

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the matter of:

C.C. Forbes, LLC	:	Violations of the Oil and Gas Act,
Lawrence Township	:	Clean Streams Law, Air Pollution
Clearfield County	:	Control Act, and Solid Waste
	:	Management Act

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 12th day of July 2010, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department") and C.C. Forbes, LLC ("C.C. Forbes").

Findings

The Department has found and determined the following:

A. The Department is the agency with the duty and authority to administer and enforce: the Air Pollution Control Act, Act of January 8, 1960, P.L. 2119, *as amended*, 35 P.S. §§4001-4015 ("Air 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"); 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"); 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. C.C. Forbes is a Delaware corporation authorized to do business in Pennsylvania, and it maintains a business address of 40 South Pennsylvania Avenue, Washington, PA 15301.

C. C.C. Forbes is a "person" as that term is defined in: Section 3 of the Air Act, 35 P.S. §4003; Section 1 of the Clean Streams Law, 35 P.S. §691.1; Section 103, of the Oil and Gas Act, 58 P.S. § 601.103; and Section 103 of the Solid Waste Management Act, 35 P.S. §6018.103.

D. EOG Resources, Inc. ("EOG"), owns and operates a gas well known as "Punxsutawney Hunting Club 36H," which is located in Lawrence Township, Clearfield County, Pennsylvania, and is authorized under well permit 37-033-26872-00.

E. EOG hired C.C. Forbes to provide certain equipment, including the blow-out prevention equipment, and perform various activities related to drilling at Punxsutawney Hunting Club 36H.

F. At approximately 6:35 p.m., on June 3, 2010, while post-hydraulic well fracturing procedures were being performed at the bottom of Punxsutawney Hunting Club 36H, a potentially catastrophic failure of the blow-out prevention and/or other well equipment occurred that resulted in the uncontrolled discharge of a significant amount of well flowback fluids, saltwater and gas from Punxsutawney Hunting Club 36H into the environment.

G. At that time no one at the well site had a current industry-accepted well control certification.

H. EOG and Forbes personnel evacuated the area within approximately one mile of Punxsutawney Hunting Club 36H. Subsequently, the FAA prohibited aircraft from flying in the airspace below 1,000 feet over Punxsutawney Hunting Club 36H.

I. EOG first attempted to notify the Department of the uncontrolled discharge at approximately 10:15 p.m., by leaving messages for individual inspectors. EOG did not call the Department's emergency number.

J. Sometime in the early morning of June 4, 2010, the Department responded and observed the uncontrolled discharge of a significant amount of well flowback fluids, saltwater and gas from Punxsutawney Hunting Club 36H into the environment, including the uncontrolled discharge of well drilling fluids flowing on the ground and into a drainage area tributary to Little Laurel Run, a high quality cold water fishery.

K. The uncontrolled discharge of a significant amount of well drilling fluids and gas into the environment from Punxsutawney Hunting Club 36H continued until approximately 12:13 p.m. on June 4, 2010, when the 10,000 psi valve was closed on the gas well.

Violations of the Oil and Gas Act

L. Section 209 of the Oil and Gas Act, 58 P.S. §601.209, requires that “[a]ny person engaged in drilling any oil or gas well shall equip the well with casings of sufficient strength and with such other safety devices, as may be necessary in a manner as prescribed by regulation of the [D]epartment, and shall use every effort and endeavor effectively to prevent blowouts, explosions and fires.”

M. Section 509 of the Oil and Gas Act is entitled “Unlawful conduct,” and it provides in relevant part that “[i]t shall be unlawful for any person to ... [c]onduct any activities related to drilling for, or production of, oil and gas, contrary to the rules or regulations adopted under this act, ... or in any manner as to create a public nuisance or to adversely affect the public health, safety, welfare or the environment.” 58 P.S. § 601.509(2).

N. 25 Pa. Code §78.72(b) states that “[b]low-out prevention equipment used shall be in good working condition at all times.” 25 Pa. Code §78.72(f), states that “[d]uring drilling when conditions are such that the use of a blow-out preventer can be anticipated, there shall be present on the rig floor a certified individual responsible to the operator. Satisfactory completion

of a United States Geologic Survey (U.S.G.S.) approved well control course or equivalent study shall be deemed adequate certification for purposes of this subsection." In addition, 25 Pa. Code §78.72(h), states that "[u]pon completion of the drilling operations at a well, the operator shall install and utilize equipment, such as the shut-off valve of sufficient rating to contain anticipated pressure, lubricator or similar device, as may be necessary to enable the well to be effectively shut-in while logging and servicing the well and after completion of the well."

O. The potentially catastrophic failure of the blow-out prevention and/or other well equipment that resulted in the uncontrolled discharge of a significant amount of well flowback fluids, saltwater and gas from Punxsutawney Hunting Club 36H into the environment violates Section 209 of the Oil and Gas Act, 58 P.S. §601.209, and 25 Pa. Code §§78.72(a) and 78.72(h).

P. The uncontrolled discharge of a significant amount of gas from Punxsutawney Hunting Club 36H into the environment violates the requirements under 25 Pa. Code §78.74, that "[t]he venting of gas to the atmosphere from a well is prohibited when the venting produces a hazard to the public health and safety."

Q. The absence on the rig floor of a certified individual responsible to the operator when conditions were such that the use of a blow-out preventer could have been anticipated violates 25 Pa. Code §78.72(f).

R. The violations described above constitute unlawful conduct under Section 509 of the Oil and Gas Act, 58 P.S. §601.509, a statutory nuisance under Section 502 of the Oil and Gas Act, 58 P.S. §601.502, and subject C.C. Forbes to a claim for civil penalties pursuant to Section 506 of the Oil and Gas Act, §601.506.

Violations of the Clean Streams Law

S. The well flowback fluids, saltwater and gas discharged from Punxsutawney Hunting Club 36H into the environment are "industrial wastes," and the drainage area tributary to Little Laurel Run is a "water of the Commonwealth" as those terms are defined in Section 1 of the Clean Streams Law, 35 P.S. §691.1. Neither C.C. Forbes nor any other person or entity had or has a permit to discharge industrial wastes into waters of the Commonwealth.

T. 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."

U. The unpermitted and uncontrolled discharge of industrial wastes from Punxsutawney Hunting Club 36H caused pollution and/or created the danger of pollution to the waters of the Commonwealth in violation Sections 301, 307, 401, and 402, of the Clean Streams Law, 35 P.S. §§691.301, 691.307, and 691.401, and 691.402.

V. The violations described 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 C.C. Forbes to a claim for civil penalties pursuant to Section 605 of the Clean Streams Law, 35 P.S. §691.605.

Violations of the Air Act

W. The gas discharged from Punxsutawney Hunting Club 36H into the atmosphere is an "air contaminant," and Punxsutawney Hunting Club 36H is a stationary "air contamination source" as those terms are defined in Section 3 of the Air Act, 35 P.S. §4003. Neither C.C. Forbes nor any other person or entity had or has a permit to discharge air contaminants into the atmosphere.

X. The unpermitted and uncontrolled discharge of a significant amount of gas from Punxsutawney Hunting Club 36H into the atmosphere was inimical to the public health, safety, or welfare, and constitutes "air pollution" as that term is defined in Section 3 of the Air Act, 35 P.S. §4003. The unpermitted and uncontrolled discharge of air pollution from Punxsutawney Hunting Club 36H into the atmosphere violates Section 4006.1 of the Air Act, 35 P.S. §4006.1.

Y. The violation described above constitutes unlawful conduct under Section 8 of the Air Act, 35 P.S. §4008, is a statutory nuisance under Section 13 of the Air Act, 35 P.S. §4013, and subjects C.C. Forbes to civil penalty liability under Section 4009.1 of the Air Act, 35 P.S. §4009.1.

Violations of the Solid Waste Management Act

Z. The frac fluids discharged from Punxsutawney Hunting Club 36H into the environment are "residual wastes" as that term is defined in Section 103 of the Solid Waste Management Act, 35 P.S. §6018.103. Neither C.C. Forbes nor any other person or entity had or has a permit to discharge residual wastes into the environment.

AA. The unpermitted and uncontrolled discharge of residual wastes from Punxsutawney Hunting Club 36H into the environment violates Sections 301 and 302 of the Solid Waste Management Act, 35 P.S. §§6018.301 and 6018.302.

AB. The violations described above constitute 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 C.C. Forbes to civil penalty liability under Section 605 of the Solid Waste Management Act, 35 P.S. §6018.605.

AC. On June 9, 2010, the Department issued an Order against C.C. Forbes regarding these matters. A copy of the Order is attached as exhibit A.

Order

After full and complete negotiation of all matters set forth in this Consent Order and Agreement, and upon mutual exchange of the covenants contained herein, the Parties desiring to avoid litigation and intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by C.C. Forbes as follows:

1. *Authority.* This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to: Sections 4 and 10.1 of the Air Act, 35 P.S. §§4004 and 4010.1; Section 5 of the Clean Streams Law, 35 P.S. §691.5; Sections 503 and 508 of the Oil and Gas Act, 58 P.S. §§601.503 and 601.508; Section 602 of the Solid Waste Management Act, 35 P.S. §6018.602; and Section 1917-A of the Administrative Code, 71 P.S. §510-17.

2. *Effect of This Consent Order and Agreement.* The June 9, 2010, Order issued by the Department is hereby replaced and superseded by this Consent Order and Agreement.

3. *Findings.*

a. C.C. Forbes agrees that the Findings in Paragraphs A through K, S, W, Z, and AC, above, are true and correct and, in any matter or proceeding involving C.C. Forbes and the Department, C.C. Forbes 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 Consent Order and Agreement in any matter or proceeding.

4. *Corrective Actions.*

a. For all post-frac cleanout operations performed by C.C. Forbes on Marcellus Shale gas wells, including the Punxsutawney Hunting Club 36H, permitted by the Department, C.C. Forbes shall immediately and permanently implement the following practices:

- i. A minimum of two pressure barriers shall be in place during all post-frac cleanout operations. Barriers shall be identified in a Prevention, Preparedness, and Contingency plan, a copy of which shall be present at the well site at all times for Department review. Barriers can include hydro-static methods, well plugs, and/or devices including but not limited to pipe rams and annular preventers. A stripper head or stripper rubber shall not be considered a pressure barrier;
- ii. A snubbing unit shall be used to perform post-frac cleanouts if a coil tubing rig is unable to clean out the frac plugs, sand, and any other debris to total depth;
- iii. A remote actuator (which is also known as an 'accumulator') capable of independently operating the blow-out prevention equipment shall be used;
- iv. All blow-out prevention equipment shall be tested according to the manufacturer's specifications immediately after installation on the well and before use, including commencement of post-frac cleanout operations. All chart record test results of that equipment shall be maintained at the wellsite;
- v. A certified individual, responsible to the operator, with current industry-accepted Well Control Certification shall be present at the well site when C.C. Forbes is performing well-related activities at the site. Proof of such certification shall be maintained at the well site; and
- vi. Field managers and operators shall be advised of, and familiar with, all emergency procedures. Statements signed by each field manager and operator documenting such familiarity shall be maintained at the well site.

5. *Civil Penalty Settlement.* Within four days of signing this Consent Order and Agreement, C.C. Forbes shall pay a civil penalty of Forty-Six Thousand Six Hundred Dollars

(\$46,600). This payment is in settlement of the Department's claim for civil penalties for the violations set forth in Paragraphs R, V, Y, and AB above, covering the period from June 3, 2010, to the effective date of this Consent Order and Agreement. The payment shall be made by corporate check or the like made payable to "Commonwealth of Pennsylvania" and sent to the East Region Oil and Gas Management, Pennsylvania Department of Environmental Protection, 208 West Third Street, Suite 101, Williamsport, Pennsylvania 17701-6448.

6. *Remedies For Failure To Comply With This Consent Order And Agreement.* If C.C. Forbes fails to comply with the provisions of this Consent Order and Agreement, C.C. Forbes shall be in violation of this Consent Order and Agreement and the Department may pursue any remedy available for a violation of an Order of the Department including, without limitation, issuing an Order against C.C. Forbes to cease any and all well production activities in the Commonwealth of Pennsylvania, filing an action to enforce this Consent Order and Agreement, and/or assessing civil penalties for the violation(s) of this Consent Order and Agreement.

7. *Reservation of Rights.* The Department reserves the right to require additional measures to achieve compliance with applicable law. C.C. Forbes reserves the right to challenge any action which the Department may take to require those measures.

8. *Liability of C.C. Forbes.* C.C. Forbes shall be liable for any violations of the Consent Order and Agreement, including those caused by, contributed to, or allowed by its officers, directors, agents, employees, contractors, consultants, successors, and assigns.

9. *Correspondence with Department.* All correspondence with the Department concerning this Consent Order and Agreement shall be addressed to:

Jennifer W. Means
Environmental Program Manager
East Region Oil and Gas Management

Department of Environmental Protection
208 West Third Street - Suite 101
Williamsport, PA 17701-6448
Phone: (570) 321-6557
e-Mail: jenmeans@state.pa.us

10. *Correspondence with C.C. Forbes.* All correspondence with C.C. Forbes concerning this Consent Order and Agreement shall be addressed to:

Giancarlo Nisimblat
Nisimblat & Basart, P.L.L.C.
301 East Third Street
P.O. Box 4145
Alice, TX 78333-4145
Telephone: (316)664-9974
FAX (361)664-9991
e-Mail: giancarlo@nisimblatbasart.com

and

C. Leon Sherman c/o
Goldberg Kamin and Garvin
Frick Building
Suite 1806
437 Grant Street
Pittsburgh, PA 15219-6106
Telephone: 412-281-1119
Telefax: 412-281-1121
e-Mail: sherman@gkgattorneys.com

C.C. Forbes shall notify the Department whenever there is a change in the contact person's name, title, or address. Service of any notice or any legal process for any purpose under this Consent Order and Agreement, including its enforcement, may be made by mailing a copy by certified mail, return receipt requested, to the above address.

11. *Decisions Under Consent Order and Agreement.* Any decision which the Department makes under the provisions of this Consent Order and Agreement is intended to be neither a final action under 25 Pa. Code §1021.2, nor an adjudication under 2 Pa.C.S.A. §101.

Any objection, which C.C. Forbes may have to the decision, will be preserved until the Department enforces this Consent Order and Agreement.

12. *Severability.* The Paragraphs of this Consent Order and Agreement shall be severable and should any part hereof be declared invalid or unenforceable, the remainder shall continue in full force and effect between the Parties.

13. *Entire Agreement.* This Consent Order and Agreement shall constitute the entire integrated agreement of the Parties as to the subject matter hereof. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or intent of any provisions herein in any litigation or any other proceeding.

14. *Attorneys' Fees.* The Parties shall bear their respective attorney fees, expenses, and other costs in the prosecution or defense of this matter or any related matters, arising prior to execution of this Consent Order and Agreement.

15. *Modifications.* No changes, additions, modifications, or amendments of this Consent Order and Agreement shall be effective unless they are set out in writing and signed by the Parties.

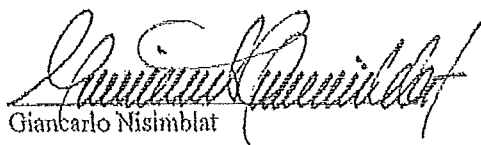
16. *Titles.* A title used at the beginning of any Paragraph of this Consent Order and Agreement may be used to aid in the construction of that Paragraph, but shall not be treated as controlling.

IN WITNESS WHEREOF, the Parties have caused this Consent Order and Agreement to be executed by their duly authorized representative. The undersigned representative of C.C. Forbes certifies under penalty of law, as provided by 18 Pa.C.S.A. §4904, that he is authorized to execute this Consent Order and Agreement on behalf of C.C. Forbes, that C.C. Forbes consents to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that

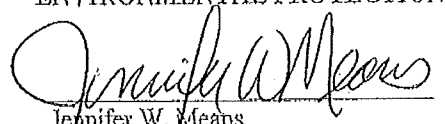
C.C. Forbes hereby knowingly waives its right to appeal this Consent Order and Agreement and to challenge its content or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, No. 1988-94, 35 P.S. §7514; the Administrative Agency Law, 2 Pa.C.S.A. §103(a) and Chapters 5A and 7A; or any other provision of law.

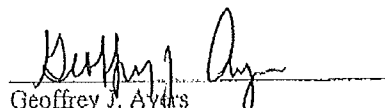
Signature by C.C. Forbes's attorney certifies only that the Consent Order and Agreement has been signed after consulting with counsel.

FOR C.C. FORBES, LLC:


Giancarlo Nisimblat
Attorney

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:


Jennifer W. Means
Environmental Program Manager
East Region Oil and Gas Management


Geoffrey J. Ayers
Assistant Counsel