

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

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EPA REGION III, PHILA. PA

In the Matter of:	)	EPA Docket No. CAA-03-2012-0256
MarkWest Liberty Midstream	)	
& Resources, LLC	)	
601 Technology Drive, Suite 130	)	
Canonsburg, Pennsylvania 15342,	)	
	)	
Respondent.	)	Proceedings Pursuant to Sections
	)	112(r) and 113 of the Clean Air Act,
MarkWest Energy Appalachia, LLC	)	42 U.S.C. §§ 7412(r) and 7413
Houston Gas Plant	)	
800 Western Avenue	)	
Chartiers Township, Pennsylvania 15301,	)	
	)	
Facility.	)	

**CONSENT AGREEMENT**

**STATUTORY AUTHORITY**

This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA" or the "Agency") by Section 113 of the Clean Air Act ("CAA"), as amended, 42 U.S.C. § 7413, and under the authority of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. The Administrator has delegated these authorities to the Regional Administrator, who has, in turn, delegated them to the Director, Hazardous Site Cleanup Division.

The parties agree to the commencement and conclusion of this cause of action by issuance of this Consent Agreement and Final Order (referred to collectively herein as "CA/FO") as prescribed by the Consolidated Rules of Practice pursuant to 40 C.F.R. § 22.13(b), and having consented to entry of this CA/FO, agree to comply with the terms of this CA/FO.

### **JURISDICTION**

1. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. §§ 22.1(a)(7) and 22.1(a)(8).
2. The Regional Judicial Officer has the authority to approve this settlement and conclude this proceeding pursuant to 40 C.F.R. §§ 22.4(b) and 22.18(b)(3).
3. For the purpose of this proceeding, Respondent admits to the jurisdictional allegations in this Consent Agreement and agrees not to contest EPA's jurisdiction with respect to the execution or enforcement of this Consent Agreement.

### **FINDINGS OF FACT RELATED TO THE VIOLATION OF SECTION 112(r)(7) OF THE CLEAN AIR ACT**

4. MarkWest Liberty Midstream & Resources, LLC, is the owner and operator of the natural gas liquid extraction facility located at 800 Western Avenue, Chartiers Township, Pennsylvania (the "Facility").
5. Respondent is organized in the Commonwealth of Pennsylvania with its headquarters located at 601 Technology Drive, Suite 130, Canonsburg, Pennsylvania.
6. Respondent has been the owner and operator of the Facility since at least November 11, 2010.
7. On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The Clean Air Act Amendments added Section 112(r) to the CAA, 42 U.S.C. § 7412(r).
8. Section 112(r) to the CAA, 42 U.S.C. § 7412(r), requires the Administrator of EPA to, among other things, promulgate regulations in order to prevent accidental releases of certain regulated substances. Section 112(r)(3), 42 U.S.C. § 7412(r)(3), mandates the Administrator to promulgate a list of regulated substances, with threshold quantities, and defines the stationary sources that will be subject to the accident prevention regulations mandated by Section 112(r)(7), 42 U.S.C. § 7412(r)(7). Specifically, Section 112(r)(7) requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for these listed regulated substances, 42 U.S.C. § 7412(r)(7). The list of regulated substances and threshold levels can be found in 40 C.F.R. § 68.130.
9. On June 20, 1996, EPA promulgated a final rule known as the Risk Management Program, 40 C.F.R. Part 68, which implements Section 112(r)(7), 42 U.S.C. § 7412(r)(7), of the CAA. The regulations require owners and operators of stationary sources to develop and implement a risk management program that includes a hazard assessment, a prevention program, and an emergency response program. The risk management program is described in a risk management plan that must be submitted to EPA. The risk management plan must include a hazard assessment to assess the potential effects of an accidental release of any regulated substance, a program for preventing accidental releases of hazardous substances, and a response

program providing for specific actions to be taken in response to an accidental release of a regulated substance, so as to protect human health and the environment.

10. Pursuant to Section 112(r)(7)(B)(iii) of the CAA, 42 U.S.C. § 7412(r)(7)(B)(iii), and its regulations at 40 C.F.R. §§ 68.10(a) and 68.150(a), the owner or operator of a stationary source at which a regulated substance is present in more than a threshold quantity must submit a risk management plan to EPA no later than the latter of June 21, 1999, or the date on which a regulated substance is first present above the threshold quantity in a process.

11. Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), authorizes EPA to commence an administrative action to assess civil penalties of not more than \$25,000 per day for each violation of Section 112(r) of the CAA that occurs before January 30, 1997. Section 113(d)(1)(B), as amended by the Debt Collection Improvement Act of 1996, authorizes EPA to commence an administrative action to assess civil penalties of not more than \$32,500 per day for each violation of Section 112(r) of the CAA that occurs after March 15, 2004 through January 12, 2009, and \$37,500 per day for each violation of Section 112(r) of the CAA that occurs after January 12, 2009.

12. The regulations at 40 C.F.R. § 68.3 define “stationary source,” in part, as any buildings, structures, equipment, installations, or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

13. The regulations at 40 C.F.R. § 68.3 define “threshold quantity” as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, listed in 40 C.F.R. § 68.130, Table 1, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

14. The regulations at 40 C.F.R. § 68.3 define “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the CAA in 40 C.F.R. § 68.130.

15. The regulations at 40 C.F.R. § 68.3 define “process” as any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities. For purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

16. EPA conducted an inspection of the Facility on December 7, 2010, to determine Respondent’s compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the Chemical Accident Prevention Provisions at 40 C.F.R. Part 68.

17. At the time of the inspection, Respondent had present at the Facility approximately 29 tanks containing approximately 382,209 pounds of propane (Chemical Abstracts Service (“CAS”) No. 74-98-06) and 599,544 pounds of a flammable mixture (CAS No. 00-11-11), consisting mainly of the RMP-listed chemical butane (CAS No. 106-97-8) mixed

with gasoline and referred to as B-G mix.

18. Respondent submitted its initial Risk Management Plan for the Facility on January 23, 2009 and a revised Risk Management Plan on November 11, 2010, pursuant to a predictive filing option available under the electronic filing program, RMP\*Submit.

19. According to the November 11, 2010 predictive filing, the Facility planned to handle and/or store approximately 9,601,675 pounds of propane, and 7,042,183 pounds of flammable mixtures at the Facility.

20. The American Petroleum Institute Standard 2510, *Design and Construction of Liquefied Petroleum Gas ("LPG") Installations* (8th ed., May 2001) ("API 2510"), "provides minimum requirements for the design and construction of liquefied petroleum gas (LPG) installations at marine and pipeline terminals, natural gas processing plants, refineries, petrochemical plants, and tank farms."

21. The American Petroleum Institute Publication 2510A, *Fire Protection Considerations for the Design and Operation of Liquefied Petroleum Gas (LPG) Storage Facilities* (2nd ed., December 1996, reaff'd, December 2010) ("API 2510A"), addresses the design, operation, and maintenance of LPG storage facilities from the standpoints of prevention and control of releases, fire protection design, and fire-control measures.

22. Respondent submitted an application for construction in June 2010 to Pennsylvania's Department of Labor of Industry, Industrial Board ("Industrial Board"). Respondent contracted with Aon Energy Risk Engineering to conduct a Fire Safety Analysis ("FSA") of the Facility. The primary purpose of the FSA was to evaluate the fire protection features at the Facility and to assess the adequacy of the protection; the secondary purpose was to develop a fire protection system layout and plan for the Facility. The FSA referred to API 2510 and API 2510A in its evaluation and assessment. The FSA, dated December 2010, recommended the provision of fire protection for the storage tanks; a fire water system; and fire water monitors, hydrants and fire detection in the storage tank areas. The FSA also recommended testing and maintenance of the fire protection, periodic testing of emergency isolation valves and shutdown systems and provision of a method to verify that the tank truck loading rack drainage basin valve is closed.

23. Respondent submitted a request for variance from the siting requirements of API 2510 to the Industrial Board in March 2011. The variance was granted by the Industrial Board on April 28, 2011, provided that the installation was designed in accordance with the FSA.

24. Respondent informed EPA that the fire protection system would not be operational until the first quarter of 2012.

25. The inspection revealed a number of concerns at the Facility:

- a. During the inspection several tanks were observed to lack locks or seals on block valves between the tank and its pressure relief valve in accordance with Section

7.1.6.4.5 of the API 2510. Thirty-four tanks were later determined to be lacking the required locks or seals.

- b. During the inspection it was observed that the minimum horizontal distance between the shells of the propane and/or flammable mixture storage tanks was less than the distance required by Section 5.1.2. of API 2510, *i.e.* five feet or three-quarters of the diameter of the larger vessel, whichever is greater.

26. Respondent corrected the deficiency pertaining to lack of locks/seals by installing locks/seals in January 2011.

27. On June 27, 2011, EPA issued an Administrative Order, EPA Docket No. CAA-03-2011-0172DA (“Order”), to Respondent pursuant to the authority of Section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B). The Order required Respondent to take the following actions: (a) install and operate a permanent fire protection system for the propane and B-G mix tanks; (b) install an interim fire protection system; (c) evaluate the fire-fighting assets of the Facility and the local fire department; (d) conduct training of company personnel, local fire fighters and emergency management officials; and (e) conduct an emergency response exercise at the Facility with company personnel, local fire fighters and emergency management officials.

28. Pursuant to the Order, Respondent has submitted reports to EPA indicating that Respondent installed an interim fire protection system by August 31, 2011, installed a permanent fire protection system in March 2012, evaluated the fire-fighting assets of the Facility and the local fire department, conducted training of company personnel, local fire fighters and emergency management officials, and conducted an emergency response exercise at the Facility with company personnel, local fire fighters and emergency management officials.

29. Subsection § 68.65(d)(2) of the Chemical Accident Prevention Provisions requires the owner or operator to document that its equipment complies with recognized and generally accepted good engineering practices, so as to identify, evaluate and control the hazards of the process.

30. EPA’s investigation indicates that, prior to Respondent’s compliance with the Order, the company failed to satisfy the requirements of 40 C.F.R. Part 68 to fully implement a Program 3 Risk Management Program (“RMP”) for the Facility. Respondent failed to document that its equipment complied with recognized and generally accepted good engineering practices, in accordance with 40 C.F.R. § 68.65(d)(2), as follows:

- a. Respondent failed to document that the fire protection system of its propane and B-G mix storage tanks at the Facility complied with recognized and generally accepted good engineering practices, in accordance with 40 C.F.R. § 68.65(d)(2). Respondent failed to provide the minimum horizontal distance between the shells of the pressurized horizontal vessels or to provide appropriate alternative fire protection, in accordance with API Standards 2510 and 2510A. Respondent corrected this deficiency in accordance with EPA’s Order by installing an interim fire protection system by August 31, 2011, and then by installing a permanent fire

protection system in March 2012.

- b. Respondent failed to document that the block valves between the pressure relief valve and the 34 propane and B-G mix storage tanks, missing locks or seals, complied with recognized and generally accepted good engineering practices in API Standard 2510, in accordance with 40 C.F.R. § 68.65(d)(2).

31. On June 25, 2012, EPA sent Respondent a request to show why penalties against Respondent were not warranted under Section 113 of the CAA.

**CONCLUSIONS OF LAW RELATED TO THE  
VIOLATION OF SECTION 112(r)(7) OF THE CLEAN AIR ACT**

32. The findings of fact contained in Paragraphs 4 through 31 of this CA/FO are incorporated by reference herein as though fully set forth at length.

33. Propane is a “regulated substance” pursuant to Section 112(r)(3) of the CAA, and listed in 40 C.F.R. § 68.130, with a threshold quantity of 10,000 pounds.

34. B-G mix is a RMP-regulated flammable mixture because it contains RMP-listed chemical butane (CAS No. 106-97-8) and gasoline.

35. At all times relevant to this Consent Agreement, propane and B-G mix have been present in a process at the Facility.

36. Respondent is a “person” as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

37. Respondent has been the operator of a “stationary source,” as the term is defined at 40 C.F.R. § 68.3, since approximately 2009.

38. Respondent is subject to the requirements of Section 112(r) of the CAA, 40 U.S.C. § 7412(r), and 40 C.F.R. Part 68, because it is the owner and/or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process.

39. The Facility is subject to the requirements of the Process Safety Management (“PSM”) standard of the Occupational Safety and Health Administration (“OSHA”), 29 C.F.R. § 1910.119.

40. Because it is subject to OSHA’s PSM requirements, the Facility is a Program 3 Facility under the Chemical Accident Prevention Provisions, in accordance with 40 C.F.R. § 68.10(d)(2).

41. Respondent has violated Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and its regulations at 40 C.F.R. Part 68, by failing to meet the following requirement: document that its equipment complied with recognized and generally acceptable good engineering

practices, in accordance with 40 C.F.R. § 68.65(d)(2). Respondent is, therefore, subject to the assessment of penalties under Section 113 of the CAA, 42 U.S.C. § 7413.

**SETTLEMENT**

42. In full and final settlement and resolution of all allegations referenced in the foregoing Findings of Fact and Conclusions of Law, and in full satisfaction of all civil penalty claims pursuant thereto, for the purpose of this proceeding, Respondent consents to the assessment of a civil penalty for the violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), as set forth above, in the amount of **\$44,100.00**.

43. Respondent consents to the issuance of this Consent Agreement, and consents for purposes of settlement to the payment of the civil penalty cited in the foregoing Paragraph.

**PAYMENT TERMS**

44. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalties described in this CA/FO, Respondent shall pay the civil penalty of \$44,100.00, no later than thirty (30) days after the effective date of the Final Order (the "final due date") by either cashier's check, certified check, or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, *i.e.*, CAA-03-2012-0256;
- b. All checks shall be made payable to **United States Treasury**;
- c. All payments made by check and sent by regular mail shall be addressed to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000  
Contact: Heather Russell, 513-487-2044

- d. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA, Fines & Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101  
Contact: 314-418-1028

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance  
US EPA, MS-NWD  
26 W. M.L. King Drive  
Cincinnati, OH 45268-0001

- f. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account No. = 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

- g. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver  
ABA = 051036706  
Account No.: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737  
Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681

- h. On-Line Payment Option:

[WWW.PAY.GOV/PAYGOV](http://WWW.PAY.GOV/PAYGOV)  
Enter sfo 1.1 in the search field. Open and complete the form.

- i. Additional payment guidance is available at:

[http://www.epa.gov/ocfo/finservices/make\\_a\\_payment.htm](http://www.epa.gov/ocfo/finservices/make_a_payment.htm)



45. Respondent shall submit copies of the check, or verification of wire transfer or ACH, to the following persons:

Lydia Guy  
Regional Hearing Clerk (3RC00)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

Cynthia T. Weiss  
Senior Assistant Regional Counsel (3RC42)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

46. The CAA civil penalty stated herein is based upon Complainant's consideration of a number of factors, including, but not limited to, the penalty criteria set forth in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and is consistent with 40 C.F.R. Part 19 and the *Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7) and 40 C.F.R. Part 68* (June 2012).

47. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to 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, as more fully described below. Accordingly, Respondent's failure to make timely payment by the final due date or to comply with the conditions of this CA/FO shall result in the assessment of late payment charges, including interest beyond that required by this CA/FO, penalties and/or administrative costs of handling delinquent debts.

48. Interest on the civil penalty assessed in this CA/FO will begin to accrue on the date that a copy of this CA/FO is mailed or hand-delivered to Respondent. 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).

49. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue in accordance with 40 C.F.R. § 13.11(b). Pursuant to Appendix B of EPA's *Resource Management Directives – Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the final due date and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid.

50. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days in accordance with 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent, in accordance with 31 C.F.R. § 901.9(d).

51. Failure of Respondent to pay the penalty assessed by the Final Order in full by the final due date may subject Respondent to a civil action to collect the assessed penalties, plus interest, pursuant to Section 113 of the CAA, 42 U.S.C. § 7413. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

**GENERAL PROVISIONS**

52. With the exception of Paragraph 3, above, for purposes of this proceeding, Respondent neither admits nor denies factual allegations set forth in this Consent Agreement, but expressly waives its rights to contest said allegations.

53. By entering into this CA/FO, Respondent does not admit any liability for the civil claims alleged herein.

54. For purposes of this proceeding, Respondent expressly waives its right to hearing and to appeal the Final Order pursuant to Section 113 of the CAA, 42 U.S.C. § 7413.

55. Respondent certifies by the signing of this CA/FO that, to the best of its knowledge, the Facility is presently in compliance with all requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and all regulations promulgated thereunder.

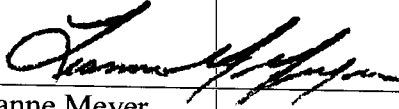
56. The provisions of this CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns. By his or her signature below, the person signing this Consent Agreement on behalf of the Respondent is acknowledging that he or she is fully authorized by the party represented to execute this Consent Agreement and to legally bind said Respondent to the terms and conditions of the Consent Agreement and accompanying Final Order.

57. This CA/FO does not constitute a waiver, suspension or modification of the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), or any regulations promulgated thereunder.

58. This CA/FO is a complete and final settlement of all civil and administrative claims and causes of action set forth in this CA/FO for alleged violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). Nothing herein shall be construed to limit the authority of EPA to undertake action against any person, including the Respondent, in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. Nothing in this CA/FO shall be construed to limit the United States' authority to pursue criminal sanctions.

59. Each party to this action shall bear its own costs and attorney's fees.

FOR MARKWEST LIBERTY MIDSTREAM & RESOURCES, LLC




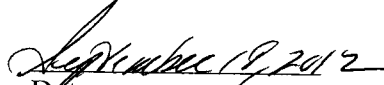
Leanne Meyer  
Vice President, Environmental, Health  
Safety and Compliance

9/14/12  
Date

MarkWest Legal Dept. App'd. to Form
OK 9.12.12

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

  
\_\_\_\_\_  
Ronald J. Borsellino, Director  
Hazardous Site Cleanup Division

  
Date

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
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800 Western Avenue	)	
Chartiers Township, Pennsylvania 15301,	)	
	)	
Facility.	)	

**FINAL ORDER**

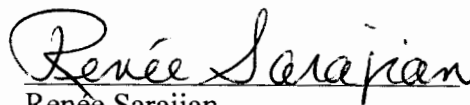
Pursuant to Section 113 of the Clean Air Act, 42 U.S.C. § 7413, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," codified at 40 C.F.R. Part 22, and based on the representations in the Consent Agreement, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ordered to comply with the terms of the referenced Consent Agreement.

**Effective Date**

This Final Order shall become effective upon the date of its filing with the Regional Hearing Clerk.

Date:

9/24/12



Renee Sarajian  
Regional Judicial Officer/Presiding Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
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800 Western Avenue )  
Chartiers Township, Pennsylvania )  
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)  
Facility. )

**CERTIFICATE OF SERVICE**

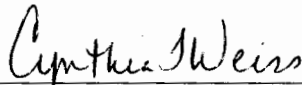
I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of Consent Agreement and Final Order, along with enclosures and/or attachments, for the above-referenced matter, with the Regional Hearing Clerk, EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that a true and correct copy of the Consent Agreement and Final Order, along with its enclosures and/or attachments, was sent to:

Via certified mail, return receipt requested

Christopher Rimkus, Esquire  
MarkWest Energy Partners, L.P.  
1515 Arapahoe Street, Tower 1  
Suite 1600  
Denver, Colorado 80202

SEP 24 2012

Date

  
Cynthia T. Weiss (3RC42)  
Senior Assistant Regional Counsel