



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

JUL 08 2015

Hank Lawrence, Esq.
Steptoe & Johnson, PLLC
400 White Oaks Boulevard
Bridgeport, West Virginia 26330

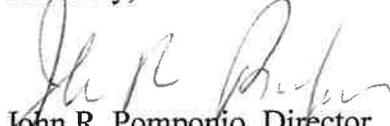
Re: EPA Docket No. CWA-03-2015-0120DW
Amended Administrative Order for Compliance

Dear Mr. Lawrence:

Please find enclosed an Amended Administrative Order for Compliance ("Amended Administrative Order"), Docket. No. CWA-03-2015-0120DW, which the United States Environmental Protection Agency is issuing to 4H Farm, LLC, ELF, LLC and Trenton Energy, LLC ("Respondents") for violations of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), at the 4H Farm located on US Route 50, Ritchie County School Road, Ellenboro, West Virginia. This Amended Administrative Order supercedes the previous Administrative Order filed on April 30, 2015.

If you have any questions regarding the Amended Administrative Order, or wish to submit any written material you believe to be relevant to the agency's findings, please contact Pamela Lazos, the attorney assigned to this matter, at (215) 814-2658.

Sincerely,


John R. Pomponio, Director
Environmental Assessment and
Innovation Division



Enclosure

cc: Ms. Susan Porter – USACE Huntington District
Ms. Megan Thompson – USACE Huntington District
Mr. Jeremy Bandy – WVDEP-EE
Mr. Brad Swiger – WVDEP-EE
Mr. David Belcher – WVDEP-OOG
Ms. Jackie Thornton – WVDEP-OOG
Ms. Wilma Reip – WVDEP
Mr. Clifford Brown – WVDNR
Mr. Hank Lawrence – Steptoe and Johnson, PLLC
Mr. Michael Zeto – Alliance Consulting



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

In The Matter of:

4H Farm, LLC
ELF, LLC
Trenton Energy, LLC

Respondents

Property Located At:
4H Farm
Ritchie County School Road
Ellenboro, Ritchie County,
West Virginia 26346
39.263°, -81.072°

Proceeding Under Sections 308(a) and 309(a)
of the Clean Water Act, 33 U.S.C. §§ 1318(a),
1319(a)

AMENDED ORDER FOR COMPLIANCE

Docket. No. CWA-03-2015-0120DW

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I. STATUTORY AUTHORITY

1. This Amended Order for Compliance (“Order”) is issued under the authority vested in the United States Environmental Protection Agency (“EPA”) by Section 309(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 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.
2. The original Order, issued on April 30, 2015 is hereby superceded by this Amended Order for Compliance.

II. FINDINGS OF FACT and CONCLUSIONS OF LAW

3. Respondents, 4H Farm, LLC, ELF, LLC, and Trenton Energy, LLC, are corporations doing business in the state of West Virginia and “persons” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

4. 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.”
5. 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.”
6. Fill material is a “pollutant” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).
7. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of dredged and/or fill material from a point source 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.
8. Respondent, 4H Farm, LLC is the manager of the 4H Farm owned by the farmland and property investment company, ELF LLC, located off of Ritchie County School Road, Ellenboro, Ritchie County, West Virginia (“the Site”). Trenton Energy, LLC, also managed by 4H Farm, did the clearing and grading on the Site.
9. The Site is located adjacent to an unnamed tributary to Hushers Run. The unnamed tributary flows approximately 1,200 linear feet south to Hushers Run, then 3.4 miles to Bonds Creek, then 1.9 miles to North Fork Hughes River, then 20.8 miles to the Hughes River, then 14.1 miles to the Little Kanawha River, then 18.1 miles to the Ohio River. The unnamed tributaries and associated tributaries leading to the Ohio 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.
10. On the basis of information available, Respondents, or persons acting on behalf of Respondents, operated equipment which discharged dredged and/or fill material to waters of the United States located at the Site, specifically by rerouting and/or placing rock channel protection into tributaries to Hushers Run, and impacting a total of approximately 2,120 lf.
11. On the basis of information available, 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).
12. On the basis of information available, 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.

13. On the basis of information available, 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. ORDER FOR COMPLIANCE

Therefore, this 8th day of JULY, 2015, the Respondents are hereby ORDERED, pursuant to Section 309(a) of the CWA, 33 U.S.C. 1319(a) to perform the following actions:

14. Within thirty (30) days of EPA’s approval of the wetland and stream delineation of pre-disturbance conditions (“Delineation”) and Delineation Report, Respondents shall submit a detailed Site restoration plan (“Restoration Plan”) to EPA for approval. The Restoration Plan shall include the actions that shall be taken to remove the material from the regulated waters, stabilize the Site, and return the Site to pre-disturbance grade and conditions.
15. EPA will review Respondents’ Restoration Plan and either: a) approve the Restoration Plan, b) approve the Restoration Plan in part, and request modifications to address and correct any noted deficiencies; c) modify the Restoration Plan to cure any deficiencies; or d) disapprove the Restoration Plan, in writing.
16. Within thirty (30) days of Respondents’ receipt of any EPA request for modifications, or disapproval, of the Restoration Plan required by paragraph 17, above, Respondents shall address and correct all noted deficiencies and resubmit the Restoration Plan for EPA approval. EPA retains the right, if Restoration Plan is not approved as provided in this AOC, to order compliance in accordance with a Restoration Plan developed by EPA.
17. Upon receipt of EPA’s written approval of the Restoration Plan, Respondents shall implement such plan in accordance with its terms. Respondents shall complete all restoration work within ninety (90) days of its receipt of the EPA’s approval of the Restoration Plan.
18. Respondents shall not discharge any dredged or fill material into any waters of the United States except in compliance with a CWA Section 404 permit or in accordance with the plans submitted and approved pursuant to this Order.
19. The restoration plan and all other correspondence should be sent to:

Stephanie Andreescu
Office of Environmental Programs
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 Information Requirement and must be signed by a Representative of Respondents authorized to sign on behalf of Respondents:

“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 CWA or any other Federal, State or local law or regulation.
22. Issuance of this Order is not an election by EPA to forego any civil or criminal action otherwise authorized by the CWA. EPA reserves the right to seek any remedy available under the law that it deems appropriate to address 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 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, including the terms and conditions contained herein. Any such conference can be in person or by electronic means. Respondents may also submit any written material it believes 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. Respondent may seek federal judicial review of this Compliance Order, issued under Section 309 of the CWA, 33 U.S.C § 1319, pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706 states the scope of such review.

VII. NOTICE OF INTENT TO COMPLY

26. Within ten (10) days of the effective date of this Order, Respondents shall submit to EPA a Notice of Intent to Comply with the Order. The Notice shall be submitted to:

Stephanie Andreescu
Office of Environmental Programs
United States Environmental Protection Agency
1650 Arch Street (3EA30)
Philadelphia, PA 19103-2029

VIII. EFFECTIVE DATE

27. This Order will become effective immediately unless modified or withdrawn.

Date:

7/8/2015



John R. Pomponio, Director
Environmental Assessment and Innovation Division
U.S. EPA Region III