

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

In the Matter of the Violations of Article 17 of the Environmental Conservation Law of the State of New York and Parts 701 and 703 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York by:

U.S. ENERGY DEVELOPMENT CORPORATION  
2350 North Forest Road  
Getzville, New York 14068

**Complaint**  
File No. 11-57  
R9-20111104-150

Respondent.

**WHEREAS:** Staff of the New York State Department of Environmental Conservation allege as follows:

**PARTIES AND JURISDICTION**

1. The **NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION** (“Department” or “NYSDEC”) is an Executive Agency of the State of New York (“State”) with jurisdiction over the environmental policy and programs of the State.
2. Pursuant to Articles 3 and 71 of the Environmental Conservation Law (“ECL”), Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“6 NYCRR”), and Orders issued thereunder, the Department is charged with enforcing the ECL, including, but not limited to, Article 17 of the ECL which governs the safeguarding of the waters of the State from pollution.
3. Respondent, **U.S. ENERGY DEVELOPMENT CORPORATION** (“U.S. Energy”) is a privately held New York based oil and natural gas exploration and development company with corporate offices located at 2350 North Forest Road, Getzville, New York 14068, Erie County. U.S. Energy is registered in New York as a Domestic Business Corporation.
4. U.S. Energy is a person as defined by ECL §§17-0105(1).
5. At all relevant times, U.S. Energy conducted oil and gas drilling operations in McKean County, Pennsylvania in a watershed area that contains Yeager Brook (Pa 53-8-8).
6. Yeager Brook flows from within Allegheny National Forest in Pennsylvania into Allegany State Park in Cattaraugus County New York. The portion of the Brook that is in New York is designated a Class B, Standard B(I) stream.

## STATUTORY AND REGULATORY FRAMEWORK

7. Pursuant to ECL §17-0101 “[i]t is declared to be the public policy of the state of New York to maintain reasonable standards of purity of the waters of the state consistent with public health and public enjoyment thereof, the propagation and protection of fish and wild life, including birds, mammals and other terrestrial and aquatic life, and the industrial development of the state, and to that end require the use of all known available and reasonable methods to prevent and control the pollution of the waters of the state of New York.”

8. Pursuant to ECL §17-0501 “[i]t shall be unlawful for any person, directly or indirectly, to throw, drain, run or otherwise discharge... organic or inorganic matter that shall cause or contribute to a condition in contravention of the standards adopted by the department pursuant to section 17-0301.”

9. Pursuant to 6 NYCRR §700.1(a)(47) “[p]ollution means the presence in the environment of conditions and/or contaminants in quantities of characteristics that are or may be injurious to human, plant or animal life or to property or that unreasonably interfere with the comfortable enjoyment of life and property throughout such areas of the State as shall be affected thereby.”

10. Pursuant to 6 NYCRR §701.1 “[t]he discharge of sewage, industrial waste, or other wastes shall not cause impairment of the best usages of the receiving water as specified by the water classifications at the location of discharge and at other locations that may be affected by such discharge.”

11. Pursuant to 6 NYCRR §701.7 “[t]he best usages of Class B waters are primary and secondary contact recreation and fishing. These waters shall be suitable for fish, shellfish, and wildlife propagation and survival.”

12. Pursuant to 6 NYCRR §703.2 the narrative water quality standard for turbidity applicable to a Class B water body is, “[n]o increase that will cause a substantial visible contrast to natural conditions”. For color, the narrative water quality standard is, “[n]one in amounts that will adversely affect the taste, color or odor thereof, or impair the waters for their best usages.”

13. Pursuant to ECL §71-1929, any person who violates any provision of Title 5 of Article 17, or the rules, regulations, orders of determination of the Commissioner promulgated thereto, “shall be liable to a penalty of not to exceed thirty-seven thousand five hundred dollars per day for each violation...” and such person may also be enjoined from such conduct.

## FACTS

### December 20, 2010 Order on Consent

14. On or about August 10, 2010, personnel from the NYS Office of Parks, Recreation, and Historic Preservation (“OPRHP”), discovered that Yeager Brook was cloudy and exhibited a milky white color. Upon further investigation, it was determined that the operation of U.S. Energy at gas well #4917-131 in McKean County, Pennsylvania had caused a discharge of pollutants which had entered Yeager Brook in New York State in violation of ECL 17-0501, 6 NYCRR 701.1, and 6 NYCRR 703.2.

15. To resolve the August 10, 2010 violations of ECL 17-0501, 6 NYCRR 701.1 and 6 NYCRR 703.2, on or about December 20, 2010, U.S. Energy duly executed an Order on Consent with the Department. The December 20, 2010 Order on Consent required U.S. Energy to pay a civil penalty of Ten Thousand (\$10,000) Dollars, provided however, that Two Thousand (\$2,000) Dollars of the civil penalty was suspended on the condition that U.S. Energy return to compliance and maintain ongoing and continued compliance with ECL 17-0501, 6 NYCRR 701.1 and 6 NYCRR 703.2.

16. The suspended portion of the civil penalty was due upon 20 days notice to U.S. Energy from the Department that U.S. Energy had failed to comply with the December 20, 2010 Order on Consent. On or about January 19, 2012, the Department notified U.S. Energy that, based upon the events described below, U.S. Energy had failed to maintain ongoing and continued compliance with ECL 17-0501, 6 NYCRR 701.1 and 6 NYCRR 703.2, was in violation of the December 20, 2010 Order on Consent and demanded payment of the suspended portion of the civil penalty.

### August 24, 2011 Order on Consent

17. On or about November 22, 2010, personnel from the OPRHP discovered that Yeager Brook was cloudy and significantly more turbid than normal. Upon further investigation and sampling, it was determined that the operations of U.S. Energy in McKean County, Pennsylvania had caused a discharge of pollutants which had entered Yeager Brook in New York State in violation of ECL 17-0501, 6 NYCRR 701.1 and 6 NYCRR 703.2.

18. To resolve the November 22, 2010 violations of ECL 17-0501, 6 NYCRR 701.1 and 6 NYCRR 703.2, on or about August 24, 2011, U.S. Energy duly executed a second Order on Consent with the Department.

19. The August 24, 2011 Order on Consent required U.S. Energy to pay a civil penalty of One Thousand Five Hundred (\$1,500) Dollars. The August 24, 2011 Order on Consent also required U.S. Energy to return to compliance and maintain ongoing and continued compliance with ECL 17-0501, 6 NYCRR 701.1 and 6 NYCRR 703.2

20. In the August 24, 2011 Order on Consent, U.S. Energy agreed to implement erosion and sediment control measures for roads, wells, and ancillary sites at: the Yeager Brook snowmobile trail in the Allegheny National Forest; Yeager Brook; and several culverts and roadside ditches in McKean County, Pennsylvania to prevent a contravention of stream standards in New York. U.S. Energy also agreed that if it failed to complete to the reasonable satisfaction of the Department any required action herein, including without limitation, any corrective action set forth in Schedule A, by the dates established therein, it would pay stipulated penalties for each day that it fails to complete any action required to maintain ongoing and continued compliance as follows:

- For days 1 to 14, the penalty shall be \$250.00 per day;
- For days 15 to 30, the penalty shall be \$500.00 per day;
- For days 31 to the date the corrective action has been completed, the penalty shall be \$1,000.00 per day.

21. Any stipulated penalty required pursuant to the August 24, 2011 Order on Consent is due and payable ten (10) days after a written notice from the Department.

22. On or about January 19, 2012, the Department notified U.S. Energy that, based upon the events described below, U.S. Energy had failed to implement erosion and sediment control measures, or had installed inadequate erosion control measures, had failed to prevent a contravention of stream standards in New York, and therefore, was in violation of the August 24, 2011 Order on Consent. The Department demanded payment of the stipulated penalties.

### **September 2011 Violation**

23. On or about September 28, 2011, personnel from the OPRHP, discovered that Yeager Brook was running much higher than normal and was not clear, as it typically runs, but rather was cloudy and gray in color.

24. OPRHP's onsite testing of the water revealed that the turbidity in Yeager Brook, which normally exhibits turbidity levels of less than 15 Nephelometric Turbidity Units (NTU), was 25.3 NTU in one branch of the brook and 33.5 NTU in another branch of the brook.

25. After taking water samples, OPRHP personnel followed the two branches of Yeager Brook upstream. They observed gray water with gray sediment flowing from a drill pad and a road where they found fresh tire tracks in thick mud.

26. On another trail OPRHP personnel observed a second mining road covered in thick heavy gray mud. They observed pools and streams of turbid water running downhill through the woods and towards the stream.

27. In addition, OPRHP personnel observed roadside culverts flowing with gray-brown water and documented that erosion and sediment controls were missing in places; had been placed in areas where they were not effective; and/or were not working correctly.

28. On each trail, OPRHP personnel documented that the sediment from the muddy roads was the same color as the sediment that they had observed in the two branches of Yeager Brook.

29. Based on their observations OPRHP personnel determined that the cloudy turbid water in Yeager Brook was the result of storm water runoff from the oil and gas roads and well pads in the area.

30. A map of the oil and gas wells in the area shows that all of the wells are owned by U.S. Energy.

### **December 2011 Violation**

31. On December 19, 2011 OPRHP staff hiked along the snowmobile trail into Allegheny National Forest where they found a road and a fairly new well pad for U.S. Energy well #218. A culvert next to the road was draining runoff but with no erosion or sediment controls in place at the end of the culvert. Storm water runoff from the culvert was draining downhill towards the streams.

32. The OPRHP team continued along the road and observed U.S. Energy well #216. The well was less than 500 feet uphill from a branch of Yeager Brook. The well site still had a derrick on it, indicating recent work, and the road to the site was very muddy, with ineffective erosion and sediment controls.

33. The team walked a short distance along Forest Road 370 where they found a culvert with failing erosion controls that was channeling runoff into the woods.

34. On December 20, 2011 OPRHP conducted routine monitoring of stream stations in Allegany State Park, including two stations on Yeager Brook. Turbidity, conductivity, temperature, and salinity readings were normal at all the stations. Water clarity was observed to be very clear in all the streams including Yeager Brook and Yeager 2.

35. On the evening of December 20, 2011 a rain event occurred that continued into December 21, 2011. The event totaled 0.96 inches of rainfall at nearby Bradford, Pennsylvania.

36. On the afternoon of December 21, 2011, the Department sent an Environmental Conservation Officer (ECO) to Allegany State Park to investigate. The ECO was joined by OPRHP staff.

37. OPRHP and DEC staff observed that both branches of Yeager Brook were running high and that the water was cloudy and slate gray in color. They could not see the bottom of the stream.

38. The only land disturbances upstream from the monitoring stations on Yeager Brook were well pads and well roads owned and/or operated by U.S. Energy.

39. OPRHP's onsite testing of the water revealed that the turbidity in Yeager Brook, which normally exhibits turbidity levels of less than 15 Nephelometric Turbidity Units (NTU), was 39.3 NTU in one branch of the brook and 30.5 NTU in another branch of the brook.

#### **January 2012 Violation**

40. On or about January 17, 2012, personnel from the OPRHP discovered that Yeager Brook was running much higher than normal and was not clear, as it typically runs, but rather was cloudy and gray in color.

41. OPRHP's onsite testing of the water revealed that the turbidity in Yeager Brook, which normally exhibits turbidity levels of less than 15 Nephelometric Turbidity Units (NTU), was 48.8 NTU.

#### **FIRST CAUSE OF ACTION**

42. Staff repeats and re-alleges paragraphs 1-41 of this Complaint as set forth herein.

43. Based upon the foregoing; by allowing turbid runoff to leave their lease roads and well pads on September 28, 2011, December 21, 2011, and January 17, 2012, and make its way into Yeager Brook, Respondent violated ECL §17-0501, 6 NYCRR 701.1, and 6 NYCRR 703.2. Pursuant to ECL §71-1929, the Department is entitled to a penalty of \$37,500 a day for each of these violations, as well as injunctive relief.

44. Each day of violation constitutes a separate and distinct violation

#### **SECOND CAUSE OF ACTION**

45. Staff repeats and re-alleges paragraphs 1-41 of this Complaint as set forth herein.

46. Based upon the foregoing, by failing to install adequate and effective erosion and sediment controls, as required by the December 20, 2010 Order on Consent, Respondent is in violation of ECL 71-1929 for failing to perform obligations imposed by that Order. Pursuant to ECL §71-1929, the Department is entitled to a penalty of \$37,500 a day for this violation, as well as injunctive relief.

47. Each day of violation constitutes a separate and distinct violation

**THIRD CAUSE OF ACTION**

48. Staff repeats and re-alleges paragraphs 1-41 of this Complaint as set forth herein.

49. Based upon the foregoing, by failing to install adequate and effective erosion and sediment controls, as required by the August 24, 2011 Order on Consent, Respondent is in violation of ECL 71-1929 for failing to perform obligations imposed by that Order. Pursuant to ECL §71-1929, the Department is entitled to a penalty of \$37,500 a day for this violation, as well as injunctive relief.

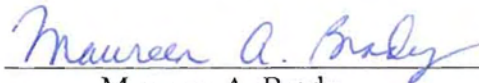
50. Each day of violation constitutes a separate and distinct violation

**WHEREFORE**, the Department requests an Order:

- I. Finding Respondent committed the violations alleged in this Complaint;
- II. Directing Respondent to come into compliance with the ECL, and/or put in place measures to ensure future compliance with the ECL;
- III. Assessing a civil penalty of One Hundred Eighty Seven Thousand Five Hundred Dollars (\$187,500);
- IV. For such other relief as the Commissioner may deem appropriate.

**DATED:** Buffalo, New York  
January 24, 2012

By:



Maureen A. Brady  
Regional Attorney  
NYS Department of Environmental  
Conservation  
270 Michigan Avenue  
Buffalo, New York 14203  
Telephone (716) 851-7190  
Facsimile (716) 851-7296

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

In the Matter of the Violations of Article 17 of the Environmental Conservation Law of the State of New York and Parts 701 and 703 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York by:

U.S. ENERGY DEVELOPMENT CORPORATION  
2350 North Forest Road  
Getzville, New York 14068

**Notice of Hearing and  
Complaint**  
File No. 11-57  
R9-20111104-150

Respondent.

PLEASE TAKE NOTICE THAT pursuant to Article 3 of the New York State Administrative Procedure Act, the above-captioned sections of the New York State Environmental Conservation Law ("ECL"), and Part 622 and the above-captioned sections of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR"), the undersigned shall request of the Chief Administrative Law Judge ("ALJ") of the Office of Hearings and Mediation Services of the New York State Department of Environmental Conservation ("Department") that an adjudicatory hearing be convened at the Department's Region 9 Office, 270 Michigan Avenue, Buffalo, New York 14203 on such day or days as the Chief ALJ, or the ALJ assigned by him to this matter, may fix, in order to consider certain charges that you have violated Articles 17 and 71 of the ECL and the rules and regulations enacted thereunder, specifically, ECL 17-0501 and Parts 701 and 703 of 6 NYCRR, as more specifically set forth in the attached Complaint and further, to consider assessment of whatever penalties the circumstances may warrant, and further, to consider any other or additional remedial action which may be appropriate.



PLEASE TAKE FURTHER NOTICE THAT the above mentioned hearing date will be set by the Office of Hearings and Mediation Services upon the filing of a Statement of Readiness for Adjudicatory Hearing pursuant to 6 NYCRR Sec. 622.9, with the Chief ALJ.

PLEASE TAKE FURTHER NOTICE THAT this Notice of Hearing serves as notice for any days the Office of Hearings and Mediation Services may fix for said hearing, or any adjournments or continuances thereof.

PLEASE TAKE FURTHER NOTICE THAT pursuant to 6 NYCRR 622.4, you must file a written answer to the charges of the violations alleged within twenty (20) days of receipt of the Complaint, annexed hereto. The written answer shall specify which allegations you admit, which allegations you deny, and which allegations you have insufficient information upon which to form an opinion regarding the allegation. The written answer shall be filed with the Department by serving the same, by mail, upon the Department attorney who has signed this Notice of Hearing, and signed by the Respondent, the Respondents' attorney, or other authorized representative.

PLEASE TAKE FURTHER NOTICE THAT any affirmative defenses, including but not limited to defense(s) of exemption(s) from permitting requirement(s), shall be waived unless they are specifically raised as affirmative defense(s) in any answer filed in this proceeding. Any affirmative defense(s) raised must include a statement of the facts which constitute the grounds of each affirmative defense asserted.

PLEASE TAKE FURTHER NOTICE THAT if you fail to serve a timely answer in this matter, pursuant to 6 NYCRR 622.4 or you fail to appear at the adjudicatory hearing in this matter, such failure will result in a default and a waiver of your right to a hearing; and,

pursuant to 6 NYCRR 622.15, an Order may be issued against you granting the relief requested in the attached Complaint. YOU MAY NOT RECEIVE ANY FURTHER NOTICE OF ANY ACTION THAT MAY BE TAKEN IN THIS REGARD.

PLEASE TAKE FURTHER NOTICE THAT this proceeding is governed by the procedures delineated in 6 NYCRR Part 622, which provides for various forms of relief which you may request by motion made pursuant to the general rules of practice provided therein. If you wish to make a motion for any of the relief provided in 6 NYCRR Part 622, such motion must be made to the Chief ALJ of the Department at the following address:

Chief Administrative Law Judge  
Office of Hearings and Mediation Services  
New York State Department of Environmental Conservation  
625 Broadway, 1st Floor  
Albany, New York 12233-1550

Any such motion made by you must also be served, by mail, upon the Department attorney who has signed this Notice of Hearing. Moreover, if you are served by the Department with a motion for any relief requested by them, you must file your response to any said motion with the Chief ALJ at the above address. Your response must also be served, by mail, upon the Department attorney who has signed this Notice of Hearing.

PLEASE TAKE FURTHER NOTICE THAT pursuant to ECL §71-1929, a violation of Article 17 subjects the violator to a civil penalty of up to a thirty-seven thousand five hundred dollars per day for each violation and in addition the person may be enjoined from continuing such violation.

PLEASE TAKE FURTHER NOTICE THAT whether or not you appear, the hearing will be convened at the time and place set by the ALJ, and should the violations of law aforesaid be established, an Order may be issued against you, including an assessment

of penalties. You may waive your right to a public hearing and agree to the issuance of an Order on Consent.

PLEASE TAKE FURTHER NOTICE THAT you may appear at the hearing with or without counsel; that all witnesses will testify under oath and a stenographic record of the proceeding will be made; that you may produce witnesses and evidence in your own behalf; that you may request issuance of subpoenas to compel attendance of witnesses and production of records relating to the matter under investigation; and that you may cross-examine witnesses and examine evidence produced against you.

PLEASE TAKE FURTHER NOTICE THAT interpreter services shall be made available to hearing impaired persons, at no charge, upon written request, within a reasonable time before the date of any hearing which might be held.

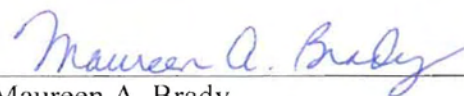
PLEASE TAKE FURTHER NOTICE THAT the location at which this hearing will be held is reasonably accessible to persons with mobility impairment.

Dated: Buffalo, New York

January 24, 2012

Staff of the New York State  
Department of Environmental  
Conservation

By:



Maureen A. Brady  
Regional Attorney  
270 Michigan Avenue  
Buffalo, New York 14203  
(716) 851-7190

SENT VIA CERTIFIED MAIL TO:

Andrew Borden, Esq.  
Corporate Counsel  
U.S. ENERGY DEVELOPMENT CORPORATION  
2350 North Forest Road  
Getzville, New York 14068