



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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

0 2 DEC 2011

Mr. Michael Shaver
Mountain V Oil and Gas
P.O. Box 470
Bridgeport, West Virginia 26330

Re: EPA Docket No. CWA-03-2012-0032DW
ORDER FOR COMPLIANCE


Dear Mr. Shaver:

Enclosed is an Order for Compliance that requires you to mitigate for the unauthorized discharges to waters of the United States associated with the Farnsworth Stockert Freshwater Impoundment, located off of County Route 32/10 (French Long Road), approximately 2,000 linear feet (lf) south of the intersection of County Route 32/10 and County Route 32/7 (Evergreen Alton), Tallmansville, Upshur 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 discharges 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 Mountain V Oil and Gas have resulted in discharges to tributaries of Queens Fork, jurisdictional waters of the United States, without a permit. This discharge constitutes a violation of Sections 301 and 404 of the CWA. All fill material in streams 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.

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. James Martin – WV Dept of Environmental Protection
Mr. Mike Zeto – WV Dept of Environmental Protection
Mr. Brad Swiger – WV Dept of Environmental Protection
Mr. Frank Jernejcic – WV Division of Natural Resources

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

In The Matter of)	
)	
Mountain V Oil and Gas)	Proceeding Under Section
)	309(a) of the Clean Water
)	Act, 33 U.S.C. § 1319(a)
Property Located At:)	
)	
Farnsworth Stockert Freshwater)	
Impoundment)	
Off of County Route 32/10,)	
Approximately 2,000 linear feet south of)	
the intersection of County Route 32/10)	
and County Route 32/7)	
Tallmansville, West Virginia 26237)	
)	ORDER FOR COMPLIANCE
)	
Respondent)	Docket No. CWA-03-2012-0032DW

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

2. Respondent is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
3. Respondent, Mountain V Oil and Gas, is the owner, lessee, and/or operator of the property located off of County Route 32/10 (French Long Road), approximately 2,000 linear feet south of the intersection of County Route 32/10 and County Route 32/7 (Evergreen Alton), Tallmansville, Upshur County, West Virginia, identified as “the Site” on the attached map labeled Exhibit “A”. For purposes of this Order, the Site shall include, but is not limited to the freshwater impoundment, access roads, and all appurtenances associated with the “Farnsworth Stockert Freshwater Impoundment.” The

Site contains unnamed tributaries to Queens Fork, which flows to Laurel Fork, and then to French Creek, the Buckhannon River, and the Tygart Valley River, a navigable-in-fact body of water which flows to the Monongahela River. Therefore, the Site contains, abuts and flows to "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.

4. On information and belief, commencing on various occasions between May 2011 and August 2011, Respondent, or persons acting on behalf of Respondent, operated mechanized equipment which discharged dredged and/or fill material to waters of the United States located on the Site described in Paragraph 3, above, and further depicted on Exhibit "A", attached hereto. Respondent constructed a freshwater pit and associated access roads, resulting in the discharge of dredged and/or fill material into two unnamed tributaries of Queens Fork.
5. 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.
6. The dredged and/or fill material referenced in Paragraph 4 was discharged by a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. 1362(14) to "waters of the United States."
7. Section 301(a) of the Act, 33 U.S.C. §1311(a), prohibits the discharge of dredged and/or fill material from any person 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.
8. 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.
9. 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 2ND day of DECEMBER, 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:

10. Cease and desist all discharges of dredged and/or fill material without a permit to waters of the United States at the Site.

11. 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 Site that, prior to construction, were streams and/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 the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers.
12. 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.
13. 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.
14. 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.
15. Respondent's failure to complete the work in a manner consistent with this Order shall be deemed a violation of this Order.
16. 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
17. 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.

18. 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

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

V. NOTICE OF INTENT TO COMPLY

20. 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

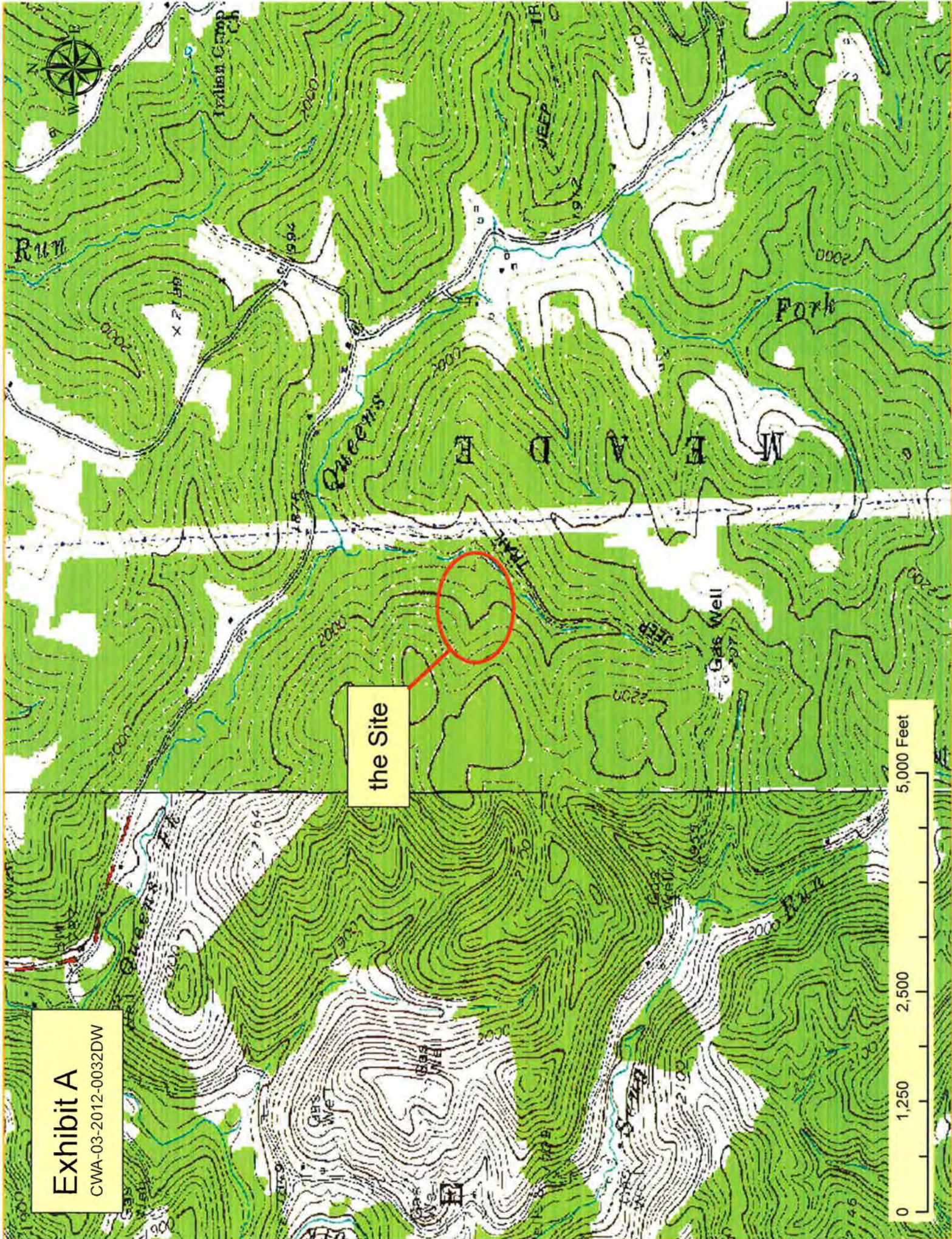
Date: 12/2/2011



John R. Pomponio, Director
Environmental Assessment and Innovation Division

Exhibit A

CWA-03-2012-0032DW



the Site

0 1,250 2,500 5,000 Feet