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

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REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

In the Matter of:

Grenadier Energy Partners, LLC
24 Waterway Ave., #875
The Woodlands, Texas 77380

Respondent

The Roberts Impoundment
39.6457, -80.5294
Located approximately 0.4 miles southwest of the intersection of Anthem Road/County Road 7/16 and Old Route 77/Delta Road 3
Littleton, Wetzel County, West Virginia

Site

Class II Proceeding Pursuant to Section 309(g)(2)(B) of the Clean Water Act, 33 U.S.C. § 1319(g)(2)(B)

EPA Docket No. CWA 03-2015-0050

FINAL ORDER

Director, Environmental Assessment and Innovation Division (EAID), U.S. Environmental Protection Agency, Region III, and Respondent, Grenadier Energy Partners, LLC have executed a document entitled "Consent Agreement and Final Order," which I hereby ratify as a Consent Agreement in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22 (the "Consolidated Rules"). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

NOW, THEREFORE, PURSUANT TO Section 309 of the Clean Water Act ("CWA"), 33 U.S.C. § 1319, and the Consolidated Rules, and based on the representations in the Consent Agreement, having determined that the penalty agreed to in the Consent Agreement is based on a consideration of the factors set forth in Section 309(g)(3) of the CWA, 33 U.S.C § 1319(g)(3), IT

IS HEREBY ORDERED that Respondent comply with the terms and conditions of the Consent Agreement. This CAFO shall become final and effective 30 days after it is lodged with the Regional Hearing Clerk, pursuant to Section 309(g)(5) of the CWA, 33 U.S.C. § 1319(g)(5).

Shawn M. Garvin
Regional Administrator
U.S. EPA, Region III

5/7/15
Date

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

In the Matter of: Grenadier Energy Partners, LLC 24 Waterway Ave., #875 The Woodlands, Texas 77380 Respondent The Roberts Impoundment 39.6457, -80.5294 Located approximately 0.4 miles southwest of the intersection of Anthem Road/County Road 7/16 and Old Route 77/Delta Road 3 Littleton, Wetzel County, West Virginia Site	Class II Proceeding Pursuant to Section 309(g)(2)(B) of the Clean Water Act, 33 U.S.C. § 1319(g)(2)(B) EPA Docket No. CWA 03-2015-0050 **CONSENT AGREEMENT & FINAL ORDER**

I. STATUTORY AND REGULATORY AUTHORITY

1. This Consent Agreement and Final Order ("CAFO") is entered into by the Director of the Environmental Assessment and Innovation Division ("EAID"), United States Environmental Protection Agency ("EPA"), Region III ("Complainant") and Grenadier Energy Partners, LLC ("Respondent"), pursuant to Section 309(g) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22 (the "Consolidated Rules").

2. The authority to settle this matter is vested in the Administrator of the EPA. The Administrator has delegated this authority to the Regional Administrator for EPA Region III. Such authority was further delegated to the Director of EAID.

3. The parties have agreed to settlement of the alleged violations of the CWA by Respondent. This CAFO simultaneously commences and concludes this action pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) & (3).

4. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and the Civil Monetary Penalty Inflation Rule, 40 C.F.R. Part 19, any person violating the CWA is liable for an administrative penalty under Section 309(g)(2)(B) in an amount not to exceed $16,000 per day for each day of the violation, up to a total penalty of $177,500 for violations occurring between January 12, 2009 and December 6, 2013.

II. EPA'S ALLEGATIONS OF FACT AND CONCLUSIONS OF LAW

5. Respondent is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

6. For the purposes of this CAFO and at all times relevant to this CAFO, Respondent states that it constructed in approximately October and November, 2010 a farm pond as part of the consideration to Larry Roberts for use of portions of his real property. The impoundment has at all relevant times been owned by Larry Roberts.

7. The Roberts Impoundment is located at 39.6457, -80.5294, approximately 0.4 miles southwest of the intersection of Anthem Road/County Road 7/16 and Old Route 77/Delta Road 3 in Littleton, Wetzel County, West Virginia (the "Site" or "Roberts Impoundment"). Roberts Impoundment was constructed on an unnamed tributary (UNT) to Sugar Run, and measures approximately ½ of an acre. Approximately 82 linear feet (lf) of the UNT to Sugar Run (mainstem) had been filled as a result of construction of the impoundment's embankment, and approximately 274 lf of the mainstem had been impacted from the impoundment of the stream. Additionally, approximately 17 lf of a tributary to the mainstem had been filled due to impoundment construction.

8. Construction of the Roberts Impoundment impacted a relatively permanent UNT to Sugar Run and its non-relatively permanent tributary. The UNT to Sugar Run flows 0.3 miles to Sugar Run, then 5.1 miles to the West Virginia Fork of Fish Creek, then 10.2 miles to Fish Creek, and then 26.7 miles to the Ohio River. The nearest navigable water that has been formally identified by the U.S. Army Corps of Engineers (USACE), Pittsburgh District, is Fish Creek which is considered navigable 4.1 miles above its mouth to the Ohio River.

9. On January 8, 2013 EPA representatives inspected the Roberts Impoundment. The inspection resulted in the issuance of an administrative order addressing CWA violations at the Site. EPA Docket No. CWA-03-2014-0020DW was issued on December 5, 2013 (AO), and required the submission of a stream restoration plan for the affected tributaries.

10. The term "fill material" within the meaning of 40 C.F.R. § 232.2, includes any material which replaces portions of the "water of the United States" with dry land or which changes the bottom elevation of a water body.

11. The UNT to Sugar Run constitutes a "water 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.

12. On information and belief, Respondent and/or people acting on behalf of Respondent, operated equipment which discharged dredged and/or fill material to waters of the United States at the Site, resulting in the filling of approximately 82 lf of stream channel and impoundment of water covering another 291 lf of the mainstem.

13. The equipment referenced in Paragraph 12 constitutes a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

14. Section 301(a) of the Act, 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 pursuant to Section 404 of the CWA, 33 U.S.C. § 1344.

15. At no time during the 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.

16. Respondent, by discharging dredged and/or fill material to the waters of the United States without authorization, has violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

III. CONSENT AGREEMENT AND FINAL ORDER

17. The parties agree that settlement of this matter prior to the initiation of litigation is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.

18. For the purposes of this proceeding, Respondent:

    a. Does not contest the jurisdictional allegations contained in this consent agreement;

    b. Neither admits nor denies the Findings of Fact and Conclusions of Law set forth in Section II above;

    c. Consents to the assessment of any stated civil penalty, to the issuance of any specified compliance or corrective action, to any conditions specified in this consent agreement;

    d. Waives the right to a hearing contesting the allegations contained herein and waives the right to appeal the final order accompanying this consent agreement.

19. Each party shall bear its own costs and attorney's fees.

20. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), EPA provided public notice and an opportunity to comment on this CAFO prior to issuing the Final Order. 40 C.F.R. § 22.45 requires a forty (40) day notice period in advance of an order which assesses a civil penalty.

21. Pursuant to Section 309(g)(1)(A) of the CWA, 33 U.S.C. § 1319(g)(1)(A). EPA consulted with the West Virginia Department of Environmental Protection regarding this action and will mail a copy of this document to the appropriate West Virginia official.

22. Based on the foregoing ALLEGATIONS OF FACT, and having taken into account the factors listed in Section 309(d) of the CWA, 33 U.S.C. § 1319(d), including but not limited to, the nature, circumstances, extent and gravity of the violation, the Respondent's knowledge, culpability and history of violations, the economic benefit to Respondent, the ability of Respondent to pay the penalty, Respondent's compliance with the Administrative Order for Compliance referenced in Paragraph 9; the administrative record; and under the authority of Section 309(g)(2)(B) of the CWA, 33 U.S.C. 1319(g)(2)(B), EPA HEREBY ORDERS AND RESPONDENT HEREBY CONSENTS to pay a civil penalty in the amount of sixty thousand six hundred and eleven dollars ($60,611) in full and final settlement of EPA's claims for civil penalties for the violations alleged herein.

IV. PAYMENT TERMS

23. Respondent shall pay a civil penalty of $60,611 for the violations alleged in this CAFO within thirty (30) days of the Effective Date of this CAFO pursuant to 40 C.F.R. § 22.31(c), in the following manner:

    a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action: EPA Docket No. CWA-03-2015-0050;

    b. All checks shall be made payable to "United States Treasury."

    c. All payments made by check and sent by regular mail shall be addressed to:

    U.S. Environmental Protection Agency
    Fines and Penalties
    Cincinnati Finance Center
    P.O. Box 979077
    St. Louis, MO 63197-9000

    Contacts: Heather Russell (513) 487-2044

    d. All payments made by check and sent by UPS, Federal Express, or overnight delivery service shall be addressed for delivery to:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: (314) 418-1028

e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

f. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

g. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact: Jon Schmid (202) 874-7026 or REX: (866) 234-5681

h. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

i. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/payment_instructions.htm

j. Respondent shall send notice of such payment, including a copy of the check, to the Regional Hearing Clerk at the following address:

Regional Hearing Clerk
Mail Code: 3RC00
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

-and-

Pamela Lazos
Mail Code: 3RC20
Office of Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

V. GENERAL PROVISIONS

24. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law and ordinance, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. Nor does this CAFO constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. §§ 1251, *et seq.,* or any regulations promulgated thereunder.

25. This CAFO is conditioned upon the accuracy of the Respondent's representations to EPA, including but not limited to Respondent's intent to comply with Administrative Order for Compliance referenced in Paragraph 9. EPA reserves the right to institute a new and/or separate action should Respondent fail to comply with the terms of this CAFO or the Administrative Order for Compliance referenced in Paragraph 9. That right shall be in addition to all other rights and causes of action, civil or criminal, the EPA may have under law or equity in such event.

26. The following notice concerns interest and late penalty charges that will accrue in the event that any portion of the civil penalty is not pai d as directed:

a. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

b. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

c. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). A penalty charge not to exceed six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent for more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

27. This Consent Agreement and the accompanying Final Order resolve only the civil claims for the specific violations alleged herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules. Further, EPA reserves any rights and remedies available to it under the Clean Water Act, 33 U.S.C. §§ 301 *et seq.,* the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk. Respondent reserves all rights and defenses it may have to defend itself in any such action.

28. Nothing in this CAFO shall be construed as prohibiting, altering or in any way eliminating the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violations of this CAFO or of the statutes and regulations upon which this CAFO is based or for Respondent's violation of any applicable provision of law.

29. The penalty specified above represents civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

30. EPA shall have the right to institute a new and separate action to recover additional civil penalties for the claims made in this CAFO if the EPA obtains evidence that the information and/or representations of the Respondent is false, or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action, civil or criminal, the EPA may have under law or equity in such event.

31. The undersigned representative of Respondent certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

32. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO, or one or more of its terms and conditions, is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Regional Administrator or his designee, then the entire CAFO shall be null and void.

VI. PUBLIC NOTICE AND EFFECTIVE DATE

33. Pursuant to 40 C.F.R. § 22.45, this CAFO shall be issued after a 40-day public notice period is concluded. This CAFO will become final and effective thirty (30) days after it is filed with the Regional Hearing Clerk, pursuant to Section 309(g)(5) of the Act, 33 U.S.C. § 1319(g)(5) (the "Effective Date").

VII. SIGNATURES

FOR COMPLAINANT, U.S. EPA REGION III

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

FOR RESPONDENT, GRENADIER ENERGY PARTNERS, LLC

Patrick S Noyes

Name: Patrick Noyes
Title: President & CEO
Grenadier Energy Partners, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that I caused to be sent a true and correct copy of the Consent Decree and Final Order (CAFO) filed this day with the Regional Hearing Clerk, EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, to the following:

Grenadier Energy Partners, LLC
24 Waterway Ave., Suite 875
The Woodlands, TX 77380

Mary Lou Fry
Senior Legal Counsel
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2103 Citywest Boulevard
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Mark D. Clark, Esq.
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300 Kanawha Boulevard, East
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Pamela J. Lazos
Sr. Assistant Regional Counsel
U.S. EPA, Region III

5/11/15
Date