



west virginia department of environmental protection

Division of Water and Waste Management
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Jim Justice, Governor
Austin Caperton, Cabinet Secretary
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**CONSENT ORDER
ISSUED UNDER THE
ABOVEGROUND STORAGE TANK ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 30**

TO: CNX Gas Company, LLC
Carrie B. Crumpton, General Manager E&P HSE
1000 Consol Energy Drive
Canonsburg, PA 15317

DATE: November 3, 2017
ORDER NO.: AST-18-002

INTRODUCTION

This Consent Order is issued by the Director of the Division of Water and Waste Management (hereinafter “Director”), under the authority of West Virginia Code, Chapter 22, Article 30, Section 1 et seq. to CNX Gas Company, LLC (hereinafter “CNX”).

FINDINGS OF FACT

In support of this Order, the Director hereby finds the following:

1. CNX is the owner/operator of one hundred thirteen (113) level one (1) aboveground storage tanks (ASTs) located in various counties in West Virginia. This facility operates under numerous WV Identification Nos.
2. On November 17, 2015, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of various CNX facilities in Barbour County, West Virginia. During the inspection, the following areas of concern were observed and documented:
 - a) ASTs sat directly on the ground, and the AST bottoms were not visible, causing concerns related to corrosion protection and leak detection.
 - b) AST secondary containment was not adequate.
 - c) An AST was not properly registered and labeled.

3. On November 17, 2015, WVDEP personnel conducted an inspection of various CNX facilities in Upshur County, West Virginia. During the inspection, the following areas of concern were observed and documented:
 - a) ASTs sat directly on the ground, and the AST bottoms were not visible, causing concerns related to corrosion protection and leak detection.
 - b) Two (2) ASTs that were in use were designated as "not fit for service."
4. On March 10, 2016, WVDEP personnel conducted an inspection of various CNX facilities in McDowell County, West Virginia. During the inspection, the following areas of concern were observed and documented:
 - a) ASTs sat directly on the ground, and the bottoms were not visible, causing concerns related to corrosion protection and leak detection.
5. On March 22, 2016, WVDEP personnel met with CNX representatives to address the various areas of concern related to ASTs at the aforementioned facilities.
6. On June 14, 2016, WVDEP personnel conducted an inspection of facilities in Raleigh County, West Virginia. During the inspection, the following area of concern was observed and documented:
 - a) ASTs sat directly on the ground and the bottoms were not visible, causing concerns related to corrosion protection and leak detection.
7. On August 1, 2016, WV Legislative Rule 47CSR63 became effective. This Rule includes, but is not limited to, AST requirements regarding corrosion protection, leak detection, and secondary containment. The specific requirements of this Rule have or will become effective on various phase-in dates, depending upon the AST's designated Level. Had these requirements been in effect during the aforementioned inspections, the observed and documented areas of concern would have been violations of WV Legislative Rule 47CSR63. Therefore, in anticipation of these requirements, CNX requested to enter into a Consent Order with WVDEP as a means to resolve any foreseeable non-compliance with WV Legislative Rule.
8. From September 2016 through December 2016, CNX submitted numerous closure plans for its Level One (1) and Level Two (2) ASTs in various counties.
9. On November 2, 2017, CNX submitted an approvable proposed plan of corrective action (POCA) to address areas of non-compliance with the AST requirements of WV Legislative Rule 47CSR63.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with Chapter 22, Article 30, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

1. The approved revised POCA, dated November 2, 2017, and associated schedule is incorporated into and has become part of this Order. Failure to adhere to the approved POCA and associated schedule is a violation of this Order.
2. Upon the effective date of this Order, CNX agrees to the following stipulated penalties. Stipulated penalties, as outlined below, shall end twelve (12) months after the date of the last compliance milestone in the approved POCA.

- a. Compliance Milestones – The following stipulated penalties will accrue per violation per day for failing to achieve any compliance milestone of the POCA.

Period of Noncompliance	Penalty Per Day per Violation
1 st through 14 th Days	\$500
15 th through 30 th Days	\$1,000
31 st Day and beyond	\$1,500

- b. Reporting Requirements – The following stipulated penalties will accrue per violation per day for each violation of any reporting requirement of the POCA.

Period of Noncompliance	Penalty Per Day per Violation
1 st through 14 th Days	\$200
15 th through 30 th Days	\$400
31 st Day and beyond	\$600


CNX shall pay any stipulated penalty within thirty (30) days of receiving WVDEP's written demand. Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. Payment shall be paid to WVDEP for deposit in the AST Administrative Fund and shall be mailed to:

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WV-DEP
601 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

1. CNX hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 30, Section 18 of the Code of West Virginia. Under this Order, CNX agrees to take all actions required by the terms and conditions of this Order and consents to and will not contest the Director's jurisdiction regarding this Order. However, CNX does not admit to any factual and legal determinations made by the Director and reserves all rights and defenses available regarding liability or responsibility in any proceedings regarding CNX other than proceedings, administrative or civil, to enforce this Order.
2. The Director reserves the right to take further action if compliance with the terms and conditions of this Order does not adequately address the violations noted herein and reserves all rights and defenses which he may have pursuant to any legal authority, as well as the right to raise, as a basis for supporting such legal authority or defenses, facts other than those contained in the Findings of Fact.
3. If any event occurs which causes delay in the achievement of the requirements of this Order, CNX shall have the burden of proving that the delay was caused by circumstances beyond its reasonable control which could not have been overcome by due diligence (i.e., force majeure). Force majeure shall not include delays caused or contributed to by the lack of sufficient funding. Within three (3) working days after CNX becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and shall, within ten (10) working days of initial notification, submit a detailed written explanation of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and a timetable by which CNX intends to implement these measures. If the Director agrees that the delay has been or will be caused by circumstances beyond the reasonable control of CNX (i.e., force majeure), the time for performance hereunder shall be extended for a period of time equal to the delay resulting from such circumstances. A force majeure amendment granted by the Director shall be considered a binding extension of this Order and of the requirements herein. The determination of the Director shall be final and not subject to appeal.
4. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving CNX of the obligation to comply with any applicable law, permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may subject CNX to additional penalties and injunctive relief in accordance with the applicable law.
5. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.
6. This Order is binding on CNX, its successors and assigns.

7. This Order shall terminate upon CNX's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



ABC Craig Neal
Vice President of Operations
CNX Gas Company, LLC

11/10/17
Date

Public Notice begin:

Date

Public Notice end:

Date

Scott G. Mandirola, Director
Division of Water and Waste Management

Date