

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**IN THE MATTER OF:**

U. S. ENERGY DEVELOPMENT CORPORATION	:	Violations of the Clean Streams Law, the Dam Safety and Encroachments Act, the Oil and Gas Act and the Solid Waste Management Act
Oil and Gas Activities in McKean and Warren Counties, PA	:	
	:	

**ORDER**

NOW, this \_\_\_\_ day of July, 2009, the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”) has made and determined the following FINDINGS and enters the following ORDER:

**Findings**

A. The Department is the agency with the duty and authority to administer and enforce The Clean Streams Law, Act of June 22, 1937, P.L. 1987, *as amended*, 35 P.S. §§691.1-691.1001 (“Clean Streams Law”); the Dam Safety and Encroachments Act, Act of November 26, 1978, P.L. 1375, *as amended*, 32 P.S. §§693.1-693.27 (“Dam Safety Act”); the Oil and Gas Act, Act of December 19, 1984, P.L. 1140, *as amended*, 58 P.S. §§601.101-601.605 (“Oil and Gas Act”); the Solid Waste Management Act, Act of July 7, 1980, P.L. 380, *as amended*, 35 P.S. §§6018.101-6018.1003 (“Solid Waste Management Act”); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. §§510-17 (“Administrative Code”); and the rules and regulations promulgated thereunder (“Regulations”).

B. U.S. Energy Development Corporation (“U.S. Energy”) is a New York Corporation registered to do business in Pennsylvania. U.S. Energy engages in various oil and gas exploration and production activities in Pennsylvania and has a mailing address of 2350 North Forest Road, Getzville, NY 14068.

C. U.S. Energy is the “owner” and “operator,” as those terms are defined in Section 103 of the Oil and Gas Act, 58 P.S. §601.103, of wells located in McKean and Warren Counties, Pennsylvania, including the wells identified in Exhibit A and Exhibit B, which are attached and fully incorporated herein by reference (collectively “the Wells”).

**Past Violations By U.S. Energy**

D. From August 7, 2007, through April 15, 2009, the Department identified violations of the Clean Streams Law, Solid Waste Management Act, Oil and Gas Act, and the Regulations at various Wells and associated facilities owned and operated by U.S. Energy. These violations are identified in Exhibit A, which is attached and fully incorporated herein by reference. As of the date of this Order, these violations have been corrected by U.S. Energy, but the civil penalties for these violations have not yet been resolved.

**Violations Not Corrected By U.S. Energy**

E. From June 10, 2009, through June 30, 2009, the Department identified violations of the Clean Streams Law, Solid Waste Management Act, Oil and Gas Act, and the Regulations at various Wells and associated facilities owned and operated by U.S. Energy. As of the date of this Order, these violations have not been corrected by U.S. Energy. The Department notified U.S. Energy of these uncorrected violations in Department inspection reports and/or Notices of Violation that the Department previously mailed to U.S. Energy. These uncorrected violations are also identified in Exhibit B, which is attached and fully incorporated herein by reference.

F. The uncorrected violations by U.S. Energy that are identified in Exhibit B include, among other things: clearing or otherwise disturbing more than 5 acres of earth with no erosion or sediment controls and/or with no permit or other approval from the Department; discharging sediment without permit or other approval from the Department into waters of the Commonwealth, including the High Quality streams Bennett Brook and Willow Creek and their tributaries; failing to

maintain adequate freeboard or maintain the liners in pits used to temporarily contain residual and industrial wastes generated from the Wells; failing to have an adequate erosion and sediment control plan at the Well site that represented the construction activities at the site and/or failing to implement the plan during and post-construction; failing to prevent erosion and sedimentation from access roads by failing to install adequate culverts at recommended spacing, failing to apply adequate road material to stabilize road surfaces, and/or failing to stabilize banks and ditches with adequate seed, fertilizer, lime and mulch; and installing a pipeline across a tributary of Willow Creek with no permit or approval from the Department.

G. U.S. Energy's failure to obtain a permit or other approval from the Department before disturbing five or more acres, as identified in Exhibit B, is a violation of Section 402 of the Clean Streams Law, 35 P.S. §691.402, and 25 Pa. Code §102.5.

H. U.S. Energy's discharges of sediment to waters of the Commonwealth with no permit or approval from the Department, as identified in Exhibit B, are violations of Sections 307 and 401 of the Clean Streams Law, 35 P.S. §§691.307 and 691.401, and constitute a public nuisance pursuant to Section 401 of the Clean Streams Law, 35 P.S. §691.401.

I. U.S. Energy's failure to: implement and maintain erosion and sediment controls at Well sites; have an erosion and sediment control plan available for review at Well sites; and develop for and implement an adequate erosion and sediment control plan at Well sites, as identified in Exhibit B, violates Section 402 of the Clean Streams Law, 35 P.S. §691.402, and 25 Pa. Code §102.4.

J. U.S. Energy's failure to obtain an encroachment permit from the Department for its pipeline across a tributary of Willow Creek, as identified in Exhibit B, violates Section 6 of the Dam Safety Act, 32 P.S. §693.6, and 25 Pa. Code §105.11.

K. U.S. Energy's failure to obtain a waiver from the Department before constructing a Well site within 100 feet of a stream, as identified in Exhibit B, violates Section 205(b) of the Oil and Gas Act, 58 P.S. §601.205(b), and constitutes a public nuisance pursuant to Section 502 of the Oil and Gas Act, 58 P.S. §601.502.

L. U.S. Energy's failure to maintain proper free board or to maintain the integrity of liners in pits used to temporarily contain residual or industrial wastes from the Wells, and the unpermitted discharge of residual and industrial waste to the ground, as identified in Exhibit B, violates Section 301 of the Solid Waste Management Act, 35 P.S. §6018.301, and 25 Pa. Code §78.57(a), and constitutes a public nuisance pursuant to Section 601 of the Solid Waste Management Act, 35 P.S. §6018.601, and Section 502 of the Oil and Gas Act, 58 P.S. §601.502.

M. U.S. Energy's unpermitted discharges of residual and industrial wastes to waters of the Commonwealth, as identified in Exhibit B, are violations of Sections 307 and 401 of the Clean Streams Law, 35 P.S. §§691.307 and 691.401, and constitute a public nuisance pursuant to Section 401 of the Clean Streams Law, 35 P.S. §691.401.

N. U.S. Energy's failure to notify the Department of an unauthorized discharge that pollutes or threatens to pollute the waters of the Commonwealth, as identified in Exhibit B, violates 25 Pa. Code §§78.66(a) and 91.33(a), and constitutes a public nuisance pursuant to Section 502 of the Oil and Gas Act, 58 P.S. §601.502.

O. U.S. Energy's failure to comply with the conditions in its drilling permits for the Wells, as identified in Exhibit B, violates Section 201(a) of the Oil and Gas Act, 58 P.S. §601.201(a), and 25 Pa. Code §78.12, and constitutes a public nuisance pursuant to Section 502 of the Oil and Gas Act, 58 P.S. §601.502.

P. The violations set forth in Paragraphs G, H, I, M, and N, above, constitute unlawful conduct pursuant to Section 611 of the Clean Streams Law, 35 P.S. §691.611, and subject U.S.

Energy to a claim for civil penalties pursuant to Section 605 of the Clean Streams Law, 35 P.S. §691.605.

Q. The violation set forth in Paragraph J above, constitutes unlawful conduct pursuant to Section 18 of the Dam Safety Act, 32 P.S. §693.18, and subjects U.S. Energy to a claim for civil penalties pursuant to Section 21 of the Dam Safety Act, 32 P.S. §693.21.

R. The violations set forth in Paragraphs K, L, N, and O, above, constitute unlawful conduct pursuant to Section 509 of the Oil and Gas Act, 58 P.S. §601.509, and subject U.S. Energy to a claim for civil penalties pursuant to Section 506 of the Oil and Gas Act, §601.506.

S. The violations set forth in Paragraph L, above, constitute unlawful conduct pursuant to Section 302 of the Solid Waste Management Act, 35 P.S. §6018.302, and subject U.S. Energy to a claim for civil penalties pursuant to Section 605 of the Solid Waste Management Act, 35 P.S. §6018.605.

### **Order**

NOW, THEREFORE, pursuant to Section 610 of the Clean Streams Law, 35 P.S. §691.610; Section 20 of the Dam Safety Act, 32 P.S. §693.20; Section 503 of the Oil and Gas Act, 58 P.S. §601.503; Section 602 of the Solid Waste Management Act, 35 P.S. §6018.602; and Section 1917-A of the Administrative Code, 71 P.S. §510-17, the Department hereby ORDERS that:

#### **Cease and Desist Well Activities**

1. U.S. Energy shall immediately cease all gas and oil well activities including, but not limited to well stimulation, well drilling, road construction, pipeline construction and any other related well activities in the Commonwealth of Pennsylvania. U.S. Energy shall cease all such gas and oil well activities until the Department has notified U.S. Energy, in writing, that it has complied with all of its obligations under this Order.

**Cease and Desist All Earth Disturbance Activities**

2. U.S. Energy shall immediately cease all “earth disturbance activities,” as that term is defined in 25 Pa. Code §102.1, in the Commonwealth of Pennsylvania, except for those earth disturbance activities necessary to comply with Paragraph 4, below.

**Cease and Desist all Discharges Of Residual Or Industrial Wastes**

3. U.S. Energy shall immediately cease all discharges of residual or industrial wastes to the ground surface or to waters of the Commonwealth.

**Stabilization and Control of all Disturbed Areas**

4.

a. Within 2 days after the date of this Order, U.S. Energy shall begin to install and within 30 days after the date of this Order, U.S. Energy shall have completed the installation of all Erosion and Sedimentation Control Best Management Practices (“BMPs”) in accordance 25 Pa. Code §102.4(b), necessary to stabilize, or to otherwise control accelerated erosion and sedimentation at or from, all leases, tracts of land, Well sites, related roads and pipelines, and any other areas that have been disturbed by U.S. Energy’s oil and gas drilling activities in the Commonwealth of Pennsylvania.

b. All work under this Paragraph by or on behalf of U.S. Energy shall be conducted under the direct supervision in the field by a licensed professional (*e.g.* engineer, surveyor, geologist, or landscape architect) who is registered in Pennsylvania and who has attended training provided by the Department since 2007 on erosion and sediment control and post-construction stormwater management for oil and gas activities.

### **Pit Freeboard**

5. Within 5 days after the date of this Order, U.S. Energy shall complete all actions necessary to bring the drill pits at each Well into compliance with the requirements of 25 Pa. Code §78.56 (a)(2).

### **Chapter 105 Permit application**

6. Within 10 days after the date of this Order, U.S. Energy shall submit to the Department the additional information required to complete the application (originally submitted October 20, 2008) for General Permit P-5 for the pipeline crossing of Willow Creek, as identified in the Department's letter to U.S. Energy, dated July 6, 2009.

### **Waiver Application**

7. Within 10 days after the date of this Order, U.S. Energy shall submit a complete request for a waiver for the site at Well No. 131 (083-53818) in accordance with Section 205(b) of the Oil and Gas Act, 58 P.S. §601.205(b).

### **Earth Disturbance Permits**

8.

a. Upon obtaining and thereafter maintaining compliance with all of the obligations under Paragraphs 1 through 7, above, U.S. Energy may submit to the Department a complete application for Erosion and Sediment Control General Permit-1 for each lease(s) or tract(s) of land, where the gas and oil well activities by U.S. Energy, individually or connected, have resulted, or will result, in 5 or more acres of earth disturbance at one time or 5 or more acres of earth will be disturbed over the life of the project.

b. After the Department has notified U.S. Energy, in writing, that it has complied with all of its obligations under this Order and that the application for a Erosion and Sediment Control General Permit-1 for the lease or tract of land at issue has been reviewed and approved by

the Department, U. S. Energy may start new gas or oil well activities including, but not limited to well stimulation, well drilling, road construction, pipeline construction and any other related well activities at the lease or tract of land at issue in accordance with the approved Erosion and Sediment Control General Permit-1.

**Erosion and Sediment Control Plans**

9.

a. Upon obtaining and thereafter maintaining compliance with all of the obligations under Paragraphs 1 through 4, above, U.S. Energy may submit to the Department an Erosion and Sediment Control Plan for each lease(s) or tract(s) of land, where the gas and oil well activities by U.S. Energy, individually or connected, have resulted, or will result, in less than 5 acres of earth disturbance at one time or less than 5 of earth will be disturbed over the life of the project.

b. After the Department has notified U.S. Energy, in writing, that it has complied with all of its obligations under this Order and that the Department has approved the Erosion and Sediment Control Plan, U.S. Energy may start new gas or oil well activities including, but not limited to well stimulation, well drilling, road construction, pipeline construction and any other related well activities at the lease or tract of land at issue in accordance with the approved Erosion and Sediment Control Plan.

c. U.S. Energy shall implement and complete all actions under the Erosion and Sediment Control Plan at each lease or tract of land at issue within 30 days of the Department's written approval of the Plan.

10. In all cases, U.S. Energy shall conduct its gas and oil well activities and earth disturbance activities in the Commonwealth of Pennsylvania in compliance with all applicable requirements of the Clean Streams Law, Oil and Gas Act, Solid Waste Management Act, Dam Safety Act, and Regulations.



11. All correspondence with the Department concerning this Order and documents submitted in compliance with this Order shall be addressed to:

Regional Manager  
Oil and Gas Management  
Department of Environmental Protection  
230 Chestnut Street  
Meadville, PA 16335-3481

Any person aggrieved by this action may appeal, pursuant to Section 4 of the Environmental Hearing Board Act, 35 P.S. §7514, and the Administrative Agency Law, 2 Pa.C.S. Chapter 5A, to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P.O. Box 8457, Harrisburg, Pennsylvania 17105-8457, 717-787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, 800-654-5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in braille or on audiotape from the Secretary to the Board at 717-787-3483. This Paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

IF YOU WANT TO CHALLENGE THIS ACTION, YOUR APPEAL MUST REACH THE BOARD WITHIN 30 DAYS. YOU DO NOT NEED A LAWYER TO FILE AN APPEAL WITH THE BOARD.

IMPORTANT LEGAL RIGHTS ARE AT STAKE, HOWEVER, SO YOU SHOULD SHOW THIS DOCUMENT TO A LAWYER AT ONCE. IF YOU CANNOT AFFORD A LAWYER, YOU MAY QUALIFY FOR FREE PRO BONO REPRESENTATION. CALL THE SECRETARY TO THE BOARD (717-787-3483) FOR MORE INFORMATION.

**FOR THE COMMONWEALTH OF PENNSYLVANIA,  
DEPARTMENT OF ENVIRONMENTAL PROTECTION:**

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S. Craig Lobins  
Regional Manager  
Oil and Gas Management  
Northwest Regional Office

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