

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

IN THE MATTER OF:

CNX Gas Company LLC	:	The Clean Streams Law
1000 Consol Energy Drive	:	The 2012 Oil and Gas Act
Canonsburg, PA 15317	:	The Dam Safety and Encroachments Act

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 2nd day of July, 2018, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”) and CNX Gas Company, LLC (“CNX”).

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 Clean Streams Law, Act of June 22, 1937, P.L. 1987, *as amended*, 35 P.S. §§ 691.1 – 691.1001 (“The Clean Streams Law”); the Dam Safety and Encroachments Act, Act of November 26, 1978, P.L. 1375, *as amended*, 32 P.S. §§ 693.1 – 693.27 (“Dam Safety 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 (“Regulations”) promulgated thereunder.

B. CNX is a Virginia limited liability company engaged in various oil and gas exploration, production, and midstream activities in Pennsylvania. CNX maintains a local business address at 1000 Consol Energy Drive, Canonsburg, PA 15317.

C. CNX owns and operates the Marchand 3 Pipeline (“Pipeline”), located in North Mahoning Township, Indiana County. The Marchand 3 Pipeline is a pipeline associated with oil and gas operations

D. On December 20, 2017, the Department issued Erosion and Sediment Control General Permit ESG17-063-0005 (“Marchand 3 ESCGP-2”) to CNX authorizing earth disturbance activities associated with the Pipeline. The Marchand 3 ESCGP-2 includes limits of disturbance (“LOD”) within which CNX may construct and maintain the Pipeline.

E. On November 30, 2017, the Department authorized CNX to operate under Water Obstruction and Encroachment Permit GP05320717-004 (“Marchand 3 GP-5”) for multiple utility line crossings, and Water Obstruction and Encroachment Permit GP08320717-004 (“Marchand 3 GP-8”) for multiple temporary road crossings associated with the Pipeline.

F. On March 29, 2018, the Department conducted an inspection of the Pipeline. This inspection revealed that CNX’s earth disturbance activities caused sediment laden water from unstabilized sections of the Pipeline’s right of way (“ROW”) to overtop several Erosion and Sedimentation Control Best Management Practices (“E&S BMPs”), and enter an unnamed tributary to Mudlick Run (“UNT”), a “water of the Commonwealth” as that phrase is defined by Section 1 of The Clean Streams Law, 35 P.S. § 691.1. Mudlick Run and its unnamed tributary are designated as “High Quality Waters” by Section 93.9t of the Regulations, 25 Pa. Code § 93.9t. High Quality Waters are defined as surface waters having quality which exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water by satisfying Section 93.4b(a) of the Regulations, 25 Pa. Code § 93.4b(a), “Qualifying as High Quality or Exceptional Value Waters.” In addition, the sediment laden water was deposited beyond the approved LOD. Finally, a pipe had been installed that directed sediment laden water

off the LOD and directly into the UNT. Neither the installation of the pipe nor the discharge from it were authorized by the Marchand 3 ESCGP-2 or any other permit from the Department.

G. On March 30, 2018, the Department issued a field order (“Order”) in response to the site conditions observed in Paragraph F, above. The Order required CNX to cease immediately the sediment laden discharge identified in the Order, remove the pipe and discharge, and achieve temporary stabilization of the LOD identified in the Order.

H. On May 16, 2018, CNX failed to comply with the requirements of the Order. Specifically, sediment laden water originating from sections of the Pipeline ROW, which CNX had not properly stabilized, overtopped E&S BMPs and entered the UNT, and deposited sediment therein beyond the approved LOD. In addition, numerous E&S BMPs were not properly implemented, maintained, or functioning. Specifically, water bars were discharging into trenches, another unapproved pipe was directing the flow of water into an existing stormwater BMP, sections of compost filter sock (“CFS”) were overtopping with water, and sections of CFS were nearly overtopping with sediment, resulting in the development of erosion channels outside of the LOD. In addition, earth disturbance was conducted outside of the approved LOD along several sections of the Pipeline. The Department issued a Notice of Violation (“May 16 NOV”)

I. Sediment is an “industrial waste” as that term is defined in Section 1 of The Clean Streams Law, 35 P.S. § 691.1.

J. On March 29 and May 16, 2018, CNX failed to implement effective E&S BMPs to minimize accelerated erosion and sedimentation, which constituted violations of 25 Pa. Code §§ 78a.53, 102.4(b)(1) and (m)(4), and 102.11(a)(1).

K. On March 29 and May 16, 2018, CNX violated 25 Pa. Code §§ 102.5(c) and (m)(4) by failing to comply with the terms of the Marchand 3 ESCGP-2 and by failing to obtain an Erosion and Sediment Control Permit prior to changing the scope of earth disturbance associated with the Pipeline.

L. On March 29 and May 16, 2018, CNX violated 25 Pa. Code §§ 78a.53 and 102.22(b)(1) by failing to implement and maintain temporary stabilization of the Pipeline.

M. On March 29 and May 26, 2018, CNX discharged industrial waste to waters of the Commonwealth in a manner not authorized by the rules and regulations of the Department, in violation of Sections 301 and 307 of The Clean Streams Law, 35 P.S. §§ 691.301, 691.307.

N. On or before May 16, 2018, CNX installed a temporary road crossing over a watercourse near wetland 103 neither shown on nor authorized by the Marchand 3 ESCGP-2 or Marchand 3 GP-8.

O. The Marchand 3 GP-8 requires geotextile matting be installed underneath of the timber mat swamp crossing. As of May 16, 2018, geotextile matting was not installed underneath the timber swamp mat at the wetland temporary road crossing for wetland 106.

P. On the dates and at the locations set forth in Paragraphs F through O, above, CNX:

1. Violated 25 Pa. Code § 105.11(a) by failing to obtain a permit from the Department prior to construction, operation, maintenance, modification, enlargement or abandonment of a water obstruction or encroachment.;

2. Violated 25 Pa. Code § 105.44(a) by failing to conduct work in accordance with the maps, plans, profiles, and specifications as approved by the Marchand GP-8; and

3. Violated 25 Pa. Code §§ 78a.53 and 102.4(b)(5)(v) by failing to describe the location of all surface waters of this Commonwealth which may receive runoff within or from the project site and their classification under Chapter 93.

Q. On April 27, 2018 CNX filed an appeal of the Order to the Pennsylvania Environmental Hearing Board (“EHB Appeal”), challenging the validity of the Order.

R. The violations described in Paragraphs F through P, above, constitute unlawful conduct under Section 611 of The Clean Streams Law, 35 P.S. § 691.611, Section 3259 of the 2012 Oil and Gas Act, 58 Pa. C.S. § 3259, and Section 18 of the Dam Safety Act, 32 P.S. § 693.18; constitute a nuisance under Sections 402(b) and 610 of The Clean Streams Law, 35 P.S. §§ 691.402(b) and 691.610; and subject CNX to a claim for civil penalties under Section 605 of The Clean Streams Law, 35 P.S. § 691.605, Section 3256 of the 2012 Oil and Gas Act, 58 Pa. C.S. § 3256, and Section 21 of the Dam Safety Act, 32 P.S. § 693.21.

S. On May 18, 2018, CNX informed the Department that CNX had retained a professional engineering consulting firm to visit the site on May 19, 2018. CNX has also informed the Department that CNX no longer intends to construct and operate the Pipeline, and will instead pursue permanent stabilization and restoration of the Pipeline site, followed by termination of the Marchand 3 ESCGP-2.

T. As of March 30, 2018, the sediment laden discharge to the UNT identified in Paragraph F had been ceased, and as of April 4, 2018, the pipe identified in Paragraph F, above, had been removed. The remaining violations described in the foregoing Paragraphs are ongoing violations, which continue to the present.

Order

After full and complete negotiation of all matters set forth in this Consent Order and Agreement, 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 Consent Order and Agreement is an Order of the Department authorized and issued pursuant to Sections 5, 316, and 610 of The Clean Streams Law, 35 P.S. §§ 691.5, 691.316, and 691.610; Section 3253 of the 2012 Oil and Gas Act, 58 Pa. C.S. § 3253; Section 20 of the Dam Safety Act, 32 P.S. § 693.20; 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 T, above, 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 Consent Order and Agreement in any matter or proceeding.

3. Corrective Actions.

a. Within **seven (7) calendar days** after execution of this Consent Order and Agreement, CNX shall conduct maintenance of all existing E&S BMPs, including repair, sediment removal, and other measures needed to result in effective E&S BMPs.

b. Within **ten (10) calendar days** after execution of this Consent Order and Agreement, CNX shall develop, immediately implement, and submit to the Department a plan to achieve temporary stabilization at the site ("Temporary Stabilization Plan"). The Temporary

Stabilization Plan shall be fully incorporated into this Consent Order and Agreement and enforceable under this Consent Order and Agreement.

c. Within **forty-five (45) calendar days** after execution of this Consent Order and Agreement, CNX shall submit to the Department for review a plan to stabilize permanently and restore the Pipeline (“Permanent Stabilization Plan”). The Permanent Stabilization Plan shall include, at minimum, a plan and schedule to stabilize and restore the Pipeline, an updated drawing showing the additional aquatic resources, an as-built survey of the constructed LOD, and a request for a modification to the Marchand 3 ESCGP-2 (“ESCGP-2 Modification”). If the Department determines that the Permanent Stabilization Plan is inadequate or incomplete and (i) notifies CNX of such inadequacies and/or deficiencies by written request for supplement or modification of the Permanent Stabilization Plan, and (ii) offers to confer with CNX via in-person or telephonic meeting within **fourteen (14) calendar days** of CNX’ receipt of the written request, then within **thirty (30) days** of receipt of the Department’s written request for supplement or modification, CNX shall supplement or modify the Permanent Stabilization Plan as requested by the Department and resubmit it to the Department for approval or modification and approval by the Department.

d. The illegal temporary road crossings described in Paragraphs N and O, above, and located at station numbers 68 + 80 shall be removed upon restoration and permanent stabilization of that section of the Pipeline, but, in any event, no later than **September 1, 2018**. If the illegal temporary road crossings will not be removed by September 1, 2018, CNX shall submit new applications for Water Obstruction and Encroachment Permits and perform any work needed to achieve compliance (*e.g.*, installation of geotextile) by **September 7, 2018**.

e. Within **ten (10) calendar days** after the Department approves the Permanent Stabilization Plan and ESCGP-2 Modification, pursuant to Paragraph 3.c., above, CNX shall begin any work needed to achieve compliance with the Marchand 3 ESCGP-2. However, if the Permanent Stabilization Plan or ESCGP-2 Modification approval date falls between October 1 and April 30, 2018, CNX shall begin implementing the work no later than June 1, 2019; such work shall be completed, and the site stabilized and restored in conformance with the Marchand 3 ESCGP-2 and Permanent Stabilization Plan, within **one hundred twenty (120) days** of commencement of the work.

f. CNX shall give a minimum of seven (7) days advanced notice in writing to the Department of the intent to commence earth disturbance activities related to the Permanent Stabilization Plan.

g. CNX shall file with the Department an ESCGP Notice(s) of Termination (“NOT”) after permanent vegetation has been established. The NOT shall be filed as soon as practicable, but no later than **September 30, 2020**.

h. CNX shall submit written “Progress Reports” to the Department. The Progress Reports shall be due quarterly by the 30th day of the month following each calendar quarter (*i.e.*, January 30, April 30, July 30, and October 30), and shall describe the actions taken in the previous quarter to comply with the requirements set forth in Paragraphs 3.a. through 3.g., above, and Paragraphs 4 through 7, below, of this Consent Order and Agreement.

i. In all cases, CNX shall fulfill all the obligations set forth in this Consent Order and Agreement no later than **October 31, 2020**. If CNX fails to comply with any obligation under this Consent Order and Agreement by **October 31, 2020**, the Department, in its sole discretion, may terminate this Consent Order and Agreement.

4. Withdrawal of EHB Appeal. Within **five (5) calendar days** after execution of this Consent Order and Agreement, CNX shall withdraw the EHB Appeal and provide written notification to the Department.

5. Illegal Discharges. CNX shall notify the Department in writing (via e-mail) if it observes an illegal discharge to waters of the Commonwealth (“Illegal Discharge”). The notification shall be made within 2 hours of discovery and include, at minimum, the location of the discharge, the receiving water, and what measures are being employed to stop the discharge. A summary of all Illegal Discharges shall be included in the Quarterly Progress Reports in accordance with Paragraph 3.h., above.

6. CNX Personnel on Site. In addition to any contractors CNX may choose to retain, CNX shall have its own employees on-site during all earth disturbance activities conducted pursuant to this Consent Order and Agreement.

7. Civil Penalty Settlement. Upon signing this Consent Order and Agreement, CNX shall pay a civil penalty of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000). This payment is in settlement of the Department’s claim for civil penalties for the violations set forth above and all violations in the Order and the May 16 NOV, covering the dates set forth herein. 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 13 (Correspondence with the Department), below.

8. Stipulated Civil Penalties.

a. If CNX fails to comply with any applicable term or provision of this Consent Order and Agreement, CNX shall be in violation of this Consent Order and Agreement.

In addition to other applicable remedies, CNX shall pay the following penalties for the following violations:

- i. \$300 for each day for failing to complete all obligations set forth in Paragraphs 3.a., 3.b., 3.f., 3.g., and 3.h. above, within the time frames set forth in this Consent Order and Agreement;
- ii. \$800 for each day for failing to complete the obligations set forth in Paragraphs 3.c., 3.d., 5 and 6, above, within the time frames set forth in this Consent Order and Agreement; and,
- iii. \$2,000 for the first day for failing to complete the obligation set forth in Paragraphs 3.e., 3.i., and 4, above, within the time frames set forth in this Consent Order and Agreement, plus an additional \$5,000 per day until the date the obligation is met.
- iv. \$250 for each individual E&S BMP failure from the date of this Consent Order and Agreement until a NOT is approved.
- v. \$400 for each day from the date of this Consent Order and Agreement until temporary stabilization is achieved.
- vi. \$7,000 for each Illegal Discharge to waters of the Commonwealth.

b. Stipulated civil penalty payments shall be payable monthly on or before the 15th day of each succeeding month. Stipulated civil penalty payments shall be made pursuant to Paragraph 8.a., above.

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

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

9. Additional Remedies.

a. If CNX fails to comply with any provision of this Consent Order and Agreement, 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 Consent Order and Agreement.

b. The remedies provided by this Paragraph and Paragraph 8 (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.

10. 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.

11. Liability of Operator. CNX shall be liable for any violations of the Consent Order and Agreement, 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 Consent Order and Agreement caused by, contributed to, or allowed by its successors and assigns.

12. Transfer of Site.

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

b. If CNX intends to transfer any legal or equitable interest in the Pipeline described herein which is affected by this Consent Order and Agreement, CNX shall serve a copy of this Consent Order and Agreement 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 District Office of the Department of such intent.

13. Correspondence with the Department. All correspondence with the Department concerning this consent Order and Agreement and documents submitted in compliance with this Consent Order and Agreement shall be addressed to:

Attn. Daniel Counahan
Oil and Gas Operations
Pennsylvania Department of Environmental Protection
400 Waterfront Drive
Pittsburgh, PA 15222-4745
Phone 412-442-5866
Email: dcounahan@pa.gov

14. Correspondence with CNX. All correspondence with CNX concerning this Consent Order and Agreement shall be addressed to:

Attn. Carrie Crumpton
CNX Gas Company, LLC
1000 CONSOL Energy Drive
Canonsburg, PA 15317
Phone: 724-485-4164
Email: carriecrumpton@cnx.com

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 Consent Order and Agreement, including its enforcement, may be made by mailing a copy by first class mail to the above address.

15. Decisions Under Consent Order and Agreement. Except as provided in Paragraph 3.i., above, any decision which the Department makes under the provisions of this Consent Order

and Agreement, including a notice that the civil penalty and/or the 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 Consent Order and Agreement.

16. Severability. The Paragraphs of this Consent Order and Agreement 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.

17. Entire Agreement.

a. This Consent Order and Agreement 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.

b. This Consent Order and Agreement constitutes settlement only of the civil liabilities for the violations set forth herein.

18. 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 Consent Order and Agreement.

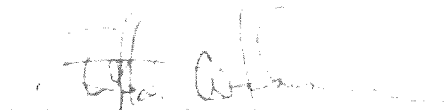
19. Modifications. No changes, additions, modifications, or amendments of this Consent Order and Agreement shall be effective unless they are set out in writing and signed by the Parties.

20. Titles. A title used at the beginning of any Paragraph of this Consent Order and Agreement may be used to aid in the construction of that Paragraph, but shall not be treated as controlling.

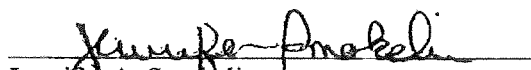
21. Termination of Consent Order and Agreement. CNX's obligations, but not the Findings, of this Consent Order and Agreement shall terminate when: 1) CNX has completed all the requirements of this Consent Order and Agreement; and 2) CNX has paid any outstanding stipulated civil penalties due under Paragraph 8 (Stipulated Civil Penalties), above. In all cases, CNX shall complete all obligations set forth under this Consent Order and Agreement no later than **October 31, 2020.**

IN WITNESS WHEREOF, the Parties have caused this Consent Order and Agreement to be executed by their duly authorized representatives. CNX certifies under penalty of law, as provided by 18 Pa. C.S.A. § 4904, that it consents to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that it hereby knowingly waives its right to appeal this Consent Order and Agreement and to challenge its content or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, the 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:



Stephen W. Johnson
Senior Vice President



Jennifer A. Smolkin
Attorney for CNX Gas Company LLC

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:



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Southwest District Oil and Gas Operations



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