



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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

APR 04 2018

Mr. Robert Gwynne
Greer Industries, Inc.
570 Canyon Road
Morgantown, WV 26508

Re: EPA Docket # CWA- 03-2018-0037DW; CWA-03-2018-6001
Facility Name: Buckeye Stone Company, Morgantown, West Virginia

ADMINISTRATIVE ORDER FOR COMPLIANCE

Dear Mr. Gwynne:

Thank you for choosing to self-disclose unauthorized discharges to waters of the United States as part of your company's environmental auditing. Enclosed is an Administrative Order for Compliance (Order) that requires you to mitigate for or restore the unauthorized work on and around the property and aggregate mine known as Buckeye Stone Company located at 442 Blaney Hollow Road in Morgantown, West Virginia (Site), which you own or control (See Exhibit A). The Order requires restoration of environmental harm caused by these unpermitted discharges to waters of the United States.

In addition, enclosed please find a Notice of Determination (NOD) pursuant to Greer's April 18, 2017 timely disclosure of potential unpermitted discharges of dredged/fill material into waters of the United States at its Buckeye Stone Company facility, submitted pursuant to the U.S. Environmental Protection Agency's (EPA's) policy on "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations," 65 Fed. Reg. 19618 (April 11, 2000) (the "Audit Policy"). EPA acknowledges the potential violations were disclosed in connection with a series of voluntary, systematic environmental audits pursuant to the Audit Policy, and EPA intends to respond to the disclosed violations in accordance with that Policy.


Section 301(a) of the Clean Water Act (CWA), 33 U.S.C. § 1311(a), prohibits discharges to waters of the United States, including dredged or fill material, without a permit from the U.S. Army Corps of Engineers (Corps) pursuant to Section 404, 33 U.S.C. § 1344. Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), authorizes the EPA to issue an Administrative Compliance Order whenever any person is in violation of any condition or limitation that implements, *inter*

alia, Section 301(a) of the CWA. Your self-disclosures revealed discharges to Blaney Hollow, Unnamed Tributary Two (UNT 2), and Unnamed Tributary Three (UNT 3) during construction and operation activities between 1977 and 2017 (See Exhibit B). These unpermitted discharges constitute a violation of Section 404 of the CWA.

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 wish to submit any written material you believe to be relevant to the agency's findings, please contact Katelyn Almeter, Office of Environmental Programs, at (215) 814-2797, or your counsel may contact Pamela J. Lazos, the EPA attorney assigned to this matter, at (215) 814-2658.

Sincerely,



John R. Pomponio, Director
Environmental Assessment and Innovation Division

Enclosure

cc: Mr. Scott Hans – U.S. Army Corps of Engineers, Pittsburgh District
Mr. Jon Coleman – U.S. Army Corps of Engineers, Pittsburgh District
Ms. Wilma Reip – WV Dept of Environmental Protection
Mr. Jeremy Bandy – WV Dept of Environmental Protection
Mr. Danny Bennett – WV Division of Natural Resources



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

In the Matter of:

Greer Industries, Inc.
570 Canyon Road
Morgantown, West Virginia 26508

Property Located At:

Buckeye Stone Company
442 Blaney Hollow Road
Morgantown, West Virginia 26508

Respondent

ADMINISTRATIVE ORDER FOR
COMPLIANCE

Docket No. CWA-03-2018-0037DW

REGIONAL HEARING CLERK
EPA REGION III PHILA, PA

2018 APR -4 PM 2:30

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I. STATUTORY AUTHORITY

1. This Administrative Order for Compliance (“AOC” or “Order”) is issued by authority vested in the Administrator of the United States Environmental Protection Agency (hereinafter “EPA”) under the Clean Water Act (“CWA” or “the Act”) Section 309(a), 33 U.S.C. § 1319(a). This authority has been delegated by the Administrator to the Regional Administrator of EPA Region III, who has further delegated the authority to the Director of the Environmental Assessment and Innovation Division of Region III.
2. This order is issued in accordance with the authority granted to EPA under the CWA, 33 U.S.C. § 1251 *et seq.* and its stated objective to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.

II. STATUTORY AND REGULATORY AUTHORITY

3. 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.

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.”
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).

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

7. Respondent is a person within the meaning of CWA Section 502(5), 33 U.S.C. § 1362(5).
8. At all times relevant to this Order, Respondent has owned and/or operated the Buckeye Stone Company Site located at 442 Blaney Hollow Road, Morgantown, Monongalia County, West Virginia 26508, comprised of an aggregate mining facility and associated features at the following coordinates 39.69998 N, -79.78253 W and depicted on Exhibit A (hereinafter “Buckeye” or “Site”).
9. The Buckeye Site was constructed on Blaney Hollow and Unnamed Tributaries to Blaney Hollow. Blaney Hollow flows to Morgan Run and then to Cheat Lake; Cheat Lake is an impounded portion of the Cheat River. The Cheat River has been identified as a traditionally navigable water. Blaney Hollow and the Unnamed Tributaries to Blaney Hollow are relatively permanent waters, which have a surface hydrologic connection and significant nexus to downstream traditionally navigable waters and are “waters of the United States” within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7).
10. On April 18, 2017 and October 16, 2017, after conversations with EPA and pursuant to EPA’s policy on “Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations,” 65 Fed. Reg. 19618 (Apr. 11, 2000) (“Audit Policy”), Greer timely disclosed potential unpermitted discharges of dredged/fill material into waters of the United States at its Buckeye Stone facility.
11. EPA acknowledges that the potential violations have been disclosed in connection with a series of voluntary, systematic environmental audits pursuant to the Audit Policy, and EPA intends to respond to the disclosed violations in accordance with that Policy. The requirements of this Order will remedy any harm caused by the unpermitted discharges, as required by the Audit Policy.

12. On the basis of information available and disclosed pursuant to the Audit Agreement, Respondent or persons acting on behalf of Respondent, operated equipment which discharged dredged or fill material into Blaney Hollow, Unnamed Tributary Two (UNT 2), and Unnamed Tributary Three (UNT 3) when it constructed and operated an aggregate mine between 1977 and 2017 (See Exhibit B).
13. On the basis of information available, at no time during the alleged discharge of dredged and/or fill material to the “waters of the United States” at the Site did Respondent have a permit from the Secretary of the Army as required by CWA Section 404, 33 U.S.C. § 1344.
14. On the basis of information available, Respondent violated CWA Section 301(a), 33 U.S.C. § 1311(a) by discharging dredged and/or fill material to the “waters of the United States” at Blaney Hollow and the Unnamed Tributaries to Blaney Hollow without authorization.

IV. ORDER

AND NOW, this 4th day of April, 2018, Respondent is hereby ORDERED, pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a), and Respondent does hereby consent to perform the following actions:

15. Cease and desist all discharges of dredged and/or fill material without a permit issued by the U.S. Army Corps of Engineers pursuant to Section 404 of the CWA, 33 U.S.C. § 1344.
16. Within thirty (30) days of the effective date of this Order, Respondent shall submit a delineation of the aquatic resources at the Site which existed prior to disturbance, including identification of any and all areas at the Site which, prior to construction, were streams and/or wetlands, and will show the prior and current extent of the waters. 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. If EPA disapproves all or part of the delineation report, Respondent shall, within thirty (30) days of receipt of EPA’s disapproval, correct the deficiencies and resubmit the delineation for approval.
17. Within thirty (30) days of EPA’s approval of the delineation, Respondent shall submit a detailed restoration plan to EPA for approval. The restoration plan will outline the mitigation proposed for impacts to aquatic resources at the Site.

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. If the plan is not approved as provided in this Order, EPA retains the right to order restoration in accordance with a plan developed by EPA. Upon approval of the plan (either with or without conditions or modifications by EPA). Respondent shall implement the plan as approved or modified by EPA. All restoration work shall be completed within ninety (90) days of EPA's approval of the plan.
20. Respondent's failure to complete the work in a manner consistent with this Order shall be deemed a violation of this Order.
21. The delineation, restoration plan and all other correspondence should be sent to:
Katelyn Almeter
Office of Environmental Programs
United States Environmental Protection Agency
1650 Arch Street (3EA30)
Philadelphia, PA 19103-2029

V. GENERAL PROVISIONS

22. 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."

23. 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.

24. 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 misleading or false 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.

VI. OPPORTUNITY TO CONFER

25. 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 Katelyn Almeter at (215) 814-2797.

VII. JUDICIAL REVIEW

26. Respondent may seek federal judicial review of this Order pursuant to the Administrative Procedure Act, Chapter 7, 5 U.S.C. §§ 701-706.

VIII. NOTICE OF INTENT TO COMPLY

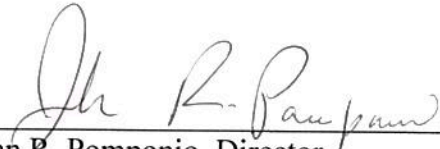
27. Within ten (10) days of the effective date of this Order, Respondent shall submit to EPA a Notice of Intent to Comply with the Order. The Notice shall be submitted to:

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

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

SO ORDERED.

Date: 4/4/2018.



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


CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of this Administrative Order for Compliance, the original of which has been filed with the Regional Hearing Clerk, U.S. EPA Region III, has been sent to the following via certified mail, return receipt requested:

Robert Gwynne
Greer Industries, Inc.
570 Canyon Road
Morgantown, West Virginia 26508

With a copy to:

Lisa Bruderly
Babst Calland
Two Gateway Center
Pittsburgh, PA 15222



Katelyn Almeter
US EPA Region III

4/4/2018

Date



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

In the Matter of:

Greer Industries, Inc.
570 Canyon Road
Morgantown, West Virginia 26508

Property Located At:

Buckeye Stone Company
442 Blaney Hollow Road
Morgantown, West Virginia 26508
39.69998 N, -79.78253 W

Respondent

NOTICE OF DETERMINATION

Docket No. CWA-03-2018-6001

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2018 APR 11 10 21 AM
EPA REGION III PHILADELPHIA

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NOTICE OF DETERMINATION

Pursuant to the Policy on Incentives for Self-Policing (Audit Policy), 65 Fed. Reg. 19618 (April 11, 2000), the U.S. Environmental Protection Agency (EPA) hereby issues this Notice of Determination (NOD) regarding violations disclosed to EPA by Greer Industries, Inc. (Greer) for the following facility:

Buckeye Stone Company
442 Blaney Hollow Road
Morgantown, West Virginia 26508
39.69998 N, -79.78253 W

I. Preliminary Statement

As an incentive for regulated entities to disclose violations that they discover, EPA may eliminate the gravity-based component of civil penalties, and waive any insignificant economic benefit component, where the voluntarily disclosed violations meet the conditions specified in the Audit Policy. EPA's streamlined implementation of this self-disclosure policy provides for self-disclosed violations to be submitted and processed through its "eDisclosure" online system. The disclosing entity referenced above disclosed the violations described herein through the eDisclosure system.

II. Determination

Based on the information, including a preliminary assessment of aquatic resource impacts, provided to EPA by Greer, and Greer's compliance with the Administrative Order for Compliance, EPA Docket No. CWA-03-2018-6001, issued today, which requires Greer to restore/mitigate for all environmental harm as a result of its violation of Section 404 of the CWA, EPA has determined that Greer has met all the conditions of the Audit Policy. Therefore, this NOD resolves the above-named entity's civil penalty liability with no assessment of a civil penalty for violating Section 404 of the Clean Water Act, 33 U.S.C. § 1344, when Respondent or persons acting on behalf of Respondent, operated equipment which discharged dredged or fill material into Blaney Hollow, Unnamed Tributary Two (UNT 2), and Unnamed Tributary Three (UNT 3) during construction and operation of an aggregate mine between 1977 and 2017.

III. Reservation of Rights

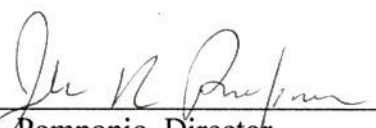
This NOD applies only to EPA's mitigation of the civil monetary penalties for the violations disclosed, and this NOD is conditioned upon the accuracy and completeness of the information submitted to EPA by the discloser. If any information or statement provided to EPA was materially false or inaccurate, EPA reserves the right to assess penalties for any violation described herein. Nothing herein shall be construed to limit the authority of EPA and/or the United States to undertake action against any person, including Greer Industries, Inc., except as expressly provided in Part II (Determination). For example, issuance of this NOD does not constitute a waiver by EPA and/or the United States of its right to bring a civil or criminal enforcement action against Greer Industries, Inc. for other violations of federally enforceable requirements, or to respond to an imminent and substantial endangerment to health, welfare, or the environment.

For the U.S. Environmental Protection Agency, Region III:

Effective Date:

4/4/2018

By:



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

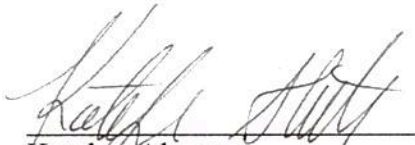
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The undersigned hereby certifies that a copy of this Notice of Determination, the original of which has been filed with the Regional Hearing Clerk, U.S. EPA Region III, has been sent to the following via certified mail, return receipt requested:

Robert Gwynne
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570 Canyon Road
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With a copy to:

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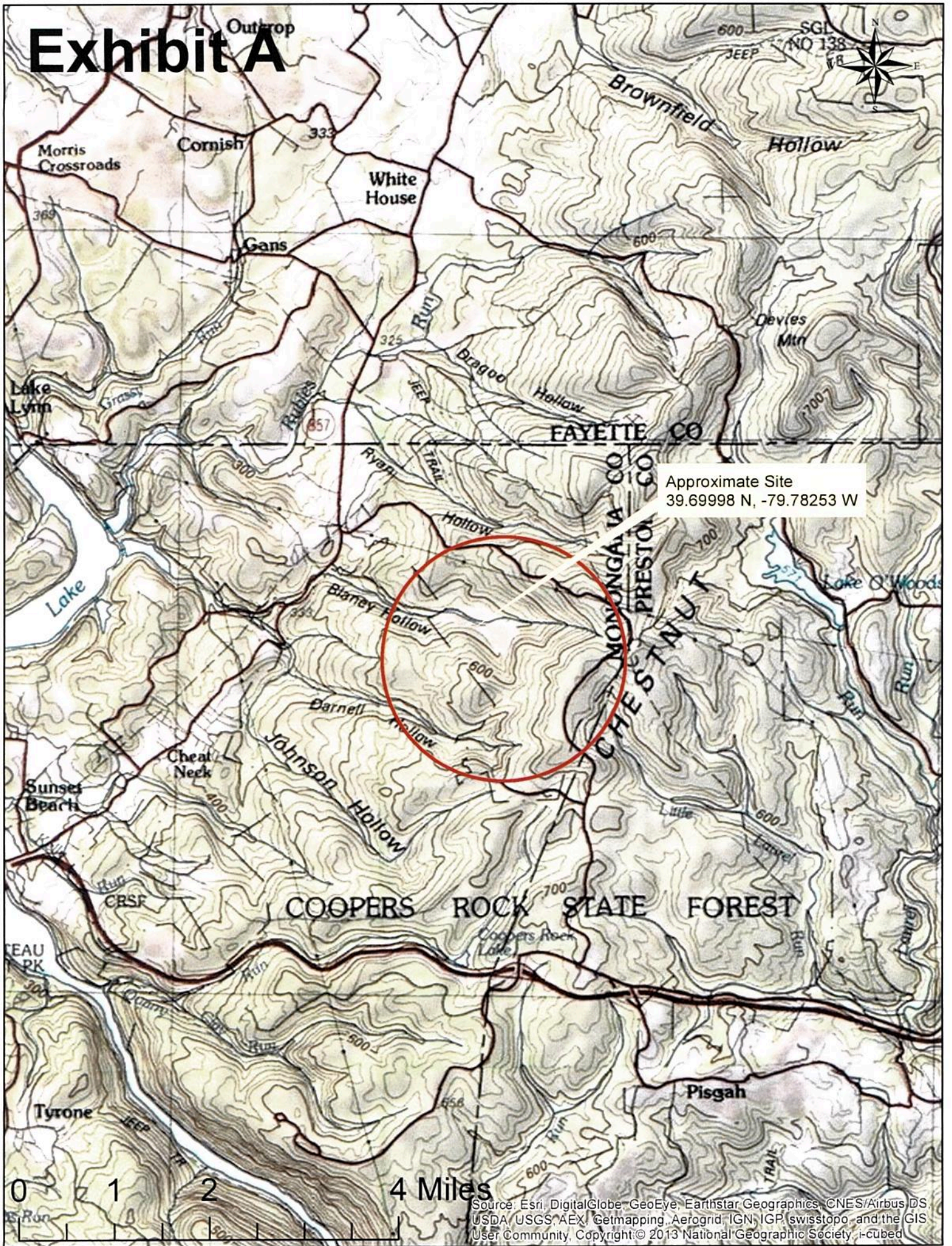


Katelyn Almeter
US EPA Region III

4/4/2018

Date

Exhibit A



Approximate Site
39.69998 N, -79.78253 W

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Exhibit B

