

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
901 NORTH 5<sup>th</sup> STREET  
KANSAS CITY, KANSAS 66101

UNITED STATES  
ENVIRONMENTAL PROTECTION  
AGENCY-REGION 7  
2011 DEC -5 PM 8:50

BEFORE THE ADMINISTRATOR

IN THE MATTER OF: )

Joseph Piene )

Docket No. CWA-07-2011-0114

Respondent )

CONSENT AGREEMENT/  
FINAL ORDER

Proceedings under Section 1319(g) of the )  
Clean Water Act, 33 U.S.C. § 1319(g) )  
\_\_\_\_\_ )

The United States Environmental Protection Agency, Region 7 (EPA) and Joseph Piene (“Respondent”) have agreed to a settlement of the alleged violations set forth in this Consent Agreement and Final Order (“CA/FO”). Thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22 (“Consolidated Rules”).

**COMPLAINT**

**Jurisdiction**

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g)(2)(B) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g)(2)(B), and in accordance with the Consolidated Rules.

2. This CA/FO alleges that the Respondent discharged pollutants into waters of the United States in violation of Sections 301 and 404 of the CWA, 33 U.S.C. §§ 1311 and 1344.

**Parties**

3. Complainant, by delegation from the Administrator of EPA to the Regional Administrator, EPA, Region 7, and re-delegation, is the Director of Region 7’s Water, Wetlands and Pesticides Division.

4. The Respondent is Joseph Piene. Respondent has a mailing address of 31976 NE Thomas Road, Greeley, Kansas 66033.

### Statutory and Regulatory Framework

5. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, *inter alia*, Section 404 of the CWA, 33 U.S.C. § 1344.

6. The CWA prohibits the discharge of “pollutants” from a “point source” into a “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

7. Section 404 of the CWA, 33 U.S.C. § 1344, specifically requires a person to obtain a permit from the Secretary of the Army acting through the Chief of Engineers, commonly referred to as the United States Army Corps of Engineers (hereinafter “Corps”), for any discharge of “dredged or fill material” into the “navigable waters” of the United States.

8. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters,” in part, as the “waters of the United States,” which are defined at 40 C.F.R. § 232.2 and 33 C.F.R. Part 328, and which include wetlands adjacent to waters of the United States.

9. Section 309(a) of the CWA, 33 U.S.C. § 1319(a), authorizes the issuance of an order against any person who violates Section 301 of the CWA, 33 U.S.C. § 1311, requiring such person to comply.

### Factual Background

10. Respondent is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

11. At all times relevant to this action, Respondent owned, operated, or otherwise controlled property located in Section 36, Township 19 South, Range 19 East, and Section 1, Township 20 South, Range 20 East, Anderson County, Kan. (hereinafter “the Site”).

12. In November 2010, Respondent and/or persons acting on his behalf and using earth moving equipment, authorized and/or directed the dredge and fill of approximately 1,100 linear feet of the South Fork Pottawatomie Creek.

13. On December 3, 2010, the Corps inspected the Site and documented the discharges of fill material described in Paragraph 12.

14. The dredged and/or fill materials discharged by Respondent into the South Fork Pottawatomie Creek are “pollutants” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

15. The earth moving equipment referenced in Paragraph 12 constitutes a “point source” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

16. The discharge of the dredged and/or fill material into the South Fork Pottawatomie Creek referenced in Paragraph 12 constitutes the “discharge of a pollutant” within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

17. The South Fork Pottawatomie Creek, referenced in Paragraph 12 is a “water of the United States” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), 40 C.F.R. § 232.2 and 33 C.F.R. Part 328.

18. Respondent did not obtain a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, prior to the performance of the work described in Paragraph 12, nor did Respondent perform the work described herein under any prior permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344.

#### **FINDINGS OF VIOLATION**

19. The facts stated in Paragraphs 10 through 18 above are herein incorporated.

20. Respondent’s discharge of pollutants from a point source into waters of the United States occurred without a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344. Therefore, these discharges violated Section 301 of the CWA, 33 U.S.C. §§ 1311.

#### **CONSENT AGREEMENT**

21. Respondent admits the jurisdictional allegations of this CA/FO and agrees not to contest EPA’s jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.

22. Respondent neither admits nor denies the factual allegations contained in this CA/FO.

23. Respondent waives any right to contest the allegations and his right to appeal the proposed Final Order accompanying this Consent Agreement.

24. Respondent and Complainant each agree to bear their own costs and attorney’s fees.

25. Nothing contained in the Final Order shall alter or otherwise affect Respondent’s obligations to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

26. The undersigned representative of Respondent certifies that he is fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondent to it.

27. Respondent certifies by the signing of this CA/FO that, to the best of his knowledge, Respondent is in compliance with all requirements of Sections 301 and 404 of the CWA, and is scheduled to be in compliance with EPA's May 21, 2010 Administrative Order for Compliance, Docket No. CWA-07-2011-0044.

28. The effect of settlement is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 27 above, of this CA/FO.

29. Respondent consents to the issuance of the Final Order and consents to the payment of a civil penalty in the amount of \$11,250.

30. Payment of the entire civil penalty shall resolve all civil and administrative claims of the United States alleged in the Findings of Violations.

#### Reservation of Rights

31. EPA reserves the right to enforce the terms of this CA/FO by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

32. With respect to matters not addressed in this CA/FO, EPA reserves the right to take any enforcement action pursuant to the CWA, or any other available legal authority, including without limitation, the right to seek injunctive relief, monetary penalties, and punitive damages.

#### FINAL ORDER

IT IS HEREBY AGREED BY THE PARTIES, and pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), it is ORDERED that:

1. Respondent shall pay a civil penalty of Eleven Thousand Two Hundred and Fifty dollars (\$11,250), due thirty (30) calendar days from the effective date of the CA/FO. Respondent shall pay the penalty by certified or cashier's checks payable to "Treasurer, United States of America" and shall deliver them with a transmittal that identifies the case name and docket number CWA-07-2011-0114 to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, Missouri 63197-9000.

Copies of the transmittal letter and the check shall be simultaneously sent to:

Kathy Robinson  
Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

and

Chris Muehlberger  
Office of Regional Counsel  
U.S. Environmental Protection Agency - Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

Should the civil penalty not be paid as provided above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

2. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CA/FO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

#### Parties Bound

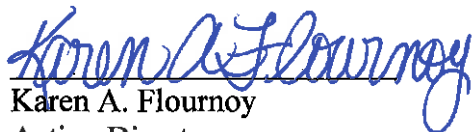
3. This Final Order shall apply to and be binding upon the Respondent, its agents, successors, and assigns. Respondent shall ensure that any directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for it with respect to matters included herein comply with the terms of this CA/FO.

#### Effective Date

4. This Final Order shall become effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this Final Order.

In the matter of Joseph Piene  
CWA Docket No.: 07-2011-0114  
Page 6 of 8

COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY



Karen A. Flournoy  
Acting Director  
Water, Wetlands and Pesticides Division

10/17/11

Date



Chris Muehlberger  
Assistant Regional Counsel  
Office of Regional Counsel

10.17.11

Date

In the matter of Joseph Piene  
CWA Docket No.: 07-2011-0114  
Page 7 of 8

RESPONDENT:  
Joseph Piene

Joseph M. Piene

10-10-2011  
Date

In the matter of Joseph Piene  
CWA Docket No.: 07-2011-0114  
Page 8 of 8

IT IS SO ORDERED.

December 2, 2011  
Date

Robert L. Patrick  
Robert L. Patrick  
Regional Judicial Officer



IN THE MATTER OF Joseph Piene, Respondent  
Docket No. CWA-07-2011-0114

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:


Copy hand delivered to  
Attorney for Complainant:

Chris Muehlberger  
Assistant Regional Counsel  
Region 7  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Mr. Joseph Piene  
37976 NE Thomas Road  
Greeley, Kansas 66033

Dated: 12/7/11

  
Kathy Robinson  
Hearing Clerk, Region 7