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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III

2012 MAR 30 AM 10: 30

1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

REGIONAL HEARING CLERK  
EPA REGION III, PHILA. PA

IN THE MATTER OF:	)	Docket No.
	)	SDWA-03-2012-0061
EXCO Resources (PA), LLC	)	
300 Ericsson Drive, Suite 200	)	CONSENT AGREEMENT
Warrendale, PA 15086-5501	)	AND FINAL ORDER
	)	
Respondent	)	Proceeding under Section
	)	1423(c) of the Safe Drinking
	)	Water Act, 42 U.S.C. § 300h-2(c)

**CONSENT AGREEMENT**

**I. STATUTORY AND REGULATORY AUTHORITY**

1. This Consent Agreement and Final Order ("CAFO") is entered into by the Director of the Water Protection Division, United States Environmental Protection Agency ("EPA"), Region III ("Complainant") and EXCO-Resources (PA), LLC ("EXCO," "Permittee," or "Respondent"), pursuant to Section 1423(a) and (c) of the Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300h-2(a) and (c), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits*, 40 C.F.R. Part 22.
2. The parties having agreed to settlement of Respondent's SDWA violations, this CAFO simultaneously commences and concludes this action pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3). Subpart I of 40 C.F.R. Part 22 applies to this proceeding. The EPA Administrator has delegated the authority to take these actions to the Regional Administrator for EPA, Region III, who in turn delegated the authority to the Water Protection Division Director of EPA, Region III ("Director").
3. Pursuant to Section 1423(c)(2) of the SDWA, 42 U.S.C. § 300h-2(c)(2), as amended by the Debt Collection Improvement Act of 1996 (codified at 28 U.S.C. § 2461) and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (effective January 12, 2009), the Administrator of the EPA is authorized to issue an order requiring compliance and/or assessing administrative penalties against any person who has violated any applicable State Underground Injection Control ("UIC") program requirement. For violations pertaining to Class II injection wells occurring after January 12, 2009, the Administrator may assess a penalty amount that is up to \$7,500 per day for

each violation, and a total penalty amount that is up to \$177,500.

## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

4. EXCO is a corporation and therefore a "person" within the meaning of Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12).
5. Section 1421(a) of the SDWA, 42 U.S.C. § 300h(a), directs the Administrator to promulgate regulations for State UIC programs. Section 1421(b) of the SDWA, 42 U.S.C. § 300h(b), lists minimum requirements for state UIC programs.
6. Section 1421(b)(1)(A) of the SDWA, 42 U.S.C. § 300h(b)(1)(a), states that the UIC regulations "shall prohibit . . . any underground injection in such State which is not authorized by a permit issued by the state . . . ."
7. The UIC regulations at 40 C.F.R. § 144.11 state that "[a]ny underground injection, except into a well authorized by rule or except as authorized by permit issued under the UIC program, is prohibited."
8. The UIC regulations at 40 C.F.R. § 144.51(a) state that "[t]he permittee must comply with all conditions of [the] permit. Any permit noncompliance constitutes a violation of the Safe Drinking Water Act and is grounds for enforcement action, for permit termination, revocation and reissuance, or modification . . . ."
9. The regulations at 40 C.F.R. § 146.8 define mechanical integrity as, *inter alia*, a well with "no significant leak in the casing, tubing, or packer . . . ."
10. Section 1423(a)(2) of the SDWA, 42 U.S.C. § 300h-2(a)(2), states that "whenever the Administrator finds during a period which a State does not have primary enforcement responsibility for underground water sources that any person subject to any requirement of any applicable underground injection control program . . . is violating such requirement, the Administrator shall issue an order . . . requiring the person to comply with such a requirement . . . ."
11. Section 1422(c) of the SDWA, 42 U.S.C. § 300h-1(c), requires EPA to administer the UIC program in states which do not have primary enforcement responsibility ("primacy").
12. The Commonwealth of Pennsylvania has not acquired primacy of the UIC program. Therefore, effective June 25, 1984, EPA Region III began direct implementation of the UIC program in Pennsylvania. *See* 40 C.F.R. § 147.1951.
13. The regulations at 40 C.F.R. § 146.5 define Class II injection wells as: "[w]ells which inject fluids: (1) Which are brought to the surface in connection with natural gas storage operations, or conventional oil or natural gas production and may be commingled with waste waters from gas plants which are an integral part of production operations . . . ."

14. At all times relevant to this CAFO, Respondent operated a Class II injection well at Brady Field in Bell Township, Clearfield County, Pennsylvania ("the Facility").
15. On May 20, 2005, EPA Region III's UIC Program issued Underground Injection Control Permit Number PAS2D205BCLE ("the Permit"), to EOG Resources for the operation of the Irvin A-19 Brine Disposal Well (the "Irvin Well"). The Permit remains in effect until May 20, 2015, and was therefore in force at all times relevant to this CAFO.
16. EOG Resources transferred the Permit to Respondent in 2008. On June 24, 2008, EPA approved Respondent's Trust Agreement accepting financial responsibility for the Irvin Well and discharged EOG Resources of financial responsibility. On September 24, 2008, EPA modified the Permit to reflect the transfer. The Trust Agreement between North Coast Energy, Inc., and S & T Bank, Inc., was entered into on June 19, 2008. The Grantor listed in the Trust Agreement was later changed to EXCO-North Coast Energy, Inc., in the First Amendment dated July 11, 2008. EXCO- North Coast Energy, Inc., later changed its name to EXCO Resources (PA), LLC.
17. Respondent's 2010 Annual Disposal/Injection Well Monitoring Report for the Irvin Well, stated that the maximum injection pressure for the months of March, April, and May of 2010 was measured at 3,250 PSIG.
18. On August 19, 2011, Respondent informed EPA via telephone of a planned mechanical integrity test on the Irvin Well to be conducted one day later on August 20, 2011.
19. On August 20, 2011, an EPA inspector visited the Facility and the Irvin Well. During the visit the EPA inspector observed a service rig at the injection well site. An EXCO representative stated that the Irvin Well may have undergone repairs.
20. On September 6, 2011, EPA sent an information request pursuant to 40 C.F.R. § 144.51 to Respondent concerning the Irvin Well. Respondent submitted its answers to EPA's information request on September 26, 2011 ("the Response").
21. On information and belief, the Irvin Well failed mechanical integrity sometime in early April, 2011 when brine fluid was observed to be flowing from the annulus at the well head. Per the Response, the amount of leaked brine fluid increased from 437 barrels ("bbls") in April, 2011, to 9,420 bbls in July, 2011. Respondent continued to inject into the Irvin Well during this time and did not cease injection operations until August 4, 2011. Respondent never informed EPA that the Irvin Well failed mechanical integrity.
22. Per the Response, Respondent conducted a rework of the Irvin Well during July and August, 2011. Respondent "determined in late July that a rework of the Irvin Well would be required . . ." Respondent did not notify EPA of the rework until August 19, 2011, when the rework was "essentially complete."
23. Per the Response, Respondent "shut down all operations" at the Irvin Well on August 4,

2011.

### III. VIOLATIONS

24. The Findings of Fact and Conclusions of Law contained in paragraphs 4 through 23 herein are incorporated into the Violations below.

#### Permit Violation #1: Monitoring Requirements

25. Part II, Section C.4 of the Permit requires that “a mechanical integrity test demonstration shall be conducted whenever protective casing or tubing is removed from the well, the packer is resealed, or a well failure is evident. The permittee may continue operation only if he or she has successfully demonstrated to the Director the mechanical integrity of the permitted well. The permittee shall cease injection operations if a loss of mechanical integrity becomes evident or if mechanical integrity cannot be demonstrated.”

26. Respondent failed to cease injection operations into the Irvin Well once a loss of mechanical integrity became evident in early April and did not cease injection operations until August 4, 2011.

27. Respondent’s failure to cease injection operations after a loss of mechanical integrity became evident constitutes a violation of Part II, Section C.4 of the Permit and the SDWA.

#### Permit Violation # 2: Reporting and Notification Requirements

28. Part II, Section D.4 of the Permit requires the permittee to “give advance notice to the Director (the Regional Administrator of EPA *see* 40 C.F.R. § 144.3) of any planned changes in the permitted facility or activity which may result in non-compliance with permit requirements.”

29. Respondent conducted a rework of the Irvin Well during July and August, 2011. Respondent did not notify EPA of the rework until August 19, 2011, when the rework was essentially complete.

30. Respondent’s failure to give EPA advance notice of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements constitutes a violation of Part II, Section D.4 of the Permit and the SDWA.

#### Permit Violation # 3: Reporting and Notification Requirements

31. Part II, Section D.6 of the Permit requires the permittee to “give notice to the Director as soon as possible of any planned physical alterations or additions to the facility.”

32. Respondent conducted a rework of the Irvin Well during July and August, 2011.

Respondent did not notify EPA of the rework until August 19, 2011, when the rework was essentially complete.

33. Respondent's failure to give EPA notice as soon as possible of planned physical alterations to the Irvin Well constitutes a violation of Part II, Section D.6 of the Permit, and the SDWA.

Permit Violation # 4: Reporting and Notification Requirements

34. Part II, Section D.11 of the Permit requires the permittee to "notify the Director of his or her intent to conduct a mechanical integrity test at least 30 days prior to such a demonstration."

35. On August 19, 2011, Respondent notified EPA of its intent to conduct a mechanical integrity test at the Irvin Well one day later on August 20, 2011.

36. Respondent's failure to notify the director of its intent to conduct a mechanical integrity test at least 30 days prior to such a demonstration constitutes a violation of Part II, Section D.11 of the Permit and the SDWA.

Permit Violation # 5: Operating Requirements

37. Part III, Section B.4 of the Permit requires that the "[i]njection pressure, measured at the surface, shall not exceed 3240 PSI."

38. Respondent's 2010 maximum injection pressure for the months of March, April, and May of 2010 was measured at 3,250 PSIG.

39. Respondent exceeded the 3,240 PSIG Injection Pressure Limitation which constitutes a violation of Part III, Section B.4 of the Permit and the SDWA.

**IV. AGREEMENT AND ORDER**

40. Respondent certifies as of the date it signs this CAFO that it is operating the Irvin Well in compliance with the provisions of the Permit and the SDWA and that all violations alleged in this CAFO have been remedied.

41. Respondent shall comply at all times with any effective EPA Permit issued for the Irvin Well.

42. Respondent agrees to take certain additional measures to further minimize or correct any adverse impact on the environment resulting from noncompliance with the Permit:

- a. By June 1, 2012, Respondent shall either: 1) complete a rework of the Irvin Well and demonstrate mechanical integrity as defined at 40 C.F.R. § 146.8; or 2) plug and abandon the well in accordance with Part III, Section C of the Permit.

- b. At all times after the effective date of this CAFO, Respondent shall report any noncompliance with terms of the effective permit. All noncompliance must be orally reported within 24 hours of the incident. A written report must follow within 5 days of the reported incident. The written submission must contain a description of the noncompliance and its cause; the period of noncompliance; including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
- c. At all times after the effective date of this CAFO, the injection pressure shall not exceed a surface injection pressure maximum of 3240 psi and a bottom hole pressure maximum of 6718 psi. These pressure calculations are based on the specific gravity of the injection fluid not exceeding 1.10. If the specific gravity of the injection fluid exceeds 1.10, then the surface injection pressure must be reduced so as not to exceed the bottom hole pressure. Injection at a pressure which initiates new fractures or propagates existing fractures in the confining zone adjacent to underground sources of drinking water or causes the movement of injection or formation fluids into an underground source of drinking water is prohibited.
- d. At all times after the effective date of this CAFO, upon future notification of the Director that the Irvin Well has failed mechanical integrity as defined at 40 C.F.R. § 146.8, the permittee shall, within ninety (90) days, either repair the well and have it retested for mechanical integrity, or plug and abandon the well in accordance with the permittee's approved plugging and abandonment plan.

#### V. ASSESSMENT OF PENALTY

- 43. In settlement of the allegations enumerated above, Respondent agrees to pay the civil penalty amount of one hundred fifty-nine thousand, six hundred and twenty-four dollars (\$159,624) in satisfaction of all claims for civil penalties for the violations cited herein. This does not constitute a "demand" as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.
- 44. Within thirty (30) days of the effective date of this Order, EXCO shall pay a civil penalty one hundred fifty-nine thousand, six hundred and twenty-four dollars (\$159,624) in the following manner:
  - A. All payments by EXCO shall reference EXCO's name and address, and the Docket Number of this action, i.e., SDWA 03-2012-0061;
  - 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: John Schmid 202-874-7026 or REX, 1-866-234-5681

H. On-Line Payment Option:

<https://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)

J. A copy of EXCO's check or a copy of EXCO's electronic fund transfer shall be sent simultaneously to the following:

U.S. Environmental Protection Agency  
Regional Hearing Clerk (3RC00)  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029;

Mr. Roger Reinhart  
Ground Water & Enforcement Branch  
U.S. Environmental Protection Agency  
Region III (Mail Code 3WP22)  
1650 Arch Street  
Philadelphia, PA 19103-2029;

and

Zachary Moor  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region III (Mail Code 3RC20)  
1650 Arch Street  
Philadelphia, PA 19103-2029

45. Failure to pay any portion of the penalty assessed by this CAFO as directed subjects EXCO to a collection action under Section 1423(c)(7) of the SDWA, 42 U.S.C. § 300h-2(c)(7). The validity, amount and appropriateness of the penalty are not subject to review in a collection proceeding. 15 U.S.C. § 2615(a)(4)(A). Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest on unpaid penalties, and a charge to cover the cost of processing and handling a delinquent claim. Interest will begin to accrue on this civil



penalty if EXCO has not paid it within fifteen days of the date due. Interest will be assessed at the rate of the United States Treasury tax and loan rate. 40 C.F.R. § 13.11. In addition, a quarterly nonpayment penalty charge may be assessed on any delinquent debt pursuant to Section 1423(c)(7) of the SDWA, 42 U.S.C. § 300h-2. EPA will assess a \$15.00 administrative handling charge for administrative costs for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains due.

## **VI. GENERAL PROVISIONS**

46. For the purpose of this proceeding, Respondent admits the jurisdictional allegations of the CAFO and agrees not to contest, in any administrative or judicial forum, EPA's jurisdiction to enter into this CAFO.
47. Respondent admits the specific factual allegations contained in this CAFO.
48. Respondent consents to the assessment of any stated civil penalty, to the issuance of any specified compliance or corrective action order, to any conditions specified in this CAFO, and to any stated Permit Action.
49. For the purposes of this proceeding, Respondent waives any right to contest the allegations and its right to appeal the final order.
50. The provisions of this CAFO shall apply and be binding upon Respondent, its officers, directors, agents, servants, authorized representatives, employees and successors or assigns. Action or inaction of any persons, firms, contractors, employees, agents, or corporations acting under, through, or for Respondent shall not excuse any failure of Respondent to fully perform its obligations under this CAFO.
51. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law and ordinance, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit. This CAFO does not constitute a waiver, suspension or modification of the requirements of 40 C.F.R. § 147.1950-1955, which remain in full force and effect.
52. Violations of the terms of this CAFO after its effective date may subject Respondent to a civil action in a United States district court with penalties up to \$37,500 per day of violation as authorized by Sections 1423(b) of the SDWA, 42 U.S.C. § 300h-2(b).
53. This CAFO resolves only the civil claims for the specific violations alleged in this CAFO. EPA reserves any rights and remedies available to it under the SDWA, 42 U.S.C. § 300f, et. seq., the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction.
54. The final order shall not in any case affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any

violations of law. The final order resolves only those causes of action alleged in the consent agreement. The final order does not waive, extinguish or otherwise affect respondent's obligation to comply with all applicable provisions of the SDWA and regulations promulgated thereunder.

55. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO, or one or more of its terms and conditions, is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Regional Administrator or his designee, then the entire CAFO shall be null and void.

56. Nothing in this CAFO shall be construed as prohibiting, altering or in any way eliminating the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violations of this CAFO or of the statutes and regulations upon which this CAFO is based or for Respondent's violation of any applicable provision of law.

57. Entry of this CAFO is a final settlement of all civil violations alleged in this CAFO. EPA shall have the right to institute a new and separate action to recover additional civil penalties for the claims made in this CAFO if the EPA obtains evidence that the information and/or representations of Respondent are false, or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action, civil or criminal, the EPA may have under law or equity in such event.

58. The penalty specified above shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

#### **VII. WAIVER OF HEARING**

59. Respondent hereby expressly waives its right to a hearing, pursuant to Section 1423(c)(3)(A) of the SDWA, 42 U.S.C. § 300h-2(c)(3)(A), on any issue of law or fact in this matter and consents to issuance of this CAFO without adjudication. Respondent also waives its right to appeal the Final Order issued in this case.

#### **VIII. PUBLIC NOTICE**

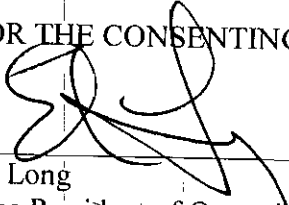
60. Pursuant to Section 1423(c)(3)(B) of the SDWA, 42 U.S.C. § 300h-2(c)(3)(B) and 40 C.F.R. § 22.45(b), EPA is providing public notice and an opportunity to comment on the CAFO prior to issuance.

#### **IX. EFFECTIVE DATE**

61. This CAFO will be issued after a forty (40) day notice period, execution by an authorized representative of EPA, and filing with the regional hearing clerk. It will become final and effective 30 day after issuance. Payment of the civil penalty assessed in this CAFO is due thirty (30) days after the effective date.

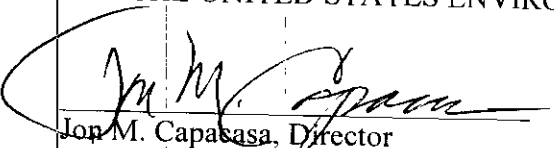
62. The undersigned representative of Respondent certifies that he is fully authorized by Respondent to enter into the terms and conditions of this CAFO and to execute and legally bind it.

FOR THE CONSENTING PARTIES:

  
\_\_\_\_\_  
Ed Long  
Vice President of Operations  
EXCO Resources (PA), LLC

Date: 2/16/12

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

  
\_\_\_\_\_  
Jon M. Capasasa, Director  
Water Protection Division  
U.S. EPA, Region III

Date: 3/30/12

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

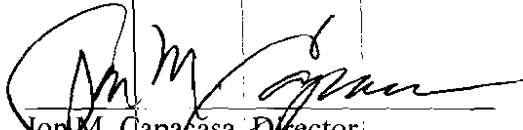
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Warrendale, PA, 15086-5501	)	
	)	
	)	Proceeding under Section
	)	1423(c) of the Safe Drinking
	)	Water Act, 42 U.S.C. § 300h-2(c)

**FINAL ORDER**

Complainant, the Director of the Water Protection Division, U.S. Environmental Protection Agency – Region III, and Respondent, EXCO Resources (PA), LLC, have executed this Consent Agreement and Final Order which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (“Consolidated Rules of Practice”). The terms of this foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

NOW, THEREFORE, PURSUANT TO Section 1423 of the Safe Drinking Water Act, as amended, 42 U.S.C. § 300h-2 (“SDWA”), and the Consolidated Rules of Practice, and having determined that the penalty agreed to in the Consent Agreement is based on a consideration of the factors set forth in Section 1423(c)(4)(B) of the SDWA, IT IS HEREBY ORDERED that the Respondent pay a penalty of one hundred and fifty nine thousand, six hundred and twenty- four dollars (\$159,624) and comply with the terms and conditions of the Consent Agreement.

Prior to the signing of this order, the foregoing Consent Agreement was put out for public comment as described at 42 U.S.C. § 300h-2(c)(3)(B) and 40 C.F.R. § 22.45(b). In accordance with 42 U.S.C. § 300h-2(c)(3)(d), this order will become effective 30 days following its issuance.

  
Jon M. Capacasa, Director  
Water Protection Division  
U.S. EPA, Region III

Date: 3/30/12

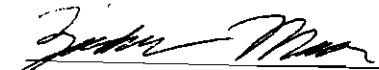
**CERTIFICATE OF SERVICE**

I hereby certify that on this day, I caused to be filed with the Regional Hearing Clerk, EPA Region III, the original Consent Agreement and Final Order, and that copies of this document were sent to the following individual in the manner described below:

Copy by Certified Mail  
Return Receipt Requested:

Heather Lamparter, Esq.  
EXCO Resources (PA), LLC  
300 Ericsson Drive, Suite 200  
Warrendale, PA 15086-5501

Date: 3/30/2012

  
Zachary Moor  
Assistant Regional Counsel  
U.S. EPA, Region III