



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
Phone 800-227-8917
<http://www.epa.gov/region08>

NOV 21 2006

Ref: 8ENF-L

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Scott Pettro
Petro Properties, LLC
2515 Hayley Court
Alpine, UT 84044

Re: Petro Properties, LLC, Administrative Order
on Consent, Docket # CWA-08-2007-0004

Dear Mr. Pettro:

Enclosed please find a copy of the Administrative Order on Consent ("AOC") for the Petro Properties/Provo Spectrum site that has now been signed by Carol Rushin for the U.S. Environmental Protection Agency. The signed Consent Agreement will be sent to you by the EPA Hearing Clerk under separate cover.

Please note that paragraph 2.a. of the AOC requires that your first payment of \$4,000.00 be made to The Nature Conservancy within 30 days of your receipt of this signed AOC. If you have any questions regarding this requirement or any other requirement of the AOC, please feel free to contact Monica Heimdal at 303-312-6359, or your attorney may contact me at 303-312-6637.

Thank you for your cooperation in finalizing this document.

Sincerely,

Wendy I. Silver
Enforcement Attorney

Enclosure

cc: Craig D. Galli, Holland & Hart (certified mail, w/enclosure)
Shawn Zinszer, U.S. Army Corps of Engineers (w/enclosure)



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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY PH 2: 46
REGION 8

IN THE MATTER OF)
Petro Properties, LLC)
2515 Hayley Court) DOCKET NO. CWA-08-2007-0004
Alpine, UT 84004)
)
Respondent.)

FILED
EPA REGION VIII
HEARING CLERK

ADMINISTRATIVE ORDER ON CONSENT

I. INTRODUCTION

This Administrative Order on Consent (“Consent Order”) is entered into voluntarily by the United States Environmental Protection Agency (“EPA”) and Petro Properties, LLC (“Petro” or “Respondent”). The Consent Order concerns the implementation and completion of actions required to partially compensate for the environmental damages caused by alleged illegal discharges of dredged or fill material at property formerly owned by Petro and located at 1005 East 1860 South in Provo, Utah (the “Property”). The parties hereto agree that complete settlement of the civil liability for violations alleged herein requires payment of a civil penalty by Respondent, as set forth in Consent Agreement, Docket No. CWA-08-2005-53 (“Agreement”). The parties hereto further agree that, upon the effective date of this Consent Order, this Consent Order shall supercede Findings of Violation and Administrative Order for Compliance, Docket No. CWA-08-2005-0054, which shall then be null and void and of no legal effect.

II. STATUTORY AUTHORITY

The following FINDINGS are made and ORDER issued pursuant to the authority vested in the Administrator of EPA by sections 308 and 309 of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1318 and 1319, and by the Administrator delegated to the Regional Administrator of EPA Region 8, and redelegated by the Regional Administrator of Region 8 to the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice. The Consent Order is based on the findings of violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a), which among other things, prohibits the discharge of pollutants into waters of the United States except as in compliance with section 404 of the CWA, 33 U.S.C. § 1344.

III. PARTIES BOUND

This Consent Order shall apply to and be binding upon EPA and shall be binding upon the Respondent, Petro Properties, LLC, its agents, successors, and assigns. The signatories to this Consent Order certify that they are authorized to execute and legally bind the parties they represent to this Consent Order. No change in the ownership or corporate status of the

Respondent or of the Property shall alter the Respondent's responsibilities under this Consent Order unless EPA, Respondent, and the transferee agree in writing to allow the transferee to assume such responsibilities. Additionally, thirty (30) days prior to such transfer, Respondent shall notify EPA at the addresses specified in paragraph 2 of Section VI of this Consent Order.

IV. STATEMENT OF PARTIES

The following FINDINGS OF FACT AND OF VIOLATION are made solely by EPA. In signing this Consent Order, the Respondent neither admits nor denies the FINDINGS OF FACT AND OF VIOLATION or that it engaged in any wrongdoing. Except as provided in this paragraph, Respondent further reserves the right to deny, present evidence in contradiction to any of the FINDINGS OF FACT AND OF VIOLATION, and to otherwise dispute jurisdiction under the CWA in any other context or forum. Notwithstanding the foregoing, in order to provide for resolution of the alleged violations of the CWA, and without any admission of liability, the Respondent consents to issuance of this Consent Order and agrees to abide by all of the conditions herein and agrees not to challenge the jurisdiction of EPA or the FINDINGS OF FACT AND OF VIOLATION below in any proceeding to enforce this Consent Order, or in any action under this Consent Order.

V. FINDINGS OF FACT AND OF VIOLATION

1. At all relevant times, Petro Properties, LLC, was a Nevada corporation engaged in real estate development.
2. At all relevant times, Petro owned and controlled property containing wetlands in certain areas. Said Property and wetlands are located at 1005 East 1860 South in Provo, Utah County, Utah, and are also referred to as the Provo Spectrum Project. The Property is composed of the South Parcel and the North Parcel.
3. In 2000, Pentacore EPG performed a delineation of wetlands on the South Parcel. On September 1, 2000, the U.S. Army Corps of Engineers ("Corps") verified the delineation identifying approximately 8.45 acres of waters of the United States, including wetlands, within the surveyed area.
4. On February 9, 2001, Pentacore EPG, on behalf of Respondent, applied to the Corps for an individual permit to fill 1.17 acres of wetlands on the South Parcel.
5. On June 18, 2001, the Corps issued a permit to Scott Petro, Petro Properties, to fill 1.17 acres of wetlands on the South Parcel. The permit required, among other things, creation of 0.67 acres of wetlands on site and placement of deed restrictions on the remaining 5.45 acres of wetlands on site. The requirements concerning wetlands creation were never fulfilled by Petro and no deed restrictions were placed prior to commencement of site preparation work; these are violations of the permit.

6. In or around November, 2001, Pentacore EPG collected field data for a wetland delineation on the North Parcel; the delineation is dated January 17, 2002. Pentacore EPG identified 8.95 acres of waters of the United States, including wetlands, within the surveyed area. This delineation was never submitted to the Corps for verification.
7. Beginning in November of 2002, Respondent commenced site preparation work, including the placement of fill into the permitted 1.17 acres on the South Parcel.
8. Respondent further discharged dredged or fill material into approximately 9.39 acres of wetlands: approximately 2.19 acres on the South Parcel and 7.2 acres on the North Parcel. Respondent had neither applied for nor received a permit to discharge into said wetlands and has not been authorized by any permit issued under CWA Section 404, 33 U.S.C. § 1344, to allow the unauthorized discharges to remain.
9. The adverse impacts of the Respondent's unauthorized discharges of fill are presumed to be avoidable, at least to some degree, in terms of the "Practicable Alternatives" analysis set forth in the Section 404(b)(1) Guidelines, 40 C.F.R. § 230.10(a), and required by CWA Section 404(b)(1), 33 U.S.C. § 1344(b)(1).
10. The wetlands filled and disturbed by the unauthorized activities (the "impacted wetlands") and surrounding areas provided various functions and values, including water quality enhancement; flood attenuation; providing habitat for birds, mammals, reptiles, amphibians, and other wildlife; and aesthetics.
11. The materials referenced in Paragraph 8, above, constitute "pollutants" within the meaning of CWA Section 502(6), 33 U.S.C. § 1362(6).
12. The discharges described in Paragraph 8, above, were from a "point source" within the meaning of CWA Section 502(14), 33 U.S.C. § 1362(14).
13. Respondent is a "person" within the meaning of CWA Section 502(5), 33 U.S.C. § 1362(5).
14. The impacted wetlands are "waters of the United States" within the meaning of 33 C.F.R. Section 328.3(a) and therefore "navigable waters" within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7).
15. The placement of fill material into wetlands constitutes the "discharge of pollutants" within the meaning of CWA Section 502(12), 33 U.S.C. § 1362(12).
16. CWA Section 301, 33 U.S.C. § 1311, prohibits the discharge of a pollutant from a point source into waters of the United States by a person without a permit issued pursuant to CWA Section 404, 33 U.S.C. § 1344.

17. Respondent is not and never has been authorized by a permit issued under CWA Section 404, 33 U.S.C. § 1344, to conduct the activities described in Paragraph 8, above.
18. Respondent's activities as described in Paragraph 8, above, without such a Section 404 permit, constitute violations of CWA Section 301, 33 U.S.C. § 1311.
19. The impacts of the violations will continue each day that the fill remains in the affected wetlands.
20. Respondent's failure to comply with the requirements set forth in the permit issued by the Corps on June 18, 2001, as described in paragraph 5, above, constitute violations of the permit and, therefore, violations of Section 404 of the Act, 33 U.S.C. § 1344.
21. Respondent consents to the issuance of this Administrative Order on Consent and agrees to abide by all of its terms and conditions herein. Respondent agrees not to challenge the jurisdiction of EPA or these Findings of Fact in any proceeding to enforce this Order.
22. Activities to be carried out under this Consent Order are remedial, not punitive, and are necessary to achieve the CWA's objective "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." CWA Section 101(a), 33 U.S.C. § 1251(a).
23. These preceding FINDINGS OF FACT AND OF VIOLATION and the ORDER FOR COMPLIANCE below have been made after consultation and coordination with the U.S. Army Corps of Engineers, Sacramento District.

VI. ORDER FOR COMPLIANCE

Based upon the foregoing FINDINGS OF FACT AND OF VIOLATION, and pursuant to the authority vested in the Administrator, EPA, under CWA Sections 308 and 309(a), 33 U.S.C. §§ 1318 and 1319(a), and by him delegated to the Regional Administrator, and redelegated to the undersigned, it is hereby ORDERED and AGREED:

1. Respondent is enjoined from discharging any pollutant into waters of the United States, unless such discharge complies with the provisions of the CWA and its regulations.
2. Respondent shall conduct mitigation activities for impacts on the Property as follows:
 - a. Within 30 days of the effective date of this Consent Order, Respondent shall pay \$4,000.00 to The Nature Conservancy ("TNC") for use solely in TNC's project described in Exhibit A to this Consent Order.

- b. Respondent shall make three additional payments to TNC for use in the project described in Exhibit A. These additional payments shall be made each subsequent year on the same day and month as the initial payment in the amounts listed below:

Year one following initial payment:	\$4,000.00
Year two following initial payment:	\$4,000.00
Year three following initial payment:	\$3,500.00

Copies of each check sent to TNC pursuant to this Consent Order shall be provided to:

Monica Heimdal, 8ENF-W
U.S. Environmental Protection Agency, Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

and

Wendy I. Silver, 8ENF-L
U.S. Environmental Protection Agency, Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

- c. If TNC discontinues the project described in Exhibit A at any time prior to the date of the final payment required by paragraph 2.b., above, Respondent shall notify EPA of the wetlands restoration project to which TNC will direct the remaining payments. Such notification shall be to the persons identified in paragraph 2.b.

3. EPA agrees to submit all notifications and correspondence to:

Scott Petro
Petro Properties, LLC
2515 Hayley Court
Alpine, UT 84004

and

Craig D. Galli, Esq.
Holland & Hart LLP
60 East South Temple
Suite 2000
Salt Lake City, UT 84111

4. Any party hereto may, by notice, change the address to which future notices shall be sent or the identity of the person designated to receive notices hereunder.

5. If an event causes or may cause delay in the achievement of the requirements of this Consent Order, Respondent shall notify EPA orally as soon as possible and in writing within ten (10) working days from the date Respondent first knew of such event or should have known of such event by exercise of due diligence, whichever is earlier. Respondent's written notice shall specify the length of the anticipated delay, the cause(s) of the delay, the measures taken or to be taken by Respondent to minimize the delay, and a timetable by which those measures will be or have been implemented. Notification to EPA pursuant to this paragraph of any anticipated delay, by itself, shall not excuse the delay or the obligation of Respondent to comply with requirements and deadlines of this Consent Order, unless EPA grants in writing an extension of the applicable requirement or deadline.

6. If Respondent demonstrates to EPA's satisfaction that the delay or anticipated delay has been or will be entirely caused by circumstances beyond Respondent's control (or the control of any of Respondent's agents) that Respondent could not have foreseen and prevented despite due diligence, and that Respondent has taken all reasonable measures to prevent or minimize such delay, EPA may excuse performance or extend the time for performance of such requirement for a period not to exceed the actual delay resulting from such circumstances. EPA's determination on these matters shall be made as soon as possible, and in writing within ten (10) working days, after the receipt of Respondent's written notification of the event. The parties agree that changed economic circumstances shall not be considered circumstances beyond the control of Respondent.

7. This Consent Order shall be effective upon receipt by Respondent of a copy of the signed Consent Order from EPA.

8. Respondent understands and acknowledges the following:

- a. 33 U.S.C. Section 1319(d) authorizes civil penalties of up to \$32,500 per day for each violation of CWA Section 301, 33 U.S.C. § 1311, and 33 U.S.C. Section 1319(c) authorizes fines and imprisonment for willful or negligent violations of the CWA. The United States agrees not to seek injunctive relief beyond that required by this Consent Order to address the violations alleged in this Consent Order unless Respondent fails to comply with this Consent Order.
- b. Compliance with the terms and conditions of this Consent Order shall not be construed to relieve Respondent of its obligations to comply with any applicable Federal, state, or local law or regulation.
- c. Failure by Respondent to complete the tasks described herein in the manner and time frame specified pursuant to this Consent Order may subject Respondent to a civil action under section 309 of the CWA, 33 U.S.C. § 1319, for violation of this Consent Order.

9. The undersigned representative of Respondent certifies that he is fully authorized to enter into the terms and conditions of this Consent Order and to execute and legally bind Respondent to this document.

BY: Scott Petro
Scott Petro
Petro Properties, LLC

DATE: 11/8/06

BY: Carol Rushin
Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice
U.S. Environmental Protection Agency, Region 8

DATE: 11/17/06

EXHIBIT A

PROPOSED USE OF PETTRO MITIGATION FUNDS

TNC Wetlands Mitigation Program

The Nature Conservancy of Utah ("TNC") and the Army Corp of Engineers ("ACOE") have developed a partnership for mitigating wetlands impacts in the State of Utah. Pursuant to an In-lieu-fee agreement with ACOE, TNC has a proven track record of accepting funds from contributors, as well as alleged Clean Water Act violators, which funds are then pooled to be used for specific wetlands enhancement and acquisition projects. This program is particularly useful when regulatory authorities conclude that wetlands impacts from development are not easily addressed through on-site or in-kind mitigation.

Lower Hobble Creek Restoration Project

TNC has partnered with the FWS and other agencies to implement an existing wetlands enhancement project located in the Springville, Utah, Hobble Creek area, called the Lower Hobble Creek Restoration Project (the "Project"), to protect the endangered June Sucker Habitat in and around Utah Lake. As part of the Project, TNC is currently negotiating Conservation Easements and Fee Acquisitions of property and water for spawning and young-of-year June Sucker habitat. The Project area is located several miles south of site of the former Provo Spectrum Property. Petro Properties LLC has agreed to make five payments totaling \$15,500 all of which TNC will use in the Recovery Program. The FWS has explained the benefits of these easement and property acquisitions as follows:

[The] funds [will be used] to acquire important habitat for the endangered June Sucker. The purchase will allow partners to restore and protect spawning, young-of-year, and juvenile habitat for June sucker while restoring wetland, tributary, and lake function on Utah Lake. These actions will benefit multiple native wetland and riparian species and provide non-native control, water quality improvements, and water management. Land would be managed as a natural area over the long term and would be accessible to the public.

FWS, *Cooperative Endangered Species Conservation Fund: FY 2007 Budget Justification* at 494 (2006).

Regulatory Background

The June Sucker, *Chasmistes liorus*, was first federally listed pursuant to the Endangered Species on April 30, 1986. In 1994, the FWS issued a "Jeopardy Opinion" on the June Sucker and approved the June Sucker Recovery Implementation Plan ("JSRIP"). The opinion stated that development pressures resulting in the loss of vegetated shoreline and riparian areas, and continued operation of water projects, may jeopardize the existence of the June sucker. At the time of listing, the wild population consisted of only 1,000 individuals. A 1998 report indicated that the wild adult spawning population was closer to 300 individuals. TNC's acquisitions and easements in the Hobble Creek area constitute June Sucker critical habitat.