

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

Ridge Prairie Farms, Inc. of
Caseyville, IL

and

Alan Begole of
Lebanon, IL

Respondents.

DOCKET NO. CWA-05-2018-0007

PROCEEDING TO ASSESS A CLASS II
CIVIL PENALTY UNDER SECTION
309(g) OF THE CLEAN WATER ACT,
33 U.S.C. § 1319(g)



CONSENT AGREEMENT AND FINAL ORDER

I. PRELIMINARY STATEMENT

1. This is an administrative action commenced and concluded under section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g), and sections 22.13(b) and 22.18(b)(2)-(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (the Consolidated Rules) as codified at 40 C.F.R. part 22.
2. The Complainant is, by lawful delegation, the Director of the Water Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondents are Ridge Prairie Farms, Inc., a Missouri Corporation doing business in St. Clair County, Illinois, specifically at 7126 N Illinois Street, Caseyville, Illinois 62232, and Alan Begole, President of Ridge Prairie Farms, Inc. (Respondents).
4. Where the parties agree to settle one or more causes of action before the filing of a

complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). *See* 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondents consent to the terms of this CAFO, including the assessment of the civil penalty specified below.

II. JURISDICTION AND WAIVER OF RIGHT TO HEARING

7. Respondents admit the jurisdictional allegations in this CAFO, and neither admit nor deny the factual allegations set forth in this CAFO.
8. Respondents waive any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondents may have with respect to any issue of fact or law set forth in this CAFO including, but not limited to, their right to request a hearing under 40 C.F.R. § 22.15(c) and sections 309(g)(2)(B) and (4)(C) of the CWA, 33 U.S.C. § 1319(g)(2)(B) and (4)(C); their right to appellate review under section 309(g)(8)(B) of the CWA, 33 U.S.C. § 1319(g)(8)(B); their right to seek federal judicial review of the CAFO pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06; any right to contest the allegations in this CAFO; and their right to appeal this CAFO. Respondents also consent to the issuance of this CAFO without further adjudication.

III. STATUTORY AND REGULATORY BACKGROUND

9. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters except in compliance with, *inter alia*, a permit for the discharge of dredged or fill material into navigable waters pursuant to section 404 of the CWA, 33 U.S.C. § 1344.
10. Section 404 of the CWA, 33 U.S.C. § 1344, authorizes the Secretary of the Army, acting through the Chief of Engineers, U.S. Army Corps of Engineers (Corps), to issue permits for the discharge of dredged or fill material into navigable waters.
11. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines the term "person" as "an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body."
12. Section 502(12)(A) of the CWA, 33 U.S.C. § 1362(12)(A), defines the term "discharge of pollutants" as "any addition of any pollutant to navigable waters from any point source"
13. Section 502(6) of the CWA, 33 U.S.C. § 1362(6) defines a "pollutant" as "solid waste, . . . biological materials, . . . rock, sand, cellar dirt, . . . and agricultural waste discharged into water."
14. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines the term "point source" as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or other vessel or floating craft, from which pollutants are or may be discharged."
15. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines the term "navigable waters" as "the waters of the United States including the territorial seas."

16. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the Administrator to assess a Class II civil penalty under section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), when the Administrator finds, on the basis of any information available, that a person has violated section 301 of the CWA, 33 U.S.C. § 1311. EPA may conduct such enforcement consistent with the January 1989 Memorandum Between The Department of the Army and The Environmental Protection Agency, Federal Enforcement for the section 404 Program of the Clean Water Act.

IV. FACTUAL ALLEGATIONS AND ALLEGED VIOLATIONS

Count 1 (Site 1)

17. The statements in Paragraphs 1 through 16 are hereby incorporated by reference as if set forth in full.
18. At all times relevant to this Order, Respondents owned and/or operated parcels located in the Northeast $\frac{1}{4}$ of Section 5, Township 2 North, Range 6 West, St. Clair County, Illinois. It is known as Site 1. See Figure 1 for a map of Site 1.
19. From 2011 through 2012, and at other times known to Respondents, using a track hoe, high lift, and bulldozer, Respondents discharged dredged and fill material into navigable waters during the excavation of a new channel in Little Silver Creek. This activity straightened a 193-foot section of Little Silver Creek.
20. At no time relevant to this discharge did Respondents have or apply for a permit pursuant to section 404 of the CWA, 33 U.S.C. § 1344, for the discharge of dredged or fill material described in paragraph 19.
21. Respondents are an individual and a corporation and are therefore "persons" as defined in

section 502(5) of the CWA, 33 U.S.C. § 1362(5).

22. The dredged and fill material referenced in paragraph 19 are "pollutants" as defined in section 502(6) of the CWA, 33 U.S.C. § 1362(6).
23. Respondents used mechanized equipment, including a track hoe, high lift, and bulldozer to discharge pollutants into the stream on Site 1. The track hoe, high lift, and bulldozer are "point sources" as defined in section 502(14) of the CWA, 33 U.S.C. § 1362(14).
24. The discharge of dredged and fill material into the stream described in paragraph 19 is a "discharge of pollutants" as defined in section 502(12) of the CWA, 33 U.S.C. § 1362(12).
25. The stream on Site 1 is called Little Silver Creek, which is a tributary to Silver Creek. Silver Creek flows to the Kaskaskia River, a traditional navigable water. Little Silver Creek, Silver Creek, and the Kaskaskia River are "navigable waters" as defined in section 502(7) of the CWA, 33 U.S.C. § 1362(7).
26. Therefore, the Respondents are persons who discharged pollutants from point sources into navigable waters without a permit issued under section 404(a) of the CWA, 33 U.S.C. § 1341(a), in violation of section 301 of the CWA, 33 U.S.C. § 1311.
27. Each day the Respondents' discharged pollutants remained in navigable waters constitutes an additional day of violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count 2 (Site 5)

28. The statements in Paragraphs 1 through 16 are hereby incorporated by reference as if set forth in full.
29. At all times relevant to this Order, Respondents owned and/or operated parcels located in the Southeast $\frac{1}{4}$ of Section 1, Township 2 North, Range 8 West, St. Clair County, Illinois. It is

known as Site 5. See Figure 2 for a map of Site 5.

30. Between 2013-2014, and at other times known to Respondents, using a hydraulic excavator, high lift, soil scrapper, and bulldozer, Respondents discharged dredged and fill material into waters of the U.S. during the filling of an unnamed tributary to Ogles Creek. This activity resulted in the loss of 824 linear feet of stream.
31. At no time relevant to this discharge did Respondents have or apply for a permit pursuant to section 404 of the CWA, 33 U.S.C. § 1344, for the discharge of dredged or fill material described in paragraph 30.
32. Respondents are a corporation and an individual and therefore "persons" as defined in section 502(5) of the CWA, 33 U.S.C. § 1362(5).
33. The dredged and fill material referenced in paragraph 30 are "pollutants" as defined in section 502(6) of the CWA, 33 U.S.C. § 1362(6).
34. Respondents used mechanized equipment, including a hydraulic excavator, high lift, soil scrapper, and bulldozer to discharge pollutants into the stream on Site 5. The hydraulic excavator, high lift, soil scrapper, and bulldozer are "point sources" as defined in section 502(14) of the CWA, 33 U.S.C. § 1362(14).
35. The discharge of dredged and fill material into the stream described in paragraph 30 is a "discharge of pollutants" as defined in section 502(12) of the CWA, 33 U.S.C. § 1362(12).
36. The stream on Site 5 is an unnamed tributary to Ogles Creek, which flows to Ogles Creek, which is a tributary to Silver Creek. Silver Creek flows to the Kaskaskia River, a traditional navigable water. The unnamed tributary to the Ogles Creek, Ogles Creek, Silver Creek, and the Kaskaskia River are "navigable waters" as defined in section 502(7) of the CWA, 33

U.S.C. § 1362(7).

37. Therefore, the Respondents are persons who discharged pollutants from point sources into navigable waters without a permit issued under section 404(a) of the CWA, 33 U.S.C.

§ 1341(a), in violation of section 301 of the CWA, 33 U.S.C. § 1311.

38. Each day the Respondents' discharged pollutants remained in navigable waters of the United States constitutes an additional day of violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).

V. CIVIL PENALTY

39. Under section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, the Administrator may assess a Class II civil penalty of up to \$16,000 per day of violation up to a total of \$177,500, for violations of Section 301 of the CWA that occurred after January 12, 2009 through December 6, 2013. This applies to Count 1.

40. Under section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, the Administrator may assess a Class II civil penalty of up to \$16,000 per day of violation up to a total of \$187,500, for violations of Section 301 of the CWA that occurred after December 6, 2013 through November 2, 2015, or after November 2, 2015, for which penalties are assessed before August 1, 2016. This applies to Count 2.

41. Based upon the facts alleged in this CAFO, and upon the nature, circumstances, extent and gravity of the violations alleged, as well as Respondents' ability to pay, prior history of such violations, degree of culpability, economic benefit or savings (if any) resulting from the violations, and such other matters as justice may require, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$20,000.

42. Within 30 days after the effective date of this CAFO, Respondent must pay the \$20,000 civil penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA, Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

43. The check must note the case caption and the docket number of this CAFO.

44. A transmittal letter, stating Respondents' names and complete addresses, and the case docket number must accompany the payment. Respondents must write the case docket number on the face of the check and send copies of the check and transmittal letter to:

Regional Hearing Clerk
U.S. EPA, Region 5
77 West Jackson Blvd., E-19J
Chicago, IL 60604

Yone Yu
Watersheds and Wetlands Branch
U.S. EPA, Region 5
77 West Jackson Blvd., WW-16J
Chicago, IL 60604

Susan Prout
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd., C-14J
Chicago, IL 60604

45. This civil penalty is not deductible for federal tax purposes.

46. If Respondents do not timely pay the civil penalty, U.S. EPA may request the United States Department of Justice bring a civil action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States' enforcement

expenses for the collection action. Respondents acknowledge that the validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

47. Respondents must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established pursuant to 26 U.S.C. § 6621(a)(2); 31 U.S.C. § 3717. In addition to the assessed penalty and interest, Respondents must pay the United States attorney's fees and costs for collection proceedings, and Respondents must pay a nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 20 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. *See* 33 U.S.C. § 1319(g)(9).

VI. GENERAL PROVISIONS

48. Pursuant to 40 C.F.R. § 22.6, the parties consent to service of this CAFO by email at the following email addresses: prout.susan@epa.gov (for Complainant) and penni@livingstonlaw.biz (for Respondents).

49. Full payment of the penalty as described in paragraphs 41 and 42 and full compliance with this CAFO shall only resolve Respondents' liability for federal civil penalties for the violations alleged in the CAFO.

50. This CAFO does not affect Respondents' responsibility to comply with the CWA and other applicable federal, state and local laws and regulations.

51. Respondents certify that they are complying with Sections 301 and 404 of the CWA, 33 U.S.C §§ 1311(a), 1344

52. This CAFO is a “final order” for purposes of 40 C.F.R. § 22.31 and the EPA’s Clean Water Act Section 404 Settlement Penalty Policy (Dec. 2001).
53. The terms of this CAFO bind Respondents and its successors and assigns.
54. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to the terms of this CAFO.
55. Each party agrees to bear its own costs and attorney’s fees in this action
56. This CAFO constitutes the entire agreement between the parties.
57. The effective date for this CAFO is the date it is filed with the Regional Hearing Clerk, which shall be at least 30 days after it has been signed by the Regional Judicial Officer or Regional Administrator and after it has been subjected to the notice requirements of sections 309(g)(4)(C) and 309(g)(5) of the CWA, 33 U.S.C. §§ 1319(g)(4)(C), (5), and 40 C.F.R. §§ 22.38, 22.45.

In the Matter of:
Ridge Prairie Farms, Inc. and Alan Begole
Docket No:

Ridge Prairie Farms, Inc. and Alan Begole, Respondents

Date: 4-2-18 By: Alan Begole
Alan Begole
Ridge Prairie Farms, Inc.

Date: 4-2-18 By: Alan Begole
Alan Begole

In the Matter of:
Ridge Prairie Farms, Inc. and Alan Begole
Docket No:

U.S. Environmental Protection Agency, Complainant

Date: 4/24/18

By: 

Christopher Korleski, Director
Water Division
United States Environmental Protection Agency
Region 5

In the Matter of:
Ridge Prairie Farms, Inc. and Alan Begole
Docket No: CWA-05-2018-0007

FINAL ORDER

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Consent Agreement and Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. **IT IS SO ORDERED.**

Date: _____ By: _____
Ann Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

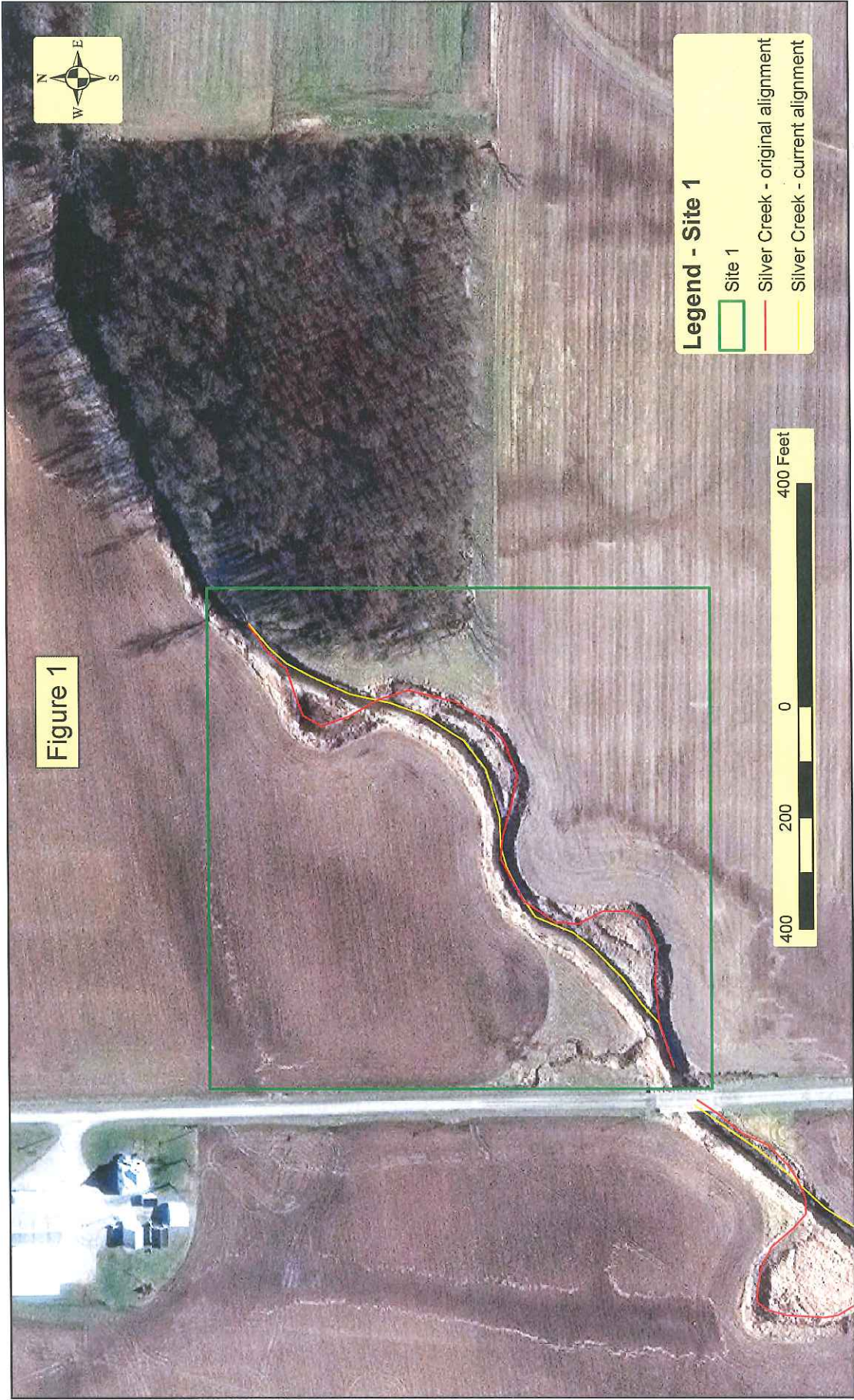


Figure 1

Legend - Site 1

- Site 1
- Silver Creek - original alignment
- Silver Creek - current alignment

Figure 2

