



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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

FEB 29 2012

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

Re: EPA Docket No. CWA-03-2012-0135DW
ORDER FOR COMPLIANCE

Dear Mr. Williams:

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 Fancher Well Pad, located off of Grays Run Road/County Road 44, approximately 500 linear feet (lf) north of the intersection of County Road 11/5 and Grays Run Road, near Four States, Marion 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 XTO Energy, Inc. have resulted in discharges to tributaries of Tevebaugh Creek, 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 ways to abate this violation.

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,

A handwritten signature in black ink that reads "John R. Pomponio".

John R. Pomponio, Director
Environmental Assessment and
Innovation Division

Enclosure

cc: Mr. Scott Hans – US Army Corps of Engineers, Pittsburgh District
Ms. Dana Adipietro – US Army Corps of Engineers, Pittsburgh District
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. Dan Tomley – 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

REGIONAL HEARING CLERK
EPA REGION III PHILA. PA.

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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:)	
)	
Fancher Well Pad)	
500 lf north of County Road 11/5 and)	
Grays Run Road/County Road 44)	
Four States, West Virginia)	
)	ORDER FOR COMPLIANCE
)	
Respondent)	Docket No. CWA-03-2012-0135DW

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 off of Grays Run Road/County Road 44, approximately 500 lf north of the intersection of County Road 11/5 and Grays Run Road, near Four States, Marion County, West Virginia. This area is identified as "the Site" on the attached map labeled Exhibit "A". The Site includes tributaries to Tevebaugh Creek and associated wetlands. Tevebaugh Creek flows to the West Fork River, 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, between April 2010 and June 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, as well as the realigning, culverting, and channeling, of unnamed tributaries of Tevebaugh Creek and associated wetlands 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 29TH 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 the effective date of this order, Respondent shall submit a pre-disturbance stream and wetland delineation to EPA for review and approval. The delineation will show the extent of the regulated waters in and adjacent to the work area by fully identifying all areas on the Site that, prior to construction, were streams and/or wetlands. 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 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.
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. 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

16. 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

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

V. NOTICE OF INTENT TO COMPLY

18. 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: 2/29/2012



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

Stephanie Andreescu for
Pamela J. Lazos

2/29/2012
Date: _____

Exhibit A

XTO Energy, Inc. - Fancher Site

Salt Lick Run

the Site

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Hess Cem

0 750 1,500 3,000 Feet

