



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

DEC 17 2012

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

John G. Corp  
President  
Trans Energy, Inc.  
210 Second Street  
P.O. Box 393  
St. Marys, West Virginia 26170

Re: *Matter of Trans Energy, Inc.*, Dkt. No. CWA-03-2013-0058DW  
(Goshorn/Timothy James Hubbs Impoundment Site)

Dear Mr. Corp:

Please find enclosed Administrative Compliance Order, Dkt. No. CWA-03-2013-0058DW, which the United States Environmental Protection Agency (EPA) is issuing to Trans Energy, Inc. for violations of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), at the Goshorn/Timothy James Hubbs Impoundment Site.


Section 301(a) of the Clean Water Act 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 Clean Water Act, 33 U.S.C. § 1319(a)(3), authorizes EPA to issue an Administrative Compliance Order to any person who is in violation of Section 301(a) of the Act. Specifically, based on its inspection conducted June 21, 2012 and on other information available to it, the EPA has determined that persons acting on behalf of and/or at the direction of Trans Energy, Inc. 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 Clean Water Act, 33 U.S.C. § 1344. The enclosed Order notifies Trans Energy, Inc. of these violations and describes actions that will return Trans Energy, Inc. to compliance. The Order is effective upon receipt.

Additionally, EPA is authorized under Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to require owners and/or operators of point sources to provide certain information, establish

records and make such reports necessary to carry out the objectives of the Act. Pursuant to this authority you are directed to provide EPA the information requested in the attached Order. You are entitled to assert a claim of business confidentiality covering any part or all of the information submitted, in a manner described in 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. This inquiry is not subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35. (See 5 C.F.R. § 1320.3(c)).

If you have any questions regarding the Order, or have information clearly demonstrating any errors in its Findings, please contact Stephanie Andreescu, Office of Environmental Programs, at (215) 814-2747, or Trans Energy, Inc.'s attorney may contact Stefania D. Shamet, Senior Assistant Regional Counsel at (215) 814-2682.

Sincerely,

  
John R. Pomponio, Director  
Environmental Assessment & Innovation  
Division

Enclosure

cc: Mr. Scott Hans, U.S. Army Corps of Engineers  
Ms. Dana Adipietro, U.S. Army Corps of Engineers  
Mr. Michael Zeto, West Virginia Department of Environmental Protection  
Mr. Brad Swiger, West Virginia Department of Environmental Protection  
Mr. David Belcher, West Virginia Department of Environmental Protection  
Ms. Jackie Thornton, West Virginia Department of Environmental Protection  
Mr. Frank Jernejcic, West Virginia Division of Natural Resources  
Ms. Leslie Gearhart, Trans Energy, Inc.  
Mr. Christopher Power, Dinsmore & Shohl, LLP  
James Timothy Hubbs Trust



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

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EPA REGION III, PHILADELPHIA, PA

In The Matter of	)	
Trans-Energy, Inc.	)	
	)	Proceeding Under Sections
Property Located At:	)	308(a) and 309(a) of the Clean Water Act, 33 U.S.C. §§ 1318(a), 1319(a).
Goshorn/Timothy James Hubbs	)	ORDER FOR COMPLIANCE &
Impoundment Site,	)	INFORMATION REQUEST
Southeast of the intersection of	)	Docket No. CWA-03-2013-0058DW
New Bethel/Goshorn Ridge Road/	)	
County Highway 62 and Dixon Ridge, in	)	
Cameron, Marshall County, West Virginia,	)	
	)	
Respondent	)	

**I. STATUTORY AUTHORITY**

1. This Order for Compliance and Information Request ("Order") 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. Trans-Energy, Inc. ("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 lessee and/or operator of the Goshorn/Timothy James Hubbs Trust Impoundment Site located approximately 2,800 linear feet southeast of the intersection of New Bethel/Goshorn Ridge Road/County Highway 62 and Dixon Ridge in Cameron, Marshall County, West Virginia ("the site"). See Exhibit A hereto.
8. The site contains a tributaries to Left Fork Maggoty Run, which flows to Maggoty Run, Fish Creek, and the Ohio River, which has been identified as a traditionally navigable water. The 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. 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 Left Fork Maggoty Run, Maggoty Run, Fish Creek, and the Ohio River.
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. INFORMATION REQUEST AND ORDER FOR COMPLIANCE

Therefore, this 17<sup>th</sup> day of DECEMBER, 2012, the Respondent is hereby ORDERED, pursuant to Section 308(a) of the CWA, 33 U.S.C. 1318(a) to provide the following within 30 days of the effective date of this Order:

13. For EPA's review and approval, a pre-construction delineation of all streams at the Site as they existed prior to the discharge of dredged and/or fill material by Respondent or persons working on Respondent's behalf. After review of the delineation, EPA will: a) approve the delineation, in whole or in part; b) approve the delineation upon specified conditions; c) modify the delineation to cure any deficiencies; d) disapprove the delineation, in whole or in part, or e) any combination of the above. If EPA disapproves all or part of the delineation, Respondent shall, within fourteen (14) days of receipt of EPA's disapproval, correct the deficiencies and resubmit the delineation for approval. EPA retains the right, if the delineation is not approved as provided in this Order, to modify the delineation in accordance with this paragraph.
14. Within 30 days of receiving EPA's approval of the delineation described in Paragraph 13 above, 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. 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. 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.

Respondent is further ORDERED, pursuant to Section 309(a) of the CWA, 33 U.S.C. § 1319(a) to do the following:

15. Upon approval of the restoration plan described in Paragraph 14 above (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.
16. Respondent shall not discharge any dredged or fill material into any waters of the United States except in compliance with a Section 404 permit.
17. 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

#### IV. GENERAL PROVISIONS

18. The following certification must accompany each submission by Respondent pursuant to this Order and Request for Information 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."

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.

20. 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. 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.
21. 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**

22. 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. JUDICIAL REVIEW**

23. Respondent may seek federal judicial review of the Order 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**

24. 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**

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

Date: 12/17/2012

  
\_\_\_\_\_  
John R. Pomponio, Director  
Environmental Assessment and Innovation Division

# Exhibit A

CWA-03-2013-0058DW

