

**COURT OF COMMON PLEAS OF WASHINGTON COUNTY
COMMONWEALTH OF PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA

vs.

CNX RESOURCES CORPORATION

NO. NT 831-21
NT 832-21
NT 833-21
NT 834-21

NOLO CONTENDERE PLEA AGREEMENT AND COLLOQUY OF DEFENDANT

1. I INTEND TO PLEAD NOLO CONTENDERE to the following criminal offense(s):

Ct	Offense	Grade	Min	Maximum
1	Unlawful Conduct – Air Pollution Control Act 35 P.S. §4008	S	\$100.00	\$2,500 or 90 days incarceration
2	Unlawful Conduct – Air Pollution Control Act 35 P.S. §4008	S	\$100.00	\$2,500 or 90 days incarceration
3	Unlawful Conduct – Air Pollution Control Act 35 P.S. §4008	S	\$100.00	\$2,500 or 90 days incarceration
4	Unlawful Conduct – Air Pollution Control Act 35 P.S. §4008	S	\$100.00	\$2,500 or 90 days incarceration

2. THE MAXIMUM PENALTIES FOR CRIMINAL OFFENSES ARE AS FOLLOWS:

Grading	Max. Jail	Max. Fine	Grading	Max. Jail	Max. Fine
M1:	FIVE (5) YRS	\$10,000.00	F1:	TWENTY (20) YRS	\$25,000.00
M2:	TWO (2) YRS	\$5,000.00	F2:	TEN (10) YRS	\$25,000.00
M3:	ONE (1) YR	\$2,500.00	F3:	SEVEN (7) YRS	\$15,000.00
Summary	NINETY (90) days	\$2,500.00			

3. **FACTUAL BASIS FOR NOLO CONTENDERE PLEA.** I understand all of the elements of each offense listed above and am agreeing that the Commonwealth can prove the following at trial:

CNX Resources Corporation (CNX) is an independent natural gas development, production, and mid-stream company. CNX is required to submit emissions statements from all of its pigging operations in Pennsylvania to the Pennsylvania Department of Environmental Protection (DEP) on an annual basis. CNX calculates emissions using a formula that has both static and variable components. One of the variable components used to calculate yearly emissions is the number of times that any given site is pigged. CNX failed to provide accurate emissions numbers to DEP in its annual emissions reports in 2016, 2017, 2018, and 2019. CNX had inaccurate counts of the number of times their stations were pigged. These inaccurate numbers were then put into an equation to calculate annual emissions. An audit of all four years showed that emissions were under-reported in 2016 and 2017 and over-reported in 2018 and 2019.

These actions did cause or assist in the violation of the Air Pollution Control Act.

4. **TERMS OF THIS NOLO CONTENDERE PLEA AGREEMENT.** The Commonwealth and the Defendant agree that all the terms and conditions in consideration of this nolo contendere plea are set forth below:

- A. The Defendant will donate \$30,000 to South Franklin Township to fund the restoration of approximately 1,800 feet of an unnamed tributary to Chartiers Creek located in South Franklin Township Park, Washington County. Any unused funds will be used towards park improvement.
- B. The Defendant will donate to Allegheny County approximately 184 acres in Elizabeth Township, Allegheny County (Tax Parcel ID Nos. 1569-F-4, 1569-J-127, 1569-L-18, 1569-L-48, 1570-S-7, 1733-D-130, 1733-D-17, and 1733-H-311).

5. **THE MAXIMUM POSSIBLE SENTENCE.** I am aware that the penalties for each of the above criminal offenses can be added together by the Court at sentencing for a possible total maximum sentence in this case of:

\$10,000 fine AND/OR 360 days incarceration

6. **THE MANDATORY MINIMUM SENTENCE.** I realize that the following mandatory minimum sentences apply in this case:

\$400.00 fine

7. THINGS THAT COULD AUTOMATICALLY INCREASE MY SENTENCE. I realize that there may be increases to my sentence because a weapon was possessed or used, or because of the age of the victim, or the location of my crime as follows:

Not applicable

8. THE SENTENCING COURT IS NOT BOUND BY ANY TERM AS TO SENTENCE CONTAINED IN THIS AGREEMENT. I acknowledge that any terms related to a sentence set forth in paragraph 4 above are not binding on the Court and I have not been guaranteed a specific sentence in exchange for this plea. The Court retains the power to decide my sentence.

9. THE RIGHTS I GIVE UP BY ENTERING A PLEA OF NOLO CONTENDERE. I understand that the law presumes me innocent and requires proof beyond a reasonable doubt to convict me of any crime. I understand that by entering a nolo contendere plea I am no longer presumed innocent, I am convicting myself of the charges to which I am pleading nolo contendere, and I will be presumed guilty of those charges beyond a reasonable doubt. Furthermore, I acknowledge the additional rights I possess which are listed below, and give them up as part of my plea.

- To require the Commonwealth to prove my guilt beyond a reasonable doubt as to each and every element of the offenses charged.
- To cross-examine Commonwealth witnesses, to compel any witness to testify on my behalf, to justify myself or choose to remain silent at trial.

10. OTHER IMPORTANT CONSEQUENCES OF MY NOLO CONTENDERE PLEA. I understand that by pleading nolo contendere I will be convicted of crime(s) and there may be some collateral consequences of this criminal conviction. Collateral consequences include the ability of the prosecution to hold this conviction against me in the future if I am charged with other crimes. The consequences also include but are not limited to the loss or restriction of a professional license and ineligibility for public funds. Lawmakers may in the future add further collateral consequences to criminal conviction that we have no way to predict now.

11. I KNOW WHAT I AM DOING AND IT IS VOLUNTARY. I am not mentally disabled or under the influence of any drugs or alcohol. I am not suffering from any disability which affects my own free will, and am free of duress. I am giving up my rights knowingly, voluntarily and intelligently.

12. I HAVE CONFERRED WITH MY ATTORNEY BEFORE THIS PLEA. I have had an opportunity to discuss this plea agreement with my attorney, with whom I am satisfied.

13. THE COURT CAN REFUSE TO ACCEPT THE PROPOSED PLEA. I understand that the Court is not required to accept this plea agreement. If it does not, then the proposed plea does not become final and I retain my rights to a trial.

PLEA OF NOLO CONTENDERE

I SWEAR AND AFFIRM THAT I HAVE READ THIS DOCUMENT IN ITS ENTIRETY OR HAD IT EXPLAINED TO ME, UNDERSTAND IT COMPLETELY, AND BELIEVE THIS PLEA IS IN MY BEST INTEREST.

BY SIGNATURE BELOW I ENTER A PLEA OF NOLO CONTENDERE TO THE OFFENSE(S) SPECIFIED IN PARAGRAPH 1 OF THIS PLEA COLLOQUY FORM, WHICH IS FINAL WHEN ACCEPTED BY THE COURT.

Defendant's Signature BY: *[Signature]* Date 12/2/21
CNX Resources Corp.
GENERAL COUNSEL

DEFENSE ATTORNEY CERTIFICATION. I certify with this Defendant that: (1) I have explained this plea agreement and the Defendant's rights to the Defendant; (2) he/she wishes to plead nolo contendere; (3) I have discussed the facts and the law of this case with the Defendant; and (4) I believe the Defendant understands the consequences of pleading nolo contendere.

Attorney for Defendant *[Signature]* Date 12/2/21

Approved by: JENNIFER SELBER
Executive Deputy Attorney General
Criminal Division
Commonwealth of Pennsylvania

BY: *[Signature]* Date 12/2/21
COURTNEY BUTTERFIELD
Senior Deputy Attorney General

AFFIDAVIT OF PROBABLE CAUSE

1. Your Affiant is employed as a Special Agent (SA), assigned to the Environmental Crimes Section (ECS). As a Special Agent, your Affiant is a criminal investigator under the Bureau of Criminal Investigations, Pennsylvania Office of Attorney General (PA OAG), located at 2515 Green Tech Drive, State College, PA 16803. Your Affiant has been so employed since 2018. Prior, your Affiant was employed as a Municipal Police Officer from 1995 to 2018. In the course of said employment, your Affiant has conducted hundreds of criminal investigations. As a Special Agent, your Affiant is authorized to conduct investigations into suspected criminal violations of the Pennsylvania Crimes Code and Pennsylvania Environmental Statutes which include misreporting of annual air emissions data, in violation of the Air Pollution Control Act. The OAG ECS Agents work cooperatively with local law enforcement officials which do not have the resources available to investigate potential environmental crimes.
2. On/about January 2nd, 2019, the PA OAG received a referral letter from the Washington County District Attorney, Eugene A. Vittone II, allowing the PA OAG ECS to assume jurisdiction for the purposes of investigation and/or prosecution, pursuant to the Commonwealth Attorney's Act, 71 P.S. §732-205(a)(3). Subsequent to this referral, the OAG ECS began an investigation into a gas pigging station located along Farmers Lane, South Franklin Township, Washington County, Washington, PA. This pigging station was owned and operated by CNX Resources Corporation.
3. CNX Resources Corporation is an independent natural gas development, production, and mid-stream company. CNX Operations are centered in the major shale formations of the Appalachian Basin. CNX Resources Corporate Headquarters is located at 1000 CONSOL Energy Drive, Canonsburg, PA 15317-6506.
4. When natural gas is extracted from the ground, it is transferred from the wellhead through a series of pipelines to get to its final destination. Depending on the geographical area the natural gas is being extracted from, it can contain natural gas liquids and/or hydrates. Natural gas liquids and/or hydrates can build up along the course of the pipeline and inhibit the flow of natural gas. In order to collect the valuable natural gas liquids, prevent corrosion, and to clear the pipeline to allow natural gas to flow freely, a process referred to as "pigging" is utilized. The emissions that occur when a pipeline is "pigged" are regulated by the Department of Environmental Protection (DEP).
5. From 2011 to 2016, the Department of Environmental Protection (DEP) required oil and gas operators to maintain records of pigging operations. Emissions from pigging activities were not required to be reported to the DEP on an annual basis, but had to be submitted to the DEP if requested for review by the Department. During this time period, pigging stations were considered "exempted sites", but individual companies were required to keep documentation to prove they were below the exemption limits established by the DEP.
6. A notice published in the PA Bulletin, 46 Pa.B. 67, on January 2nd, 2016 entitled "Requirement to Submit Emissions Inventory Data for Natural Gas Activities" indicated that "...in accordance with section 4(3) of the Air Pollution Control Act (35 P.S. § 4004(3)) and 25 Pa. Code § 135.3 (relating to reporting), the Department is authorized to collect air quality emissions inventories, including those from owners or operators of facilities engaged in the following: coal bed methane compressing, processing, and related activities; unconventional natural gas development, production, transmission, processing, and related activities; and midstream conventional natural gas compressing, processing, and related activities." Included in the sources and activities that the Department had identified for the source reporting requirements were "pigging operations."
7. When the annual submission of pigging operations emissions became a DEP requirement for oil and gas operators in 2016, CNX Resources did not introduce any new and/or additional systems to assist the individual responsible for the recording of the data. The number of pigging events were recorded in the form of emails and text messages sent by a third party contractor. This



correspondence was used primarily for internal billing purposes. CNX Resources subsequently relied on this correspondence at the end of the reporting year to calculate the pigging events to be used in the annual emissions reporting formula. In mid-2017, this system evolved to a Google sheet system to track the number of pigging events for the year. At the end of the reporting year, the responsible official would manually tabulate the Google sheet entries and the final counts would be entered onto a spreadsheet. In September of 2019, CNX Resources introduced software designed to eliminate the manual tabulation errors in the reporting process. The Survey 1, 2, 3 System allows an employee or contractor to scan a QR code on the pigging station, enabling the data to be sent from the field in real-time.

8. Beginning in 2012, the Pennsylvania Department of Environmental Protection (DEP) began to investigate complaints regarding a pigging station known as "Oak Springs". The complaints from adjacent landowners, the Borello family, stemmed from the emissions that were occurring during the pigging process. The Oak Springs station was being pigged multiple times per day, and causing a severe disruption to quality of life of Jodi Borello and her family. The DEP was unable to find any violations relating to the volume or contents of the emissions, but because of Jodi Borello's record keeping, they were alerted to the possibility that CNX Resources was not accurately reporting the number of times that their station at Oak Springs was being pigged.
9. An Air Quality Specialist employed by the DEP, requested pigging logs from CNX Resources and compared the number of pigging events recorded with the number of events reported in the 2017 annual emissions report to the DEP. The comparison showed that CNX failed to account for nine (9) additional pigging events at Oak Springs. The number of events is critical in the accurate reporting of emissions. The Air Quality Specialist explained that the emissions formula for a given site is calculated utilizing pollutants emitted, type of equipment at the station, and the number of venting events. The under-reporting of venting events resulted in the under-reporting of emissions by CNX Resources.
10. After DEP notified CNX Resources of the missing data, CNX Resources failed to initiate a thorough audit of the process and procedures used to compile the number of pigging events. CNX Resources asked a single operator to recount the pigging events in his emails. CNX Resources subsequently amended the 2017 annual report, and submitted same to the DEP with corrections. The amended report submitted to the DEP contained inaccurate data as well. A review of the data indicated that the errors by CNX Resources were not limited to the Oak Springs facility.
11. Manually counting and inputting thousands of data points resulted in numerous errors in the numbers of pigging events recorded, and because the number of events was used in the emissions calculations formula, the subsequent amounts of emissions reported to the DEP were inaccurate.
12. As a result, the annual emissions reports submitted to the DEP were inaccurate for the reporting years 2016, the initial and amended submissions for 2017, 2018, and 2019.
13. In the reporting year 2016, CNX under-reported the number of pigging events.
14. In the reporting year 2017, CNX under-reported the number of pigging events.
15. In the amended report for 2017 which was re-submitted to the DEP, CNX under-reported the number of pigging events.
16. In the reporting year 2018, CNX over-reported the number of pigging events.
17. In the reporting year 2019, CNX over-reported the number of pigging events.

18. As provided in Air Pollution Control Act, 35 P.S. §4010.3, entitled Limitation on Action, "...actions for civil or criminal penalties under this act may be commenced at any time within a period of seven (7) years from the date the offense is discovered."