



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

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FEB 22 2012

Mr. Randy Broda
Jay Bee Oil and Gas
Route 1 Box 5
Cairo, West Virginia 26337

Re: EPA Docket No. CWA-03-2012-0087DW
ORDER FOR COMPLIANCE


Dear Mr. Broda:

Enclosed is an Order for Compliance that notifies you that the U.S. Environmental Protection Agency (EPA) has identified unauthorized discharges to waters of the United States associated with the Yeater Well Pad, located off of County Route 6/Franks Run, approximately 1.2 miles northeast of the intersection of West Virginia 23 and County Route 6/Frank's Run in Center Point, Doddridge County, West Virginia. The 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 of dredged and/or fill material to waters of the United States, without a permit from the U.S. Army Corps of Engineers. The EPA has determined that activities performed by Jay Bee Oil and Gas have resulted in a discharge to a tributary of Franks Run, a jurisdictional water of the United States, without a permit. This constitutes a violation of Sections 301 and 404 of the CWA. The enclosed Order for Compliance identifies these unlawful discharges and proposes certain ways to abate this violation and return to compliance.

EPA is prepared to answer any questions you may have. Ms. Stephanie Andreescu is assigned to this matter and may be reached by phone at 215-814-2747.

Sincerely,


John R. Pomponio, Director
Environmental Assessment and
Innovation Division

Enclosure

cc: Mr. Mark Taylor – U.S. Army Corps of Engineers, Huntington District
Ms. Susan Fields – U.S. Army Corps of Engineers, Huntington District
Mr. Mike Zeto – WV Department of Environmental Protection
Mr. Brad Swiger – WV Department of Environmental Protection
Mr. Frank Jernejcic – WV Division of Natural Resources

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

In The Matter of)	
)	
Jay Bee Oil and Gas)	Proceeding Under Section
)	309(a) of the Clean Water
)	Act, 33 U.S.C. § 1319(a)
Property Located At:)	
)	
Yeater Well Pad)	
1.2 miles northeast of West Virginia 23)	
and County Route 6/Franks Run)	
Center Point, West Virginia 26339)	
)	ORDER FOR COMPLIANCE
)	
Respondent)	Docket No. CWA-03-2012-0087DW

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 is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
3. Respondent, Jay Bee Oil and Gas, is the owner, lessee, and/or operator of the property located approximately 1.2 miles northeast of the intersection of West Virginia 23 and County Route 6/Franks Run in Center Point, Doddridge County, West Virginia. This area is identified as "the Site" on the attached map labeled Exhibit "A". The Site includes a tributary to Franks Run, which flows to McElroy Creek and then to Middle Island Creek, a navigable-in-fact body of water. Therefore, the Site contains "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.

4. On information and belief, in September 2010, Respondent, or persons acting on behalf of Respondent, operated equipment which discharged dredged and/or fill material to waters of the United States located on the Site described in Paragraph 3, above, and further depicted on Exhibit "A", attached hereto. Respondent's activities included the discharge of dredged and/or fill material into an unnamed tributary of Franks Run without authorization.
5. 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.
6. The dredged and/or fill material referenced in Paragraph 4 was discharged by a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. 1362(14) to "waters of the United States."
7. Section 301(a) of the Act, 33 U.S.C. §1311(a), prohibits the discharge of dredged and/or fill material from point sources 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.
8. On information and belief, at no relevant time did the Respondent have a permit from the Secretary of the Army as required by Section 404 of the Act, 33 U.S.C. § 1344 for discharges of dredged and/or fill material to waters of the United States located on the Site.
9. Respondent, by discharging dredged and/or fill material to the "waters of the United States" without authorization, has violated Section 301(a) of the Act, 33 U.S.C. § 1311(a).

III. ORDER FOR COMPLIANCE

Therefore, this 22ND day of FEBRUARY, 2012, the Respondent is hereby ORDERED, pursuant to Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a), to do the following:

10. Cease and desist all discharges of dredged and/or fill material without a permit to waters of the United States at the Site.
11. Within thirty (30) days of EPA's approval, Respondent shall submit a detailed restoration plan to EPA for approval. The plan must describe the actions that will be taken to remove the material from the regulated waters, stabilize the site, and return the Site to pre-disturbance grade and conditions. Alternatively, Respondent shall submit a plan to modify the existing stream crossing to comply with the requirements of Nationwide Permit 14.

12. After review of the plan submitted pursuant to Paragraph 11, 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.
13. If EPA disapproves all or part of the restoration plan, Respondent 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), Respondent 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.
14. The restoration plan and all other correspondence should be sent to:

Stephanie Andreescu
Environmental Scientist
United States Environmental Protection Agency
1650 Arch Street (3EA30)
Philadelphia, PA 19103-2029
15. Respondent's compliance with the terms of this Order shall not relieve Respondent of its 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.

IV. EFFECTIVE DATE

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

V. NOTICE OF INTENT TO COMPLY

17. Within ten (10) days of the effective date of this Order, Respondent shall submit to EPA a Notice as to whether Respondent intends to comply with the Order. The Notice shall be submitted to:

Stephanie Andreescu
Environmental Scientist
United States Environmental Protection Agency
1650 Arch Street (3EA30)
Philadelphia, PA 19103-2029

Date: 2/22/2012


John R. Pomponio, Director
Environmental Assessment and Innovation Division

Exhibit A

CWA-03-2012-0087DW

