



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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

26 JAN 2011

Mr. Aubrey K. McClendon
Chesapeake Appalachia, LLC
900 Pennsylvania Avenue
Charleston, WV 25362

2011 JAN 26 PM 1:46
U.S. E.P.A. PA

Re: EPA Docket No. CWA-03-2011-0084DW
ORDER FOR COMPLIANCE


Dear Mr. McClendon:

Enclosed is an Order for Compliance that requires you to mitigate for the unauthorized activity associated with the impoundment of an unnamed tributary to Fish Creek, located on the property of Mr. Paul Buzzard, approximately 1000 linear feet northwest of the intersection of Fish Creek Road and Greenfield Ridge in Cameron, 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 Chesapeake Appalachia, 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 an unnamed tributary to Fish Creek and its associated wetlands. All fill material in the stream 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, Pittsburgh District
Mr. Frank Jernejcic – WV Department of Natural Resources
Mr. Mike Zeto – WV Department of Environmental Protection
Mr. Mike Brownell – Chesapeake Energy Corporation
Ms. Stephanie Timmermeyer – Timmermeyer, PLLC
Mr. Paul Buzzard

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

In The Matter of)	
)	
Chesapeake Appalachia, LLC)	Proceeding Under Section
)	309(a) of the Clean Water
Property Located At:)	Act, 33 U.S.C. § 1319(a)
)	
Tributary of Fish Creek,)	
Approximately 1,000 feet northwest of)	
the intersection of Fish Creek Road and)	
Greenfield Ridge)	ORDER FOR COMPLIANCE
Cameron, WV 26033)	
)	
Respondent)	Docket No. CWA-03-2011-0084DW

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

1. Respondent is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
2. Respondent, Chesapeake Appalachia, LLC, conducted work in an unnamed tributary of Fish Creek, located approximately 1,000 linear feet northwest of the intersection of Fish Creek Road and Greenfield Ridge in Cameron, Marshall County, West Virginia, identified as "the Site" on the attached map labeled Exhibit "A". Fish Creek flows to the Ohio River, a navigable-in-fact body of water. Therefore, the area is "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.
3. On information and belief, commencing on various occasions between August 2007 and December 2009, Respondent, or persons acting on behalf of Respondent, operated equipment which discharged dredged and/or fill material to waters of the United States

the Site described in Paragraph II-2, above, and further depicted on Exhibit "A", attached hereto. Respondent's activities included the discharge of fill into an unnamed tributary of Fish Creek and its associated wetlands to create an impoundment at the Site.

4. 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.
5. The equipment referenced in Paragraph II-3, 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).
6. 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.
7. 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.
8. 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 26TH day of JANUARY, 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:

1. Cease and desist all discharges without a permit to waters of the United States at the Site.
2. 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 identify all areas on the Site that, prior to construction, were streams or wetlands.
3. 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 to be taken to remove the material from the regulated waters, to stabilize the Site and to return the watercourse and wetlands to pre-disturbance grade and conditions.
4. 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.

5. 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.
6. Respondent's failure to complete the work in a manner consistent with this Order shall be deemed a violation of this Order.
7. The restoration plan and all other correspondence should be sent to:

Todd Lutte
Wetlands Enforcement Coordinator
Mail Code (3EA30)
United States Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103-2029
8. 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.
9. 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

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

V. NOTICE OF INTENT TO COMPLY

1. 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:

Todd Lutte
Wetlands Enforcement Coordinator
Mail Code (3EA30)
United States Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103-2029

Date: 1/26/2011



John R. Pomposio, Director
Environmental Assessment and Innovation Division

Exhibit "A"

CWA-03-2011-0084DW

