

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action under Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b), and under 28 U.S.C. §§ 1331, 1345, 1355, and 1367.

4. Venue is proper in the Western District of Pennsylvania pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1395(a), as well as Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b), because it is the judicial district in which Defendants are doing business and in which the violations alleged in the Complaint occurred.

5. Notice of commencement of this action has been given to Pennsylvania in accordance with Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

DEFENDANTS

6. CONSOL Energy Inc. (“Consol”) is a Delaware corporation with its principal place of business at CNX Center, 1000 Consol Energy Drive, Canonsburg, Pennsylvania 15317.

7. CNX Coal Resources LP (“CNX”) is a Delaware corporation with its principal place of business at CNX Center, 1000 Consol Energy Drive, Canonsburg, Pennsylvania 15317.

8. Consol Pennsylvania Coal Company LLC (“CPCC”) is a Delaware corporation with its principal place of business at 1000 Consol Energy Drive, Canonsburg, Pennsylvania 15317.

STATUTORY AND REGULATORY REQUIREMENTS

Clean Water Act

9. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the “discharge of any pollutant by any person” to waters of the United States, except, *inter alia*, in compliance with an

NPDES permit issued by EPA or an authorized state pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

10. Section 402 of the CWA, 33 U.S.C. § 1342, provides that the permit-issuing authority may issue an NPDES permit that authorizes the discharge of any pollutant to waters of the United States, upon the condition that such discharge will meet all applicable requirements of the CWA and such other conditions as the permitting authority determines necessary to carry out the provisions of the CWA.

11. Section 402(a)(2) of the CWA directs the Administrator to prescribe conditions and limitations, including effluent limitations, for NPDES permits to assure compliance with the requirements of the CWA. 33 U.S.C. § 1342(a)(2); *see also* 33 U.S.C. § 1311. Effluent limitations, as defined in Section 502(11) of the CWA, 33 U.S.C. § 1362(11), are restrictions on quantity, rate, and concentration of chemical, physical, biological, and other constituents which are discharged from point sources.

12. Section 301(b) of the CWA, 33 U.S.C. § 1311(b), directs the Administrator to set effluent limitations for categories and classes of point sources based on the best practicable control technology or the best available technology economically achievable for such category or class. In 1985, EPA set effluent limitations guidelines (“ELGs”) for discharges from coal mining point sources. *See* 40 C.F.R. Part 434; 50 Fed. Reg. 41296-01 (Oct. 9, 1985). The ELGs prescribe “maximum for any 1 day” and “average of daily values for 30 consecutive days” numeric effluent limits for, *inter alia*, iron, total suspended solids, pH, and manganese. Discharges with a pH above or below the range set forth in the applicable ELGs (generally within the range of 6.0 to 9.0 at all times) are violations of the daily maximum or daily minimum

limits in Defendants' NPDES permits.

13. Section 303(a) of the CWA, 33 U.S.C. § 1313(a), requires that states adopt ambient water quality standards and establish water quality criteria for particular water bodies that will protect the designated uses of the water. When technology-based ELGs are insufficient to keep receiving waters within those levels, the NPDES permit must include stricter water quality based effluent limits that reflect water quality standards and criteria. 33 U.S.C. § 1311(b)(1)(C); *see also* 25 Pa. Code Chapter 93 (Pennsylvania water quality standards).

14. Section 309(b) of the CWA, 33 U.S.C. § 1319(b), authorizes the Administrator to commence a civil action for appropriate relief, including a permanent or temporary injunction, against any person who violates any permit condition or limitation in a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

15. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), provides that any person who violates any permit condition or limitation in a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, shall be subject to a civil penalty payable to the United States of up to \$25,000 per day for each violation.

16. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, 69 Fed. Reg. 7121 (February 13, 2004), 74 Fed. Reg. 626 (January 7, 2009), and 40 C.F.R. § 19, EPA may seek civil penalties of up to \$32,500 per day for each violation occurring between March 15, 2004 and January 12, 2009, and up to \$37,500 per day for each violation occurring after January 12, 2009.

Pennsylvania Clean Streams Law

17. At all relevant times, the Commonwealth of Pennsylvania has been authorized by EPA pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), to administer an NPDES program for regulating the discharges of pollutants to navigable waters within the jurisdiction of the Commonwealth. Pursuant to 25 Pa. Code Chapter 92a, PADEP is the agency that administers the NPDES permit program in Pennsylvania.

18. Sections 301, 307, and 315 of the PCSL, 35 P.S. §§ 691.301, 691.307, and 691.315, prohibit the discharge by any person of any pollutant from a mine into waters of the Commonwealth of Pennsylvania, except, *inter alia*, in compliance with applicable water quality standards and effluent limitations as required by a Pennsylvania NPDES permit issued pursuant to the PCSL and its implementing regulations.

19. Section 601 of the PCSL, 35 P.S. § 691.601, authorizes PADEP to commence a civil action for injunctive relief to compel compliance with and enjoin violations of any provision of the PCSL or any term or condition of an NPDES permit issued under the PCSL. Section 605 of the PCSL, 35 P.S. § 691.605, also provides that any person who violates any provision of an NPDES permit issued pursuant to the PCSL or its implementing regulations is subject to a civil penalty of up to \$10,000 per day for each violation.

GENERAL ALLEGATIONS

20. The Defendants named herein are “persons” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 35 P.S. § 691.1.

21. Defendants own and/or operate the coal mining, processing, and shipping operations at the Bailey, Enlow Fork, and Harvey (formerly known as BMX) mines in Greene

and Washington Counties, Pennsylvania. The Bailey, Enlow Fork, and Harvey Mines are large underground bituminous coal mines that are adjacent to each other and share a common coal preparation plant and coal refuse disposal areas. The Bailey, Enlow Fork, and Harvey mines and related operations are collectively referred to in this Complaint as the “Bailey Mine Complex.”

22. CPCC applied for, and PADEP issued, the following NPDES permits to discharge pollutants from the Bailey Mine Complex into nearby receiving streams: PA0213535; PA0213527; PA0235482; PA0235806; and PA0092894. The NPDES permits were issued under both the Pennsylvania Clean Streams Law and the Clean Water Act. The NPDES permits contain effluent limitations prohibiting discharges of specified pollutants in excess of numeric monthly average, daily maximum, instantaneous maximum, and/or daily minimum limits. These limitations reflect ELGs and stricter water quality based effluent limits.

23. The NPDES permits identified in Paragraph 21 authorize discharges in compliance with effluent limits into specified receiving streams. The receiving streams are identified by NPDES permit number and outfall location in Appendix A to this Complaint.

24. At all relevant times, Consol managed, directed, and controlled environmental compliance at the Bailey Mine Complex, including providing direct oversight and management of environmental compliance staff, corresponding with consultants and otherwise directing water treatment approaches, maintaining an environmental data management system for water quality data tracking, and communicating directly with state and federal regulators regarding environmental compliance issues.

25. On information and belief, CNX is a master limited partnership formed by Consol in 2015 to manage and further develop its active thermal coal operations in Pennsylvania,

including the Bailey Mine Complex. On information and belief, CNX has jointly owned and/or operated the Bailey Mine Complex since July 1, 2015.

26. As a result of the coal mining and processing operations at the Bailey Mine Complex, Defendants generate coal slurry, wastewater, and other excess materials that are, or contain, various “pollutants” as that term is defined in Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2. These pollutants include aluminum, iron, manganese, total suspended solids, settleable solids, pH, and osmotic pressure. *See* Appendix A.

27. Defendants have discharged pollutants from various outfalls that are “point sources” within the meaning of Section 502(14) of the Clean Water Act, 33 U.S.C. § 1362(14), into the receiving streams identified in Appendix A of this Complaint.

ENFORCEMENT BACKGROUND

Outfall 301, NPDES Permit No. PA0235482

28. Outfall 301 of Coal Refuse Disposal Permit No. 30020701, NPDES Permit PA0235482, discharges drainage from coal refuse disposal areas Nos. 3 and 4 (“CRDA 3/4”) in the Bailey Mine Complex, including drainage from a large slurry impoundment. On December 9, 2003, PADEP issued a revised permit that included average monthly, daily maximum, and instantaneous maximum osmotic pressure effluent limitations for Outfall 301.

29. On May 25, 2005, CPCC and PADEP entered into a Consent Order and Agreement with regard to the osmotic pressure effluent limitations for Outfall 301 (the “CO&A”). The CO&A set forth a process for CPCC to request a site-specific osmotic pressure limitation. The CO&A also imposed stipulated penalties in the amount of \$250 per violation in the event that the discharge at Outfall 301 exceeded applicable osmotic pressure limitations prior

to any permit modification.

30. CPCC subsequently decided not to pursue site-specific osmotic pressure limits and was unable to consistently meet the applicable osmotic pressure limits for Outfall 301.

31. On December 10, 2010, CPCC and PADEP entered into an amendment to the CO&A (the "CO&A Amendment"). The CO&A Amendment required CPCC to submit an application for permit modification to include a water handling plan to remove the high osmotic pressure waters from Outfall 301.

32. On October 10, 2012, PADEP issued a Compliance Order to CPCC for failure to maintain necessary treatment facilities, based on exceedances of osmotic pressure limits for Outfall 301 in the prior three months. The Compliance Order required abatement by November 10, 2012.

33. On March 9, 2013, PADEP issued a Consent Assessment of Civil Penalty to CPCC for exceeding its osmotic pressure permit limits for Outfall 301 in July, August, and September of 2012.

34. Defendants have implemented a pump-back system as a temporary measure to address exceedances of the osmotic pressure limits for Outfall 301. The pump-back system uses the CRDA No. 3 slurry impoundment to store waters high in osmotic pressure and other pollutant parameters in order to prevent unlawful discharge. Due to excess water accumulation and limited storage capacity, discharge of these contaminated waters from CRDA No. 3 may ultimately occur unless additional measures are taken.

Outfall 501, NPDES Permit No. PA0235806

35. Outfall 501, Coal Refuse Disposal Permit Number 30080701, NPDES Permit No.

PA0235806 discharges drainage from coal refuse disposal area No. 5 (CRDA No. 5) in the Bailey Mine Complex, including from a large slurry impoundment. NPDES Permit No. PA0235806 includes effluent limitations on discharges of aluminum, iron, and manganese from Outfall 501.

36. On October 10, 2012, PADEP issued a compliance order to CPCC for failure to maintain necessary treatment facilities, based on exceedances of aluminum, iron, and manganese limits for Outfall 501 in July of 2012. The Compliance Order required abatement by November 10, 2012.

37. On January 30, 2013, PADEP issued a Consent Assessment of Civil Penalty to CPCC for exceeding its aluminum, iron, and manganese permit limits for Outfall 501 in July of 2012.

38. NPDES Permit No. PA0235806 also includes osmotic pressure effluent limitations. Pursuant to a request from PADEP, Defendants have implemented a pump-back system as a temporary measure to prevent future exceedances of osmotic pressure permit limits for Outfall 501. The pump-back system uses the CRDA No. 5 slurry impoundment to store contaminated waters in order to prevent unlawful discharge. Due to excess water accumulation and limited storage capacity, discharge of contaminated waters from CRDA No. 5 may ultimately occur unless additional measures are taken.

CLAIM FOR RELIEF

39. Paragraphs 1-38 are realleged and incorporated by reference.

40. During the period relevant to this Complaint, Defendants have discharged and likely will continue to discharge pollutants in excess of effluent limitations specified in

applicable NPDES permits.

41. From January 1, 2006 to June 30, 2015, Consol and CPCC exceeded effluent limitations contained in NPDES permits applicable to discharges from the Bailey Mine Complex at least 188 times for daily effluent limitations and at least 170 times for monthly effluent limitations. *See* Appendix A.

42. From July 1, 2015 to March 31, 2016, Consol, CNX, and CPCC exceeded effluent limitations contained in NPDES permits applicable to discharges from the Bailey Mine Complex at least one time for daily effluent limitations and one time for monthly effluent limitations. *See* Appendix A.

43. For each exceedance of an effluent limitation, Defendants are in violation of the Clean Water Act for discharging in violation of the conditions and limitations of the applicable NPDES permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

44. Defendants' discharges of pollutants in excess of effluent limitations contained in the applicable NPDES permits constitute violations of 35 P.S. §§ 691.307 and 691.315.

45. Unless enjoined, Defendants' violations will continue.

46. Pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 35 P.S. § 691.601, Defendants are liable for permanent injunctive relief.

47. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), Defendants are liable for civil penalties of up to \$32,500 per day of violation for all violations occurring between March 15, 2004 and January 12, 2009, and up to \$37,500 per day of violation for all violations occurring after January 12, 2009.

48. Under 35 P.S. § 691.605, Defendants are liable for civil penalties up to \$10,000

per day for each violation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, the United States of America and the Pennsylvania Department of Environmental Protection, respectfully pray that this Court:

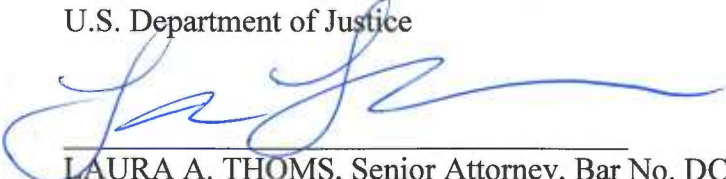
1. Permanently enjoin Defendants from discharging pollutants except as expressly authorized by the CWA and the limitations and conditions of NPDES permits.
2. Order Defendants to take all necessary steps to comply with the CWA, the PCSL, and the limitations and conditions of the applicable NPDES permits.
3. Assess civil penalties against Defendants up to \$32,500 per day for each violation that occurred between March 15, 2004 and January 12, 2009, and up to \$37,500 per day for each violation that occurred after January 12, 2009.
4. Assess civil penalties against Defendants up to \$10,000 per day for each violation under 35 P.S. § 691.605.
5. Grant such other relief as the Court may deem appropriate.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA



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