

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
)
JG Holdings, L.L.C.) Docket No. CWA-07-2007-0015
)
) CONSENT AGREEMENT AND
) FINAL ORDER
Respondent)
)
Proceedings under Section 309(g) of the)
Clean Water Act, 33 U.S.C. § 1319(g))
_____)

The United States Environmental Protection Agency (EPA), Region VII (Complainant) and JG Holdings, LLC (Respondent) have agreed to a settlement of this action before the filing of a complaint, and 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 (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted 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), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22.

2. This Consent Agreement and Final Order serves as notice that the United States Environmental Protection Agency (EPA) has reason to believe that Respondent has violated Sections 301 and 404 of the CWA, 33 U.S.C. § 1311 and § 1344, and regulations promulgated thereunder.

Parties

3. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of EPA. The Administrator has delegated this authority to the Regional Administrator, EPA, Region VII, who in turn has delegated it to the Director of the Water, Wetlands and Pesticides Division of EPA, Region VII (Complainant).

4. Respondent, JG Holdings, L.L.C., is a corporation incorporated under the laws of Missouri and authorized to conduct business in the State of Missouri.

Statutory and Regulatory Framework

5. Section 301 of the CWA, 33 U.S.C. § 1311, prohibits the discharge of “pollutants” by any “person” into “navigable waters” as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362, except in compliance with, *inter alia*, a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344.

6. 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.

7. 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.

8. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the commencement of an action for administrative penalties against any person who violates Section 301 of the CWA, 33 U.S.C. § 1311.

General Allegations

9. Respondent is a “person” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

10. At all times relevant to this action, Respondent J.G. Holdings, L.L.C. operated or otherwise controlled the property located in Section 16, Township 37 North, Range 33 West, in Washington County, Missouri, which contains a portion of Johns Creek (hereinafter “Johns Creek Property”).

11. At various times beginning around December 2000 and continuing until at least August 30, 2002, Respondent J.G. Holdings, L.L.C. and/or persons acting on its behalf, discharged dredged or fill material into Johns Creek at the Johns Creek Property. Respondent J.G. Holdings, L.L.C. and/or persons acting on its behalf, using earth moving equipment, placed fill material into the main channel of Johns Creek for the purpose of constructing a dam to impound water. The dam constructed on the Johns Creek property created a 22 acre private recreational lake.

12. The discharge and disposal of dredged and/or fill material and the filling of Johns Creek has altered the natural drainage pattern and hydrology of the area, impacting and inundating approximately 1,520 linear feet of Johns Creek at the Johns Creek Property.

13. The earth moving equipment, referenced in Paragraph 11 above, constitutes a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

14. The fill and/or dredged materials excavated and discharged and disposed of into Johns Creek at the Johns Creek property include rock, sand and dirt, and are "pollutants" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

15. The discharge and disposal of the fill and/or dredged material into Johns Creek on the Johns Creek Property, as described in Paragraph 11 above, constitute the "discharge of a pollutant" within the meaning of Section 501(12) of the CWA, 33 U.S.C. § 1362(12).

16. Johns Creek flows into bodies of water that flow into the Mississippi River. Johns Creek and the Mississippi River are "waters 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.

17. The Corps issued a Cease and Desist Order to Respondent on May 21, 2004 and referred the matter to EPA by letter received December 9, 2004.

18. On June 10, 2005, EPA issued Respondent JG Holdings, L.L.C. a Notice of Violation and requested Respondent to provide information related to the activities described in paragraph 11 above. JG Holdings, L.L.C. provided its response on July 8, 2005.

19. Respondent JG Holdings, L.L.C. signed tolling agreements to toll the statute of limitations from November 20, 2005 to June 15, 2007 on any action brought against JG Holdings, L.L.C. concerning the activities described in paragraph 11 above.

Count 1
Unpermitted Discharge

20. The facts stated in paragraphs 1 through 19 above are herein incorporated.

21. The Respondent did not obtain a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, to perform the work described in paragraph 11 above, nor was the Respondent performing the work described in paragraph 11 above under any prior permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344.

22. Respondents' discharge and disposal of pollutants from a point source into waters of the United States, as described above, occurred without a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, and, therefore, these discharges and disposals violated Section 301 of the CWA, 33 U.S.C. § 1311.

23. The Respondent has not removed any of the fill material placed in waters of the United States and, therefore, the violation is continuing.

Relief

24. Based on the foregoing Findings of Violation, and pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA, Region VII hereby proposes to issue a Final Order assessing an administrative penalty against the Respondent for the violations cited above, in the amount of \$36,400.

CONSENT AGREEMENT

1. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of this Consent Agreement and Final Order.

2. 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 this Consent Agreement and Final Order.

3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.

4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal this Consent Agreement and Final Order.

5. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement and Final Order without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.

6. This Consent Agreement and Final Order addresses all civil and administrative claims for the CWA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

7. Nothing contained in this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation 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 or she 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.

9. Respondent certifies by the signing of this Consent Agreement and Final Order that it is in compliance at the Johns Creek Property with the requirements of Sections 301 and 404 of the CWA, 33 U.S.C. §§ 1311 and 1344.

10. The effect of settlement described in paragraph 6 above is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 9 above, of this Consent Agreement and Final Order.

11. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement and Final Order, Respondent shall pay a penalty of \$36,400 as set forth in paragraph 1 of the Final Order.

12. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

FINAL ORDER

Payment Procedures

Pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and according to terms of this Consent Agreement and Final Order, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Thirty-Six Thousand Four Hundred Dollars (\$36,400) within thirty days of the effective date of this Final Order.

2. Payment of the penalty shall be by cashier or certified check made payable to the "United States Treasury" and remitted to:

U.S. Environmental Protection Agency Region VII
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251.

The payment shall identify the Respondent by name and docket number (CWA-07-2007-0015).
Copies of the check shall be mailed to:

Jonathan W. Meyer
Assistant Regional Counsel
U.S. Environmental Protection Agency - Region VII
901 North 5th Street
Kansas City, Kansas 66101

and

Kathy Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region VII
901 North 5th Street
Kansas City, Kansas 66101.

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

Parties Bound

4. This Final Order portion of this Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

General Provisions

5. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of the Final Order portion of this Consent Agreement and Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, and to seek penalties against Respondent or to seek any other remedy allowed by law.

6. Complainant reserves the right to take enforcement action against Respondent for any future violations of the CWA and its implementing regulations and to enforce the terms and conditions of this Consent Agreement and Final Order.

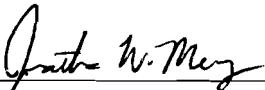
7. This Order shall be entered and become effective only after the conclusion of the period of public notice and comment required pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

8. Respondent and Complainant shall bear their respective costs and attorney's fees.

9. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

For the Complainant:

The United States Environmental Protection Agency



Jonathan W. Meyer
Assistant Regional Counsel

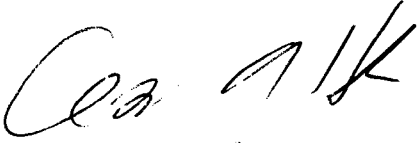
6-7-07
Date



William A. Spratlin
Division Director
Water, Wetlands and Pesticides Division

06/07/07
Date

For the Respondent:

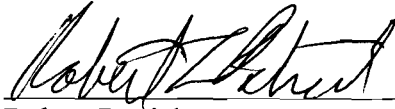


Printed Name: Gregory A. Huntley
Title: V.P.



Date

IT IS SO ORDERED. This Final Order shall become effective immediately.



Robert Patrick
Regional Judicial Officer

Date June 11, 2007

IN THE MATTER OF JG Holdings, LLC., Respondent
Docket No. CWA-07-2007-0015

CERTIFICATE OF SERVICE

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

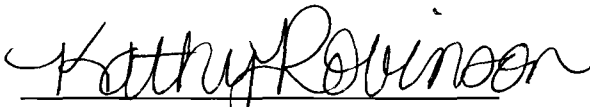
Copy hand delivered to:

Jonathan W. Meyer
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Jack M. Horas
Horas, Radice & Kellett, LLC
911 Washington Avenue
Suite 400
St. Louis, Missouri 63101

6/11/07
Dated


Kathy Robinson
Hearing Clerk, Region 7