



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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

AUG 12 2014

Messrs. Dennis and David Yost
Daybrook Development Company
2656 Daybrook Road
Fairview, West Virginia 26570

Re: Daybrook Development Company
Docket. No. CWA-03-2014-0245DW

Dear Messrs. Yost:

Please find enclosed an Administrative Compliance Order ("Order"), Docket. No. CWA-03-2014-0245DW, which the United States Environmental Protection Agency ("EPA") is issuing to Daybrook Development Company. ("Daybrook") for violations of Section 301(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1311(a), at the Yost Impoundments in Fairview, 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 November 7, 2013 and on other information available to it, EPA has determined that persons acting on behalf of and/or at the direction of Daybrook 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 Daybrook of these violations and describes actions that will return Daybrook 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, or your counsel may contact Judy Hykel, the attorney assigned to this matter, at (215) 814-2646.

Sincerely,



John R. Pomponio, Director

Environmental Assessment and Innovation Division
U.S. EPA Region III

Enclosure

cc: Ms. Dana Adipietro, Esq. – USACE, Pittsburgh District
Mr. Jon Coleman – USACE, Pittsburgh District
Mr. Jeremy Bandy – WV DEP, EE
Mr. Brad Swiger – WV DEP, EE
Mr. David Belcher – WV DEP, OOG
Ms. Jackie Thornton – WV DEP, OOG
Mr. Brian Long – WV DEP, Dam Safety
Ms. Wilma Reip - WVDEP
Mr. Clifford Brown – WV DNR
Mr. Danny Bainbridge – Freelance Technical Associates



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

In The Matter of:
Daybrook Development Company

Property Located At:
Yost Impoundments
1 mile southwest of Yank Hollow Road and
Daybrook Run Road
Fairview, West Virginia 26570
Respondent

Proceeding Under Sections 308(a) and 309(a)
of the Clean Water Act, 33 U.S.C. §§ 1318(a),
1319(a)

ORDER FOR COMPLIANCE

Docket. No. CWA-03-2014-02450

REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

2014 OCT 2 PM 2:02

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I. STATUTORY AUTHORITY

1. This Order for Compliance (“Order”) is issued under the authority vested in the United States Environmental Protection Agency (“EPA”) by Section 309(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 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. Daybrook Development Company (“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 owner and/or operator of the Yost Impoundments, located approximately 1 mile southwest of Yank Hollow Road and Daybrook Run Road, Fairview, Monongalia County, West Virginia (“the Site”).
8. The Site is located on unnamed tributaries (“UNTs”) to an UNT of Days Run. The UNTs flow approximately 730 linear feet to the UNT of Days Run, then 1.7 miles to Days Run, then 5.9 miles to Dunkard Creek, then 28.5 miles to the Monongahela River. The Monongahela River has been identified as a traditionally navigable water. 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, the unnamed tributaries.
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 12TH day of AUGUST, 2014, the Respondent is hereby ORDERED, pursuant to Section 309(a) of the CWA, 33 U.S.C. 1319(a) to perform the following actions:

13. Within thirty (30) days of the effective date of this Order, Respondent shall submit a wetland and stream delineation of pre-disturbance conditions (“Delineation”) and associated report (“Delineation Report”) to EPA for approval. The Delineation and Delineation Report shall identify any and all areas at the Site which, prior to construction, were streams and/or wetlands, and will show the extent of the waters. 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 including the 1987 Manual for the Delineation of Wetlands and the Regional Supplement for the Eastern Mountains and Piedmont Region version 2.0.

14. EPA will review Respondent's Delineation and Delineation Report and either: a) approve the Delineation and/or the Delineation Report, or b) approve the Delineation and the Delineation Report in part, and request modifications to address and correct any noted deficiencies, or c) disapprove of the Delineation and/or the Delineation Report, in writing.
15. Within fourteen (14) days of Respondent's receipt of EPA's request for modifications or EPA's disapproval, of any submission required by Paragraph 13, above, Respondent shall address and correct all noted deficiencies and resubmit the Delineation and/or the Delineation Report to EPA for approval.
16. Within thirty (30) days of EPA's approval of the Delineation and Delineation Report, Respondent shall submit a detailed Site restoration plan ("Restoration Plan") to EPA for approval. The Restoration Plan shall include the actions that shall be taken to remove the material from the regulated waters, stabilize the Site, and return the Site to pre-disturbance grade and conditions.
17. EPA will review Respondent's Restoration Plan and either: a) approve the Restoration Plan, b) approve the Restoration Plan in part, and request modifications to address and correct any noted deficiencies; c) modify the Restoration Plan to cure any deficiencies; or d) disapprove the Restoration Plan, in writing.
18. Within thirty (30) days of Respondent's receipt of any EPA request for modifications, or disapproval, of the Restoration Plan required by paragraph 17, above, Respondent shall address and correct all noted deficiencies and resubmit the Restoration Plan for EPA approval. EPA retains the right, if Restoration Plan is not approved as provided in this AOC, to order compliance in accordance with a Restoration Plan developed by EPA.
19. Upon receipt of EPA's written approval of the Restoration Plan, Respondent shall implement such plan in accordance with its terms. Respondent shall complete all restoration work within ninety (90) days of its receipt of the EPA's approval of the Restoration Plan.
20. Respondent shall not discharge any dredged or fill material into any waters of the United States except in compliance with a CWA Section 404 permit or in accordance with the plans submitted and approved pursuant to this Order.
21. The delineation, 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

IV. GENERAL PROVISIONS

22. The following certification must accompany each submission by Respondent pursuant to this Information Requirement 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."

23. 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.
24. 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.
25. Issuance of this Order does not affect EPA's authority to seek additional information under Section 308 of the CWA, 33 U.S.C. § 1318, or otherwise affect EPA's ability to enforce or implement the CWA.

V. OPPORTUNITY TO CONFER

26. Respondent is invited to confer with the Agency about the findings and conclusions reflected in this Order, including 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

27. Respondent may seek federal judicial review of this Compliance Order, issued under Section 309 of the CWA, 33 U.S.C § 1319, pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706, which is set forth at <http://uscode.house.gov/download/pls/05C7.txt>, states the scope of such review.

VII. NOTICE OF INTENT TO COMPLY

28. 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:

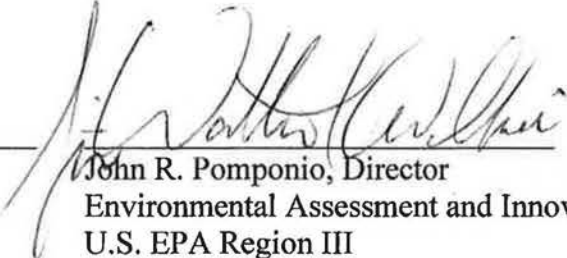
Stephanie Andreescu
Environmental Scientist
United States Environmental Protection Agency
1650 Arch Street (3EA30)
Philadelphia, PA 19103-2029

VIII. EFFECTIVE DATE

29. This Order will become effective fourteen (14) days after receipt unless modified or withdrawn.

Date:

8/12/14


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

CERTIFICATE OF SERVICE

I hereby certify that on the date shown below I caused one copy of the foregoing Administrative Order issued to Daybrook Development Company, Docket No. CWA-03-2014-0245DW to be served by Certified Mail, Return Receipt Requested to:

Messrs. Dennis and David Yost
Daybrook Development Company
2656 Daybrook Road
Fairview, West Virginia 26570

I also certify that on the date shown below I filed by hand the original and one copy of the foregoing Administrative Order issued to Daybrook Development Company, Docket No. CWA-03-2014-0245DW with the Regional Hearing Clerk for the U.S. Environmental Protection Agency, Region III at the following address:

3RC00
1650 Arch Street
Philadelphia, PA, 19103

Date:

8/12/14



Judith R. Hykel
Senior Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA Region III
(215) 814-2646
hykel.judith@epa.gov