

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

IN THE MATTER OF:

Atlas Resources, LLC	:	Oil and Gas Act
800 Mountain View Drive	:	The Clean Streams Law
Smithfield, PA 15478	:	Solid Waste Management Act

CONSENT ASSESSMENT OF CIVIL PENALTY

This Consent Assessment of Civil Penalty ("CACP") is entered into this ____ day of _____ 2009, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department") and Atlas Resources, LLC ("Atlas").

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 Clean Streams Law, Act of June 22, 1937, P.L. 1987, *as amended*, 35 P.S. §§ 691.1-691.1001 ("Clean Streams Law"); 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 the rules and regulations ("Rules and Regulations") promulgated there under.

B. Atlas is a Pennsylvania corporation engaged in various oil and gas exploration activities in Pennsylvania. Atlas's business address is 800 Mountain View Drive, Smithfield, PA 15478.

C. Atlas is the “owner” and “operator,” as those terms are defined in Section 103 of the Oil and Gas Act, 58 P.S. § 601.103, of the following gas wells:

1. Burchianti 30, Permit No. 37-059-24476-00, Monongahela Township, Greene County,
2. Burchianti 41, Permit No. 37-059-24616-00, Monongahela Township, Greene County,
3. Carter 2, Permit No. 37-059-24111-00, Cumberland Township, Greene County,
4. Eckerd 1, Permit No. 37-125-23779-00, Deemston Borough, Washington County,
5. Henderson 7, Permit No. 37-051-24077-00, Jefferson Township, Fayette County,
6. Penarnik 8, Permit No. 37-059-24555-00, Cumberland Township, Greene County,
7. Redman 30, Permit No. 37-051-24231-00, Washington Township, Fayette County,
8. Thompson 32, Permit No. 37-051-23746, Nicholson Township, Fayette County,
9. Thompson 33, Permit No. 37-051-23747, Nicholson Township, Fayette County,
10. Willis 18, Permit No. 37-059-24708, Cumberland Township, Greene County,
11. Dancho-Brown 4, Permit No. 37-051-24152, Redstone Township, Fayette County,
12. Groves 8, Permit No. 37-059-25160, Cumberland Township, Greene County, and
13. Kovach 34, Permit No. 37-051-24225, German Township, Fayette County.

Burchianti 30

D. On May 27, 2009, Atlas failed to maintain erosion and sedimentation control Best Management Practices (“BMPs”) to minimize accelerated erosion and sedimentation on the well site.

E. Atlas’s failure to maintain adequate erosion and sedimentation control BMPs at the Burchianti 30 well site constitutes a violation of 25 Pa. Code § 78.53 and Section 206(b) of the Oil and Gas Act, 58 P.S. § 601.206(b), is unlawful conduct and a public nuisance under Sections 509 and 502 of the Oil and Gas Act, 58 P.S. §§ 601.509 and 601.502, and subjects Atlas to a claim for civil penalties under Section 506 of the Oil and Gas Act, 58 P.S. § 601.506.

F. Atlas’s failure to maintain adequate erosion and sedimentation control BMPs at the Burchianti 30 well site is a violation of 25 Pa. Code §§ 102.4(b)(1) and 102.11, constitutes unlawful conduct under Section 611 of the Clean Streams Law, 35 P.S. § 691.611, and subjects Atlas to a claim for civil penalties under Section 605 of the Clean Streams Law, 35 P.S. § 691.605.

Burchianti 41

G. On May 11, 2009, Atlas failed to maintain erosion and sedimentation control Best Management Practices (BMP’s) to minimize accelerated erosion and sedimentation on the Burchianti 41 well site. Specifically, Atlas caused or allowed gullies to form on the well site and sediment to overtop the filter fence and discharge off the well site.

H. Atlas’s failure to maintain adequate erosion and sedimentation control BMPs at the Burchianti 41 well site constitutes a violation of 25 Pa. Code § 78.53 and Section 206(b) of the Oil and Gas Act, 58 P.S. § 601.206(b), is unlawful conduct and a public nuisance under Sections 509

and 502 of the Oil and Gas Act, 58 P.S. §§ 601.509 and 601.502, and subjects Atlas to a claim for civil penalties under Section 506 of the Oil and Gas Act, 58 P.S. § 601.506.

I. Atlas's failure to maintain adequate erosion and sedimentation control BMPs at the Burchianti 41 well site is a violation of 25 Pa. Code §§ 102.4(b)(1) and 102.11, constitutes unlawful conduct under Section 611 of the Clean Streams Law, 35 P.S. § 691.611, and subjects Atlas to a claim for civil penalties under Section 605 of the Clean Streams Law, 35 P.S. § 691.605.

Carter 2

J. On or about April 10, 2008, Atlas failed to adequately restore the Carter 2 well site within nine months of completion of drilling. Specifically, Atlas did not permanently stabilize the well site by establishing a minimum uniform 70% perennial vegetative cover, with a density capable of resisting erosion and sedimentation, or another acceptable permanent BMP.

K. Atlas's inadequate restoration of the Carter 2 well site violates Section 206(c) of the Oil and Gas Act, 58 P.S. § 601.206(c), and 25 Pa. Code § 78.53, constitutes unlawful conduct and a public nuisance under Sections 509 and 502 of the Oil and Gas Act, 58 P.S. §§ 601.509 and 601.502, and subjects Atlas to a claim for civil penalties under Section 506 of the Oil and Gas Act, 58 P.S. § 601.506.

L. Atlas's inadequate-restoration of the Carter 2 well site violates 25 Pa. Code §§ 102.4(b)(1) and 102.22, constitutes unlawful conduct under Section 611 of the Clean Streams Law, 35 P.S. § 691.611, and subjects Atlas to a claim for civil penalties under Section 605 of the Clean Streams Law, 35 P.S. § 691.611.

M. Additionally, on or about April 10, 2008, Atlas failed to maintain erosion and sedimentation control BMPs to minimize accelerated erosion and sedimentation on the Carter 2

well site. Specifically, Atlas caused or allowed sediment to pass under perimeter filter fabric fence and discharge off the well site.

N. Atlas's failure to maintain adequate erosion and sedimentation control BMPs at the Carter 2 well site constitutes a violation of 25 Pa. Code § 78.53 and Section 206(b) of the Oil and Gas Act, 58 P.S. § 601.206(b), is unlawful conduct and a public nuisance under Sections 509 and 502 of the Oil and Gas Act, 58 P.S. §§ 601.509 and 601.502, and subjects Atlas to a claim for civil penalties under Section 506 of the Oil and Gas Act, 58 P.S. § 601.506.

O. Atlas's failure to maintain adequate erosion and sedimentation control BMPs at the Carter 2 well site is a violation of 25 Pa. Code §§ 102.4(b)(1) and 102.11, constitutes unlawful conduct under Section 611 of the Clean Streams Law, 35 P.S. § 691.611, and subjects Atlas to a claim for civil penalties under Section 605 of the Clean Streams Law, 35 P.S. § 691.605.

Eckerd 1

P. On July 31, 2009, Atlas failed to install any erosion and sedimentation control Best Management Practices (BMP's) to minimize accelerated erosion and sedimentation on the Eckerd 1 well site either before or during earth disturbance activities as evidenced by the discharge of sediment off the well site.

Q. Atlas's failure to implement and maintain adequate erosion and sedimentation control BMPs at the Eckerd 1 well site constitutes a violation of 25 Pa. Code § 78.53 and Section 206(b) of the Oil and Gas Act, 58 P.S. § 601.206(b), constitutes a public nuisance and unlawful conduct under Sections 502 and 509 of the Oil and Gas Act, 58 P.S. §§ 601.502 and 601.509, and subjects Atlas to a claim for civil penalties under Section 506 of the Oil and Gas Act, 58 P.S. § 601.506.

R. Atlas's failure to implement and maintain adequate erosion and sedimentation control BMPs at the Eckerd 1 well site is a violation of 25 Pa. Code §§ 102.4(b)(1) and 102.11, constitutes unlawful conduct under Section 611 of the Clean Streams Law, 35 P.S. § 691.611 and subjects Eckerd 1 to a claim for civil penalties under Section 605 of the Clean Streams Law, 35 P.S. § 691.605.

Henderson 7

S. On or about December 15, 2008, Atlas caused or allowed diesel fuel to be discharged to the ground at the Henderson 7 well site during a skid tank relocation on the well pad.

T. Diesel fuel discharged to the ground is a "residual waste" as that term is defined in Section 103 of the Solid Waste Management Act, 35 P.S. § 6018.103.

U. On or about December 15, 2008, Atlas did not have a permit or approval from the Department to discharge residual waste to the ground at the Henderson 7 well site.

V. Atlas's discharge of residual waste to the ground without first obtaining a permit or approval from the Department is a violation of Section 301 of the Solid Waste Management Act, 35 P.S. § 6018.301, and constitutes unlawful conduct and a public nuisance under Sections 302 and 601 of the Solid Waste Management Act, 35 P.S. §§ 6018.302 and 6018.601, and subjects Atlas to a claim for civil penalties under Section 605 of the Solid Waste Management Act, 35 P.S. § 6018.605.

W. On or about December 30, 2008, Atlas failed to maintain erosion and sedimentation control Best Management Practice (BMP's) to minimize accelerated erosion and sedimentation on

the Henderson 7 well site. Specifically, Atlas caused or allowed sediment to be discharged off the well site and into a wetland area.

X. Atlas's failure to maintain adequate erosion and sedimentation control BMPs at the Henderson 7 well site constitutes a violation of 25 Pa. Code § 78.53 and Section 206(b) of the Oil and Gas Act, 58 P.S. § 601.206(b), is unlawful conduct and a public nuisance under Sections 509 and 502 of the Oil and Gas Act, 58 P.S. §§ 601.509 and 601.502, and subjects Atlas to a claim for civil penalties under Section 506 of the Oil and Gas Act, 58 P.S. § 601.506.

Y. Atlas's failure to maintain adequate erosion and sedimentation control BMPs at the Henderson 7 well site is a violation of 25 Pa. Code §§ 102.4(b)(1) and 102.11, constitutes unlawful conduct under Section 611 of the Clean Streams Law, 35 P.S. § 691.611, and subjects Atlas to a claim for civil penalties under Section 605 of the Clean Streams Law, 35 P.S. § 691.605.

Pevarnik 8

Z. On or about July 13, 2009, Atlas caused or allowed production fluids including brine to be discharged onto the ground at the Pevarnik 8 well-site while transferring from brine tanks to frac tanks.

AA. Gas well production fluids including brine discharged on the ground are a "residual waste" as that term is defined in Section 103 of the Solid Waste Management Act, 35 P.S. § 6018.103.

AB. On or about July 13, 2009, Atlas did not have a permit or approval from the Department to discharge industrial waste and/or residual waste to the ground at the Pevarnik 8 well-site.

AC. Atlas's discharge of residual waste to the ground without first obtaining a permit or approval from the Department is a violation of 25 Pa. Code §§ 78.54 and 78.57(a) and constitutes unlawful conduct under Section 509 of the Oil and Gas Act, 58 P.S. § 601.509, and subjects Atlas to a claim for civil penalties under Section 506 of the Oil and Gas Act, 58 P.S. § 601.506.

AD. Atlas's discharge of residual waste to the ground without first obtaining a permit or approval from the Department is a violation of Section 301 of the Solid Waste Management Act, 35 P.S. § 6018.301, and constitutes unlawful conduct and a public nuisance under Sections 302 and 601 of the Solid Waste Management Act, 35 P.S. §§ 6018.302 and 6018.601, and subjects Atlas to a claim for civil penalties under Section 605 of the Solid Waste Management Act, 35 P.S. § 6018.605.

Willis 18

AE. On or about April 15, 2009, Atlas caused or allowed production fluids including brine to be discharged to the ground at the Willis 18 well site while transferring brine from the brine tank to a tanker truck.

AF. Gas well production fluids discharged on the ground are a "residual waste" as that term is defined in Section 103 of the Solid Waste Management Act, 35 P.S. § 6018.103.

AG. On or about April 15, 2009, Atlas did not have a permit or approval from the Department to discharge residual waste to the ground at the Willis 18 well site.

AH. Atlas's discharge of residual waste to the ground without first obtaining a permit or approval from the Department is a violation of 25 Pa. Code §§ 78.54 and 78.57(a) and constitutes

unlawful conduct under Section 509 of the Oil and Gas Act, 58 P.S. § 601.509, and subjects Atlas to a claim for civil penalties under Section 506 of the Oil and Gas Act, 58 P.S. § 601.506.

AI. Atlas's discharge of residual waste to the ground without first obtaining a permit or approval from the Department is a violation of Section 301 of the Solid Waste Management Act, 35 P.S. § 6018.301, and constitutes unlawful conduct and a public nuisance under Sections 302 and 601 of the Solid Waste Management Act, 35 P.S. §§ 6018.302 and 6018.601, and subjects Atlas to a claim for civil penalties under Section 605 of the Solid Waste Management Act, 35 P.S. § 6018.605.

Redman Unit 30

AJ. On or about July 23, 2009, Atlas failed to install and/or maintain adequate erosion and sedimentation control Best Management Practices (BMP's) to minimize accelerated erosion and sedimentation on the Redman Unit 30 well site. Specifically, Atlas caused or allowed perimeter filter fabric fence to be breached by a large amount of sediment that discharged off the well site.

AK. Atlas's failure to implement and maintain adequate erosion and sedimentation control BMPs at the Redman Unit 30 well site constitutes a violation of 25 Pa. Code § 78.53 and Section 206(b) of the Oil and Gas Act, 58 P.S. § 601.206(b), constitutes a public nuisance and unlawful conduct under Sections 502 and 509 of the Oil and Gas Act, 58 P.S. §§ 601.502 and 601.509, and subjects Atlas to a claim for civil penalties under Section 506 of the Oil and Gas Act, 58 P.S. § 601.506.

AL. Atlas's failure to implement and maintain adequate erosion and sedimentation control BMPs at the Redman 30 well site is a violation of 25 Pa. Code §§ 102.4(b)(1) and 102.11,

constitutes unlawful conduct under Section 611 of the Clean Streams Law, 35 P.S. § 691.611 and subjects Atlas to a claim for civil penalties under Section 605 of the Clean Streams Law, 35 P.S. § 691.605.

Thompson 32

AM. On or about July 08, 2009, Atlas failed to adequately restore the Thompson 32 well site within nine months of completion of drilling. Specifically, Atlas did not permanently stabilize the well site by establishing a minimum uniform 70% perennial vegetative cover, with a density capable of resisting erosion and sedimentation, or another acceptable permanent BMP.

AN. Atlas's inadequate restoration of the Thompson 32 well site violates Section 206(c) of the Oil and Gas Act, 58 P.S. § 601.206(c), and 25 Pa. Code § 78.53, constitutes unlawful conduct and a public nuisance under Sections 509 and 502 of the Oil and Gas Act, 58 P.S. §§ 601.509 and 601.502, and subjects Atlas to a claim for civil penalties under Section 506 of the Oil and Gas Act, 58 P.S. § 601.506.

AO. Atlas's inadequate restoration of the Thompson 32 well site violates 25 Pa. Code §§ 102.4(b)(1) and 102.22, constitutes unlawful conduct under Section 611 of the Clean Streams Law, 35 P.S. § 691.611, and subjects Atlas to a claim for civil penalties under Section 605 of the Clean Streams Law, 35 P.S. § 691.611.

Thompson 33

AP. On or about July 08, 2009, Atlas caused or allowed production fluids including brine to be discharged to the ground at the Thompson 33 well site. Additionally, Atlas failed to notify the Department of this reportable release of production fluids including brine.

AQ. Production fluids including brine discharged on the ground are a “residual waste” as that term is defined in Section 103 of the Solid Waste Management Act, 35 P.S. § 6018.103.

AR. On or about July 8, 2009, Atlas did not have a permit or approval from the Department to discharge residual waste to the ground.

AS. Atlas’s discharge of residual waste to the ground at the Thompson 33 well site without first obtaining a permit or approval from the Department is a violation of 25 Pa. Code §§ 78.54 and 78.57(a) and constitutes unlawful conduct and a public nuisance under Sections 509 and 502 of the Oil and Gas Act, 58 P.S. §§ 601.509 and 601.502, and subjects Atlas to a claim for civil penalties under Section 506 of the Oil and Gas Act, 58 P.S. § 601.506.

AT. Atlas’s discharge of residual waste to the ground at the Thompson 33 well site without first obtaining a permit or approval from the Department is a violation of Section 301 of the Solid Waste Management Act, 35 P.S. § 6018.301, and constitutes unlawful conduct and a public nuisance under Sections 302 and 601 of the Solid Waste Management Act, 35 P.S. §§ 6018.302 and 6018.601, and subjects Atlas to a claim for civil penalties under Section 605 of the Solid Waste Management Act, 35 P.S. § 6018.605.

AU. Atlas’s failure to promptly notify the Department of the production fluid including discharges is a violation of 25 Pa. Code § 91.33(a) constitutes unlawful conduct under Section 611 of the Clean Streams Law, 35 P.S. § 691.611; and subjects Atlas to civil penalty liability under Section 605 of the Clean Streams Law, 35 P.S. § 691.605.

Dancho-Brown 4

AV. On or about August 15, 2009, Atlas caused or allowed the discharge of hydraulic fracturing flow-back fluids from the Dancho-Brown 4 well site pit to the ground due to a compromised pit liner.

AW. Hydraulic fracturing flow-back fluids discharged on the ground are a “residual waste” as that term is defined in Section 103 of the Solid Waste Management Act, 35 P.S. § 6018.103.

AX. On or about August 15, 2009, Atlas did not have a permit or approval from the Department to discharge industrial and/or residual waste to the ground at the Dancho-Brown 4 well site.

AY. Atlas’s discharge of residual waste to the ground from a pit without first obtaining a permit or approval from the Department violates 25 Pa. Code §§ 78.54 and 78.56, constitutes unlawful conduct and a public nuisance under Sections 509 and 502 of the Oil and Gas Act, 58 P.S. §§ 601.509 and 601.502, and subjects Atlas to a claim for civil penalties under Section 506 of the Oil & Gas Act, 58 P.S. § 601.506.

AZ. Atlas’s discharge of residual waste to the ground without first obtaining a permit or approval from the Department violates Section 301 of the Solid Waste Management Act, 35 P.S. § 6018.301, constitutes unlawful conduct and a public nuisance under Sections 302 and 601 of the Solid Waste Management Act, 35 P.S. §§ 6018.302 and 6018.601, and subjects Atlas to a claim for civil penalties under Section 605 of the Solid Waste Management Act, 35 P.S. § 6018.605.

Groves 8

BA. On or about September 19, 2009, Atlas caused or allowed the discharge of hydraulic fracturing flow-back fluids from the Groves 8 well site pit to the ground due to a compromised pit liner.

BB. Hydraulic fracturing flow-back fluids are a “residual waste” as that term is defined in Section 103 of the Solid Waste Management Act, 35 P.S. § 6018.103.

BC. On or about September 19, 2009, Atlas did not have a permit or approval from the Department to discharge residual waste to the ground at the Groves 8 well site.

BD. Atlas’s discharge of residual waste to the ground from a pit without first obtaining a permit or approval from the Department violates 25 Pa. Code §§ 78.54 and 78.56, constitutes unlawful conduct and a public nuisance under Sections 509 and 502 of the Oil and Gas Act, 58 P.S. §§ 601.509 and 601.502, and subjects Atlas to a claim for civil penalties under Section 506 of the Oil & Gas Act, 58 P.S. § 601.506.

BE. Atlas’s discharge of residual waste to the ground without first obtaining a permit or approval from the Department violates Section 301 of the Solid Waste Management Act, 35 P.S. § 6018.301, constitutes unlawful conduct and a public nuisance under Sections 302 and 601 of the Solid Waste Management Act, 35 P.S. §§ 6018.302 and 6018.601, and subjects Atlas to a claim for civil penalties under Section 605 of the Solid Waste Management Act, 35 P.S. § 6018.605.

Kovach 34

BF. On or about September 1, 2009, Atlas caused or allowed approximately 450 gallons of hydrochloric acid to be spilled on the ground at the Kovach 34 well site.

BG. Hydrochloric acid spilled on the ground is a “residual waste” as that term is defined in Section 103 of the Solid Waste Management Act, 35 P.S. § 6018.103.

BH. On or about September 1, 2009, Atlas did not have a permit or approval from the Department to discharge residual waste to the ground at the Kovach 34 well site.

BI. Atlas’s discharge of residual waste to the ground from a pit without first obtaining a permit or approval from the Department violates 25 Pa. Code §§ 78.54, constitutes unlawful conduct and a public nuisance under Sections 509 and 502 of the Oil and Gas Act, 58 P.S. §§ 601.509 and 601.502, and subjects Atlas to a claim for civil penalties under Section 506 of the Oil & Gas Act, 58 P.S. § 601.506.

BJ. Atlas’s discharge of residual waste to the ground without first obtaining a permit or approval from the Department violates Section 301 of the Solid Waste Management Act, 35 P.S. § 6018.301, constitutes unlawful conduct and a public nuisance under Sections 302 and 601 of the Solid Waste Management Act, 35 P.S. §§ 6018.302 and 6018.601, and subjects Atlas to a claim for civil penalties under 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 Atlas 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 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

EIGHTY EIGHT THOUSAND TWO HUNDRED SEVENTY FIVE DOLLARS (\$88,275.00)

which Atlas hereby agrees to pay.

2. Civil Penalty Settlement. Upon the signing of this CACP, Atlas shall pay the civil penalty assessment in Paragraph 1. This payment is in settlement of the Department's claim for civil penalties for the violations set forth in Paragraphs E, F, H, I, K, L, N, O, Q, R, V, X, Y, AC, AD, AH, AI, AK, AL, AN, AO, AS, AT, AU, AY, AZ, BD, BE, BI and BJ. The payment shall be by corporate check or the like made payable to the "Commonwealth of Pennsylvania" and sent to the Department of Environmental Protection, Oil and Gas Management, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

3. Findings.

a. Atlas agrees that the findings in Paragraphs A through BJ are true and correct and, in any matter or proceeding involving Atlas and the Department, Atlas 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. Atlas 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 Atlas certify, under penalty of law,

as provided by 18 Pa. C. S. § 4904, that they are authorized to execute this CACP on behalf of Atlas; that Atlas consents to the entry of this CACP as an ASSESSMENT of the Department; that Atlas hereby knowingly waives any right to a hearing under the statutes referenced in this CACP; and that Atlas 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 Atlas' attorney is not required and certifies only that the assessment has been signed after consulting with counsel.

FOR ATLAS RESOURCES, LLC:

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:

Jeffrey C. Simmons
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