



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

JUL 01 2013

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Randy Broda, President
Jay Bee Oil and Gas, Inc.
Route 1 Box 5
Cairo, West Virginia 26337

Re: *Jay Bee Oil and Gas, Inc.*, Docket. No. CWA-03-2013-0136DW

Dear Mr. Broda:

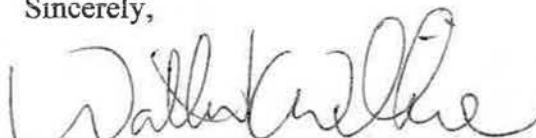
Please find enclosed an Administrative Compliance Order ("Order"), Docket. No. CWA-03-2013-0136DW, which the United States Environmental Protection Agency ("EPA") is issuing to Jay Bee Oil and Gas, Inc. ("Jay Bee") for violations of Section 301(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1311(a), at the Nurses Hollow Impoundment in Center Point, 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 whenever any person is in violation of any condition or limitation which implements, *inter alia*, Section 301(a) of the CWA. Specifically, based on its inspection conducted August 15, 2012 and on other information available to it, EPA has determined that persons acting on behalf of and/or at the direction of Jay Bee 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 Jay Bee of these violations and describes actions that will return Jay Bee 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 wish to submit any written material you believe to be relevant to the agency's findings, please contact Stephanie Andreescu, Office of Environmental Programs, at (215) 814-2747. Your counsel may contact Stefania Shamet, Senior Assistant Regional Counsel, at (215) 814-2682.

Sincerely,



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

Enclosure

cc: Mr. Cory Wilson – 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



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

In The Matter of:
Jay Bee Oil and Gas, Inc.

Property Located At:
The Nurses Hollow Impoundment
500 linear feet northwest of County Route 4/1
and Broad Run/County Route 4
Center Point, West Virginia 26339
Respondent

Proceeding Under Sections 308(a) and 309(a)
of the Clean Water Act, 33 U.S.C. § 1311(a),
1319(a)

ORDER FOR COMPLIANCE

Docket. No. CWA-03-2013-0136DW

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2013 JUL -1 PM 1:59
REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

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.

II. FINDINGS OF FACT and CONCLUSIONS OF LAW

2. Jay Bee Oil and Gas, Inc. (“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 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.
7. Respondent is the owner and/or operator of the Nurses Hollow Impoundment, located approximately 500 linear feet northwest of County Route 4/1 and Broad Run/County Route 4, Center Point, West Virginia (“the Site”). On the basis of information available, the Nurses Hollow Impoundment is a centralized pond serving multiple wells.
8. The Site is located adjacent to two unnamed tributaries to Broad Run. Broad Run flows to McElroy Creek, and then to Middle Island Creek, a tributary to the Ohio River. Middle Island Creek and the Ohio River have been identified as traditionally navigable waters. The unnamed 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.
9. On the basis of information available, 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, specifically, the unnamed tributaries.
10. 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).
11. 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 Respondent have a permit from the Secretary of the Army as required by Section 404 of the CWA, 33 U.S.C. § 1344.
12. On the basis of information available, 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 1st day of JULY, 2013, the Respondent is hereby ORDERED , pursuant to Section 309(a) of the CWA, 33 U.S.C. 1319(a) to perform the following actions:

13. Within 30 days of the effective date of this Order, Respondent shall submit a detailed restoration plan for EPA’s review and approval. The restoration plan shall include a delineation of aquatic resources at the Site prior to disturbance, including identification of any and all areas at the Site which, prior to construction, were streams and/or wetlands. 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. The restoration plan further shall 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 submission described in Paragraph 13, EPA will: a) approve the submission, in whole or in part; b) approve the submission upon specified conditions; c) modify the submission to cure any deficiencies; d) disapprove the submission, in whole or in part; or e) any combination of the above. If EPA disapproves all or part of the submission, Respondent shall, within fourteen (14) days of receipt of EPA's disapproval, correct the deficiencies and resubmit the document for approval. EPA retains the right, if the submission is not approved as provided by this Order, to order compliance in accordance with a restoration plan developed by EPA.
15. Upon approval of the submission as described in Paragraphs 13 and 14 above (either with or without conditions or modifications by EPA), Respondent shall implement the restoration plan as approved or modified by EPA. All restoration work shall be completed within ninety (90) days of EPA's approval of the plan.
16. Respondent shall not discharge any dredged or fill material into any waters of the United States except in compliance with a Section 404 permit.
17. The delineation, 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

18. The following certification must accompany each submission by Respondent pursuant to this Information Requirement 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."

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 CWA or any other Federal, State or local law or regulation.

20. 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.
21. 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

22. Respondent is invited to confer with the Agency about the findings and conclusions reflected in this Order and Information Requirement, including 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

23. 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, 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

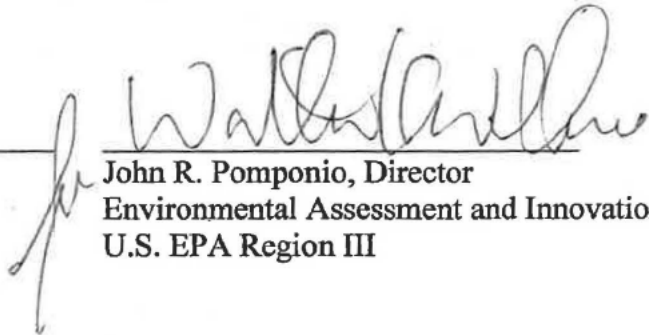
24. Within ten (10) days of the effective date of this Order, Respondent shall submit to EPA a Notice of Intent to Comply with the Order. The Notice shall be submitted to:

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

VIII. EFFECTIVE DATE

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

Date: 7/1/2013

A handwritten signature in black ink, appearing to read "John R. Pomponio", is written over a horizontal line. The signature is cursive and somewhat stylized.

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

