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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

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Philadelphia, Pennsylvania 19103-2029 EPA REGION III, PHILA. PA

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

I.L. Morris, President
Waco Oil and Gas Co., Inc.
1595 U.S. Highway 33 E.
Glenville, West Virginia 26351

Re: In the Matter of Waco Oil and Gas, Inc.,
EPA Docket. No. CWA-03-2013-0200DW

Dear Mr. Morris:

Please find enclosed an Administrative Order ("Order") Docket. No. CWA-03-2013-0200DW, which the United States Environmental Protection Agency ("EPA") is issuing to Waco Oil and Gas, Inc. ("Waco") for violations of Section 301(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1311(a), at the Webb Well Pad Site in Doddridge County, West Virginia.

Section 301(a) of the CWA prohibits any person from discharging a pollutant from a point source to a water of the United States without specific authorization. Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), authorizes EPA to issue an Administrative Compliance Order whenever any person is in violation of any condition or limitation which implements, *inter alia*, Section 301(a) of the CWA. Specifically, based on its inspection conducted January 9, 2013 and on other information available to it, EPA has determined that persons acting on behalf of and/or at the direction of Waco discharged dredged and/or fill material to waters of the United States without a permit issued by the U.S. Army Corps of Engineers pursuant to Section 404 of the CWA, 33 U.S.C. § 1344. The enclosed Order notifies Waco of these violations and describes actions that will return Waco to compliance.

You are entitled to assert a claim of business confidentiality covering any part or all of the information submitted in response to the Order, in a manner described at 40 C.F.R. § 2.203(b). Information subject to a claim of business confidentiality will be made available to the public only in accordance with 40 C.F.R. Part 2, Subpart B. Unless a claim of business confidentiality is asserted at the time the requested information is submitted, EPA may make this information available to the public without further notice to you.

If you have any questions regarding the Order or wish to submit any written material you believe to be relevant to the agency's findings, please contact Stephanie Andreescu, Office of Environmental Programs, at (215) 814-2747. Your counsel may contact Pam Lazos, Senior Assistant Regional Counsel, at (215) 814-2658.

Sincerely,



John R. Pomponio, Director
Environmental Assessment and Innovation Division
U.S. EPA Region III

Enclosure

cc: Mr. Mark Taylor – US Army Corps of Engineers, Huntington District
Mr. Michael Zeto – WV DEP - EE
Mr. Brad Swiger – WV DEP - EE
Mr. David Belcher – WV DEP - OOG
Ms. Jackie Thornton – WV DEP - OOG
Ms. Wilma Reip – WV DEP - DWWM
Mr. Roger Anderson – WV DNR
Ms. Theresa Webb

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REGIONAL HEARING CLERK
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In The Matter of:

Waco Oil and Gas Co., Inc.

Property Located At:
The Webb Well Pad Site
0.9 mile northeast of the intersection of
U.S. 50 and Tarkiln Run/County Route 9
Salem, West Virginia 26426

Respondent

Proceeding Under Section 309(a) of the Clean
Water Act, 33 U.S.C. § 1319(a)

ORDER FOR COMPLIANCE

Docket. No. CWA-03-2013-0200DW

I. STATUTORY AUTHORITY

1. This Administrative Order for Compliance (“AO”) is issued under the authority vested in the United States Environmental Protection Agency (“EPA”) by Sections 308(a) and 309(a) of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1318(a), 1319(a). The Administrator has delegated this authority to the Regional Administrator of EPA Region III who in turn has delegated it to the Director of the Environmental Assessment and Innovation Division.

II. FINDINGS OF FACT and CONCLUSIONS OF LAW

2. Waco Oil and Gas Co., Inc. (“Respondent”) is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
3. 40 C.F.R. § 232.2 defines “discharge of fill material” to include “[p]lacement of fill that is necessary for the construction of any structure or infrastructure in a water of the United States.”
4. 40 C.F.R. § 232.2 defines “fill material” as “material placed in waters of the United States where the material has the effect of: 1) [r]eplacing any portion of a water of the United States with dry land; or 2) [c]hanging the bottom elevation of any portion of a water of the United States.”
5. Fill material is a “pollutant” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of dredged and/or fill material from a point source to "waters of the United States" except in compliance with a permit issued by the Secretary of the Army under Section 404 of the CWA, 33 U.S.C. § 1344.
7. Respondent is the operator of the Webb Well Pad, located at coordinates 39.31, -80.605, approximately 0.9 miles northeast of the intersection of U.S. 50 and Tarkiln Run/County Route 9 in Salem, West Virginia ("the Site").
8. The Site is located adjacent to unnamed tributaries (UNTs) to Tarkiln Run. Tarkiln Run flows to Buckeye Run, then to Buckeye Creek, and then to Middle Island Creek, a tributary of the Ohio River. The nearest navigable extent of slack water that has been formally identified by the U.S. Army Corps of Engineers (Corps), is Middle Island Creek which extends 12.0 miles above its mouth to the Ohio River. The unnamed tributaries on the Site are "waters of the United States" within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7); 40 C.F.R. § 232.2.
9. On the basis of information available, Respondent, or persons acting on behalf of Respondent, operated equipment which discharged dredged and/or fill material to waters of the United States located at the Site. Specifically, construction of the Webb Well Pad disturbed unnamed tributaries to Tarkiln Run.
10. On the basis of information available, the dredged and/or fill material was discharged by equipment which constitutes a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
11. On the basis of information available, at no time during the alleged discharge of dredged and/or fill material to the "waters of the United States" located on the Site did Respondent have a permit from the Secretary of the Army as required by Section 404 of the CWA, 33 U.S.C. § 1344.
12. On the basis of information available, Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a) by discharging dredged and/or fill material to the "waters of the United States" without authorization.

III. ORDER FOR COMPLIANCE

Therefore, this 11th day of September, 2013, 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:

13. Immediately cease and desist all discharges without a permit to waters of the United States at the Site.

14. Within thirty (30) days of the effective date of this Order, Respondent shall submit a pre-construction wetland and stream delineation to EPA for review and approval. This will fully identify all areas on the Site that, prior to construction, were streams or wetlands and will show the extent of the regulated waters in and adjacent to the work area. The Respondent shall utilize a methodology for identifying wetlands and streams in disturbed and undisturbed areas consistent with methods accepted by EPA and the U.S. Army Corps of Engineers.
15. Within thirty (30) days of EPA's approval, Respondent shall submit a detailed restoration and mitigation 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.
16. After review of the restoration and mitigation 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.
17. 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.
18. 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.
19. Respondent's failure to complete the work in a manner consistent with this Order shall be deemed a violation of this Order.
20. The restoration plan and all other correspondence should be sent to:

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

IV. GENERAL PROVISIONS

21. The following certification must accompany each submission by Respondent pursuant to this Order and must be signed by a Representative of Respondent authorized to sign on behalf of Respondent:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

22. Respondent's compliance with the terms of this Order shall not relieve Respondent of its obligation to comply with all applicable provisions of the CWA or any other Federal, State or local law or regulation.
23. Issuance of this Order is not an election by EPA to forego any civil or criminal action otherwise authorized by the CWA. EPA reserves the right to seek any remedy available under the law that it deems appropriate to address the violations described herein. Compliance with this Order shall not be a defense to any action commenced pursuant to such authorities. Failure to comply and/or respond to this Order, or providing misleading or false information, may subject you to civil and/or criminal sanctions pursuant to, 33 U.S.C. § 1319, and/or a civil judicial action initiated by the U.S. Department of Justice.

V. OPPORTUNITY TO CONFER

24. Respondent is invited to confer with the Agency about the findings and conclusions reflected in this Order and about the terms and conditions contained herein. Any such conference can be in person or by electronic means. Respondent may also submit any written material it believes to be relevant to the Agency's determinations. If such a conference is desired, Respondent should contact Stephanie Andreescu at (215) 814-2747.

VI. JUDICIAL REVIEW

25. Respondent may seek federal judicial review of this Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

VII. NOTICE OF INTENT TO COMPLY

26. Within ten (10) days of the effective date of this Order, Respondent shall submit to EPA a Notice of Intent 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

VIII. EFFECTIVE DATE

27. This Order will become effective thirty (30) days after receipt unless modified or withdrawn.

Date:

9/11/13



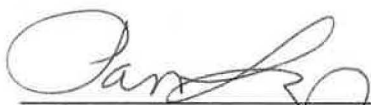
John R. Pomponio, Director
Environmental Assessment Innovation Division
U.S. EPA Region III

CERTIFICATE OF SERVICE

I hereby certify that on this date, I filed the original Administrative Order for Compliance AO with the Regional Hearing Clerk, US EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103, and that a true and correct copy of this AO was sent by certified mail, return receipt requested to:

I.L. Morris, President
Waco Oil and Gas Co., Inc.
1595 U.S. Highway 33 E.
Glennville, West Virginia 26351

9/11/13
Date: _____



Pamela J. Lazos (3RC20)
Sr. Asst. Regional Counsel