

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII  
901 N. 5<sup>th</sup> STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF: )  
)  
) Docket No. CWA-07-2004-0331  
)  
ROGER HARDERS )  
)  
) CONSENT AGREEMENT AND  
) FINAL ORDER  
Respondent )  
)  
Proceedings under Section 309(g) of the )  
Clean Water Act, 33 U.S.C. § 1319(g) )  
)  
\_\_\_\_\_ )

**CONSENT AGREEMENT AND FINAL ORDER**

This proceeding for the assessment of a civil penalty was initiated on or about September 24, 2004, pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA), 33 U.S.C. § 1319(g), when the United States Environmental Protection Agency (Complainant or EPA) issued to Roger Harders, Wahoo, Nebraska (Respondent), a Complaint and Notice of Opportunity for Hearing.

The Complaint charged Respondent with a violation of Sections 301 and 404 of the CWA, 33 U.S.C. § 1311 and § 1344, and the regulations promulgated thereunder.

The Complaint proposed a civil penalty of Sixty Six Thousand Dollars (\$66,000) for this violation. The parties entered into negotiations in an attempt to settle the allegations contained in the Complaint; this Consent Agreement and Final Order are the result of such negotiations.

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G.E. 21 PAGE 1

## **CONSENT AGREEMENT**

1. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.
2. Respondent neither admits nor denies the factual allegations contained in the Complaint.
3. Respondent consents to the issuance of the Final Order.
4. Respondent consents to the mitigation set forth below in the Final Order.
5. Respondent waives any right to contest the allegations and his right to appeal the proposed Final Order accompanying this Consent Agreement.
6. Respondent and Complainant each agree to bear their own costs and attorney's fees.
7. 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.
8. The undersigned representative of Respondent certifies that he is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.

## **FINAL ORDER**

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

1. Respondent shall pay no civil penalty in this matter.
2. For mitigation of the violation the Respondent shall be responsible for the completion of the work for one project as outlined in the attached mitigation plan. The mitigation plan is an enforceable part of this Final Order. The mitigation activities shall be completed within 180 days of the effective date of the Final Order.
3. In addition, the Respondent shall pay \$1,320 to the Natural Resource District in Wahoo, Nebraska. The money will be used toward the completion of a project to protect water resources at the mitigation project site or on a separate wetlands project to enhance the water resources within the natural resource district of Wahoo, Nebraska. The Respondent shall make

the check payable to "Lower Platte North Natural Resource District" and send it to Natural Resource District, P.O. Box 126, Wahoo, Nebraska 68066. The payment shall be made within 120 days of the effective date of the Final Order. Copies of the transmittal letter and the check shall be simultaneously sent to:

Steven L. Sanders  
Office of Regional Counsel  
U.S. Environmental Protection Agency - Region VII  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

4. Upon satisfactory completion by Respondent of all activities required by this Order a representative of the Complainant shall notify the Respondent in writing of said completion.

Parties Bound

5. This Final Order shall apply to and be binding upon the Respondent, his agents, successors and assigns. Respondent shall ensure that any directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for him with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

Reservation of Rights

6. The EPA reserves the right to enforce the terms of this Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

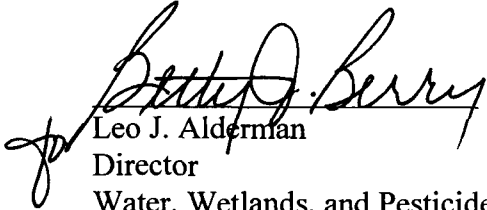
7. With respect to matters not addressed in this Final Order, EPA reserves the right to take any enforcement action pursuant to the CWA, or any other available legal authority, including without limitation, the right to seek injunctive relief, monetary penalties and punitive damages.

Effective Date

8. This Final Order shall be 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.

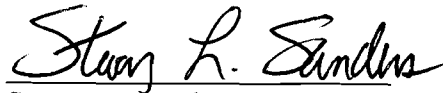
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COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY

  
Leo J. Alderman

Director  
Water, Wetlands, and Pesticides Division  
U.S. Environmental Protection Agency  
Region VII


05/16/05  
Date



Steven L. Sanders  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region VII

5-10-05  
Q.E. 21 Pres

RESPONDENT:  
ROGER HARDERS

  
\_\_\_\_\_  
Roger Harders

5-10-2005  
\_\_\_\_\_  
Date

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IT IS SO ORDERED.

May 25, 2005  
Date

Robert L. Patrick  
Robert L. Patrick  
Regional Judicial Officer

5-10-05  
ALP/RJG

## MITIGATION PLAN

April 2005

The mitigation site is located in the NW  $\frac{1}{4}$  of Section 23 Township 14, Range 6 of Saunders County, Nebraska (see attached maps). The mitigation site is approximately 1 acre in size. The site will include an approximate  $\frac{1}{4}$  acre area which will be covered with water. The  $\frac{1}{4}$  acre area will be excavated to allow a depth of 18-24 inches of water to be used as shallow water habitat. The soil from this excavation shall be placed in upland areas. The area surrounding the excavated shallows will be planted in switch grass. The grassed area will serve as a filter strip which will reduce the amount of pollutant run-off from the upper watershed. The grassed filter strip will also function as habitat for migratory birds and wildlife cover. The shallow  $\frac{1}{4}$  acre area will be planted with wetland species such as cattails, arrowhead and smartweed species that are natural to the watershed. The mitigation site is located within a low lying area that will be capable of supplying water for the success of this project.

In addition, Mr. Harders agrees to contribute to the Lower Platte Natural Resources District (LPNRD) the sum of \$1,320.00. The funds will first be used toward the protection and completion of the water resources at the mitigation project site, and any remaining funds to be used on a separate wetlands project to enhance the water resources within the natural resources district of Wahoo, Nebraska. Upon completion of the project LPNRD will provide to Mr. Harders a report stating how the funds were used. Mr. Harders will forward a copy of this report to EPA.

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Q&A PAGE 7



United States Department of Agriculture  
Farm Service Agency



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# Saunders County

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date





United States Department of Agriculture  
Farm Service Agency



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IN THE MATTER OF Roger Harders, Respondent  
Docket No. CWA-07-2004-0331

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to  
Attorney for Complainant:

Steven L. Sanders  
Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by U.S. Certified Mail,  
Return Receipt Requested, to:

Jaron J. Bromm  
Fennemore Craig, P.C.  
1221 N. Street  
Suite 801  
Lincoln, Nebraska 68508

Copy by Facsimile and  
First Class Pouch Mail to:

The Honorable Susan L. Biro  
Chief Administrative Law Judge  
U. S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Mail Code 1900L  
Washington, D. C. 20460

and

The Honorable William B. Moran  
Administrative Law Judge  
U. S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Mail Code 1900L  
Washington, D. C.

Dated: 5/25/05



Kathy Robinson  
Regional Hearing Clerk