



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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

FEB 13 2018

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

Re: EPA Docket # CWA- 03-2018-0035DW; CWA-03-2018-6000
Facility Name: Deckers Creek Limestone, 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 or restore for the unauthorized work on and around the property known as Deckers Creek Limestone located in Morgantown, West Virginia (Site), which you own or control. The Order requires restoration of the environmental harm which was caused by the unlawful discharge to waters of the United States. In addition, enclosed please find a Notice of Determination (NOD) pursuant to Greer's July 07, 2017 timely disclosure of potential unpermitted discharges of dredged/fill material into waters of the United States at its Deckers Creek Limestone facility submitted pursuant to 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 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.

Section 301(a) of the Clean Water Act (CWA), 33 U.S.C. § 1311(a), prohibits discharges to waters of the United States, including dredge 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 U.S. Environmental Protection Agency (EPA) to issue an Administrative Compliance Order whenever any person is in violation of any condition or limitation which implements, *inter alia*, Section 301(a) of the CWA. Activities you have performed at the Site have resulted in discharges to jurisdictional waters of the United



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REGION III
1650 Arch Street
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REGIONAL HEARING CENTER
EPA REGION III, PHILA. PA

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RECEIVED

In the Matter of:	:	ADMINISTRATIVE ORDER FOR COMPLIANCE
Greer Industries, Inc.	:	
570 Canyon Road	:	
Morgantown, West Virginia 26508	:	Docket No. CWA-03-2018-0035DW
Property Located At:	:	
Deckers Creek Limestone	:	
Route 7 (approximately 7 miles east from Sabraton)	:	
Morgantown, West Virginia 26505	:	
Respondent	:	

I. STATUTORY AUTHORITY

1. This Administrative Order for Compliance (“AOC” or “Order”) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (hereinafter “EPA”) under Section 309(a) of the Clean Water Act (“CWA” or “the Act”), 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 Clean Water Act, 33 U.S.C. § 1251 *et seq.* (CWA), 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 Section 502(5) of the Act, 33 U.S.C. § 1362(5).
8. At all times relevant to this Order, Respondent has owned and/or operated the Deckers Creek Limestone facility located on Route 7 (approximately 7 miles east from Sabraton) Morgantown, Monongalia County, West Virginia 26505, comprised of an aggregate mining facility and associated features at the following coordinates 39.57702 N, - 79.86230 W and depicted on Exhibit A (hereinafter “Deckers Creek Limestone” or “Site”).
9. The Deckers Creek Limestone Site was constructed on Unnamed Tributaries to Deckers Creek, which flows to Deckers Creek and then to the Monongahela River. The Monongahela River has been identified as a traditionally navigable water. The Unnamed Tributaries to Deckers Creek 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 Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

10. On July 07, 2017 and January 08, 2018, after conversations with EPA, Greer timely disclosed potential unpermitted discharges of dredged/fill material into waters of the United States at its Deckers Creek Limestone facility 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").
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 approximately 1300 linear feet of two Unnamed Tributaries to Deckers Creek when it constructed and operated an aggregate mine between 1995 and 2017.
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 Section 404 of the CWA, 33 U.S.C. § 1344.
14. On the basis of information available, Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a) by discharging dredged and/or fill material to the "waters of the United States" at the Unnamed Tributaries to Deckers Creek without authorization.

IV. ORDER

AND NOW, this 13th day of February, 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. EPA retains the right, if the plan is not approved as provided in this Order, 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 Chapter 7 of the Administrative Procedure Act, 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

IX. EFFECTIVE DATE

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

SO ORDERED.

Date: 2/13/2018.


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

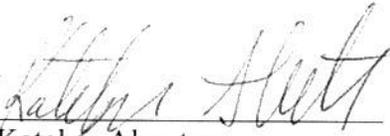
CERTIFICATE OF SERVICE

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

2/13/2018
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:

Deckers Creek Limestone
 Route 7 (approximately 7 miles
 east from Sabraton)
 Morgantown, West Virginia 26505

Respondent

NOTICE OF DETERMINATION

Docket No. CWA-03-2018-6000

REGIONAL HEARING CLERK
 EPA REGION III, PHILA. PA

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NOTICE OF DETERMINATION

Pursuant to EPA’s revised final policy entitled “Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations,” 65 Fed. Reg. 19618 (April 11, 2000) (“Audit Policy”), the United States Environmental Protection Agency, Region III (“EPA”), hereby issues this Notice of Determination (“NOD”) to Greer Industries, Inc., regarding violations of Sections 301 and 404 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1344, and their implementing regulations at 40 C.F.R. Parts 122 and 232, at the facility located at Decker’s Creek Limestone, Route 7 (approximately 7 miles east from Sabraton), Morgantown, West Virginia, 26505 (“Facility”). The violations that are the subject of this NOD were voluntarily

disclosed to EPA by electronic filing dated July 07, 2017. That filing was withdrawn following discussions with the Agency and resubmitted on January 08, 2018

I. AUDIT POLICY

In order to encourage regulated entities to conduct voluntary compliance evaluations and to voluntarily discover, disclose, and correct violations of environmental requirements, EPA promulgated the Audit Policy. As an incentive for businesses owners to participate in the Audit Policy voluntary disclosure process, EPA may eliminate or substantially reduce the gravity-based component of civil penalties to be assessed for violations that are voluntarily disclosed in compliance with the conditions specified in the Audit Policy. The conditions of the Audit Policy are as follows:

- (1) Systematic Discovery;
- (2) Voluntary Discovery;
- (3) Prompt Disclosure;
- (4) Independent Discovery;
- (5) Prompt Correction;
- (6) Prevent Recurrence;
- (7) No Repeat Violations;
- (8) Other Violations Excluded; and
- (9) Cooperation.

Pursuant to the Audit Policy, EPA may eliminate or reduce gravity-based penalties up to 100% if the disclosing entity satisfies all of the conditions described above. The Policy provides up to 100% reduction of the penalty's gravity component for violations discovered either through a timely environmental audit or a compliance management system.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to the Audit Policy and based upon the information and representations Greer provided in its disclosure letter dated January 08, 2018, EPA makes the following findings of fact and conclusions of law:

- A. Greer is a “person” as that term is defined by Section 502(5) of the CWA, 33 U.S.C. 1362(5).
- B. 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.
- C. 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.”
- D. 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.”
- E. Fill material is a “pollutant” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6)
- F. Under Section 404(a) of the CWA, 33 U.S.C. § 1344(a), any person wishing to discharge dredged or fill material into navigable waters must first acquire a permit from the Secretary of the U.S. Army Corps of Engineers.

- G. At all times relevant to this NOD, Respondent has owned and/or operated the Deckers Creek Limestone Site located on Route 7 (approximately 7 miles east from Sabraton) Morgantown, Monongalia County, West Virginia 26505, comprised of an aggregate mining facility and associated features at the following coordinates, 39.57702 N, -79.86230 W, and depicted on Exhibit A (hereinafter “Deckers Creek Limestone” or “Site”).
- H. The Deckers Creek Limestone Site mine was constructed on Unnamed Tributaries to Deckers Creek, which flows to Deckers Creek, and then to the Monongahela River. The Monongahela River has been identified as a traditionally navigable water. The Unnamed Tributaries to Deckers Creek are relatively permanent waters, which have a surface hydrologic connection and significant nexus to downstream traditionally navigable waters and is a “waters of the United States” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
- I. On July 7, 2017 and January 08, 2018, Respondent disclosed a violation pursuant to EPA’s Audit Policy, regarding Greer’s Deckers Creek Limestone Site through EPA’s eDisclosure portal.
- J. On the basis of information available and disclosed by Respondent pursuant to the Audit Policy, Respondent or persons acting on behalf of Respondent, operated equipment which discharged dredged or fill material into approximately 1300 linear feet of two Unnamed Tributaries to Deckers Creek when it constructed and operated an aggregate mine between 1995 and 2017.
- K. 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 Deckers Creek Limestone

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.

- i. **Systematic Discovery:** Representatives of Greer conducted a review of ongoing operational facilities to ascertain compliance with federal environmental requirements. The disclosed violations were discovered during these activities.
- ii. **Voluntary Discovery:** Greer voluntarily provided EPA with the information and not as a result of any legally mandated requirements prescribed by statute, regulation, permit, or judicial or administrative order, or consent agreement.
- iii. **Prompt Disclosure:** Greer completed its compliance review and disclosed the violations as soon as practical after all facility reviews had been completed.
- iv. **Discovery and Disclosure Independent of Government or Third-Party Plaintiff:** Greer's discovery and disclosure of the potential violations occurred prior to the commencement or issuance of any federal, state, or local inspection, investigation, information request, notice of citizen suit, complaint by a third party, report of the violation by a whistleblower, or imminent discovery of the violation by a regulatory agency.
- v. **Correction and Remediation:** Once review of all facilities had been completed, Greer began the process of filing claims through the eDisclosure portal. The Facility disclosed its violations on July 7, 2017, and, after discussions with the Agency, as to the timing of

restoration/mitigation activities, resubmitted them on January 8, 2018.

While work will not be completed within a 60-day time-frame,

Respondent has agreed to undertake and complete all

restoration/mitigation work required to bring the Facility into compliance with the CWA pursuant to EPA Docket No. CWA-03-2018-0035DW.

- vi. **Prevent Recurrence:** Greer's environmental consultant has been tasked with reviewing all of Greer's facilities for compliance with the CWA to prevent recurrence of the Section 404 violations under the CWA.
- vii. **No Repeat Violations:** As of the date of its initial disclosure to EPA, Greer has not received any notices of any violation(s) of Section 404 under the CWA concerning any of its facilities. As of the date of the initial disclosure, Greer has not had any violations of Section 404 at this Facility in the last three years or at any of its other facilities in the last five years.
- viii. **Other Violations Excluded:** The disclosed violations did not result in actual serious harm and did not present a risk of imminent and substantial endangerment to human health or the environment, nor did the disclosed violations violate the specific terms of any judicial or administrative order or consent agreement.
- ix. **Cooperation:** Greer has cooperated with EPA and has provided such information as necessary and requested by EPA to determine the applicability of the Audit Policy.

IV. EPA's DETERMINATION

Pursuant to the Audit Policy and based upon the information Greer provided in its disclosure letter and various correspondence with EPA, EPA makes the following determination concerning the disclosure identified above:

- A. Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a) by discharging dredged and/or fill material to the “waters of the United States” at the Unnamed Tributaries to Deckers Creek without authorization, and Section 404 of the CWA, 33 U.S.C. § 1344, by failing to acquire a permit.
- B. Section 309(g) of the CWA, 33 U.S.C. § 1319(g)(2), provides that, for violations of Section 301 of CWA, 33 U.S.C. § 1311, EPA may assess a penalty not to exceed \$25,000 per violation. Pursuant to the Debt Collection Improvement Act of 1996 (“DCIA”) and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (“Penalty Inflation Rule”), violations of Section 301 of CWA that occurred after January 12, 2009 through November 2, 2015, are subject to a statutory maximum penalty of \$177,500. Violations occurring after November 2, 2015, are subject to a statutory maximum penalty of \$267,415.
- C. In calculating the civil penalty to be assessed for a violation of Section 301 of CWA, 33 U.S.C. § 1311, EPA considers the factors listed in Section 1319(g)(3) of CWA, 33 U.S.C. § 1319(g)(3), with specific reference to EPA’s Revised CWA Section 404 Settlement Penalty Policy dated December 21, 2001 (*Settlement Penalty Policy*). This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors referenced above to particular cases. Based upon the information Greer provided, the Settlement Penalty Policy, and EPA’s consideration of the facts of this case, including the

fact that Greer will spend approximately \$135,000 to restore the Site and/or mitigate for the environmental damage, EPA has determined that a gravity-based civil penalty in the amount of \$70,500 would be appropriate for the above violations of Sections 301 and 404 of the CWA.

- D. Based upon information provided by Greer, EPA has determined that Greer has met all of the conditions of the Audit Policy and qualifies for a 100% reduction in the gravity-based component of the civil penalty for the disclosed violations. Additionally, Greer has not gained any significant economic benefit as a result of non-compliance with the regulations since they will be mitigating for the violation. Therefore, EPA will not assess a civil penalty against Greer for the aforementioned violations.

IV. RESERVATION OF RIGHTS

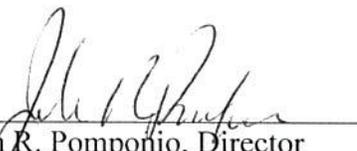
- A. This NOD resolves only the potential claims for civil penalties pursuant to Sections 301 and 404 of the CWA for the violations alleged herein. Nothing in this NOD is intended to be nor shall be construed to operate in any way to resolve criminal liability, if any, of Greer. EPA reserves the right to require compliance, corrective action, and/or other remedial measures in connection with any violations, including those alleged herein, of the CWA or any other environmental law.
- B. This NOD shall not relieve Greer of its obligations to comply with all applicable provisions of federal, state, and local law, nor shall it be construed to be a ruling on, or determination of, any issues relating to any federal, state, or local permit. This NOD does not constitute a waiver, suspension, or modification of the requirements of the CWA or any regulations promulgated there under.

- C. EPA reserves the right to undertake any action against any person, including Greer in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, welfare, or the environment.
- D. EPA reserves the right to revoke this NOD and, thereby, render such NOD null and void if and to the extent that any information or certification Greer provided, upon which any civil penalty mitigation granted herein for such violations was based, was materially false or inaccurate at the time such information or certification was provided to EPA. In such event, EPA reserves the right to assess and collect any and all civil penalties for any violations described herein. Such revocation shall be in writing and shall become effective upon receipt by Greer.

In issuing this NOD, EPA seeks to promote self-auditing by Greer and expects Greer to be in full compliance with regulatory requirements and to continue the internal procedures necessary to prevent recurrences of violations of environmental requirements.

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

Date: 2/13/2018

By: 
John R. Pomponio, Director
Environmental Assessment and Innovation
Division (3EA00)

CERTIFICATE OF SERVICE

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

With a copy to:

Lisa Bruderly
Babst Calland
Two Gateway Center
Pittsburgh, PA 15222

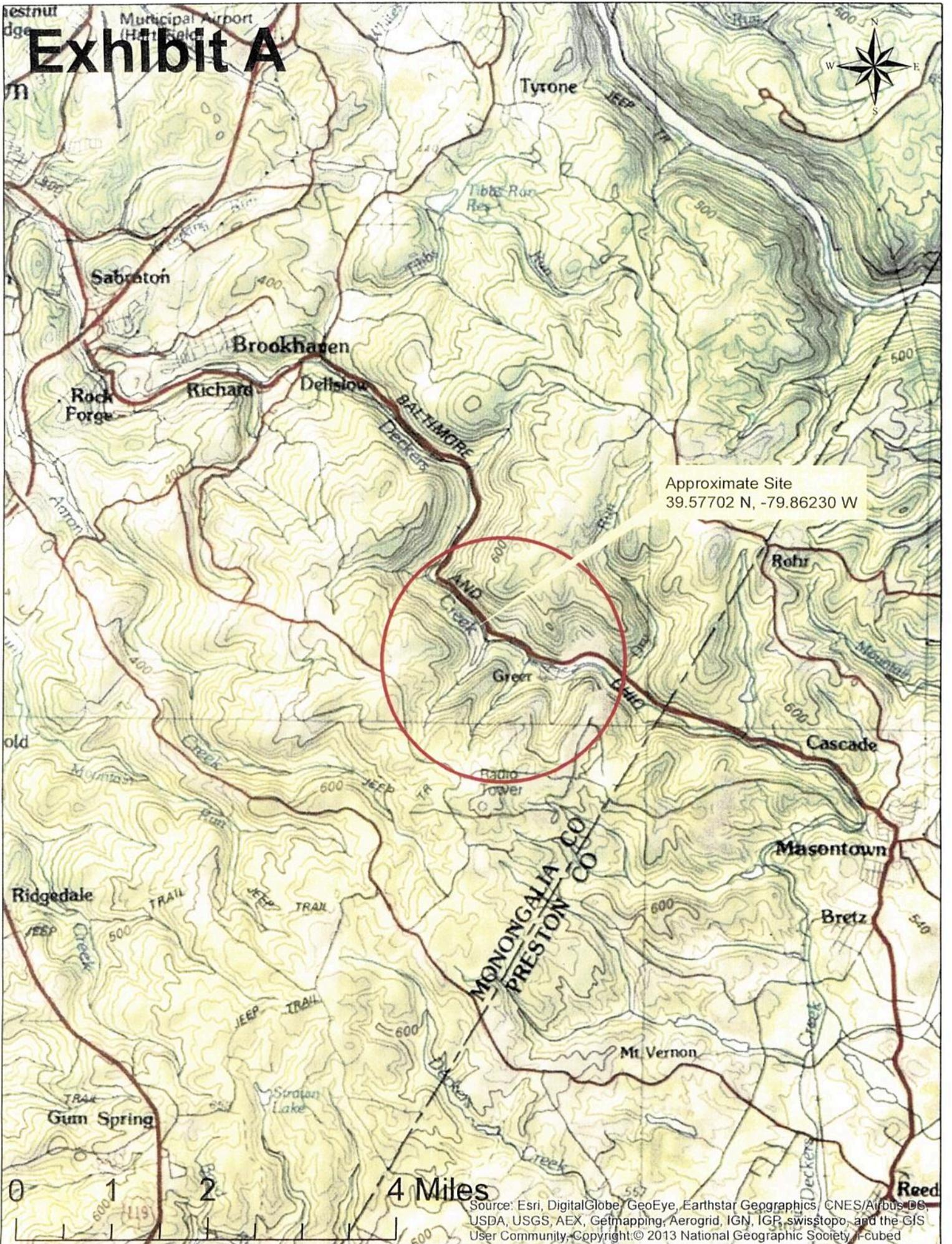


Katelyn Almeter
US EPA Region III

2/13/2018

Date:

Exhibit A



Approximate Site
39.57702 N, -79.86230 W

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community, Copyright © 2013 National Geographic Society, i-cubed