

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

IN THE MATTER OF:

CNX Gas Company LLC
1000 Consol Energy Drive
Canonsburg, PA 15037,

Respondent.

) Docket No.
) SDWA-03-2009-0224
)
)
)
) CONSENT AGREEMENT
) AND FINAL ORDER
)
)
)
)
) Proceeding under Section
) 1423(c) of the Safe Drinking
) Water Act, 42 U.S.C. § 300h-2(c)

2010 SEP 24 PM 3:59

RENEWED

L. Johnson

I. STATUTORY AND REGULATORY AUTHORITY

1. This Consent Agreement and Final Order ("CAFO") is entered into by the Director, Water Protection Division, United States Environmental Protection Agency ("EPA"), Region III ("Complainant") and CNX Gas Company LLC ("Respondent" or "CNX"), 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. The parties having agreed to settlement of Respondent's SDWA violations, this CAFO 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 has delegated the authority to the Water Protection Division Director of EPA, Region III ("Director").
2. Section 1422(c) of the SDWA, 42 U.S.C. § 300h-2(c), requires EPA to administer the Underground Injection Control ("UIC") program in states which do not have approved state programs ("primacy"). 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.

3. The UIC regulations at 40 C.F.R. § 144.11 prohibit any underground injection, except into a well authorized by rule or by permit issued under the UIC program. See also 42 U.S.C. § 300h(b)(1)(A).
4. The regulations at 40 C.F.R. § 144.6(b)(1), define Class II injection wells as wells which (1) inject fluids 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, unless those waters are classified as a hazardous waste at the time of injection; (2) For enhanced recovery of oil or natural gas; and (3) For storage of hydrocarbons which are liquid at standard temperature and pressure.
5. Pursuant to Section 1423(c)(2) of the SDWA, 42 U.S.C. § 300h-2(c)(1), 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, the Administrator of the EPA is authorized to issue an order requiring compliance and/or assessing administrative penalties against any person who has violated an applicable UIC program requirement. For violations pertaining to Class II injection wells occurring between March 15, 2004 and January 12, 2009, the Administrator may assess a penalty amount that is up to \$6,500 per day for each violation, and a total penalty amount that is up to \$157,500.

II. FINDINGS OF FACT

6. CNX is a "person" within the meaning of Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12).
7. In May, 2005, Respondent submitted to EPA a permit application for the operation of the Morris Run 1 Injection Well located within the Consolidation Coal Company abandoned Blacksville 1 mine in Greene County, Pennsylvania ("Facility").
8. Respondent's permit application provided operational information relevant to the Morris Run 1 Injection Well that included analytical results of produced water samples from two local coal bed methane ("CBM") wells known as the Kiger and Blockhouse wells. The analytical results provided by Respondent showed that the total dissolved solids ("TDS") concentration in the Kiger well sample was 18,200 milligrams per liter ("mg/l") and in the Blockhouse well sample was 10,400 mg/l. Respondent stated in the permit application that it anticipated that water quality will not vary significantly from well to well.

9. Respondent's permit application provided that "[t]he area immediately around the injection site will be secured with a chain-link fence fitted with a locked entry gate. Additionally, the tanker truck tap-in will be situated within a locked valve box and/or fitted with a locking connector. Any breaches in the security of the injection point will be remedied immediately."
10. On September 1, 2005, EPA issued Permit Number PAS2D210BGRE (the "Permit") to Respondent as the permittee authorizing it to inject coal bed methane fluid through a Class IID injection well, the Morris Run 1 Injection Well, into a mine pool, the upper level of which is at an elevation of greater than 700 feet below the ground surface.
11. Part 1, Section D.4 of the Permit (Proper Operation and Maintenance) provides that the permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed and used by the permittee to achieve compliance with the permit. The provision further provides that proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training.
12. Part 1, Section D.5 (Duty to Provide Information) of the Permit provides that if the permittee becomes aware of any incomplete or incorrect information in the permit application or subsequent reports, the permittee shall promptly submit information addressing these deficiencies.
13. Part II, Section C.2 (Monitoring Requirements) of the Permit provides that cumulative volume shall be continuously monitored.
14. Part II, Section D.3.a.2 (Reporting and Notification Requirements, Twenty-four Hour Reporting) of the Permit provides that the permittee shall orally report to the Director within 24 hours any noncompliance which may endanger health or the environment. The Permit further provides that any noncompliance with a permit condition shall be included as information which must be reported orally within 24 hours.
15. Part III, Section B.2 of the Permit (Injection Fluid) provides that the permittee shall not inject any other fluid, other than the fluid produced in association with CNX's CBM production wells ("produced fluid").
16. At all times since September 1, 2005, Respondent has been the permittee and has operated the Morris Run 1 Injection Well and the property where such well is located.
17. CNX utilized contract haulers to transport produced fluid to the Morris Run 1 Injection Well for disposal. Such contract haulers also transported sewage for treatment and disposal at other facilities.

18. EPA conducted inspections of the Facility on August 7, 11, 19 and 20, 2008.
19. At the time of the August 7, 2008 EPA inspection, the gate at the Facility was open, no lock was installed on the ball valves at the truck offloading area, no flow or pressure meter was in operation in the flow line at the Morris Run 1 Injection Well, the wire from the previous flow meter had been cut and was hanging from the fence, and no CNX personnel or operators were present at the Facility.
20. From December 23, 2006 until at least August 20, 2008, no flow meter was operational at the Facility to continuously monitor the flow rate, and cumulative volume.
21. During the period of time from December 23, 2006 until at least August 20, 2008, Respondent's only method of recording the volume injected to the Morris Run 1 Injection Well was a truck log book kept at the Facility.
22. Since September 1, 2005, not all truck drivers that discharged to the Morris Run 1 Injection Well recorded or accurately recorded in the log book at the Facility the volume of produced water that they discharged.
23. In an August 26, 2008 letter, EPA requested Respondent to provide specific information pertaining to Respondent's operation of the Facility.
24. In Respondent's responses to EPA dated September 25, 2008, February 5, 2009 and March 20, 2009 it provided sampling results of the fluids deposited into the Morris Run 1 Injection Well by contract haulers for the approximate period of time from September 2007 through March 2009. According to the sample results, at least 100 truck loads of produced water were deposited into the Morris Run 1 Injection Well that had TDS levels that varied significantly from the expected TDS levels provided in the permit application and eight truck loads of produced water were deposited into the Morris Run 1 Injection Well that contained E.coli.
25. E.coli may be an indicator of the presence of sewage.
26. The trucks that haul CBM produced water to the Facility may have also hauled septic waste to other locations.
27. In its permit application, Respondent did not identify E.coli as a constituent that would be present in the CBM production fluid disposed at the Morris Run 1 Injection Well.
28. In a letter dated March 12, 2010, CNX advised EPA that it intends to permanently close the Morris Run 1 Injection Well and that closure will be performed in accordance with the Plugging and Abandonment Plan in Attachment Q to the application for the UIC permit. CNX also stated that the plugging and abandonment would be coordinated with the Pennsylvania

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Department of Environmental Protection ("PADEP") in addition to EPA since the well is also covered by the PADEP Coal Mining Activity Permit for the Blacksville No. 2 mine.

29. In order to resolve the violations described herein, EPA and Respondent enter into this CAFO.

III. CONCLUSIONS OF LAW

30. Respondent's failure, as provided in Section II (Findings of Fact) above, to provide operator staffing at the Facility constitutes a violation of Part 1, Section D.4 (Proper Operation and Maintenance) of the Permit and the SDWA.
31. Respondent's failure, as provided in Section II (Findings of Fact) above, to promptly submit information to EPA regarding TDS levels present in the produced water disposed into the Morris Run 1 Injection Well that were significantly higher than the levels included in the Permit application constitutes a violation of Part 1, Section D.5 (Duty to Provide Information) of the Permit and the SDWA.
32. Respondent's failure, as provided in Section II (Findings of Fact) above, to promptly submit information to EPA regarding E. coli present in the produced water disposed into the Morris Run 1 Injection Well that Respondent did not identify in the Permit application constitutes violations of Part 1, Section D.5 (Duty to Provide Information) of the Permit and the SDWA.
33. Respondent's failure, as provided in Section II (Findings of Fact) above, to continuously monitor the cumulative volume during the disposal of produced fluid into the Morris Run 1 Injection Well constitutes violations of Part II, Section C.2 (Monitoring Requirements) of the Permit and the SDWA.
34. Respondent's failure, as provided in Section II (Findings of Fact) above, to report to the Director its noncompliance with the Permit conditions constitutes violations of Part II, Section D.3.a.2 (Reporting and Notification Requirements, Twenty-four Hour Reporting) of the Permit and the SDWA.
35. Based on the Findings of Fact set forth in Section II above, the Complainant concludes that Respondent has violated the requirements set forth in the Permit and is liable for a civil penalty in accordance with Section 300h-2(c)(2) of the SDWA, 42 U.S.C. § 1423(c)(2).

IV. ORDER ON CONSENT AND ASSESSMENT OF PENALTY

36. In order to resolve the violations described herein, and to provide a legal framework for the payment of a penalty, EPA and Respondent enter into this ORDER ON CONSENT. Respondent consents to issuance of this CAFO and agrees to undertake all actions required by its terms and conditions. Respondent consents to the assessment of the civil penalty herein

and consents to issuance of the compliance order contained herein.

37. Respondent admits to EPA's jurisdiction as set forth in Section I of this CAFO, and waives any defenses it might have as to jurisdiction and venue. Respondent agrees not to contest EPA jurisdiction to issue this CAFO and not to contest EPA jurisdiction to enforce the terms of this CAFO.
38. Respondent neither admits nor denies the Findings of Fact set forth in Section II and Conclusions of Law set forth in Section III, above.
39. Each party to this action shall pay its own costs and attorney fees.
40. The provisions of this CAFO shall be binding upon the Respondent, and its officers, principals, directors, successors and assigns.
41. Based on the foregoing FINDINGS, and having taken into account the factors listed in Section 1423(c)(4)(B) of the SDWA, 42 U.S.C. § 300h-2(c)(4)(B), including but not limited to: (1) the seriousness of Respondent's violations cited in Paragraphs 30 through 34, (2) the economic benefit accruing to Respondent resulting from the violations; (3) Respondent's history of other violations of Part C of the SDWA; (4) Respondent's good faith efforts to comply with the SDWA; (5) the economic impact of the penalty described below on the Respondent; (6) other such matters as justice may require; and (7) the administrative record; EPA, under the authority of section 1423(a) and (c) of the SDWA, 42 U.S.C. §§ 300h-2(a) and (c), HEREBY ORDERS AND RESPONDENT HEREBY CONSENTS:

Order for Compliance

42. Respondent certifies as of the date that this CAFO becomes effective pursuant to Section IX (Effective Date), below that all violations alleged in this CAFO have been remedied and that the Morris Run 1 Injection Well is no longer in operation.
43. At all times after the effective date as provided in Section IX (Effective Date) of this CAFO Respondent shall not operate the Morris Run 1 Injection Well.
44. Within (60) sixty days of the effective date of this CAFO, Respondent shall plug and abandon the Morris Run 1 Injection Well, in accordance with the following requirements:
 - A. Part III.C of the Permit;
 - B. Attachment Q (Plugging and Abandonment Plan) of the Permit Application
45. Respondent shall notify the Director (45) forty-five days before the plugging and abandonment

of the Morris Run 1 Injection Well.

46. Within (30) thirty days after plugging the Morris Run 1 Injection Well, the Respondent shall submit a completed EPA Form Number 7520-14 (Plugging and Abandonment Plan) and a report to the EPA which shall consist of a statement that the Morris Run 1 Injection Well was plugged and abandoned in accordance with Part III.C of the Permit.

47. All submissions required by this CAFO shall be signed by a responsible corporate officer of at least the level of vice-president, who shall make the following certification:

"I certify under the penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

48. Until such time as the Morris Run 1 Injection Well is plugged and abandoned, Respondent shall maintain security at the Facility as necessary to assure that no wastewater or any other fluids are discharged into the Morris Run 1 Injection Well.

49. All information required to be submitted to EPA pursuant to this CAFO shall be sent to:

Karen D. Johnson
Ground Water Enforcement Branch
U.S. EPA, Region III
1650 Arch Street (3WP22)
Philadelphia, PA 19103-2029
Phone: (215) 814-5445

Assessment of Penalty

50. In settlement of the allegations enumerated above, Respondent agrees to pay the civil penalty amount of one hundred fifty-seven thousand five hundred dollars (\$157,500) 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. § 2412.51. Within thirty (30) days of the effective date of this Order, Respondent shall pay a civil penalty of one hundred fifty-seven thousand five hundred dollars (\$157,500) in the following manner:

A. All payments by Respondent shall reference Respondent's name and address, and the

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Docket Number of this action, i.e., SDWA 03-2009-0224;

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: Eric Volck 513-487-2105

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

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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

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

J. A copy of Respondent's check or a copy of Respondent'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. Steve Platt
Ground Water & Enforcement Branch
U.S. Environmental Protection Agency
Region III (Mail Code 3WP22)
1650 Arch Street
Philadelphia, PA 19103-2029;

and

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

51. Failure to pay any portion of the penalty assessed by this CAFO as directed subjects the Respondent 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 the Respondent 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. In addition, 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.

V. GENERAL PROVISIONS

52. 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.
53. Violations of the terms of this CAFO after its effective date or the date of final judgment in the event of an appeal under Section 1423(c)(6) of the SDWA, 42 U.S.C. § 300h-2(c)(6), may subject the Respondent to a civil action in a United States district court with penalties up to \$37,500 per day of violation as authorized in Sections 1423(b) of the SDWA, 42 U.S.C. § 300h-2(b).
54. The penalty specified above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.
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.

VI. WAIVER OF HEARING

56. 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. The Respondent also waives its right to appeal the Final Order issued in this case.

VII. RESERVATION OF RIGHTS

57. This Consent Agreement and the accompanying Final Order resolve only the civil claims for the specific violations alleged in this CAFO. EPA reserves the right to commence action against any person, including Respondent, in response to any condition that EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in 40 C.F.R. § 22.18(c). Further, 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, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.
58. 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.
59. 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 the 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.
60. Issuance of this ORDER is not an election by the EPA to forgo any civil or any criminal action other than the civil violations resolved by this action.

VIII. PUBLIC NOTICE

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

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Agreement prior to issuing the Final Order.

IX. EFFECTIVE DATE

62. This CAFO will be issued after a forty (40) day comment period, execution by an authorized representative of the Environmental Protection Agency and filing with the regional hearing clerk. It will become final and effective thirty (30) days after issuance.

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

FOR RESPONDENT:

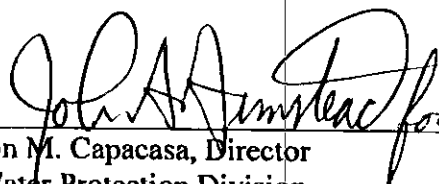


Nicholas DeLuliis, President
CNX Gas Company LLC

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Issued this 24 day of September 2010

FOR COMPLAINANT:

A handwritten signature in black ink, appearing to read "Jon M. Capacasa", written over a horizontal line.

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