COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

**IN THE MATTER OF:**

| | | |
|---|---|---|
| CNX Gas Company, LLC<br>2481 John Nash Blvd<br>Bluefield, WVA<br>24701 | :<br>:<br>: | Violations of 2012 Oil and Gas Act |

**ORDER**

NOW, this 10TH day of September, 2014, the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department") has made and determined the following FINDINGS and enters the following ORDER:

**FINDINGS**

A. The Department is the agency with the duty and authority to implement, administer, and enforce 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"); 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.

B. CNX Gas Company, LLC ("CNX") is a West Virginia corporation engaged in various oil and gas well activities in Pennsylvania. CNX's business address is 2481 John Nash Boulevard, Bluefield, West Virginia 24701.

C. CNX is the "operator" as that term is defined in Section 3203 of the 2012 Oil and Gas Act, 58 Pa.C.S. §3203, of the [redacted] well, authorized under Department Permit No. [redacted] and the [redacted] well, authorized under Department Permit No. [redacted] both located in Washington Township, Greene County (collectively, the "Wells").

D. On or about January 2, 2009, CNX started the drilling of the [redacted] well and completed the drilling on or about February 6, 2009.

E. On or about January 20, 2009, CNX started the drilling of the [redacted] well and completed the drilling on or about February 7, 2009.

F. A private water well located at [redacted] serves as a water supply for all domestic purposes, and is a "water supply' as that term is defined under 25 Pa. Code §78.1 (the "Water Supply").

G. The Water Supply is located approximately 800 feet east of the [redacted] Well, and approximately 1000 feet east of the [redacted] Well.

H. On August 3, 2009 CNX personnel documented a strong "sulfur-like" odor and yellow staining in sinks and commode at the residence served by the Water Supply.

I. On September 9, 2009, the Department was notified by the Water Supply owner that the Water Supply had acquired a yellow color and an unpleasant odor on or about May 10, 2009, and that the color and odor made the water undrinkable and unusable for any other domestic purpose.

J. On September 10, 2009, October 8, 2009, December 9, 2009, and April 15, 2014, the Department collected samples of the Water Supply for laboratory analyses.

K. On May 17, 2005, June 20, 2005, December 15, 2008, and August 3, 2009, CNX collected samples of the Water Supply for laboratory analyses.

L. The samples taken by CNX on the dates specified in Paragraph K, above, were collected after treatment of the Water Supply. Samples collected after treatment may not accurately reflect the quality of the Water Supply.

M. On February 28, 2013 and July 1, 2013, CNX collected samples of the Water Supply for laboratory analyses.

N. Based on information obtained as of the date of this Order, the Department determined that the Water Supply is polluted from well drilling alteration or operation activities, and is not of adequate quality for the purposes served by the Water Supply.

O. Specifically, the levels in the samples taken by the Department and CNX on the dates specified in Paragraphs J and K, above, (collectively "Post-Drill Samples") for the following contaminants are above the Primary or Secondary Maximum Contaminant Levels identified in the Pennsylvania Safe Drinking Water Act, 35 P.S. §§721.1–721.17, and 25 Pa. Code §109.202., and the Water Supply quality is not adequate for the purposes served by the Water Supply.

| | 5/17/05 * | 6/20/05 * | 12/15/08 * | 8/3/09 * | 9/10/09 | 10/9/09 | 12/9/09 | 2/28/13 | 7/1/13 | 4/15/14 | Drinking Water Standard |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Iron (mg/l) | <0.03 | 0.03 | 0.663 | 0.035 | 0.425 | 0.29 | 0.68 | 8.16 | 0.942 | 1.535 | 0.3mg/l |
| Manganese (mg/l) | <0.01 | <0.01 | 0.051 | <0.01 | 0.431 | 0.335 | 0.37 | 9.0 | 0.76 | 0.873 | 0.05mg/l |

*Samples taken after treatment

P. In addition, during the September 10, 2009 and October 8, 2009 sampling the Water Supply had an unpleasant sulfur or "rotten egg" odor, and continues to have this unpleasant odor.

Q. Pursuant to Section 3218(c) of the 2012 Oil and Gas Act, 58 P.S. §3218(c), it shall be presumed that a well operator is responsible for pollution of a water supply if it is located within 1,000 feet of the oil or gas well, and the pollution occurred within six months after completion of drilling of the well.

R. CNX is presumed by law to be responsible for the pollution of the Water Supply under Section 3218(c)(1) of the 2012 Oil and Gas Act, 58 Pa.C.S. §3218(c)(1), because the Water Supply is located within 1,000 feet of the Wells, and the pollution occurred within six months after completion of drilling of the Wells.

S. If the user is without a readily available source of drinking water, pursuant to Section 3218(c.1) of the 2012 Oil and Gas Act, 58 Pa.C.S. §3218(c.1), a well operator that is presumed under 58 Pa.C.S. §3218(c)(1) to be responsible for the pollution of the water supply shall provide a temporary water supply of adequate quantity and quality for the purposes served by the supply until it has permanently restored and/or replaced the Water Supply in accordance with Section 3218 of the 2012 Oil and Gas Act, 58 Pa.C.S. §3218(a), and 25 Pa Code §78.51.

T. As of the date of this Order, CNX is providing temporary drinking water to the users of the Water Supply by means of an above-ground tank that is plumbed into the residence served by the Water Supply.

U. CNX's authority under Department Permit No. [redacted] and Permit No. [redacted] to conduct activities at the Wells is conditioned upon CNX's "compliance with applicable laws and regulations," and the above referenced permits do not relieve CNX "from the obligation to comply with the Clean Streams Law and all statutes, rules, and regulations administered by" the Department.

V. Pursuant to Section 3218(a) of the 2012 Oil and Gas Act, 58 Pa.C.S. §3218(a), and 25 Pa Code §78.51(a), a well operator who affects a private water supply by pollution shall restore or replace the affected supply with an alternate source of water adequate in quantity and quality for the purposes served by the supply.

W. Section 3218(a) of the 2012 Oil and Gas Act, 58 Pa. C.S. §3218(a), and 25 Pa. Code § 78.51(d), set forth the criteria for adequate reliability, cost, maintenance, control, quality, and quantity of the restored or replaced water supply.

X. As of the date of this Order, CNX has not restored or replaced the Water Supply with an alternative source of water that is adequate for the purposes served by the Water Supply in

violation of Section 3218(a) of the 2012 Oil and Gas Act, 58 Pa.C.S. §3218(a), and 25 Pa. Code §78.51(a).

Y. The pollution of the Water Supply from the drilling of the Wells and CNX's failure to restore or replace the affected Water Supply with an alternate source of water adequate for the purposes served by the Water Supply constitute a public nuisance and unlawful conduct pursuant to Sections 3252 and 3259(2) of the 2012 Oil and Gas Act, 58 Pa.C.S. §§3252 and 3259(2), and subject CNX to civil penalty liability pursuant to Section 3256 of the 2012 Oil and Gas Act, 58 Pa.C.S. §3256.

**ORDER**

NOW, THEREFORE, pursuant to Sections 3218(b) and 3253 of the 2012 Oil and Gas Act, 58 Pa.C.S. §§3218(b) and 3253, 25 Pa. Code §78.51(c), and Section 1917-A of the Administrative Code, 71 P.S. §510-17, the Department hereby ORDERS that:

1. **Restore or Replace the Water Supply.**

a. Temporary Drinking Water Supply. CNX shall continue to provide the users of the Water Supply with a temporary drinking water supply of adequate and reliable quantity and quality until the Department notifies CNX, in writing, that the requirements of this Order have been satisfied.

b. Restoration/Replacement Plan. Within thirty (30) days after the date of this Order, CNX shall submit to the Department, in writing, a plan to permanently restore or replace the Water Supply ("Restoration/Replacement Plan") that, at a minimum, shall identify the:

i. proposed corrective actions (*e.g.* treatment, drill new water supply well, hook into public water supply, and/or other corrective actions) to permanently restore or replace the Water Supply in compliance with Section 3218(a) of the 2012 Oil and Gas Act, 58 Pa.C.S. §3218(a), and 25 Pa. Code §78.51(d);

ii. proposed schedule to implement the corrective actions and restore or replace the Water Supply within thirty (30) days after receipt of the Department's written approval of the Restoration/Replacement Plan or of the modified Restoration/Replacement Plan;

iii. the independent laboratory, certified by the Department, that CNX will use to analyze samples from the restored or replaced Water Supply;

iv. proposed or executed agreements/contracts between CNX and the users of the Water Supply to provide for all plumbing, conveyance, pumping, or auxiliary facilities necessary for the use of the permanently restored or replaced Water Supply;

v. proposed or executed contracts/agreements between CNX and the users of the Water Supply documenting how CNX will compensate on a permanent basis for any increased operating and maintenance costs for the replaced or restored Water Supply; and

vi. plan for confirmatory samples of the restored and/or replaced Water Supply after CNX asserts that it has permanently restored or replaced the Water Supply, or after CNX asserts that the Water Supply is no longer affected. Such samples will be used to determine whether the Water Supply meets the standards set forth in Section 3218(a) of the 2012 Oil and Gas Act, 58 Pa.C.S. §3218(a), and 25 Pa. Code §78.51(d). The confirmatory sampling plan should provide for: split samples with the Department; that sampling would only take place Monday through Friday during Department working hours; and should specify that CNX will notify the Department at least three (3) working days before any scheduled sampling of the Water Supply.

2. **Submission of Documents.**

a. With regard to any document that CNX submits to the Department pursuant to Paragraph 1.b., above, CNX shall also submit to the Department, in writing, additional information and/or correct deficiencies within ten (10) days after receipt of the Department's written request for additional information and/or notice of deficiencies.

b. Upon receipt of a complete document in compliance with the requirements of Paragraph 1.b., above, or a revised document that addresses the Department's request(s) under Paragraph 2.a., above, the Department will approve or modify and approve the document in writing.

c. Upon receipt by CNX of the Department's written approval under this Order of a document or modified document, the approved document shall become an obligation of this Order and shall be enforceable as such.

3. **Implementation of Approved Restoration/Replacement Plan(s).**

a. CNX shall implement the Department-approved Restoration/Replacement Plan in accordance with the approved schedule therein.

b. In all cases, CNX shall complete the approved corrective actions to permanently restore or replace the Water Supply within thirty (30) days after receipt of the Department's written approval of the Restoration/Replacement Plan.

4. In complying with this Order, CNX shall not cause pollution of any waters of the Commonwealth and shall not affect by pollution or diminution any other water supply.

5. All correspondence with the Department concerning this Order shall be addressed as follows:

Amanda Sluss
Environmental Protection Compliance Specialist
District Oil and Gas Operations
400 Waterfront Dr.
Pittsburgh, PA 15222-4745

Any person aggrieved by this action may appeal, pursuant to Section 4 of the Environmental Hearing Board Act, 35 P.S. §7514, and the Administrative Agency Law, 2 Pa.C.S.A. Chapter 5A, to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P.O. Box 8457, Harrisburg, Pennsylvania 17105-8457, 717-787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, 800-654-5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action

unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in braille or on audiotape from the Secretary to the Board at 717-787-3483. This Paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

IF YOU WANT TO CHALLENGE THIS ACTION, YOUR APPEAL MUST REACH THE BOARD WITHIN 30 DAYS. YOU DO NOT NEED A LAWYER TO FILE AN APPEAL WITH THE BOARD. IMPORTANT LEGAL RIGHTS ARE AT STAKE, HOWEVER, SO YOU SHOULD SHOW THIS DOCUMENT TO A LAWYER AT ONCE. IF YOU CANNOT AFFORD A LAWYER, YOU MAY QUALIFY FOR FREE PRO BONO REPRESENTATION. CALL THE SECRETARY TO THE BOARD (717-787-3483) FOR MORE INFORMATION.

**FOR THE COMMONWEALTH OF PENNSYLVANIA,**
**DEPARTMENT OF ENVIRONMENTAL PROTECTION:**

Eric Gustafson
District Oil and Gas Manager
District Oil and Gas Operations