



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

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

AUG 23 2012

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

Re: EPA Docket No. CWA-03-2012-0230DW  
ORDER FOR COMPLIANCE &  
INFORMATION REQUEST

Dear Mr. Gerdom:

Enclosed is an Order for Compliance and Information Request (Order) that requires you to address unauthorized discharges to waters of the United States associated with the GEPCO Pipeline (the site). The site is located between 39°12'1.8"N, 80°21'4.5"W and 39°14'57.2"N, 80°21'22.3"W, west of Mount Clare in Harrison County, West Virginia. The U.S. Environmental Protection Agency, Region III (EPA) has issued this Order pursuant to its authority under Sections 308(a) and 309(a) of the Clean Water Act (CWA), 33 U.S.C. §§ 1318(a), 1319(a).

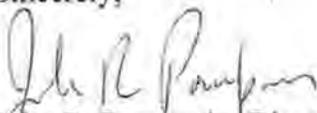
On February 2, 2012, EPA sent PDC Mountaineer, LLC (PDCM) an information request pursuant to Section 308(a) of the CWA, 33 U.S.C. § 1318(a). PDCM's response, dated February 17, 2012, included a partial copy of Thrasher Engineering's November 28, 2011 delineation of the site. PDCM's supplemental attachment, dated March 12, 2012, contained a complete copy. PDCM also submitted a request for a U.S. Army Corps Jurisdictional Determination dated April, 2012. PDCM subsequently submitted a revised delineation of the site in the "GEPCO Gas Line Stream and Wetland Restoration Plan" prepared by Alliance Consulting dated May 14, 2012.

The revised delineation reveals that activities performed by PDCM, or those acting on its behalf, resulted in discharges into jurisdictional waters of the United States. 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.

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 plans 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)).

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  
Ms. Jackie Thornton – 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

REGIONAL HEARING CLERK  
EPA REGION III, PHILADELPHIA, PA

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In The Matter of	)	
PDC Mountaineer, LLC	)	
	)	
Property Located At:	)	Proceeding Under Sections
GEPCO Pipeline	)	308(a) and 309(a) of the Clean Water Act, 33 U.S.C. §§ 1318(a), 1319(a)
Between 39°12'1.8"N, 80°21'4.5"W	)	
and 39°14'57.2"N, 80°21'22.3"W	)	
Harrison County, West Virginia	)	ORDER FOR COMPLIANCE &
	)	INFORMATION REQUEST
	)	Docket No. CWA-03-2012-0230DW
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. 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 GEPCO Pipeline located between 39°12'1.8"N, 80°21'4.5"W and 39°14'57.2"N, 80°21'22.3"W, west of Mount Clare in Harrison County, West Virginia (“the site”).
8. The site contains wetlands and tributaries which drain to Browns Run and the West Fork River. Browns Run is a perennial tributary of the West Fork River, a traditionally navigable water. The 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 May 2012, Respondent provided a stream and wetland restoration plan to EPA. The plan 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 and 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 & INFORMATION REQUEST**

Therefore, this 23<sup>RD</sup> day of AUGUST, 2012, the Respondent is hereby ORDERED, pursuant to Section 308(a) of the CWA, 33 U.S.C. 1318(a) to do the following:

13. 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.
14. 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.

15. 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:

16. 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 shall not discharge any dredged or fill material into any waters of the United States except in compliance with a Section 404 permit.
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

#### IV. GENERAL PROVISIONS

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.
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, 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. 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 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**

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. JUDICIAL REVIEW**

25. 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**

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

#### **VIII. EFFECTIVE DATE**

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

Date: 8/23/2012

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