), 91.34, and 102.5(l) at the same time that it submits the Report.

4. Civil Penalty Settlement. CNX consents to the assessment of a civil penalty of THREE HUNDRED TEN THOUSAND DOLLARS (\$310,000.00), which shall be paid in full upon signing this COA. This payment is in settlement of the Department's claim for civil penalties for the violations set forth in Paragraphs J, K, L, and W through BB, above. The payment shall be by corporate check or the like, made payable to "Commonwealth of Pennsylvania" and sent to the address set forth in Paragraph 10 (Correspondence with the Department), below.

5. Stipulated Civil Penalties.

a. In the event CNX fails to comply in a timely manner with any applicable term or provision of this COA, CNX shall be in violation of this COA and, in addition to other applicable remedies, shall pay a civil penalty in the amount of \$1,000 per day for each violation.

b. Stipulated civil penalty payments shall be payable monthly on or before the fifteenth day of each succeeding month and shall be made by corporate check or the like

made payable to “Commonwealth of Pennsylvania” and sent to the address set forth in Paragraph 11 (Correspondence with the Department), below.

c. Any payment under this Paragraph shall neither waive CNX’s duty to meet its obligations under this COA nor preclude the Department from commencing an action to compel CNX’s compliance with the terms and conditions of this COA. The payment resolves only CNX’s liability for civil penalties arising from the violation of this COA for which the payment is made.

d. Stipulated civil penalty payments shall be due automatically and without notice.

6. Additional Remedies.

a. If CNX fails to comply with any provision of this COA, 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 COA.

b. The remedies provided by this Paragraph and Paragraph 5 (Stipulated Civil Penalties), above, 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. CNX reserves the right to challenge any action which the Department may take to require those measures.

8. Liability of Operator. CNX shall be liable for any violations of the COA, including those caused by, contributed to, or allowed by its officers, agents, employees, or contractors. CNX also shall be liable for any violation of this COA caused by, contributed to, or allowed by its successors and assigns.

9. Transfer of Site.

a. CNX's duties and obligations under this COA shall not be modified, diminished, terminated, or otherwise altered by the transfer of any legal or equitable interest in the Morris to McQuay Pipeline Project or any part thereof.

b. If CNX intends to transfer any legal or equitable interest in the Morris to McQuay Pipeline Project, CNX shall serve a copy of this COA 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 Oil and Gas District Office of the Department of such intent.

c. The Department in its sole discretion may agree to modify or terminate CNX's duties and obligations under this COA upon transfer of the Morris to McQuay Pipeline Project or any part thereof. CNX waives any right that it may have to challenge the Department's decision in this regard.

10. Correspondence with the Department. All correspondence with the Department concerning this COA shall be addressed to:

Daniel F. Counahan
Southwest District Oil and Gas Manager
Pennsylvania Department of Environmental Protection
400 Waterfront Drive
Pittsburgh, PA 15222-4745
Phone 412-442-4006

11. Correspondence with CNX. All correspondence with CNX concerning this COA shall be addressed to:

Carrie Crumpton
Vice President, Environmental Strategy and Permitting
CNX Resources Corporation
1000 CONSOL Energy Drive
Canonsburg, PA 15317

CNX shall notify the Department in writing whenever there is a change in the contact person's name, title, or address. Service of any notice or any legal process for any purpose under this COA, including its enforcement, may be made by mailing a copy by first class mail to the above address.

12. Decisions Under COA. Any decision which the Department makes under the provisions of this COA, 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.A. § 101. Any objection that CNX may have to the decision will be preserved until the Department enforces this COA.

13. Force Majeure.

a. In the event that CNX is prevented from complying in a timely manner with any time limit imposed in this COA solely because of a strike, fire, flood, act of God, or other circumstance beyond CNX's control and which CNX, by the exercise of all reasonable diligence, is unable to prevent, then CNX may petition the Department for an extension of time. An increase in the cost of performing the obligations set forth in this COA shall not constitute circumstances beyond CNX's control. CNX's economic inability to comply with any of the obligations of this COA shall not be grounds for any extension of time.

b. CNX 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) working days** in writing of the date it becomes aware of or reasonably should have become aware of the event impeding performance. The written submission shall include relevant documentation, as well as an 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 CNX to mitigate the effects of the event and to minimize the length of the delay. The initial written submission may be supplemented within ten (10) working days of its submission. CNX'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 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 CNX and other information available to the Department. In any subsequent litigation, CNX 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.

14. Severability. The Paragraphs of this COA 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.

15. Entire Agreement. This COA 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 intent of any provisions herein in any litigation or any other proceeding.

16. 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 COA.

17. Modifications. No changes, additions, modifications, or amendments of this COA shall be effective unless they are set out in writing and signed by the Parties.

18. Titles. A title used at the beginning of any Paragraph of this COA may be used to aid in the construction of that Paragraph but shall not be treated as controlling.

19. Termination of COA. CNX's obligations, but not the Findings, of this COA shall terminate when CNXM has completed all the requirements of this COA and paid any outstanding stipulated civil penalties due under Paragraph 5 (Stipulated Civil Penalties), above. CNX shall complete all obligations set forth in this COA no later than **June 1, 2021**.

20. Execution of Agreement. This COA may be signed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

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IN WITNESS WHEREOF, the parties have caused this COA to be executed by their duly authorized representatives. The undersigned representatives of CNX certify under penalty of law, as provided by 18 Pa. C. S.A. § 4904, that they are authorized to execute this COA on behalf of CNX; that CNX consents to the entry of this COA as a final ORDER of the Department; and that CNX hereby knowingly waives its right to appeal this COA and to challenge its content or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, Act of July 13, 1988, P.L. 530, No. 1988-94, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S.A. § 103(a) and Chapters 5A and 7A; or any other provision of law. Signature by CNX's attorney certifies only that the agreement has been signed after consulting with counsel.

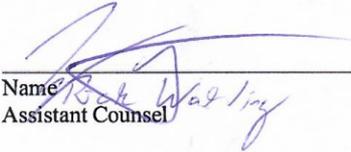
FOR CNX GAS COMPANY LLC:


Name *Chad G. R. H.*
Title *CEO + EV*

FOR THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION:


Name Daniel F. Counahan
District Oil and Gas Manager
Southwest Oil and Gas District


Name *Stephen L. Gall*
Title *Secretary*


Name *Bob W. King*
Assistant Counsel

WAIVED
Name
Attorney for CNX Gas Company LLC

FOR CNX MIDSTREAM PARTNERS LP
BY ITS GENERAL PARTNER,
CNX MIDSTREAM GP LLC:



Name *Charles G. R. H.*
Title *President*

Waived

Name
Attorney for CNX Midstream Partners LP and
CNX Midstream GP LLC