



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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Michael Cannon, Counsel
XTO Energy, Inc.
810 Houston Street
Fort Worth, Texas 76102

FEB 04 2014

Re: In the Matter of XTO Energy, Inc., Docket No. CWA-03-2014-0070DW

Dear Mr. Cannon:


Please find enclosed an Administrative Compliance Order ("Order" or "AO"), Docket No. CWA-03-2014-0070DW, which the United States Environmental Protection Agency, Region III ("EPA"), is issuing to XTO Energy, Inc. ("Respondent" or "XTO"), for violations of Section 301(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1311(a), at the Gould Site located in Jane Lew, 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 ("Order") to any person who is in violation of Section 301(a) of the CWA. Upon information and belief, as well as information provided by XTO, EPA has determined that Respondent or 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 as required by Section 404 of the CWA, 33 U.S.C. § 1344. The enclosed Order notifies Respondent of these violations and describes actions that will return the Site 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 Pamela Lazos, Senior Assistant Regional Counsel, at (215) 814-2658.

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, Esq. – US Army Corps of Engineers
Mr. Joseph Sizemore – WV DEP EE
Mr. Brad Swiger – WV DEP EE
Mr. David Belcher – WV DEP OOG
Ms. Jackie Thornton – WV DEP OOG
Ms. Wilma Reip – WV DEP
Mr. Clifford Brown – WV DNR
Mr. Roger Anderson – WV DNR
Mr. Wil Porche – XTO Energy, Inc.
Ms. Lisa Bruderly, Esq. – Babst Calland



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1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

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In The Matter of)	
)	
XTO Energy, Inc.)	Proceeding Under Section
)	309(a) of the Clean Water
Respondent)	Act, 33 U.S.C. § 1319(a)
)	
)	
Property Located At:)	EPA Docket No. CWA-03-2014-0070DW
Gould Site)	
39.0796°, -80.2803°)	
Marion County, West Virginia)	ORDER FOR COMPLIANCE

I. STATUTORY AUTHORITY

1. This Administrative Order for Compliance (“Order” or “AO”) 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, Region III.
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.* (CWA), 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. XTO Energy, Inc. (“Respondent” or “XTO”) 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 Gould Site is located at coordinates 39.0796°, -80.2803°, in Jane Lew, Upshur County, West Virginia (the “Site”), and approximately 1.4 miles northwest of Hodgesville-Hacker Creek Road and Hacker Creek Road.
9. The Site consists of two well pads, two freshwater pits, and associated access roads.
10. Rooting Creek flows approximately 8.5 miles from the Site to Gnatty Creek, then 1.6 miles to Elk Creek, a navigable water. All of the afore-listed 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, specifically, unnamed tributaries to Rooting Creek and wetlands abutting Rooting Creek and its tributaries.
12. The discharge of dredged and/or fill material was caused 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 4th day of February, 2014, the Respondent is hereby ORDERED, pursuant to Section 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. Immediately cease and desist all discharges without a permit to waters of the United States at the Site.
16. Within thirty (30) days of the effective date of this order, Respondent shall submit a pre-construction wetland and stream delineation to EPA for review and approval. This will fully identify all areas on the Site that, prior to construction, were streams or wetlands and will show the extent of the waters in and adjacent to the work area. 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.
17. Within thirty (30) days of EPA's approval, Respondent shall submit a detailed restoration plan to EPA for approval. The plan must describe the actions to be taken to remove the material from the regulated waters, to stabilize the Site, and to return the streams and/or wetlands to pre-disturbance grade and conditions.
18. 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.
19. 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.
20. 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.
21. Respondent's failure to complete the work in a manner consistent with this Order shall be deemed a violation of this Order.
22. 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

23. 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."

24. 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.
25. 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 false or misleading 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

26. 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

27. 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

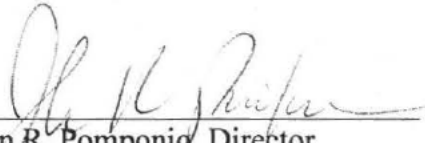
28. Within ten (10) days of the effective date of this Order, Respondent shall submit to EPA a written Notice of Intent to Comply with the Order. The Notice shall be submitted to:

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

VIII. EFFECTIVE DATE

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

Date: February 4, 2014



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

CERTIFICATE OF SERVICE

I hereby certify that on this date, I filed the original Administrative Order for Compliance with the Regional Hearing Clerk, US EPA Region III, and that a copy of this Order was sent by certified mail, return receipt requested, to:

Mr. Michael Cannon, Counsel
XTO Energy, Inc.
810 Houston Street
Fort Worth, Texas 76102

Ms. Lisa Bruderly, Esq.
Babst Calland, Attorneys at Law
Two Gateway Center
Pittsburgh, PA 15222

Date: 2/4/2014

Stephanie Andraescu for
Pamela J. Lazos
Sr. Assistant Regional Counsel