



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

APR 30 2012

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Dewey Gerdom
PDC Mountaineer, LLC
120 Genesis Boulevard
Bridgeport, West Virginia 26330

Re: EPA Docket No. CWA-03-2011-0235DW
ORDER FOR COMPLIANCE &
INFORMATION REQUEST

Dear Mr. Gerdom:

Enclosed is an Order for Compliance and Information Request that requires you to address unauthorized discharges to waters of the United States associated with the Hudkins Well Pad (the "site"). The site is located on Stone Pot Road in Mount Clare, West Virginia. The U.S. Environmental Protection Agency, Region III ("EPA") has issued this Order under the authority of Sections 308(a) and 309(a) of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1318(a), 1319(a).


On February 2, 2012, EPA sent PDC Mountaineer, LLC ("PDCM") an information request pursuant to Section 308(a) of the CWA, 33 U.S.C. § 1318(a). PDCM's "Amended and Supplemental Response" dated March 6, 2012, contained two site delineations. PDCM submitted an additional site delineation via electronic mail dated March 23, 2012. PDCM continues to work cooperatively with EPA to refine the submitted delineations.

The delineations reveal that activities performed by PDCM, or those acting on its behalf, resulted in discharges into jurisdictional waters of the United States. This finding was confirmed by an EPA inspection conducted at the site on March 28, 2012. These discharges, which occurred without a permit, constitute a violation of Sections 301 and 404 of the CWA. Accordingly, all fill material in streams and wetlands must be removed, and all impacted areas must be returned to pre-disturbance conditions.

EPA reviewed each version of the submitted site delineation. EPA subsequently granted conditional approval in a letter dated April 9, 2012 ("conditional approval"). Pursuant to the enclosed Order, PDCM must now submit a restoration plan. The restoration plan must incorporate the comments provided in the conditional approval.

EPA is prepared to answer any questions you may have. Stephanie Andreescu is assigned to this matter and may be reached by phone at (215) 814-2747. Your counsel may also contact Zachary Moor, the regional attorney assigned to this matter, at (215) 814-2654.

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 Department of Environmental Protection
Mr. Brad Swiger – WV Department of Environmental Protection
Mr. David Belcher – WV Department of Environmental Protection
Mr. Frank Jernejcic – WV Division of Natural Resources
Mr. Larry Carder – PDC Mountaineer, LLC
Mr. Joseph Veltri – PDC Mountaineer, LLC
Mr. Hank Lawrence – Steptoe & Johnson, PLLC



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REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

REGIONAL HEARINGS CLERK
EPA REGION III, PHILADELPHIA, PA

2012 APR 30 AM 11:03

RECEIVED

In The Matter of)	
PDC Mountaineer, LLC)	
)	
Property Located At:)	Proceeding Under Sections
Hudkins Well Pad)	308(a) and 309(a) of the Clean Water Act, 33 U.S.C. §§ 1318(a), 1319(a)
Latitude 39.200337)	
Longitude -80.352175)	
Harrison County,)	ORDER FOR COMPLIANCE &
West Virginia)	INFORMATION REQUEST
)	Docket No. CWA-03-2011-0235DW
Respondent)	

I. STATUTORY AUTHORITY

1. This Order for Compliance and Information Request 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 & CONCLUSIONS OF LAW

2. PDC Mountaineer, LLC ("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 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 CWA, 33 U.S.C. § 1344.

7. Respondent is the owner, lessee, and/or operator of the Hudkins Well Pad with its approximate center at Latitude 39.2000337 and Longitude at -80.352175 west of Mount Clare in Harrison County, West Virginia ("the site").
8. The site contains wetlands and tributaries which drain to Browns Run. Browns Run is a perennial tributary of the West Fork River, a traditionally navigable water. West Fork River is a tributary of the Monongahela River. These 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. In March 28, 2012, EPA and the Army Corps of Engineers conducted a 404 inspection at the site ("the inspection"). The inspection and site delineations provided by Respondent confirmed that 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 including streams which drain to Browns Run, a perennial tributary to the West Fork River and associated wetlands. This discharge commenced during the summer of 2011.
10. 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. 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. 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 30th day of APRIL, 2012, the Respondent is hereby ORDERED, pursuant to Sections 308(a) and 309(a) of the CWA, 33 U.S.C. §§ 1318(a), 1319(a) do the following:

13. Respondent shall not discharge any dredged or fill material into any waters of the United States except in compliance with a section 404 permit.
14. Within 30 days of the effective date of this Order, 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.

15. 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.
16. 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.
17. Respondent's failure to complete the work in a manner consistent with this Order shall be deemed a violation of this Order.
18. 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

19. 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. GENERAL PROVISIONS

20. Issuance of this Order shall not be deemed an election by EPA to forego any administrative, civil, or criminal action to seek penalties, fines, or any other appropriate relief under the Act for the violations cited herein. EPA reserves the right to seek any remedy available under the law that it deems appropriate for the violations cited. Failure to comply and/or respond to this Order and Request, 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. If EPA initiates such an action, Respondent may be subject to civil penalties of up to \$37,500 per day of violation pursuant to Section 309 of the Act, 33 U.S.C. § 1319 and 40 C.F.R. Part 19.

- 21. Compliance with the terms and conditions of this Order does not relieve the Respondent of its obligations to comply with any applicable federal, state, or local law or regulation.
- 22. Issuance of this Order shall not be deemed an election by EPA to forego any civil or criminal action to seek civil penalties, fines, or other appropriate relief under the Act for the violations set forth above.
- 23. Issuance of this Order does not affect EPA's authority to seek 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

- 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. EFFECTIVE DATE

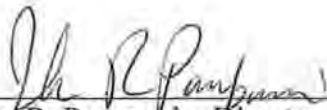
- 25. This ORDER AND REQUEST will become effective thirty (30) days after receipt unless modified or withdrawn.

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

Date: 4/30/2012



John R. Pomponio, Director
Environmental Assessment and Innovation Division