XTO Energy, Inc. Settlement - 2014

(Washington, DC - December 22, 2014) The U.S. Environmental Protection Agency (EPA) and the Department of Justice (DOJ) announced today that XTO Energy, Inc. (XTO), a subsidiary of ExxonMobil and the nation’s largest holder of natural gas reserves, will spend an estimated $3 million to restore eight sites damaged by unauthorized discharges of fill material into streams and wetlands in connection with hydraulic fracturing operations.

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Overview of Company

XTO Energy, Inc. (XTO) is a publically traded corporation and a wholly owned subsidiary of ExxonMobil, the nation’s largest holder of natural gas reserves. XTO is a Delaware corporation with its principle place of business in Fort Worth, Texas.

XTO operations focus on oil and natural gas production, including hydraulic fracturing operations in the Marcellus Shale corridor in Pennsylvania and West Virginia.

Violations
The complaint alleges violations of Sections 301(a) and 404 of the Clean Water Act (CWA), which prohibit the discharge of dredge and/or fill material to waters of the United States except in compliance with a permit issued by the U.S. Army Corps of Engineers.

The consent decree resolves the unauthorized discharges of dredged and/or fill material at eight sites in Harrison, Marion, and Upshur Counties in West Virginia. The consent decree also resolves West Virginia state law claims brought by West Virginia Department of Environmental Protection.

The alleged unauthorized discharges at the eight sites are associated with the construction of facilities related to extraction of natural gas, including but not limited to well pads, freshwater pits, access roads, a pipeline, and a compressor station pad.

The alleged violations impacted approximately 5,357 linear feet of stream and 3.38 acres of wetlands across the eight sites in West Virginia.

**Injunctive Relief**

The injunctive relief includes: (1) restoration of all eight sites; (2) compensatory mitigation, where appropriate; and (3) implementation of a program to assure compliance with Section 404 of the Clean Water Act, including an employee training program.

**Restoration of All Sites**

This consent decree requires XTO to restore all sites where restoration is feasible. The company will submit restoration plans for all sites to the EPA for approval, and will monitor all restored sites (up to 10 years) in order to assure the success of the restoration. Additionally, this consent decree includes various requirements intended to permanently preserve the restored sites.

**Compensatory Mitigation**

The company will perform compensatory mitigation to offset the permanent impacts to aquatic resources at sites that could not be restored due to lack of access.

**Program to Assure Compliance with 404 Clean Water Act**

The consent decree requires XTO to implement a program to assure compliance with Section 404 of the CWA.

Through the compliance assurance program, XTO will provide the training on the Clean Water Act Section 404 to its employees, contractors, and affiliates whose responsibilities include the design and construction or supervision of employees of oil and gas facilities in West Virginia for a period of five years after the entry of this consent decree.

The program will also require XTO to implement a compliance protocol in West Virginia. The compliance protocol will require XTO to use a qualified wetlands professional to assess all aquatic resources within any proposed limit of disturbance and within 100 – 300 horizontal feet of any proposed limit of disturbance, depending on the project, prior to the submission of any application to:
• The West Virginia Department of Environmental Protection for new and expansive construction of well pads or impoundments, or to conduct any other construct activity, beyond its currently approved limit of disturbance, and
• The West Virginia Division of Highways for construction of any associated access road(s).

Additionally, for relevant sites, XTO must prepare an alternatives analysis, design facilities to avoid and minimize impacts to aquatic resources, and implement construction techniques that are certified by a registered professional engineer to ensure rapid stabilization of disturbed earth while assuring appropriate erosion and sediment controls are consistent with state or local erosion requirements, and ensure that no earth disturbance occurs until appropriate permits are obtained pursuant to CWA Section 404 and applicable West Virginia law.

**Pollutant Reduction**

In CWA Section 404 cases, pollutant reduction is measured by the number of acres restored or mitigated for wetlands or the number of linear feet restored or mitigated for streams. This case involves impacts to approximately 5,357 linear feet of streams and 3.38 acres of wetlands across the eight Sites. The EPA has determined that the injunctive relief requirements of this consent decree will restore or mitigate for the impacts caused by the defendant’s alleged unlawful activities. Therefore, the total pollution reduction in this case is 3.38 acres of restored or mitigated wetlands and 5,357 linear feet of restored or mitigated streams.

**Civil Penalty**

XTO will pay a civil penalty of $2.3 million, divided equally between the United States and the State of West Virginia. This penalty is one of the largest civil penalties for unauthorized discharges of dredged and/or fill material under the Clean Water Act.

**Comment Period**

The proposed settlement, lodged in the U.S. District Court for the Northern District of West Virginia, is subject to a 30-day public comment period and final court approval. Information on submitting comments is available at the Department of Justice website.

**For more information, contact:**

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