



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

Mr. Jack Lucey  
RD 1, Box 94A  
Glen Easton, West Virginia 26039

Re: *Matter of Trans Energy, Inc. & Mr. Jack Lucey*, Dkt. No. CWA-03-2013-0057DW (Lucey Impoundment Site)

Dear Sirs:

Please find enclosed Administrative Compliance Order, Dkt. No. CWA-03-2013-0057DW, which the United States Environmental Protection Agency (EPA) is issuing to Trans Energy, Inc. and Mr. Jack Lucey for violations of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), at the Lucey 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, and liability under the Clean Water Act is joint and several. 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 January 18, 2012 and on other information available to it, the EPA has determined that persons acting on behalf of and/or at the direction of and/or with the authorization of Trans Energy, Inc. and Mr. Jack Lucey 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. and Mr.

Jack Lucey of these violations and describes actions that will return Trans Energy, Inc. and Mr. Jack Lucey to compliance. The Order will become effective 30 (thirty) days after 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 your 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



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

In The Matter of )  
Trans Energy, Inc. & )  
Mr. Jack Lucey )  
  
Property Located At: )  
Lucey Impoundment Site )  
Southeast of Fork Ridge (County )  
Highway 17) and Glen Easton Ridge )  
(County Highway 60) near Cameron, )  
Marshall County, West Virginia, )  
  
Respondents )

Proceeding Under Sections  
308(a) and 309(a) of the Clean Water  
Act, 33 U.S.C. §§ 1318(a), 1319(a)  
ORDER FOR COMPLIANCE &  
INFORMATION REQUEST  
Docket No. CWA-03-2013-0057DW

REGIONAL HEARING CLE  
EPA REGION III PHILA. P.

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**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. and Mr. Jack Lucey (“Respondents”) are “persons” 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).

16. Within 30 days of receiving EPA's approval of the delineation described in Paragraph 15 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, Respondents 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.

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

17. Upon approval of the restoration plan described in Paragraph 16 above (either with or without conditions or modifications by EPA), Respondents 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. Respondents shall notify EPA upon completion of the work.
18. Respondents shall not discharge any dredged or fill material into any waters of the United States except in compliance with a Section 404 permit.
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

#### IV. GENERAL PROVISIONS

20. The following certification must accompany each submission by Respondents pursuant to this Order and Request for Information and must be signed by a Representative of each Respondent authorized to sign on behalf of that 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."

21. Respondents' compliance with the terms of this Order shall not relieve Respondents of their obligation to comply with all applicable provisions of the Clean Water Act or any other Federal, State or local law or regulation.

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. Liability under the Clean Water Act is joint and several.
8. Respondent Jack Lucey is the owner of property on which the Lucey Impoundment Site is located, approximately 0.9 miles southeast of Fork Ridge (County Highway 17) and Glen Easton Ridge (County Highway 60), near Cameron, Marshall County, West Virginia ("the Site"). See Exhibit A hereto.
9. Respondent Trans Energy, Inc. is the lessee/operator of the Site.
10. The Site contains tributaries to Burch Run, which flows to Grave Creek and the Ohio River. 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.
11. Respondents, or persons acting on behalf of and/or at the direction of and/or with the authorization of Respondents, operated equipment which discharged dredged and/or fill material to waters of the United States located on the Site including streams which drain to Burch Run, Grave Creek, and the Ohio River.
12. 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).
13. 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 Respondents have a permit from the Secretary of the Army as required by Section 404 of the CWA, 33 U.S.C. § 1344.
14. Respondents 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 Respondents are hereby ORDERED, pursuant to Section 308(a) of the CWA, 33 U.S.C. 1318(a) to provide by January 31, 2013:

15. 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 Respondents or persons working on Respondents' 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, Respondents 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.

22. 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.
23. Issuance of this Order does not affect EPA's authority to seek additional information or inspect 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. Respondents are 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. Respondents may also submit any written material they believe to be relevant to the Agency's determinations. If such a conference is desired, Respondents should contact Stephanie Andreescu at (215) 814-2747.

#### **VI. JUDICIAL REVIEW**

25. Respondents 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. No later than January 31, 2013, Respondents 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: 12/17/2012

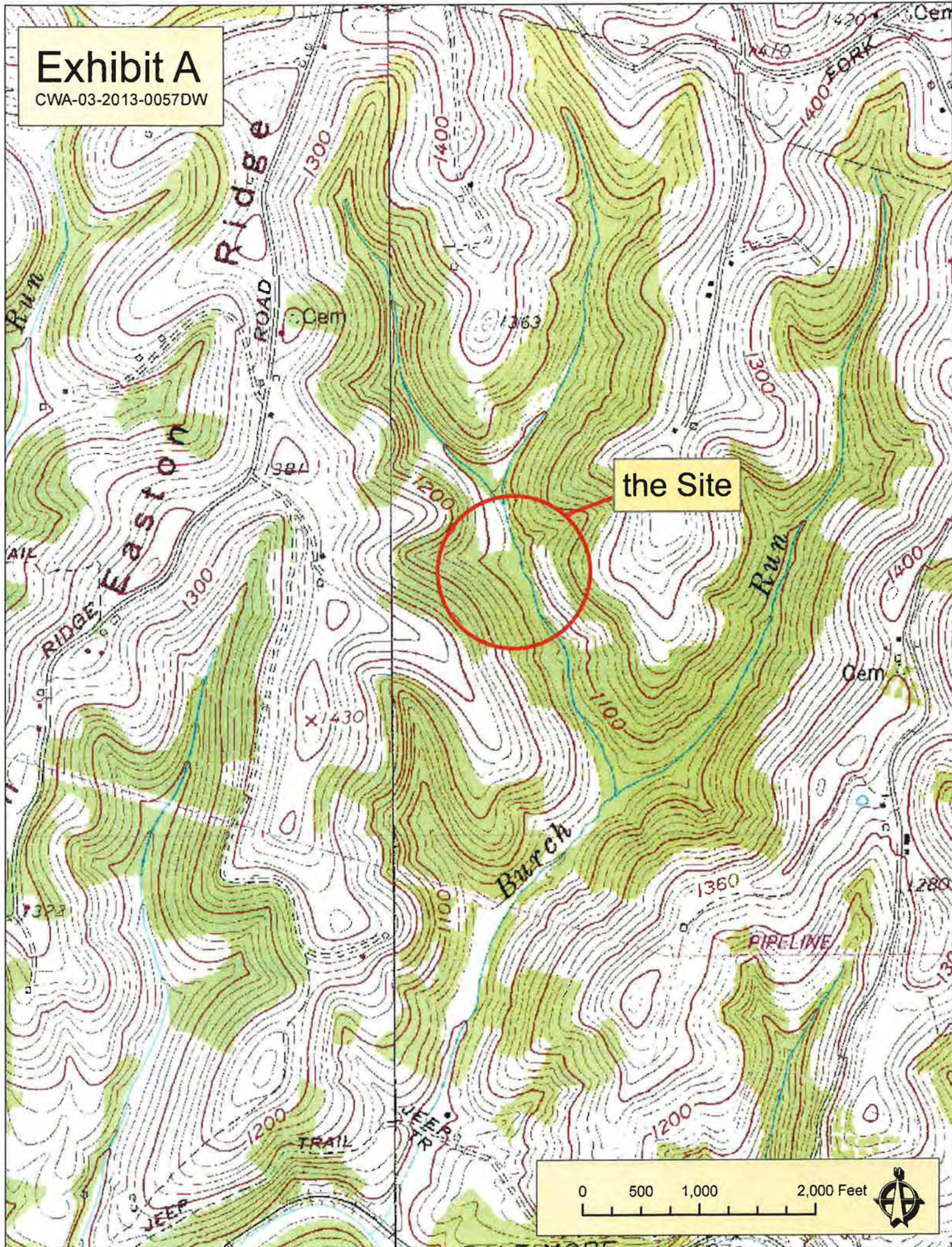


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John R. Pomponio, Director  
Environmental Assessment and Innovation Division

# Exhibit A

CWA-03-2013-0057DW



the Site

