



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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

JUN 13 2013

George Edward Arnold, President
Devonian Gas Production, Inc.
PO Box 907
74 Viking Road
Jane Lew, West Virginia 26378

Re: Matter of Devonian Gas Production, Inc., Docket No. CWA-03-2013-0159DW

Dear Mr. Arnold:

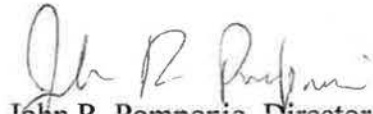
Please find enclosed an Administrative Compliance Order ("Order"), Docket No. CWA-03-2013-0159DW, which the United States Environmental Protection Agency ("EPA") is issuing to Devonian Gas Production, Inc. ("Respondent") for violations of Section 301(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1311(a), at the Cutright Impoundment in Upshur County, West Virginia.

Section 301(a) of the CWA 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 CWA, 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 CWA. Specifically, based on its inspection conducted January 8, 2013, and on other information available to it, EPA has determined that persons acting on behalf of and/or at the direction of Respondent 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 CWA, 33 U.S.C. § 1344. The enclosed Order notifies Respondent of these violations and describes actions that will return Respondent to compliance.

You are entitled to assert a claim of business confidentiality covering any part or all of the information submitted in response to the Order, in a manner described at 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.

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. Your attorney may also contact Zachary Moor, Assistant Regional Counsel, at (215) 814-2654.

Sincerely,



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

Enclosure

cc: Mr. Jon Coleman – US Army Corps of Engineers
Ms. Dana Adipietro – US Army Corps of Engineers
Mr. Michael Zeto – WV Dept of Environmental Protection
Mr. Brad Swiger – WV Dept of Environmental Protection
Mr. David Belcher – WV Dept of Environmental Protection
Ms. Jackie Thornton – WV Dept of Environmental Protection
Mr. Boyd Cutright



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

In The Matter of:

Devonian Gas Production, Inc.

Property Located At:
The Cutright Impoundment
38.8498, -80.2335
French Creek, Upshur County
West Virginia,

Respondent

Proceeding Under Section 309(a) of the Clean
Water Act, 33 U.S.C. § 1319(a)

ORDER FOR COMPLIANCE

Docket. No. CWA-03-2013-0159

REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA.

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RECEIVED

I. STATUTORY AUTHORITY

1. This 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. This order is issued in accordance with the authority granted to EPA under the Clean Water Act, 33 U.S.C. § 1251 *et seq.* and its stated objective to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.

II. FINDINGS OF FACT and CONCLUSIONS OF LAW

3. Devonian Gas Production, Inc. (“Respondent”) is a “person” 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” and “the building of any structure or impoundment requiring rock, sand, dirt, or other material for its construction.”

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. The Cutright Impoundment is located at coordinates 38.8498°N, 80.2335°W near Grand Camp Run Road/County Route 34/2 in French Creek, Upshur County, West Virginia (the “Site”).
9. The Site consists of an in-line freshwater impoundment constructed in Grand Camp Run and in an unnamed tributary of Grand Camp Run.
10. Grand Camp Run flows to French Creek, then to Buckhannon River, and then to the Tygart River. The Tygart River is navigable seven miles above its mouth to the Monongahela River. Grand Camp Run and the unnamed tributary of Grand Camp Run 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. Respondent, or persons acting on behalf of Respondent, operated equipment which discharged dredged and/or fill material to waters of the United States located at the Site.
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 Respondent have a permit from the Secretary of the Army as required by Section 404 of the CWA, 33 U.S.C. § 1344.
14. 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

Therefore, this 13th day of JUNE, 2013, the Respondent is hereby ORDERED, pursuant to Section and 309(a) of the CWA, 33 U.S.C. 1319(a) to take the following actions in order to comply with the section or requirement of the CWA cited above:

15. Respondent shall submit a wetland and stream delineation of pre-disturbance conditions for EPA's review and approval within 30 days of the effective date of this Order. The delineation and associated report shall identify any and all areas at the Site which, prior to construction, were streams and/or wetlands, and will show the extent of the waters. The Respondent shall utilize a methodology for identifying wetlands and streams in disturbed and undisturbed areas consistent with methods generally accepted by EPA and the U.S. Army Corps of Engineers.
16. Respondent shall submit a detailed restoration plan for EPA's review and approval within 30 days of EPA's approval of the delineation. 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.
17. After review of the plans submitted pursuant to Paragraphs 15 and 16, 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 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 compliance in accordance with a plan developed by EPA.
18. Upon approval of the plans described in Paragraphs 15 and 16 above (either with or without conditions or modifications by EPA), Respondent shall implement the plan as approved or modified by EPA. All restoration work shall be completed within ninety (90) days of EPA's approval of the plan.
19. Respondent shall not discharge any dredged or fill material into any waters of the United States except in compliance with a Section 404 permit.
20. 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

21. The following certification must accompany each submission by Respondent pursuant to this Order 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."

22. Respondent's compliance with the terms of this Order shall not relieve Respondent of its obligation to comply with all applicable provisions of the CWA or any other Federal, State or local law or regulation.
23. 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.

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 this Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

VII. NOTICE OF INTENT TO COMPLY

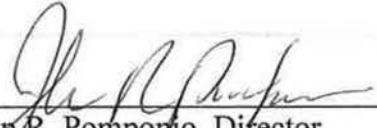
26. Within ten (10) days of the effective date of this Order, Respondent shall submit to EPA a Notice of Intent to Comply with the Order. The Notice shall be submitted to:

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

VIII. EFFECTIVE DATE

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

Date: 6/13/2013



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