

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**IN THE MATTER OF:**

Seneca Resources	:	Violations of Sections 401, 301,
Gray's Run, Pad E to Pad G, 6"	:	and 307 of the Clean Streams Law,
water line	:	and Section 301 of the Solid Waste
Permit number ESX11-081-0052	:	Management Act
McIntyre and Lewis Twps.,	:	
Lycoming Co.	:	

**CONSENT ASSESSMENT OF CIVIL PENALTY**

This Consent Assessment of Civil Penalty (hereinafter "CACP") is entered into this 22<sup>nd</sup> day of April, 2013, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (hereinafter "Department"), and Seneca Resources (hereinafter "Seneca").

The Department has found and determined the following:

A. The Department is the agency with the duty and authority to administer and enforce the Oil and Gas Act, Act of December 19, 1984, P.L. 1140, as amended, 58 P.S. §§ 601.101-601.605 ("Oil and Gas Act"); the Solid Waste Management Act, Act of July 7, 1980, P.L. 380, as amended, 35 P.S. §§ 6018.101-6018.1003 ("Solid Waste Management Act"); The Clean Streams Law, Act of June 22, 1937, P.L. 1987, as amended, 35 P.S. §§ 691.1-691.1001 ("Clean Streams Law"); 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 promulgated thereunder

B. Seneca Resources (hereinafter "Seneca") is a Pennsylvania corporation authorized to do business in Pennsylvania which maintains a business address of 51 Zents Boulevard, Brookville, PA 15825.

C. Seneca owns and operates the Pad E to Pad G 6" water line which crosses Gray's Run. The Gray's Run water crossing is authorized by permit number ESX11-081-0052 (hereinafter "Water Crossing") located in McIntyre and Lewis Townships, Lycoming County, Pennsylvania.

D. Gray's Run is a Class A Trout Stream, an Exceptional Value Cold Water Fishery, and a Water of the Commonwealth.

E. On January 23, 2012, the Department inspected the Water Crossing construction site in response to a reported discharge to Gray's Run. The report came from DCNR Energy Forester, Tim Bahr, who observed discoloration in the stream at the Gray's Run Road Bridge

(hereinafter "Bridge") at approximately 11:00 A.M. Mr. Bahr traced the discoloration back to an inadvertent return at the Stream Crossing. Seneca also reported the inadvertent return to the Department. The stream crossing is approximately 5,000 feet upstream of the Bridge. A water quality monitoring station is also located at the Bridge.

- F. Upon arriving at the Water Crossing the Department noted the following;
- 1) the drill, drill truck, and other vehicles were on a small gravel pad off of Gray's Run Road;
  - 2) the drill bore pit was located approximately 75 feet from the western bank of the stream;
  - 3) a brown turbid discharge approximately 2 feet wide discharging from the side of the bank below the water line, which then flowed downstream;
  - 4) the discharge was confined to the west bank side of the stream by a gravel bar, and it appeared muddy and pearlescent in appearance in this part of the stream;
  - 5) a sample of the discharge was taken in the stream as close as possible to where it appeared to be entering the stream;
  - 6) samples were taken in the main portion of Gray's Run on the opposite side of the gravel bar, and approximately 20 feet upstream of the discharge sample;

G. The Department was then informed that there had been another discharge located on the other side of Gray's Run, along the east bank. Upon investigating, the Department found a small area of discoloration which appeared to be caught in a still eddy.

H. The Department was initially informed that the bore for the Water Crossing was to have been drilled on air. The Department was informed at the time of investigation that the Water Crossing had actually been drilled with a rotary drill using water and chemicals as well as air. The drill pressure was approximately 350 psi as opposed to 450 psi for a bentonite and water bore. For the boring process Aaron Enterprises was using 750 gallons of water and 2.5 gallons each of two formulations. The two chemicals that had been used for the boring are as follows;

- 1) Control Chemical's Foamer ES, which contains 30-40% Sodium Olefin Sulphonate, a surfactant;
- 2) Hole Control (previously known as Hi-Tech 100-50) which is a blend of vegetable oil lubricant and an anionic polyacrylamide emulsion polymer. Hole Control also contains up to 14% mineral spirits, according to the MSDS;

I. When the discharge happened the drillers were conducting a "push ream". The drillers lost approximately 100 gallons of the diluted mixture, approximately 13% of the total, according to Seneca. A silt sock was installed in Gray's Run, near the bank, to hold back further discharges.

J. The Department returned to Gray's Run on January 26, 2012, for a follow-up inspection. At the time of inspection, the drilling rig was being moved out from the Water Crossing. The Department was informed that the pipe was pulled into place the night of January 25, 2012 by Aaron Enterprises, the driller for Seneca. On the west side of Gray's Run there was a silt sock in place. The Department also noted only one small depression in the stream,

approximately 2 feet by 1.5 feet, which appeared to contain a milky substance. On the East side of the run there was an additional silt sock in place.

- K. On January 31, 2012, the Department issued Seneca a Notice of Violation for:
- 1) discharge of pollutorial substances to waters of the Commonwealth in violation of Section 401 of the Clean Streams Law, 35 P.S. §691.401;
  - 2) unpermitted discharge of an industrial waste into waters of the Commonwealth in violation of Section 301 of the Clean Streams Law, 35 P.S. §691.301;
  - 3) unauthorized discharge of an industrial waste into waters of the Commonwealth in violation of Section 307 of the Clean Streams Law, 35 P.S. §691.307; and
  - 4) failure to manage residual waste in violation of Section 301 of the Solid Waste Management Act, 35 P.S. §6018.301;

L. Section 1 of the Clean Streams Law 35 P.S. § 691.1, defines, in relevant part, “[p]ollution” to mean “contamination of any waters of the Commonwealth such as will create or is likely to create a nuisance or to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, . . . , or other legitimate beneficial uses, . . . , including but not limited to such contamination by alteration of the physical, chemical or biological properties of such waters, or change in temperature, taste, color or odor thereof, or the discharge of any liquid, gaseous, . . . , solid or other substances into such waters.”

M. Section 401 of the Clean Streams Law 35 P.S. §691.401, states, in relevant part, “[i]t shall be unlawful for any person or municipality to put or place into any of the waters of the Commonwealth, or allow or permit to be discharged from property owned or occupied by such person into any waters of the Commonwealth, any substance of any kind or character resulting in pollution as herein defined.”

N. Section 301 of the Clean Streams Law 35 P.S. §691.301, states, “[n]o person or municipality shall place or permit to be placed, or discharged or permit to flow, or continue to discharge or permit to flow, into any of the waters of the Commonwealth any industrial wastes, except as hereinafter provided in this act.”

O. Section 307(a) of the Clean Streams Law 35 P.S. §691.307(a), states, in relevant part, “[n]o person or municipality shall discharge or permit the discharge of industrial wastes in any manner, directly or indirectly, into any of the waters of the Commonwealth unless such discharge is authorized by the rules and regulations of the Department or such person or municipality has first obtained a permit from the Department.”

P. Section 301 of the Solid Waste Management Act, 35 P.S. §6018.301, states in relevant part, that “[n]o person or municipality shall store, transport, process, or dispose of residual waste within this Commonwealth unless such storage, or transportation, is consistent with or such processing or disposal is authorized by the rules and regulations of the Department and no person or municipality shall own or operate a residual waste processing or disposal

facility unless such person or municipality has first obtained a permit for such facility from the Department.”

Q. The unpermitted discharge of pollution substances, as described in Paragraphs E through I constitutes a violation of Section 401 of the Clean Streams Law, 35 P.S. §691.401, supra.

R. The unpermitted discharge of production fluids, an industrial waste, into the waters of the Commonwealth, as described in Paragraphs E through I constitutes a violation of Section 301 of the Clean Streams Law, 35 P.S. §301, supra.

S. The unpermitted discharge of production fluids, an industrial waste, into the waters of the Commonwealth, as described in Paragraphs E, through I constitutes a violation of Section 307 of the Clean Streams Law, 35 P.S. §307, supra.

T. The unpermitted discharges of residual waste as described in Paragraphs E through I; above, constitute violations of Section 301 of the Solid Waste Management Act, 35 P.S. §6018.301.

U. The failures to contain pollutorial substances and wastes from the drilling, altering, completing, recompleting, servicing and plugging the well, including brines, drill cuttings, drilling muds, oils, stimulation fluids, well treatment and servicing fluids, plugging and drilling fluids other than gases in a pit, tank or series of pits and tanks as described in Paragraphs E through I; above, constitute violations of Section 78.56(a) of the Department’s Rules and Regulations, 25 Pa Code §78.56(a).

V. The violations described in Paragraphs Q, R, and S, above, constitute unlawful conduct under Section 611 of the Clean Streams Law, 35 P.S. §691.611, a statutory nuisance under Section 601 of the Clean Streams Law, 35 P.S. §691.601, and subject Seneca to a claim for civil penalties pursuant to Section 605 of the Clean Streams Law, 35 P.S. §691.605.

W. The violation described in Paragraph P, above, constitutes unlawful conduct under Section 610 of the Solid Waste Management Act, 35 P.S. §6018.610, are a statutory nuisance under Section 601 of the Solid Waste Management Act, 35 P.S. §6018.601, and subject Seneca to civil penalty liability under Section 605 of the Solid Waste Management Act, 35 P.S. §6018.605.

X. The violations described in Paragraphs Q through T, above, constitute unlawful conduct under Section 601.509 of the Oil and Gas Act, 58 P.S. § 601.509; Section and 611 of the Clean Streams Law, 35 P.S. § 691. 611; and, Section 610 of the Solid Waste Management Act, 35 P.S. § 6018. 610; and, subject Seneca to a claim for civil penalties Section 506 of the Oil and Gas Act, 58 P.S. § 601.506; Section 605 of the Clean Streams Law, 35 P.S. § 691.605; and, Section 605 of the Solid Waste Management Act, 35 P.S. § 6018.605.

After full and complete negotiation of all matters set forth in this CACP and upon mutual exchange of the covenants herein, the parties desiring to avoid litigation and intending to be

legally bound, it is hereby ASSESSED by the Department and AGREED to by Seneca as follows:

1. **Assessment.** In resolution of the Department's claim for civil penalties, which the Department is authorized to pursue under Section 506 of the Oil and Gas Act, 58 P.S. § 601.506; and, Section 605 of the Solid Waste Management Act, 35 P.S. § 6018.605; the Department hereby assesses a civil penalty of Thirty Seven Thousand One Hundred Forty Five Dollars and Twenty Six Cents (\$37,145.26), which Seneca hereby agrees to pay.

2. **Civil Penalty Settlement.** Upon signing this CACP, Seneca shall pay the civil penalty assessed in Paragraph 1. This payment is in settlement of the Department's claim for civil penalties for the violations set forth in Paragraphs Q through T, above, for the time period set forth in Paragraphs E through I, above. The payment shall be made by corporate check or the like, made payable to the "Commonwealth of Pennsylvania", and forwarded to the East Region Oil and Gas Management, Pennsylvania Department of Environmental Protection, 208 West Third Street, Suite 101, Williamsport, Pennsylvania 17701-6448.

3. **Findings.**

(a) Seneca agrees that the findings in Paragraphs A through X, above, are true and correct and, in any matter or proceeding involving Seneca and the Department, Seneca 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 CACP in any matter or proceeding.

4. **Reservation of Rights.** The Department reserves all other rights with respect to any matter addressed by this CACP, including the right to require abatement of any conditions resulting from the events described in the findings. Seneca reserves the right to challenge any action which the Department may take, but waives the right to challenge the content or validity of this CACP.

IN WITNESS WHEREOF, the parties have caused this CACP to be executed by their duly authorized representatives. The undersigned representatives of Seneca certify, under penalty of law, as provided by 18 Pa. C.S. § 4904, that they are authorized to execute this CACP on behalf of Seneca; that Seneca consents to the entry of this CACP as an ASSESSMENT of the Department; that Seneca hereby knowingly waives any right to a hearing under the statutes referenced in this CACP; and that Seneca knowingly waives its right to appeal this CACP, 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. § 103(a) and Chapters 5A and 7A; or any other provision of law. Signature by Seneca's attorney certifies only that the agreement has been signed after consulting with counsel.

FOR SENECA RESOURCES:

FOR THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION:

*DA Kepler* 4/22/13  
 Signature (Date)

*Jennifer W. Means* 4/29/13  
 Signature (Date)

Douglas A. Kepler  
 Name (Typed or Printed)

Jennifer W. Means  
 Environmental Program Manager  
 Eastern District Oil & Gas

V.P. Env. Eng.  
 Title

*DALE A. ROUEKAMP* 4/25/13  
 Signature (Date)

*David M. Chuprinski* 4-30-13  
 Signature (Date)

DALE A. ROUEKAMP  
 Name (Typed or Printed)

~~Geoffrey J. Ayers~~  
 Asst. Regional Counsel  
 Northcentral Region

Chuprinski

VICE PRESIDENT  
 Title

*Christopher M. Trojchil* 4/22/2013  
 Signature (Date)

Christopher M. Trojchil  
 Name (Typed or Printed):  
 Attorney for Seneca Resources