



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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

FEB 02 2012



Mr. Dewey Gerdom
PDC Mountaineer, LLC
120 Genesis Boulevard
P.O. Box 26
Bridgeport, West Virginia 26330

Re: EPA Docket No. CWA-03-2012-0085DW
ORDER FOR COMPLIANCE


Dear Mr. Gerdom:

Enclosed is an Order for Compliance that requires you to mitigate unauthorized discharges to waters of the United States associated with the D'Annunzio Well Pad and the Board of Education Pipeline (the "Site"). The Site is located at approximately 39° 15.2699' N and 80 20.1866' W in Nutter Fort, 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 the discharge of pollutants 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 PDC Mountaineer, LLC, or those acting on its behalf, resulted in discharges to tributaries of Nutter Run, and associated wetlands, which are jurisdictional waters of the United States. These discharges, which occurred without a permit, constitute 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 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. Jon Coleman – 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. 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



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

In The Matter of)	
PDC Mountaineer, LLC)	
)	
)	Proceeding Under Section
)	309(a) of the Clean Water
)	Act, 33 U.S.C. § 1319(a)
Property Located At:)	
D'Annunzio Well Pad &)	
Board of Education Pipeline)	ORDER FOR COMPLIANCE
39° 15.2699' N and)	Docket No. CWA-03-2012-0085DW
80 20.1866' W)	
Nutter Fort, Harrison County,)	
West Virginia)	
)	
Respondent)	

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"). 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 D'Annunzio Well Pad and the Board of Education Pipeline located at approximately 39° 15.2699' N and 80 20.1866' W in Harrison County, West Virginia ("the Site").
8. The Site contains wetlands and tributaries to Nutter Run, Doll Run, Davisson Run, and the West Fork River. Nutter Run flows to Elk Creek and then to the West Fork River, a traditionally navigable water. Doll Run and Davisson Run flow directly to the West Fork 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. On information and belief, 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 unnamed tributaries of Nutter Run and associated wetlands. This discharge commenced during the summer of 2011.
10. On information and belief, 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 2ND day of FEBRUARY, 2012, the Respondent is hereby ORDERED, pursuant to Section 309(a) of the CWA, 33 U.S.C. § 1319(a), to do the following:

13. Cease and desist all discharges of dredged and/or fill material without a permit to waters of the United States at the Site.
14. 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 D'Annunzio Well

Pad and the BOE Pipeline which, prior to construction, were streams 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 EPA and the U.S. Army Corps of Engineers.

15. 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.
16. 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.
17. 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.
18. Respondent's failure to complete the work in a manner consistent with this Order shall be deemed a violation of this Order.
19. 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
20. 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.
21. 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

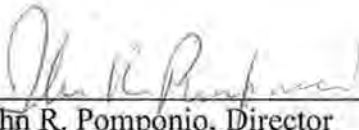
22. The effective date of this Order shall be the date of receipt of the executed document.

V. NOTICE OF INTENT TO COMPLY

23. 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: 2/2/2012



John R. Pomponio, Director
Environmental Assessment and Innovation Division