

## DECISION MEMO

Forest Chemical Transfer and Renewal from Pennsylvania General Energy  
USDA Forest Service, Eastern Region, Allegheny National Forest  
Warren County, Pennsylvania  
Bradford Ranger District

### I. DECISION TO BE IMPLEMENTED

#### A. Description of Decision

My decision is to transfer and renew Special Use Permit BRD409801 (previously issued to Pennsylvania General Energy) to Forest Chemical. The new permit number is BRD153 is for the use and maintenance of a 6500 feet wide by 14 feet long (1.2 miles, 2.0 acres) existing oil and gas access road to access Forest Chemical's private oil and gas improvements. The right-of-way is located in Lots 362, 363, and 364 (portion of FR117B) in Sheffield Township, Warren County, Pennsylvania as shown on the attached map (Exhibit A). The road is located in Management Areas 2.2 and 3.0.

My decision includes an administrative action only. The permits will be issued for 20 years.

This decision will be implemented through issuance of a special use authorization that meets the requirements of the decision and Forest Service regulations.

It is also my decision that a Special Use Fee will be charged for the Special Use Permit because Forest Chemical does not qualify for a fee waiver in accordance with Code of Federal Regulations Title 36 part 251, section 57(b)(1) (CFR 251.57(b)(1)).

#### B. Purpose of Decision

This decision is in response to the application for the transfer and renewal of Pennsylvania General Energy's Special Use Permit to Forest Chemical. The permit is for the use and maintenance of an existing oil and gas road to access existing private mineral improvements.

#### C. Allegheny National Forest Land & Resource Management Plan (LRMP)

The LRMP goals include:

*“Encourage, facilitate, and administer the orderly exploration, development, and production of mineral resources.” (p 15)*

*“New road construction shall be limited to that required for designated special uses or by law to provide access to non-Federal land or valid existing mineral rights.” (p. 146)*

This activity for management areas 2.2 and 3.0 is *suitable* as shown on LRMP Table 12 (p.37).

The LRMP Standard for Management Areas 2.2 and 3.0 states: “*Special uses, utility corridors, road rights-of-way, and intensive oil and gas development may be present in some parts of this management area.*” (pgs. 109, 113)

## **II. REASONS FOR CATEGORICALLY EXCLUDING THE DECISION**

Decisions may be categorically excluded from documentation in an environmental impact statement or environmental assessment when they are within one of the categories identified by the U.S. Department of Agriculture in 7 CFR part 1b.3 or one of the categories identified by the Chief of the Forest Service in Forest Service Handbook (FSH) 1909.15 sections 31.12 or 31.2, and there are no extraordinary circumstances related to the decision that may result in a significant individual or cumulative effect on the quality of the human environment.

My conclusion is based on a review of the record that shows a thorough review of relevant scientific information, a consideration of responsible opposing views, and the acknowledgment of incomplete or unavailable information, scientific uncertainty, and risk.

I have concluded that this decision is appropriately categorically excluded from documentation in an environmental impact statement or environmental assessment as it is a routine activity within a category of exclusion and there are no extraordinary circumstances related to the decisions that may result in a significant individual or cumulative effect on the quality of the human environment. My conclusion is based on information presented in this document and the entirety of the record.

### **A. Category of Exclusion**

The decision is within the category of exclusion 31.2.3h that includes, “Approving the continued use of land where such use has not changed since authorized and no change in the physical environment or facilities are proposed.” This decision is also within the category of exclusion 31.12.10b, “Issuance of a new special use authorization to reflect administrative changes such as, a change of ownership or control of previously authorized facilities or activities, or conversion of the existing special use authorization to a new type of special use authorization (for example, converting a permit to a lease or easement)”.

### **B. Relationship to Extraordinary Circumstances**

#### **1. Threatened and Endangered Species or Their Critical Habitat -**

The Endangered Species Act requires that federal activities not jeopardize the continued existence of any species federally listed or proposed as threatened or endangered, or result in adverse modification to such species’ designated critical habitat. In accordance with Section 7(c) of this Act, a list of the listed and proposed, threatened or endangered species that may be present in the project area was requested from the U.S. Fish and Wildlife Service (**Record 1**).

It was determined that this decisions will have ‘no effect’ on listed species or their critical habitats.

2. Floodplains, Wetlands, or Municipal Watersheds -

Floodplains: Executive Order 11988 is to avoid adverse impacts associated with the occupancy and modification of floodplains. Floodplains are defined by this order as, “...the lowland and relatively flat areas adjoining inland and coastal waters including flood-prone areas of offshore islands, including at a minimum, that area subject to a one percent [100-year recurrence] or greater chance of flooding in any one year.”

The ecological land type is classified as Upland. The decision will not affect floodplains.

Wetlands: Executive Order 11990 is to avoid adverse impacts associated with destruction or modification of wetlands. Wetlands are defined by this order as, “...areas inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds.”

The decision will not affect wetlands.

Municipal Watersheds: Municipal watersheds are managed under multiple use prescriptions in forest plans. Municipal watersheds on the ANF are the Big Mill Creek - Ridgway Reservoir municipal watershed and the West Branch Tunungwant - Bradford reservoir municipal watershed. The decision area is not within a municipal watershed.

The decision will not affect municipal watersheds.

3. Congressionally Designated Areas -

Wilderness:

The decision will not affect Wilderness.

Wilderness Study Areas:

The decision will not affect Wilderness Study Areas.

National Recreation Areas:

The decision will not affect National Recreation Areas.

4. Inventoried Roadless Areas -

The decision will not affect inventoried roadless areas.

5. Research Natural Areas -

The decision will not affect Research Natural Areas.

6. American Indian and Alaska native religious or cultural sites -

Additionally, the Federal government has trust responsibilities to Tribes under a government-to-government relationship to insure that the Tribes' reserved rights are protected. Consultation with tribes helps insure that these trust responsibilities are met. The Forest consulted with potentially affected tribes. Per Attachment A of the ANF Programmatic Agreement with State Historic Preservation Office (SHPO) and the ACHP, activities such as those in this project that do not have the potential to affect access to or use of resources by Native Americans is considered an "exempt undertaking." (**Record 2**)

7. Archaeological sites, or historic properties or areas –

Section 106 of the National Historic Preservation Act requires federal agencies to take into account the effect of a project on any district, site, building, structure, or object that is included in, or eligible for inclusion in the National Register of Historic Places. Section 106 of the National Historic Preservation Act also requires federal agencies to afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on agency undertakings. The Archaeological Resources Protection Act covers the discovery and protection of historic properties (prehistoric and historic) that are excavated or discovered on federal lands. It affords protection of archaeological resources and sites that are on public and Indian lands. The Native American Graves Protection and Repatriation Act covers the discovery and protection of Native American human remains and objects that are excavated or discovered in federal lands. It encourages avoidance of archaeological sites that contain burials or portions of sites that contain graves through "in situ" preservation, but may encompass other actions to preserve these remains and items. This decision complies with the cited Acts. A "no effect" determination was made. (**Record 2**)

No other extraordinary circumstances related to this project were identified.

### **III. PUBLIC INVOLVEMENT**

Public involvement included listing in the Forest's *Schedule of Proposed Actions*, posted on the ANF Web Site on April 14, 2008 and direct mailings to: Heartwood - J Bensman, Forest Watch Coord, John McKown, Allegheny Defense Project, Jim Kleissler, Ed & Karen Atwood, Ryan Talbott, Seneca Nation of Indians, Kathy Mitchell, THPO, Seneca Nation of Indians, Maurice John, Sr., President, Warren County Commissioners, Sheffield Township Supervisors, Pleasant Township Supervisors.

One comment was received asking for clarification on the Permittees involved in the transfer. *Pennsylvania General Energy is transferring an existing permit to Forest Chemical for the purpose of providing access to Forest Chemical's private oil and gas improvements.* The commenter also expressed concerns about the proximity of the road to Duck Eddy stream. *Bradford District Roads Engineering Technician has worked with Forest Chemical to correct erosion and drainage concerns to provide adequate protection of the Duck Eddy stream adjacent to this oil and gas access road.*

#### **IV. FINDINGS REQUIRED BY AND/OR RELATED TO OTHER LAWS AND REGULATIONS**

My decision will comply with all applicable laws and regulations. I have summarized some pertinent ones below.

Federal Land Policy and Management Act - This Act allows the granting of easements across National Forest System Lands. The regulations at 36 CFR 251 guide the issuance of permits, leases, and easements under this Act. Permits, leases, and easements are granted across National Forest System lands when the need for such is consistent with planned uses and Forest Service policy and regulations. This decision is consistent with this Act.

Forest Plan Consistency (National Forest Management Act) - This Act requires the development of long-range land and resource management plans. The Allegheny National Forest (ANF) LRMP was developed, as required by the Act. The Act requires all projects and activities be consistent with the LRMP. The Plan has been reviewed in consideration of this project. This decision is responsive to guiding direction contained in the LRMP, as summarized in Section I of this document. This decision is consistent with the standards and guidelines contained in the LRMP.

Endangered Species Act - See Section II, Item B2 of this document.

Sensitive Species (Forest Service Manual 2670) - This Manual direction requires analysis of potential impacts to sensitive species, those species for which the Regional Forester has identified population viability is a concern. On the Allegheny National Forest, the Regional Forester approved the sensitive species list. Potential effects of this decision on sensitive species have been analyzed and documented in a Biological Evaluation (**Record 1**). This decision will have "no impact" on sensitive species.

Clean Water Act – The intent of the Act is to restore and maintain the integrity of waters. The Forest Service complies with this Act through the use of Best Management Practices. This decision incorporates Best Management Practices to ensure protection of soil and water resources.

Wetlands (Executive Order 11990) - See Section II, Item B3 of this document.

Floodplains (Executive Order 11988) - See Section II, Item B3 of this document.

Federal Cave Resources Protection Act - This Act is to secure, protect, preserve, and maintain significant caves, to the extent practical. No known cave resources will be affected by this decision.

National Historic Preservation Act - See Section II, Item B7 of this document.

Archaeological Resources Protection Act - See Section II, Item B7 of this document.

Native American Graves Protection and Repatriation Act - See Section II, Item B6 of this document.

Wild and Scenic Rivers Act - See Section II, Item B3 of this document.

Environmental Justice (Executive Order 12898) - This Order requires consideration of whether projects would disproportionately impact minority or low-income populations. These decisions comply with this Act. Public involvement occurred for this project, the results of which I have considered in this decision-making. Public involvement did not identify any adversely impacted local minority or low-income populations. This decision is not expected to adversely impact minority or low-income populations.

National Environmental Policy Act - This Act requires public involvement and consideration of potential environmental effects. The entirety of documentation for this decision supports compliance with this Act.

## **V. ADMINISTRATIVE REVIEW OR APPEAL OPPORTUNITIES**

This decision is not subject to an administrative review or appeal pursuant to 36 CFR 215 and the Earth Island Institute v. Ruthenbeck Ruling of October 19, 2005. This decision is subject to appeal pursuant to 36 CFR 251 by those who hold or, in certain instances, those who apply for written authorizations to occupy and use National Forest System lands. No comments were received from a like holder, therefore, this decision is not appealable.

## **VI. IMPLEMENTATION DATE**

This decision may be implemented immediately.

## **VII. CONTACT PERSON**

Further information about this decision can be obtained from Cindy Hervatin during normal office hours (weekdays, 8:00 a.m. to 4:30 p.m.) at the Bradford Ranger District office, 29 Forest Service Drive, Bradford, PA 16701; Phone: voice (814) 363-6077; Fax: (814) 362-2761; e-mail: [chervatin@fs.fed.us](mailto:chervatin@fs.fed.us).

## VIII. SIGNATURE AND DATE

/s/ Robert A. Stovall  
For: ANTHONY V. SCARDINA  
District Ranger  
Allegheny National Forest

11/12/2008

Date

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