



west virginia department of environmental protection

Division of Water and Waste Management
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Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
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**CONSENT ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11**

TO: Mr. Jack Lafield, President
Caiman Energy, LLC
5949 Sherry Lane, Suite 1300
Dallas, Texas 75225

DATE: November 21, 2011

ORDER NO.: 7467

INTRODUCTION

This Consent Order is issued by the Director of the Division of Water and Waste Management (hereinafter “Director”), under the authority of West Virginia Code, Chapter 22, Article 11, Section 1 et seq. to Caiman Energy, LLC (hereinafter “Caiman Energy”).

FINDINGS OF FACT

In support of this Order, the Director hereby finds the following:

1. Caiman Energy is the owner/operator of a gas pipeline under construction in Marshall County, WV. There are significant land disturbance activities necessary for the placement, installation, inspection and testing of the gas pipeline.
2. Caiman Energy relies upon and utilizes various contractors for the design, construction, placement, inspection and oversight of the construction activities.
3. On February 18, 2011, West Virginia Department of Environmental Protection (WVDEP) personnel investigated a complaint concerning construction of a gas pipeline in Fish Creek, Wetzel County, WV. As a result of this investigation, WVDEP determined the following:
 - a. Fish Creek is designated by the WV Department of Natural Resources as a High Quality Stream (Sixth Edition).

- b. A contractor hired by Caiman Energy was constructing a stream crossing for pipeline construction in Fish Creek at or near GPS Coordinate 39°47'29" N and 80°44'56" W.
 - c. A contractor hired by Caiman Energy was side-casting stream rubble and dredged material from the stream crossing activity and causing a brown plume of muddy water downstream of the crossing activity, a violation of WV Legislative Rule, Title 47, Series 2, Section 3. Notice of Violation (NOV) W- NW-TAM-021811-001 was issued to L.A. Pipeline, a contractor hired by Caiman Energy.
 - d. Caiman Energy represents that the contractor hired by Caiman Energy was expected to follow the requirements of Nationwide permit number 12 issued by the Secretary of the Army to discharge dredged and/or fill material into waters of the United States but failed to do so.
 - e. A contractor hired by Caiman Energy did not construct erosion and sediment control structures recognized as prudent and necessary to prevent, control and reduce sediment laden discharge into State waters.
4. On February 23, 2011, WVDEP personnel conducted an inspection of Caiman Energy activities in Marshall County, WV and documented the following:
- a. A contractor hired by Caiman Energy continued construction activities for a pipeline in the Fish Creek and adjacent watersheds.
 - b. A contractor hired by Caiman Energy constructed a pipeline through an unnamed tributary of Fish Creek near or about GPS Coordinate 39° 48' 30" N and 80° 44' 00" W and caused a distinctly visible brown plume of suspended solids and a sludge blanket in State waters, a violation of WV Legislative Rule, Title 47, Series 2, Section 3. NOV BCS-022311-001 was issued to L.A. Pipeline.
 - c. A contractor hired by Caiman Energy constructed a pipeline through an unnamed tributary of West Fork of Lower Bowman Run of Fish Creek near or about GPS Coordinate 39° 48' 45" N and 80° 43' 23" W and caused a distinctly visible brown plume of suspended solids and a sludge blanket in State waters, a violation of WV Legislative Rule, Title 47, Series 2, Section 3. NOV BCS-022311-002 was issued to L.A. Pipeline.
 - d. A contractor hired by Caiman Energy constructed a pipeline through an unnamed tributary of Fish Creek near or about GPS Coordinate 39° 47' 34" N and 80° 45' 34" W and caused a distinctly visible brown plume of suspended solids and a sludge blanket in State waters, a violation of WV Legislative Rule, Title 47, Series 2, Section 3. NOV BCS-022311-003 was issued to L.A. Pipeline.
 - e. A contractor hired by Caiman Energy constructed a pipeline through an unnamed tributary of Fish Creek near or about GPS Coordinate 39° 47' 07" N and 80° 46' 09" W and caused a distinctly visible plume of suspended solids and a sludge blanket in State waters, a violation of WV Legislative Rule, Title 47, Series 2, Section 3. NOV BCS-022311-004 was issued to L.A. Pipeline.
 - f. A contractor hired by Caiman Energy constructed a pipeline through an unnamed tributary of Long Run of Fish Creek near or about GPS Coordinate 39° 46' 47" N and 80° 46' 16" W and caused a distinctly visible brown plume of suspended solids and a sludge blanket in State waters, a violation of WV Legislative Rule, Title 47, Series 2, Section 3. NOV BCS-022311-005 was issued to L.A. Pipeline.

- c. Sediment laden water associated with pipeline construction by a contractor hired by Caiman Energy was observed entering into Cedar Run at or about GPS Coordinate 39° 45' 40" N and 80° 36' 0" W and caused a sludge blanket, a violation of WV Legislative Rule, Title 47, Series 2, Section 3.
 - d. Sediment laden water associated with pipeline construction by a contractor hired by Caiman Energy was observed entering into an unnamed tributary of Fish Creek at or about GPS Coordinate 39° 45' 30" N and 80° 35' 46" W and caused a distinctly visible brown plume in the unnamed tributary of Fish Creek, a violation of WV Legislative Rule, Title 47, Series 2, Section 3.
 - e. Fill material associated with pipeline construction by a contractor hired by Caiman Energy was unlawfully placed in West Virginia Fork of Fish Creek to facilitate equipment passage at or about GPS Coordinate 39° 44' 41" N and 80° 35' 56" W, a violation of WV Legislative Rule, Title 47, Series 2, Section 3.
 - f. Sediment laden water from the pipeline construction access road adjacent to West Virginia Fork entered into West Virginia Fork and created a distinctly visible brown plume, a violation of WV Legislative Rule, Title 47, Series 2, Section 3.
 - g. The length of pipeline in several areas was constructed without erosion and sediment control structures recognized as prudent and necessary to prevent, control and reduce sediment laden discharge into State waters.
7. On July 20, 2011, WVDEP visited Caiman Energy construction activities in Marshall County, WV and documented the following:
- a. A contractor hired by Caiman Energy continued construction activities for a pipeline in Cedar Run and adjacent watersheds.
 - b. A contractor hired by Caiman Energy constructed a pipeline through an unnamed tributary of Cedar Run near or about GPS Coordinate 39° 45' 48" N and 80° 35' 54" W and caused a sludge blanket within State waters, a violation of WV Legislative Rule, Title 47, Series 2, Section 3. NOV NW-SEW-I-070211-01 was issued to Caiman Energy.
8. On July 20, 2011, WVDEP met with Caiman Energy to discuss findings, deficiencies and corrective actions. Caiman also provided WVDEP with a proposed Erosion and Sedimentation Control Plan (ESCP), dated April 11, 2011. Subsequent to this meeting WVDEP provided Caiman with numerous photos from its July inspections.
9. By correspondence, dated August 5 and August 24, 2011, WVDEP commented on Caiman Energy's ESCP and offered suggestions for further attention.
10. A meeting was held between WVDEP and Caiman Energy on November 3, 2011, to discuss the terms of this Order. Caiman Energy maintains that it was the responsibility of its contractor(s) to maintain compliance with all pertinent laws and rules described in the Findings of Fact of this Order. WVDEP maintains that Caiman Energy is responsible for the oversight and direction of the environmental compliance efforts of its contractor(s) and thus failed to ensure that its contractor(s) were in compliance with all pertinent laws and rules.

11. During the November 3, 2011, meeting between WVDEP and Caiman Energy, Caiman indicated that it was planning to “button up” ongoing construction activities related to its pipeline installation due to the onset of winter weather conditions which would impair its ability to adequately provide erosion and sediment control. Caiman Energy further advised it did not plan to initiate any additional pipeline construction activity over the winter months.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with Chapter 22, Article 11, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

1. Caiman Energy shall immediately take all necessary erosion and sediment control measures to achieve compliance with WV Legislative Rules and Requirements Governing Water Quality Standards regarding “Conditions Not Allowable” in State waters (Title 47, Series 2, Section 3). These erosion and sediment control measures shall be consistent with the WVDEP, Division of Water and Waste Management erosion and sediment control best management practices (BMPs) manual.
2. Caiman Energy shall seek and secure all appropriate authorization/permits from local, state and federal authorities prior to initiation of all future construction activities including, but not limited to, US Army Corp of Engineers, WV Department of Natural Resources and other relevant agencies not herein specified.
3. Within thirty (30) days of entry of this Order, Caiman Energy shall provide to WVDEP an original and three (3) copies of a detailed and accurate topographic map depicting the location of all projects undertaken by Caiman Energy in West Virginia since November 1, 2010. The map shall be a color coordinated scheme to include the previously requested information and submitted on a standard 24” x 36” format and shall be accompanied by a narrative description of the projects. The map and description shall include all activities associated with Caiman Energy in whole or in part, inclusive of partnerships, mergers, subsidiaries, affiliates, joint ventures and other corporate structures not herein specified.
4. Within thirty (30) days of entry of this Order, Caiman Energy shall complete the final edition of its ESCP, and begin installation and maintenance of appropriate BMPs at all land disturbance activities identified in Item Three (3). Caiman Energy shall demonstrate additional care and caution at all stream crossings, including ephemeral water courses identified, associated or predicted to occur within the higher order watershed.
5. Within thirty (30) days of entry of this Order, Caiman Energy shall submit three (3) copies of its final ESCP to:

**Environmental Inspector Supervisor
NW Regional Environmental Enforcement Office
2031 Pleasant Valley Road, Suite #1
Fairmont, WV 26554**

6. Caiman Energy shall obtain WV/NPDES Water Pollution Control Permits for Stormwater Associated with Construction Activities in the future prior to commencing land disturbance associated with construction activity.
7. Construction activities, including grubbing operations, shall not begin until the Permit has been secured and implemented under the terms and conditions of the permitting authority.
8. Caiman Energy shall provide a copy of all appropriate permits and application documents, as identified in Item Two (2), as a supplement to permit application(s).
9. Within thirty (30) days of entry of this Order, Caiman Energy shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates, past and present, for how and when Caiman Energy will achieve compliance with all pertinent laws and rules. The plan of corrective action shall be submitted to:

**Environmental Inspector Supervisor
NW Regional Environmental Enforcement Office
2031 Pleasant Valley Road, Suite #1
Fairmont, WV 26554**

A copy of this plan shall be submitted to:

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WVDEP
601 57th Street SE
Charleston, WV 25304**

Upon approval, the plan of corrective action and schedule shall be incorporated into and become part of this Order, as if fully set forth herein. Failure to submit an approvable plan of corrective action and schedule or failure to adhere to the approved schedule is a violation of this Order.

10. Upon demand by WVDEP, Caiman Energy agrees to pay stipulated penalties for violation of any action required by this Order according to the following parameters:

<u>Days of Violation</u>	<u>Amount</u>
1-15	\$1,000 per day
16-30	\$2,500 per day
>30	\$5,000 per day

11. Because of Caiman Energy's Legislative Rule violations, Caiman Energy shall be assessed a civil administrative penalty of two hundred twenty-three thousand nine hundred forty-eight dollars (\$223,948) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within

thirty (30) days of entry of this Order. Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall be mailed to:**

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WV-DEP
601 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

1. Caiman Energy hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21 of the Code of West Virginia. Under this Order, Caiman Energy agrees to take all actions required by the terms and conditions of this Order and consents to and will not contest the Director's jurisdiction regarding this Order. However, Caiman Energy does not admit to any factual and legal determinations made by the Director and reserves all rights and defenses available regarding liability or responsibility in any proceedings regarding Caiman Energy other than proceedings, administrative or civil, to enforce this Order.
2. The Director reserves the right to take further action if compliance with the terms and conditions of this Order does not adequately address the violations noted herein and reserves all rights and defenses which he may have pursuant to any legal authority, as well as the right to raise, as a basis for supporting such legal authority or defenses, facts other than those contained in the Findings of Fact.
3. If any event occurs which causes delay in the achievement of the requirements of this Order, Caiman Energy shall have the burden of proving that the delay was caused by circumstances beyond its reasonable control which could not have been overcome by due diligence (i.e., force majeure). Force majeure shall not include delays caused or contributed to by the lack of sufficient funding. Within three (3) working days after Caiman Energy becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and shall, within ten (10) working days of initial notification, submit a detailed written explanation of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and a timetable by which Caiman Energy intends to implement these measures. If the Director agrees that the delay has been or will be caused by circumstances beyond the reasonable control of Caiman Energy (i.e., force majeure), the time for performance hereunder shall be extended for a period of time equal to the delay resulting from such circumstances. A force majeure amendment granted by the Director shall be considered a binding extension of this Order and of the requirements herein. The determination of the Director shall be final and not subject to appeal.
4. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving Caiman Energy of the obligation to comply with any applicable law, permit, other order, or any other requirement otherwise applicable. Violations of the terms and

conditions of this Order may subject Caiman Energy to additional penalties and injunctive relief in accordance with the applicable law.

5. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.
6. This Order is binding on Caiman Energy, its successors and assigns.
7. This Order shall terminate upon Caiman Energy's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

Caiman Energy, LLC

Date

Public Notice begin: _____
Date

Public Notice end: _____
Date

Scott G. Mandirola, Director
Division of Water and Waste Management

Date