

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**IN THE MATTER OF:**

Seneca Resources Corporation	:	Violations of the Oil and Gas Act, the
DCNR Tract 595, Well Pad F	:	Solid Waste Management Act, and
Permit Number 117-21117	:	the Department's Rules and
Bloss Township, Tioga County	:	Regulations

**CONSENT ASSESSMENT OF CIVIL PENALTY**

This Consent Assessment of Civil Penalty (hereinafter "CACP") is entered into this 21<sup>st</sup> day of March, 2013, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (hereinafter "Department"), and Seneca Resources Corporation (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 Pa. C.S. §§ 3201-3274 (hereinafter "2012 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"); and 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 (hereinafter "Regulations").

B. Seneca is a Pennsylvania Corporation authorized to do business in Pennsylvania, and which maintains a business address of 51 Zents Boulevard, Brookville, PA, 15825.

C. Seneca owns and operates a natural gas well pad known as the DCNR Tract 595, Well Pad F, which includes gas well Permit Number 117-21117 authorized by the Department (hereinafter "Gas Well Pad") located in Bloss Township, Tioga County, Pennsylvania.

D. On January 17, 2012, the Department inspected the Gas Well Pad and found the following:

- 1) puddles on the well pad surface were observed, and field measured conductivity measured from 2 mS/cm to 12 mS/cm.

E. On January 18, 2012, the Department inspected the Gas Well Pad and found the following:

- 1) most of the exposed soil on the well pad surface was not frozen though the temperature was approximately 20 degrees F;
- 2) a wet area of soil on the pad slope behind a row of wheelie trailers was observed and its field measured conductivity was over the limit of the field meter detection limit;
- 3) there was a separate divot on the slope which was draining liquid;

- 4) the Department notified the foreman onsite that the plastic liner on the pad was leaking and allowing hydraulic fracturing fluid to flow across the rock layer under the liner and out the side slope of the Gas Well Pad;
- 5) near the access road, a puddle had a field measured conductivity reading of 6.6 mS/cm;
- 6) an attempt was made to vacuum up the puddles the previous day;
- 7) the number of puddles was fewer than the previous day's inspection;
- 8) the puddles that remained on the well pad had elevated conductance; and,
- 9) the soil of the Gas Well Pad surface was moist and unfrozen, while the surrounding ground near the Gas Well Pad was frozen.

F. The January 17 and 18, 2012, Inspection Reports included a Notice of Violation (NOV) for the following:

- 1) creating the potential to cause pollution to the waters of the Commonwealth in violation of Section 402 of the Clean Streams Law, 35 P.S. § 691.402;
- 2) unpermitted disposal of residual waste in violation of Section 301 of the Solid Waste Management Act, 35 P.S. §6018.301;
- 3) the failure to control and dispose of fluids in a manner that prevents pollution of the waters of the Commonwealth in violation of Section 78.54 of the Department's Rules and Regulations, 25 Pa. Code §78.54; and,
- 5) failure to notify the Department of a pollutorial incident in violation of Section 91.33(a) of the Department's Rules and Regulations, 25 Pa. Code § 91.33(a).

G. On January 31, 2012, the Department inspected the Gas Well Pad and found the following:

- 1) the slope of the Gas Well Pad that had been draining hydraulic fracturing fluid since the last inspection on January 18, 2012, had field measured conductivity readings over the detection limit of the field meter;
- 2) sumps had been dug on the slope and near a row of wheelie trailers; and,
- 3) at the toe of the slope, a ditch had field measured conductivity readings over the detection limit of the field meter.

H. The January 31, 2012 Inspection Report included a NOV for the following:

- 1) creating the potential to cause pollution to the waters of the Commonwealth in violation of Section 402 of the Clean Streams Law, 35 P.S. § 691.402;
- 2) unpermitted disposal of residual waste in violation of Section 301 of the Solid Waste Management Act, 35 P.S. §6018.301;
- 3) the failure to control and dispose of fluids in a manner that prevents pollution of the waters of the Commonwealth in violation of Section 78.54 of the Department's Rules and Regulations, 25 Pa. Code § 78.54;

- 5) failure to notify the Department of a pollutorial incident in violation of Section 91.33(a) of the Department's Rules and Regulations, 25 Pa. Code § 91.33(a); and,
- 6) the failure to take necessary measures to prevent pollutants from directly or indirectly reaching waters of the Commonwealth, a violation of Section 91.34(a) of the Department's Rules and Regulations, 25 Pa. Code § 91.34(a).

I. On February 6, 2012, the Department inspected the Gas Well Pad and found the following:

- 1) the violations for the unreported release of hydraulic fracturing fluid on the Gas Well Pad surface and seeping out of a fill slope of the Gas Well Pad, were ongoing;
- 2) the field measured conductivity in the sediment trap at the toe of the slope had a reading over the limits of the field meter;
- 3) there was a row of wheelie trailers on top of the fill slope that was seeping contaminated fluid;
- 4) there were several holes in the liner where a wheelie trailer had been moved out of the ROW, up-slope of the sediment trap;
- 5) the liquid on the plastic liner had field measure conductivity over the detection limit of the field meter;
- 6) field measured conductivity readings were elevated over the Gas Well Pad surface;
- 7) fluid measured over the conductivity meter's limit of detection from the liner that contained seven (7) wheelie trailers;
- 8) a coupler was leaking fluid on the faulty liner where the trailers were lined up; the field measured conductivity was over the detection limit of the meter for that fluid;
- 9) the vacuum system was not on the plastic liner and puddles under the vacuum system were also over the detection limits of the field conductivity meter; and,
- 10) oil stained the ground on the opposite side of the Gas Well Pad, near the access road.

J. The February 6, 2012 Inspection Report included a NOV for the following:

- 1) unpermitted disposal of residual waste in violation of Section 301 of the Solid Waste Management Act, 35 P.S. §6018.301;
- 2) creating the potential to cause pollution to the waters of the Commonwealth in violation of Section 402 of the Clean Streams Law, 35 P.S. § 691.402;
- 3) failure to notify the Department of a pollutorial incident in violation of Section 91.33(a) of the Department's Rules and Regulations, 25 Pa. Code § 91.33(a) ;

- 4) the failure to control and dispose of fluids in a manner that prevents pollution of the waters of the Commonwealth in violation of Section 78.54 of the Department's Rules and Regulations, 25 Pa. Code §78.54; and,
- 5) the failure to take necessary measures to prevent pollutants from directly or indirectly reaching waters of the Commonwealth, a violation of Section 91.34(a) of the Department's Rules and Regulations, 25 Pa. Code § 91.34(a).

K. On March 3, 2012, Seneca submitted a written response to address the Department's NOV. Seneca had ultimately discovered a bad seam in the poly-liner that was between two separate pieces of geotextile. This was determined to be the probable point of release contributing to the seepage from the fill slope of the Gas Well Pad. An additional issue involved a row of hydraulic fracturing tanks that were on containment in the vicinity of the seepage. Once the tanks had been removed, numerous tears on the containment, along with puddles of contaminated water on the liner, had leaked on to the Gas Well Pad. The cumulative effect of various drips and poor management mixed with precipitation on top of the compromised liner allowed brine to reach the Gas Well Pad surface.

L. On March 14, 2012, the Department inspected the Gas Well Pad and found the following:

- 1) the area that was seeping hydraulic fracturing fluid out of the fill slope continued to seep;
- 2) the fill of the Gas Well Pad was discovered to be seeping hydraulic fracturing fluid since January 18, 2012;
- 3) excavation to remove contaminated soil had not been initiated at the fill slope or the ditch below;
- 4) a vacuum truck had been utilized to remove most of the contaminated fluid that seeped out of the slope and into the ditch; and,
- 5) the violations from previous inspections remained outstanding because effective remediation had not been initiated.

M. On April 13, 2012, the Department inspected the Gas Well Pad and found the following:

- 1) field measured conductivity of puddles on the Gas Well Pad surface returned readings between 2-12 mS/cm;
- 2) the fill slope of this site had been seeping hydraulic fracturing fluid from January through March 2012;
- 3) at time of inspection, the slope and ditch below did not have fluid in/on them;
- 4) excavation had not been performed to remove contaminated soil in that area;
- 5) the ditch had been lined with rip rap; and,
- 6) no new violations were cited, however, the violations from the previous inspection remained outstanding.

N. On May 15, 2012, the Department inspected the Gas Well Pad and found the following:

- 1) the fill of the Gas Well Pad was discovered to be seeping contaminated fluid since January 18, 2012;
- 2) a vacuum truck had been utilized daily to remove most of the contaminated fluid that was seeping out of the slope and into the sump;
- 3) field measured conductivity of the fluid in the sump had a reading of 2.2 mS/cm; and,
- 4) the violations cited from previous inspections remained outstanding.

O. On June 20, 2012, the Department inspected the Gas Well Pad and found the following:

- 1) field measured conductivity from puddles on the Gas Well Pad surface returned readings of less than 2 mS/cm;
- 2) soil was being removed from the vicinity of where contaminated fluid spilled in January;
- 3) no new violations were cited during the inspection; and,
- 4) the violations cited from previous inspections remained outstanding until sufficient remediation is completed and confirmatory of the soil ground water are reported.

P. In June 2012, Seneca submitted a report prepared by Rettew titled "Limited Soil and Groundwater Investigation" for the DCNR Tract 595 Well Pad. The Report detailed the clean-up of the contaminated area. The Department reviewed the submission and did not require any additional remediation.

Q. On August 3, 2012, the Department inspected the Gas Well Pad and found the following:

- 1) Seneca had excavated the contaminated soil;
- 2) the excavation created a pit; field measured conductivity of puddles from the pit had readings of 2 mS/cm; and,
- 3) no new violations were cited during this inspection.

R. 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."

S. Section 78.54 of the of the Department's Rules and Regulations, 25 Pa. Code § 78.54, states, in relevant part, that "[t]he well operator shall control and dispose of fluids, residual waste and drill cuttings, including top hole water, brines, drilling fluids, drilling muds, stimulation fluids, well servicing fluids, oil, production fluids and drill cuttings in a manner that prevents pollution of the waters of this Commonwealth and in accordance with §§ 78.55-78.58 and 78.60-78.63 and with the statutes under which this chapter is promulgated."

T. Section 91.33(a) of the Department's Rules and Regulations, 25 Pa. Code §91.33(a), states, in relevant part, "[i]f, because of an accident or other activity or incident, a toxic substance or another substance which would endanger downstream users of the waters of this Commonwealth, would otherwise result in pollution or create a danger of pollution of the waters, or would damage property, is discharged into these waters-including sewers, drains, ditches or other channels of conveyance into the waters-or is placed so that it might discharge, flow, be washed or fall into them, it is the responsibility of the person at the time in charge of the substance or owning or in possession of the premises, facility, vehicle or vessel from or on which the substance is discharged or placed to immediately notify the Department by telephone of the location and nature of the danger and, if reasonably possible to do so, to notify known downstream users of the waters."

U. Section 91.34(a) of the Department's Rules and Regulations, 25 Pa. Code §91.34(a), states, "persons engaged in an activity which includes the impoundment, production, processing, transportation, storage, use, application or disposal of pollutants shall take necessary measures to prevent the substances from directly or indirectly reaching waters of this Commonwealth, through accident, carelessness, maliciousness, hazards of weather or from another cause."

V. The unpermitted discharge of residual waste as described in Paragraphs D through O, above, constitutes violations of Section 301 of the Solid Waste Management Act, 35 P.S. § 6018.301.

W. The failure to control and dispose of fluids, residual waste and drill cuttings...in a manner that prevents pollution of the waters of this Commonwealth, constitutes violations of Section 78.54 of the Department's Rules and Regulations, 25 Pa. Code § 78.54.

X. The failure to notify the Department of a pollutional incident constitutes a violation of Section 91.33(a) of the Department's Rules and Regulations, 25 Pa. Code § 91.33(a).

Y. The failure to take necessary measures to prevent pollutional substances from directly or indirectly reaching waters of the Commonwealth constitutes a violation of Section 91.34(a) of the Department's Rules and Regulations, 25 Pa. Code § 91.34(a).

Z. The violations described in Paragraphs V through Y, above, constitute unlawful conduct under Section 611 of the Clean Streams Law, 35 P.S. § 691.611; Section 3259 of the 2012 Oil and Gas Act, 58 Pa. C.S. § 3259; and Section 610 of the Solid Waste Management Act, 35 P.S. § 6018.610; and subject Seneca to a claim for civil penalties under Section 605 of the Clean Streams Law, 35 P.S. § 691.605; Section 3252 of the 2012 Oil and Gas Act, 58 Pa. C.S. § 3252; 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 contained 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 605 of the Clean Streams Law, 35 P.S. §

691.605; Section 3256 of the 2012 Oil and Gas Act, 58 Pa. C.S. § 3256; and, Section 605 of the Solid Waste Management Act, 35 P.S. § 6018.605; the Department hereby assesses a civil penalty of Sixty-Eight Thousand Nine Hundred Forty Three Dollars (\$68,943.00), 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 V through Y, above, for the time period set forth in Paragraphs D through Q. The payment shall be made by corporate check or the like, made payable to the "Commonwealth of Pennsylvania", and forwarded to the Eastern Oil and Gas District, Pennsylvania Department of Environmental Protection, 208 West Third Street, Suite 101, Williamsport, Pennsylvania 17701-6648.

3. **Findings.**

(a) Seneca agrees that the findings in Paragraphs A through Z, 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; and that Seneca hereby knowingly waives its rights 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.

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Signature by Seneca's attorney certifies only that the agreement has been signed after consulting with counsel.

FOR SENECA RESOURCES CORPORATION:

FOR THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION:

DALCOP 3/13/13  
Signature (Date)  
Douglas A. Kopler  
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V.P. Env. Eng.  
Title for

Jennifer W Means 3/20/13  
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Jennifer W Means  
Environmental Program Manager  
Eastern Oil and Gas District

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