UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

NOV 27 2013

REPLY TO THE ATTENTION OF:

WN-16J

**CERTIFIED MAIL 7009 1680 0000 7648 0345**
**RETURN RECEIPT REQUESTED**

American Energy Corporation
c/o CT Corporation System
Registered Agent
1300 East Ninth Street
Cleveland, Ohio 44114

Re: Request for Information Pursuant to Section 308 of the Clean Water Act, 33 U.S.C. § 1318, Regarding American Energy Corporation – Century Mine Bennoc Refuse Disposal Area, Alledonia, Ohio
Docket No. V-W-14-308-06

To Whom It May Concern:

This letter concerns discharges of pollutants into waters of the United States associated with the American Energy Corporation – Century Mine, located in southeastern Ohio.

This letter and the enclosures are a request for information issued pursuant to Section 308(a) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. § 1318(a). Section 308 of the Act authorizes EPA to require those subject to the Act to furnish information, conduct monitoring, submit monitoring data, and make reports as may be necessary to carry out the objectives of the Act. Enclosure 1, which is hereby made part of this letter, details the information American Energy Corporation ("AEC" or "you") must provide to EPA. Please submit your written responses in accordance with the instructions in Section I of the Information Request, which provides response deadlines and the address where information should be submitted.

Pursuant to Section I, provide all information in the format requested within 10 calendar days from the date you receive this letter. Please provide a signed written confirmation of your intention to comply with this request, via fax or email attachment (pdf), to Janet Pellegrini, National Pollutant Discharge Elimination System Programs Branch, at the address provided in Enclosure 1, by 5:00 pm central standard time on December 3, 2013.

Accompany your responses to this request with a certificate that is signed and dated by you or the person who is authorized by you to respond to the request. Enclosure 2, which is hereby made part of this letter, provides a Statement of Certification for this purpose.

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Failure to respond fully and truthfully to this information request may result in enforcement proceedings under Section 309 of the Act, 33 U.S.C. § 1319, which could result in the judicial imposition of civil or criminal penalties or the administrative imposition of civil penalties. In addition, there is potential criminal liability for the falsification of any response to the requested information.

Although the information requested must be submitted to EPA, you are entitled to assert a business confidentiality claim pursuant to the regulations set forth in 40 C.F.R. Part 2, Subpart B. If EPA determines the information you have designated meets the criteria in 40 C.F.R. § 2.208, the information will be disclosed only to the extent and by means of the procedures specified in Subpart B. Unless a confidentiality claim is asserted at the time the requested information is submitted, EPA may make the information available to the public without further notice to you (see Enclosure 3).

Enclosed is a document entitled *U.S. EPA Small Business Resources-Information Sheet* to assist you in understanding the compliance assistance resources and tools available to you (see Enclosure 4). Any decision to seek compliance assistance at this time, however, does not relieve you of your obligation to EPA nor does it create any new rights or defenses, and will not affect any EPA decision to pursue enforcement action.

If you have questions regarding this information request, please contact Janet Pellegrini at (312) 886-4298, or have your legal counsel contact Gary Prichard, Office Regional Counsel, at (312) 886-0570.

Sincerely,

for Tinka G. Hyde
Director, Water Division

Enclosures

cc: Paul Novak, OEPA
James R. Turner, Treasurer, American Energy Corporation
Jon Nagel, American Energy Corporation

# ENCLOSURE 1
# CLEAN WATER ACT (CWA) SECTION 308 INFORMATION REQUEST

## I. Instructions

1. Please provide a signed written confirmation of your intention to comply with this request, via fax or email attachment (pdf), to Janet Pellegrini, National Pollutant Discharge Elimination System Programs Branch, by 5:00 central standard time on December 3, 2013.
2. Submit all information required by this request to EPA within 10 calendar days of your receipt of this letter.
3. All documents created for the Information Request should be provided in electronic format.
4. Respond to all requests using the following formats, as appropriate: MS Word Document, MS Excel Spreadsheet, MS Access Database, Geographic Information System (GIS) data, Adobe Acrobat Reader PDF format, or pictures and images in JPEG format. Data may be submitted on CD-ROMs or other electronic formats acceptable to EPA.
5. For data that is requested and/or submitted in tables, accumulate and organize the data into a clearly labeled and annotated MS Excel Spreadsheet. The spreadsheet should be formatted so that it can be printed on an 8.5" x 11" sheet of paper. The spreadsheet can be formatted to print on an 8.5" x 14" or 11" x 17" sheet of paper if doing so offers additional clarity.
6. For each document produced in response to this Information Request, indicate on the document, or in some other reasonable manner, the number of the Information Request and its subpart to which it responds.
7. Accompany your response to this Information Request with a certificate that is signed and dated by you or the person who is duly authorized by you to respond to the request that states that the response is complete and contains all information and documentation available to you pursuant to the request. Enclosure 2 provides a Statement of Certification for this purpose.
8. All information submitted pursuant to this Information Request must be submitted to:

U.S. Environmental Protection Agency – Region 5
Attention: Janet Pellegrini
NPDES Programs Branch, WN-16J
77 West Jackson Boulevard
Chicago, IL 60604
pellegrini.janet@epa.gov
312-886-4298 (phone)
312-692-2436 (fax)

## II. Definitions

The following definitions shall apply for the purposes of this Information Request:

1. "American Energy Corporation Century Mine" shall include all mining and related operations associated with Century Mine and Bennoc Refuse Disposal Area, located in Belmont County, Ohio.

2. "Document" includes any writings, drawings, graphs, charts, photographs, phone records, field records, operation logs/notes/field rounds sheets, electronic mail, facsimile, Supervisory Control and Data Acquisition (SCADA) information, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. Documents must be produced as they are kept in the usual course of business.

3. "You" and "your" shall mean American Energy Corporation and/or any company, entity, or corporation that has directed work at a American Energy Corporation mining operation, and any parent, affiliate, subsidiary or related entity of American Energy Corporation.

## III. Information Request

1. Provide the following information for Century Mine and the Bennoc Refuse Disposal Area:

   A. Provide the last 3 years of Ohio Department of Natural Resources (ODNR) Division of Mines and Reclamation's Quarterly Monitoring Report Sheets for monitoring site locations that are in Piney Creek and tributaries of Piney Creek that are:
   i. Upstream of currently permitted OGM00142*BG Pond 001 & Pond 002 (OH0144576 proposed Pond 023 & 024 respectively) and downstream of other discharges
   ii. Upstream of currently permitted Pond 001 & Pond 002 (OH0144576 proposed Pond 023 & 024 respectively) and downstream of Pond 008A, B and C discharges
   iii. Downstream of currently permitted Pond 001 (proposed Pond 023) and upstream of other discharges
   iv. Downstream of Pond 002 (proposed Pond 024) and upstream of other discharges
   v. Downstream of Pond 001 and Pond 002 and upstream of other discharges
   vi. Include monitoring reports for the Points designated on ODNR maps for AEC Century Mine, as D-2, D-9 and D-12
   vii. Include monitoring reports for Pond 001 and Pond 002

   EPA understands that the ODNR Quarterly Monitoring Report Sheets submitted in accordance with the requested item 1.A. above, will include the following information associated with each monitoring site:

   i. Monitoring site ID,
   ii. surface elevation of monitoring site,
   iii. stream or spring flows (cfs or gpm),
   iv. date measured,
   v. pH,
   vi. total Acidity,
   vii. total Alkalinity,
   viii. total Iron,
   ix. total manganese,
   x. total suspended solids,
   xi. total hardness,
   xii. total sulfates, and
   xiii. specific conductance.

To the extent that the sheets you provide do not include this information please provide this information.

B. Provide a map that depicts the exact location for each of the monitoring points within the Quarterly Monitoring Reports (QMR) and ensure that this map identifies each sampling location using the same Monitoring Site ID number as provided in the QMRs.

C. Provide a table for all the monitoring sites that includes columns for; the exact waterway location of the sampling point (i.e. Piney Creek, tributary to Piney Creek, etc.), latitude and longitude coordinates for each sampling location to a tenth of a second (most accurate level available).

D. Include any existing analytical data, from the last 3 years, for Pond 001 and Pond 002

**ENCLOSURE 2**

STATEMENT OF CERTIFICATION

I certify that the information contained in or accompanying this submission is true, accurate, and complete.

As to the identified portion(s) of this submission for which I cannot personally verify its truth and accuracy, I certify as the company official having supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

By_____
(Signature)

_____
(Title)

_____
(Date)

# ENCLOSURE 3

## Confidential Business Information (CBI) Assertion and Substantiation Requirements

Assertion Requirements

You may assert a business confidentiality claim covering all or part of the information requested in the attached letter, as provided in 40 C.F.R. § 2.203(b). To make a confidentiality claim, submit the requested information and indicate that you are making a claim of confidentiality. Any document over which you make a claim of confidentiality should be marked by placing on or attaching to the information, at the time it is submitted to EPA, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret" or "proprietary" or "company confidential" and a date, if any, when the information should no longer be treated as confidential. Information covered by such a claim will be disclosed by the EPA only to the extent permitted and by means of the procedures set forth by Section 308 of the CWA, and 40 C.F.R. Part 2. Allegedly confidential portions of otherwise non-confidential documents should be clearly identified. EPA will construe the failure to furnish a confidentiality claim with your response to the attached letter as a waiver of that claim, and the information may be made available to the public without further notice to you.

Please segregate personnel, medical and similar files from your responses and include that information on separate sheet(s) marked as "Personal Privacy Information," given that disclosure of such information to the general public may constitute an invasion of privacy.

Substantiation Requirements

All confidentiality claims are subject to EPA verification and must be made in accordance with 40 C.F.R. § 2.208 which provides in part that you satisfactorily show that you have taken reasonable measures to protect the confidentiality of the information and that you intend to continue to do so; and that the information is not and has not been reasonably obtainable by legitimate means without your consent.

Pursuant to 40 C.F.R. Part 2, Subpart B, EPA may at any time send you a letter asking you to substantiate fully your CBI claim. You must provide EPA with a response within the number of days set forth in the EPA request letter. Failure to submit your comments within that time will be regarded as a waiver of your confidentiality claim or claims, and EPA may release the information. EPA will ask you to specify which portions of the information you consider confidential. **You must be specific by page, paragraph, and sentence when identifying the information subject to your claim**. Any information not specifically identified as subject to a confidentiality claim may be disclosed to the requestor without further notice to you. For each item or class of information that you identify as being subject to CBI, EPA will ask you to answer the following questions, giving as much detail as possible:

1. For what period of time do you request that the information be maintained as confidential, e.g., until a certain date, until the occurrence of a specified event, or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.
2. Information submitted to EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question 1 above?

A. What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information still be considered confidential?

B. Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports, or articles? Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?

C. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.

D. For each category of information claimed as confidential, explain with specificity why release of the information is likely to cause substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?

Please note that effluent data provided under Section 308 of the CWA, 33 U.S.C. § 1318, is not entitled to confidential treatment under 40 C.F.R. Part 2. "Effluent data" means, with reference to any source of discharge of pollutant (as that term is defined in Section 502(6) of the CWA, 33 U.S.C. 1362(6)):

> Information necessary to determine the identity, amount, frequency, concentration, temperature, or other characteristics (to the extent related to water quality) of any pollutant which has been discharged by the source (of of any pollutant resulting from any discharge from the source), or any combination of the foregoing;
>
> Information necessary to determine the identity, amount, frequency, concentration, temperature, or other characteristics (to the extent related to water quality) of the pollutants which, under an applicable standard or limitation, the source was authorized to discharge (including, to the extent necessary for such purpose, a description of the manner or rate of operation of the source); and
>
> A general description of the location and/or nature of the source to the extent necessary to identify the source and to distinguish it from other sources (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source).

# ENCLOSURE 4

United States Environmental Protection Agency

Office of Enforcement and Compliance Assurance (2201A)
EPA 300-F-07-003 October 2007

*Office of Enforcement and Compliance Assurance*

# INFORMATION SHEET

## U. S. EPA Small Business Resources

If you own a small business, the United States Environmental Protection Agency (EPA) offers a variety of compliance assistance resources such as workshops, training sessions, hotlines, websites, and guides to assist you in complying with federal and state environmental laws. These resources can help you understand your environmental obligations, improve compliance, and find cost-effective ways to comply through the use of pollution prevention and other innovative technologies.

### Compliance Assistance Centers

(www.assistancecenters.net)
In partnership with industry, universities, and other federal and state agencies, EPA has established Compliance Assistance Centers that provide information targeted to industries with many small businesses.

**Agriculture**
(www.epa.gov/agriculture or 1-888-663-2155)

**Automotive Recycling Industry**
(www.ecarcenter.org)

**Automotive Service and Repair**
(www.ccar-greenlink.org or 1-888-GRN-LINK)

**Chemical Industry**
(www.chemalliance.org)

**Construction Industry**
(www.cicacenter.org or 1-734-995-4911)

**Education**
(www.campuserc.org)

**Healthcare Industry**
(www.hercenter.org or 1-734-995-4911)

**Metal Finishing**
(www.nmfrc.org or 1-734-995-4911)

**Paints and Coatings**
(www.paintcenter.org or 1-734-995-4911)

**Printed Wiring Board Manufacturing**
(www.pwbrc.org or 1-734-995-4911)

**Printing**
(www.pneac.org or 1-888-USPNEAC)

**Transportation Industry**
(www.transource.org)

**Tribal Governments and Indian Country**
(www.epa.gov/tribal/compliance or 202--564-2516)

**US Border Environmental Issues**
(www.bordercenter.org or 1-734-995-4911)

The Centers also provide State Resource Locators (www.envcap.org/statetools/index.cfm) for a wide range of topics to help you find important environmental compliance information specific to your state.

### EPA Websites

EPA has several Internet sites that provide useful compliance assistance information and materials for small businesses. If you don't have access to the Internet at your business, many public libraries provide access to the Internet at minimal or no cost.

**EPA's Home Page**
www.epa.gov

**Small Business Gateway**
www.epa.gov/smallbusiness

**Compliance Assistance Home Page**
www.epa.gov/compliance/assistance

**Office of Enforcement and Compliance Assurance**
www.epa.gov/compliance

**Voluntary Partnership Programs**
www.epa.gov/partners



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# U.S. EPA SMALL BUSINESS RESOURCES

## Hotlines, Helplines & Clearinghouses

(www.epa.gov/epahome/hotline.htm)
EPA sponsors many free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements. A few examples are listed below:

**Clean Air Technology Center**
(www.epa.gov/ttn/catc or 1-919-541-0800)

**Emergency Planning and Community Right-To-Know Act**
(www.epa.gov/superfund/resources/infocenter/epcra.htm or 1-800-424-9346)

**EPA's Small Business Ombudsman Hotline** provides regulatory and technical assistance information.
(www.epa.gov/sbo or 1-800-368-5888)

**The National Environmental Compliance Assistance Clearinghouse** provides quick access to compliance assistance tools, contacts, and planned activities from the U.S. EPA, states, and other compliance assistance providers
(www.epa.gov/clearinghouse)

**National Response Center** to report oil and hazardous substance spills.
(www.nrc.uscg.mil or 1-800-424-8802)

**Pollution Prevention Information Clearinghouse**
(www.epa.gov/opptintr/ppic or 1-202-566-0799)

**Safe Drinking Water Hotline**
(www.epa.gov/safewater/hotline/index.html or 1-800-426-4791)

**Stratospheric Ozone Refrigerants Information**
(www.epa.gov/ozone or 1-800-296-1996)

**Toxics Assistance Information Service** also includes asbestos inquiries.
(1-202-554-1404)

**Wetlands Helpline**
(www.epa.gov/owow/wetlands/wetline.html or 1-800-832-7828)

## State Agencies

Many state agencies have established compliance assistance programs that provide on-site and other types of assistance. Contact your local state environmental agency for more information or the following two resources:

**EPA's Small Business Ombudsman**
(www.epa.gov/sbo or 1-800-368-5888)

**Small Business Environmental Homepage**
(www.smallbiz-enviroweb.org or 1-724-452-4722)

## Compliance Incentives

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations before an enforcement action has been initiated, businesses may be eligible for penalty waivers or reductions. EPA has two policies that potentially apply to small businesses:

**The Small Business Compliance Policy**
(www.epa.gov/compliance/incentives/smallbusiness)

**Audit Policy**
(www.epa.gov/compliance/incentives/auditing)

## Commenting on Federal Enforcement Actions and Compliance Activities

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established an SBA Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. If you believe that you fall within the Small Business Administration's definition of a small business (based on your North American Industry Classification System (NAICS) designation, number of employees, or annual receipts, defined at 13 C.F.R. 121.201; in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, call the SBREFA Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247).

Every small business that is the subject of an enforcement or compliance action is entitled to comment on the Agency's actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community in response to comments made under SBREFA.

## Your Duty to Comply

If you receive compliance assistance or submit comments to the SBREFA Ombudsman or Regional Fairness Boards, you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes it enforces, including the right to take emergency remedial or emergency response actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

***EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act or related provisions.***