



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

28 SEP 2011

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Jack Williams
XTO Energy, Inc.
810 Houston Street
Fort Worth, Texas 76102

Re: EPA Docket No. CWA-03-2011-0298DW
ORDER FOR COMPLIANCE

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2011 SEP 28 AM 11:15
EPA REGION III, PHILA, PA

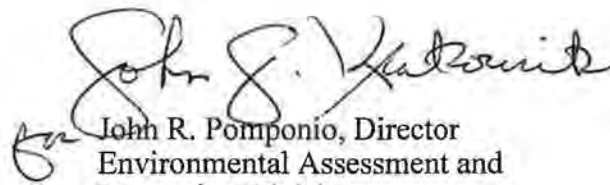
Dear Mr. Williams:

Enclosed is an Order for Compliance that requires you to mitigate for the unauthorized discharges to waters of the United States associated with the Boggess Site, located approximately 1.0 mile north of the intersection of Reeses Run Road (County Route 20/7) and West Virginia Route 20, Lumberport, Harrison County, West Virginia. 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 dredged and/or fill material, without a permit from the U.S. Army Corps of Engineers. Activities performed by XTO Energy, Inc. have resulted in discharges to tributaries of Tenmile Creek and/or their associated wetlands without a permit into jurisdictional waters of the United States. This discharge constitutes a violation of Sections 301 and 404 of the CWA. All fill material in streams and wetlands must be removed, and all impacted areas must be returned to pre-disturbance conditions.

EPA is prepared to answer any questions you may have. Ms. Stephanie Chin 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. Scott Hans – US Army Corps of Engineers
Ms. Dana Adipietro – US Army Corps of Engineers
Mr. Mike Zeto – WV Dept of Environmental Protection
Mr. Brad Swiger – WV Dept of Environmental Protection
Mr. Frank Jernejcic – WV Division of Natural Resources
Mr. Wil Porche – XTO Energy, Inc.
Mr. Christopher Armstrong – XTO Energy, Inc.
Mr. Joseph Reinhart – Babst Calland
Ms. Lisa Bruderly – Babst Calland

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

In The Matter of)	
)	
XTO Energy, Inc.)	Proceeding Under Section
)	309(a) of the Clean Water
)	Act, 33 U.S.C. § 1319(a)
Property Located At:)	
)	
Boggess Site)	
Approximately 1.0 mile north of the)	
Intersection of Reeses Run Road and)	
West Virginia Route 20)	
Lumberport, West Virginia 26386)	
)	ORDER FOR COMPLIANCE
)	
Respondent)	Docket No. CWA-03-2011-0298DW

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, XTO Energy, Inc., is the owner, lessee, and/or operator of the property located approximately 1.0 mile north of the intersection of Reeses Run Road (County Route 20/7) and West Virginia Route 20, Lumberport, Harrison County, West Virginia, identified as "the Site" on the attached map labeled Exhibit “A”. For purposes of this Order, the Site shall include, but is not limited to, the well pad, compressor station, access roads, and all appurtenances associated with the “Boggess Site.” The Site contains wetlands and unnamed tributaries to Tenmile Creek, which flows to the Monongahela River, a navigable-in-fact body of water. Therefore, the 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.

4. On information and belief, commencing on various occasions between January 2010 to the current date, 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 constructed a well pad, a compressor station, access roads, and appurtenances. Respondent's activities include the discharge of dredged and/or fill material into unnamed tributaries of Tenmile Creek and/or their associated wetlands.
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 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.
8. 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 Respondent have a permit from the Secretary of the Army as required by Section 404 of the Act, 33 U.S.C. § 1344.
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 28th day of September, 2011, 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 the effective date of this order, Respondent shall submit a pre-disturbance wetland and stream delineation to EPA for review and approval. The delineation and associated report will identify any and all areas at the Site that, prior to construction, were streams and/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.

12. 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.
13. 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.
14. 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.
15. Respondent's failure to complete the work in a manner consistent with this Order shall be deemed a violation of this Order.
16. The restoration plan and all other correspondence should be sent to:

Stephanie Chin
Environmental Scientist
United States Environmental Protection Agency
1650 Arch Street (3EA30)
Philadelphia, PA 19103-2029
17. 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.
18. 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

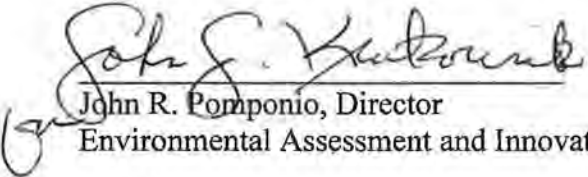
19. The effective date of this Order shall be the date of receipt of the executed document.

V. NOTICE OF INTENT TO COMPLY

20. 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 Chin
Environmental Scientist
United States Environmental Protection Agency
1650 Arch Street (3EA30)
Philadelphia, PA 19103-2029

Date: 9/28/11


John R. Pomponio, Director
Environmental Assessment and Innovation Division

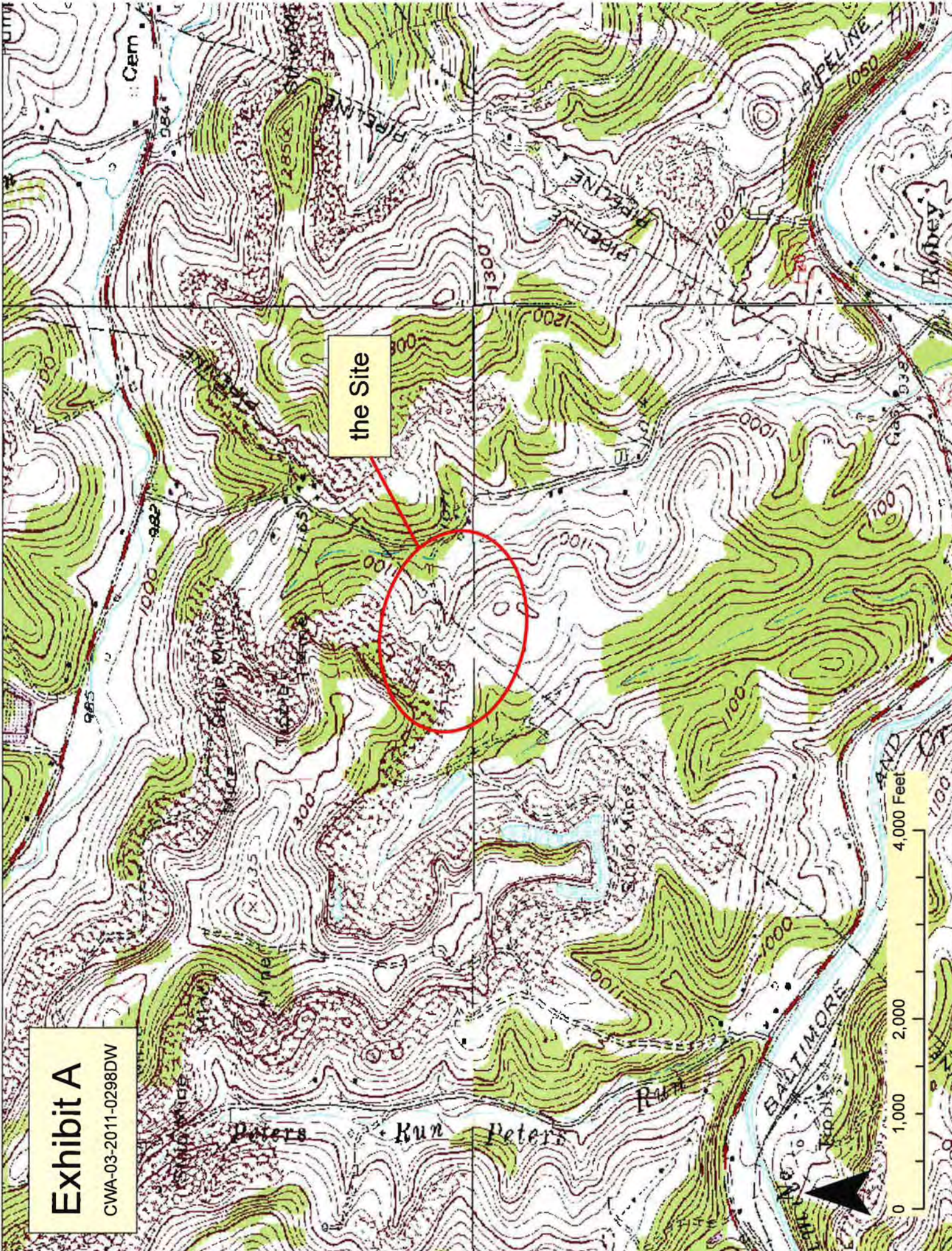
CERTIFICATION OF SERVICE

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 Williams
President
XTO Energy, Inc.
810 Houston Street
Fort Worth, Texas 76102


Pamela J. Lazos

9/28/11
Date: _____



the Site

Exhibit A
CWA-03-2011-0298DW

