



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

28 SEP 2011

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Jack Lafield
President
Caiman Energy, LLC
5949 Sherry Lane
Dallas, Texas 75225

Mr. Steven Rooney
Precision Pipeline, LLC
3314 56th St.
Eau Claire, Wisconsin 54703

Re: EPA Docket No. CWA-03-2011-0300DW
ORDER FOR COMPLIANCE

Dear Sirs:

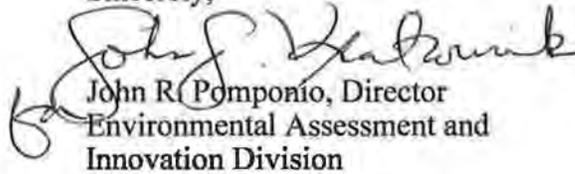
Enclosed is an Order for Compliance that requires you to mitigate for the unauthorized activities associated with impacts for the construction of the "Victory" section of a Caiman Energy, LLC pipeline. Violations were observed north of Kausooth, between Reid Ridge Road (County Route 96) and Fish Ridge Road (County Route 94) in Marshall County, West Virginia. The Order requires mitigation for the environmental harm which was caused by the unlawful discharge to waters of the United States. The U.S. Environmental Protection Agency (EPA) has issued this Order under the authority of Section 309(a) of the Clean Water Act (CWA), 33 U.S.C. § 1319(a).

The CWA prohibits discharges to waters of the United States, including dredge or fill material, without a permit from the U.S. Army Corps of Engineers pursuant to CWA §404, 33 USC §1344. Activities performed by Caiman Energy, LLC and Precision Pipeline LLC have resulted in discharges to jurisdictional waters of the United States without a permit. These activities constitute a violation of Sections 301 and 404 of the CWA and include the placement of fill material into tributaries of Cedar Run. All fill material in the stream must be removed, and all impacted areas must be returned to pre-disturbance conditions.

RECEIVED
2011 SEP 28 AM 11:14
REGIONAL HEARINGS CLERK
EPA REGION III PHILA. PA

EPA is prepared to answer any questions you may have. Ms. Carrie Traver is assigned to this matter and may be reached by phone at 215-814-2772.

Sincerely,



John R. Pomponio, Director
Environmental Assessment and
Innovation Division

Enclosure

cc: Mr. Scott Hans – US Army Corps of Engineers, Pittsburgh District
Mr. Frank Jernejcic – WV Department of Natural Resources
Mr. Michael Zeto – WV Department of Environmental Protection
Mr. Bradley Swiger- WV Department of Environmental Protection
Mr. Steve Skellie – Caiman Energy, LLC
Mr. Alan Kane, Kane Environmental Engineering, Inc.

BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

In The Matter of)	
)	
Caiman Energy, LLC)	Proceeding Under Section
)	309(a) of the Clean Water
Property Located At:)	Act, 33 U.S.C. § 1319(a)
)	
Fish Ridge Road (County Route 94))	
Southwest of the intersections with)	
Reid Ridge Road (County Route 96))	ORDER FOR COMPLIANCE
Marshall County, Cameron, WV 26033)	
)	
Respondent)	Docket No. CWA-03-2011-0300DW

I. STATUTORY AUTHORITY

1. This Order for Compliance is issued under the authority vested in the United States Environmental Protection Agency (EPA) by Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a) (“CWA” or “Act”). The Administrator has delegated this authority to the Regional Administrator of EPA Region III who in turn has redelegated it to the Director of the Environmental Assessment and Innovation Division.

II. ALLEGATIONS

2. Respondent, Precision Pipeline, LLC, is a corporation organized and existing under the laws of Wisconsin and is authorized to do business in the state of West Virginia.
3. Respondent, Caiman Energy, LLC, is a limited liability company organized and existing under the laws of Delaware and is authorized to do business in the state of West Virginia.
4. Respondents are therefore “persons” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
5. Respondents, Precision Pipeline and Caiman Energy, conducted work in tributaries of Cedar Run, located along Fish Ridge Road, southwest of the intersection with Reid Ridge Road, Marshall County, West Virginia, (“the Site”), further identified on the attached

map labeled Exhibit "A." Cedar Run is a tributary to Fish Creek. Fish Creek flows to the Ohio River, a navigable-in-fact body of water. Therefore, Site contains, abuts, and flows to "waters of the United States" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7); 40 C.F.R. § 232.2; 40 C.F.R. § 122.2.

6. Upon information and belief, commencing on various occasions between June 2011 and the present, Respondents, or persons acting on behalf of Respondents, operated equipment which discharged dredged and/or fill material to waters of the United States associated with the construction of the "Victory" pipeline located at the Site described in Paragraph 5, above, and further depicted on Exhibit "A." For purposes of the order, Site shall include but not be limited to: the pipeline, associated access roads, and appurtenances. Respondents' activities included dredging and discharging fill material into unnamed tributaries to Cedar Run, in association with installation of a natural gas pipeline.
7. The term "fill material" within the meaning of 40 C.F.R. § 232.2, includes any pollutant which replaces portions of "waters of the United States" with dry land or which changes the bottom elevation of a water body for any purpose.
8. The equipment referenced in Paragraph 4, above, which has discharged dredged and/or fill material to "waters of the United States", constitutes a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).
9. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of dredged and/or fill material by any person to "waters of the United States" except in compliance with a permit issued by the Secretary of the Army under Section 404 of the Act, 33 U.S.C. § 1344.
10. On information and belief, at no time during the discharge of dredged and/or fill material to the "waters of the United States" located on the Site, did the Respondents have a permit from the Secretary of the Army as required by Section 404 of the Act, 33 U.S.C. § 1344.
11. Respondents, by discharging dredged and/or fill material to the "waters of the United States" without authorization, have violated Section 301(a) of the Act, 33 U.S.C. § 1311(a).

III. ORDER FOR COMPLIANCE

Therefore, this 28th day of September, 2011, the Respondents are hereby ORDERED, pursuant to Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a), to do the following:

12. Cease and desist all discharges without a permit to waters of the United States at the Site.

13. Within thirty (30) days of the effective date of this order, Respondents shall submit a pre-construction wetland and stream delineation for the entire "Victory" pipeline right of way to EPA for review and approval. This will identify all areas on the Site that, prior to construction, were streams or wetlands and will show the extent of the regulated waters. The Respondent shall utilize a methodology for identifying wetlands and streams in disturbed and undisturbed areas consistent with methods generally accepted by the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers.
14. Within thirty (30) days of EPA's approval, Respondents shall submit a detailed restoration plan to EPA for approval. The plan must describe the actions to be taken to remove the material from the regulated waters, to stabilize the Site, and to return the streams and wetlands to pre-disturbance grade and conditions.
15. After review of the restoration plan, EPA will: a) approve the plan, in whole or in part; b) approve the plan upon specified conditions; c) modify the plan to cure any deficiencies; d) disapprove the plan, in whole or in part, or e) any combination of the above.
16. If EPA disapproves all or part of the restoration plan, Respondents shall, within fourteen (14) days of receipt of EPA's disapproval, correct the deficiencies and resubmit the plan for approval. EPA retains the right, if the plan is not approved as provided in this Order, to order restoration in accordance with a plan developed by EPA. Upon approval of the restoration plan (either with or without conditions or modifications by EPA), Respondents shall implement the plan as approved or modified by EPA as provided below. All restoration work shall be completed within ninety (90) days of EPA's approval of the plan.
17. Respondents' failure to complete the work in a manner consistent with this Order shall be deemed a violation of this Order.
18. The restoration plan and all other correspondence should be sent to:

Carrie Traver
United States Environmental Protection Agency
Region III (3EA30)
1650 Arch Street
Philadelphia, PA 19103-2029
19. Respondents' compliance with the terms of this Order shall not relieve Respondents of their obligation to comply with all applicable provisions of the Clean Water Act or any other Federal, State or local law or regulation. Issuance of this Order is not an election by EPA to forego any civil or criminal action otherwise authorized by the Clean Water Act. EPA reserves the right to seek any remedy available under the law that it deems appropriate to the violations described herein. Compliance with this Order shall not be a defense to any action commenced pursuant to such authorities.

20. Violation of the terms of this Order may result in further EPA enforcement action including, but not limited to, imposition of administrative penalties pursuant to 33 U.S.C. § 1319(g) as modified by the Debt Collection Procedures Act of 1996 and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19; and/or initiation of judicial proceedings that allow for civil penalties pursuant to 33 CFR § 1319(b) and (d) as modified by the Debt Collection Procedures Act; and/or for the criminal sanctions of imprisonment and fines of up to \$50,000 per day, 33 U.S.C. § 1319(c).

IV. EFFECTIVE DATE

21. The effective date of this Order shall be the date of receipt of the executed document.

V. NOTICE OF INTENT TO COMPLY

22. Within ten (10) days of the effective date of this Order, Respondents shall submit to EPA a Notice of Intent to Comply with the Order. The Notice shall be submitted to:

Carrie Traver
United States Environmental Protection Agency
Region III (3EA30)
1650 Arch Street
Philadelphia, PA 19103-2029

Date: 9/28/11


John R. Pomponio, Director
Environmental Assessment and Innovation Division

CERTIFICATION OF SERVICE

I certify that on this date I filed with the Regional Hearing Clerk, EPA Region III, a copy of the Administrative Order for Compliance with copies going, via certified mail, return receipt requested, to the following:

Mr. Jack Lafield
President
Caiman Energy, LLC
5949 Sherry Lane
Dallas, TX 75225

Mr. Steven Rooney
Precision Pipeline, LLC
3314 56th St.
Eau Claire, WI 54703


Pamela J. Lazos

9/28/11
Date: _____

Exhibit "A"

CWA-03-2011-0300DW

the Site



0 1,500 3,000 6,000 Feet

1 inch = 2,000 feet

