

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:

PERRY RITLAND

Respondent

Docket No. CWA-07-2019-0006

CONSENT AGREEMENT/
FINAL ORDER

Proceedings under Section 309(g) of the
Clean Water Act, 33 U.S.C. § 1319(g)

The United States Environmental Protection Agency, Region 7 (“EPA”) and Perry Ritland (“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 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)(A), 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. Respondent is Perry Ritland ("Respondent").

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."

9. 40 C.F.R. § 112.2 (1993) defines "waters of the United States" to include *inter alia*: (i) all waters which are currently, used, were used in the past, or may be susceptible to use in interstate or foreign commerce; (ii) all interstate waters; (iii) tributaries to such waters; and (iv) wetlands adjacent to such waters or their tributaries.

10. 40 C.F.R. § 232.2 and 33 C.F.R. § 328.3(b) define "wetlands" as "[t]hose areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated conditions."

11. 40 C.F.R. § 232.2 defines "discharge of fill material" to include the "placement of fill, including site-development fills for commercial and other uses."

12. 40 C.F.R. § 232.2 defines "fill material" as material that "replaces any portion of the waters of the United States with dry land" or which "changes the bottom elevation of a water of the United States."

13. Section 309(g) 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 and Allegations of Violation

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

15. At all times relevant to this action, Respondent owned, operated, or otherwise controlled property in Section 22, 9, 10, and 16, Township 85 North, Range 21 West, in Story County, Iowa (hereinafter “the Site”).

16. Starting sometime in 2015, Respondent and/or persons acting on his behalf authorized and/or directed the placement of fill material into Middle Minerva Creek and abutting wetlands located on Respondent’s property using a bulldozer or similar earth moving equipment.

17. On December 4, 2017, the Corps, Rock Island District, received a citizen complaint concerning Respondent’s fill activity in Middle Minerva Creek.

18. A record review by the Rock Island Corps District confirmed that the location of the fill activity was the same as proposed in a 2000 CWA Section 404 permit application by Respondent’s father. The permit application was withdrawn in 2001.

19. Middle Minerva Creek is a perennial stream that flows approximately 14 miles into the Iowa River, a traditionally navigable water.

20. The fill material discharged by Respondent into Middle Minerva Creek and adjacent wetlands is a “pollutant” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

21. Bulldozers and other earth moving equipment are “point sources” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

22. Respondent’s actions constitute the “discharge of fill material” as defined by 40 C.F.R. § 232.2 and the “discharge of a pollutant” within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

23. Middle Minerva Creek and adjacent wetlands are “waters of the United States” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7) and 40 C.F.R. § 112.2 (1993).

24. 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 herein, 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.

25. 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, and, therefore, these discharges violated Section 301 of the CWA, 33 U.S.C. § 1311.

CONSENT AGREEMENT

26. 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.

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

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

29. Respondent and Complainant each agree to bear their own costs and attorney's fees.

30. 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.

31. Respondent certifies that it is fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondent to it.

32. Respondent consents to the issuance of the Final Order and consents to the payment of a civil penalty in the amount of \$15,000.

33. Payment of the entire civil penalty shall resolve all civil and administrative claims of the United States alleged in the Complaint.

Reservation of Rights

34. 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.

35. 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.

PENALTY

36. Respondent shall pay a civil penalty of Fifteen Thousand Dollars (\$15,000). The penalty shall be paid in full within thirty (30) days following receipt by Respondent of a fully executed copy of this CA/FO. Respondent shall pay the penalty by certified or cashier's check payable to "Treasurer, United States of America" and shall deliver it, with a transmittal that identifies the case name and docket number to:

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

The check must also be annotated with the docket number and with the name of the case. Copies of the transmittal letter and the check shall be simultaneously sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and

Chris Muehlberger
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

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.

37. 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.

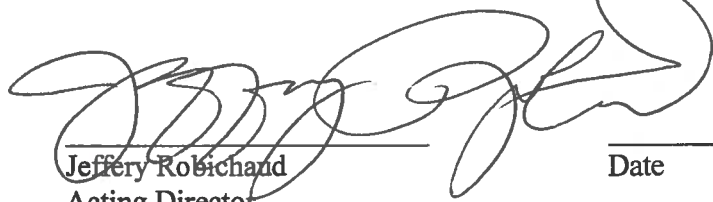
Parties Bound

38. 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

39. This Final Order shall become effective upon filing pursuant to 40 C.F.R. § 22.31(b). All time periods herein shall be calculated therefrom unless otherwise provided in this Final Order.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY



Jeffery Robichaud
Acting Director
Water, Wetlands and Pesticides Division

1/28/19

Date



Chris Muehlberger
Assistant Regional Counsel

1.28.19

Date

RESPONDENT:

Perry Ritland

Printed Name

Perry Ritland

Signature

11-5-18

Date

Title

FINAL ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 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, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

The Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Bonomeo
Regional Judicial Officer

Feb. 11, 2019
Date

CERTIFICATE OF SERVICE

I certify that on the date noted below, I filed the original and one true and correct copy of the signed original Consent Agreement and Final Order with the Regional Hearing Clerk, Region 7. I further certify that on the date noted below, I sent by certified mail, return receipt requested, a true and correct copy of the signed original Consent Agreement and Final Order to the following

Mr. Perry Ritland
72323 130th Street
Zearing, Iowa 50278

and

Mr. Tom Wynia, Esq.
Brekken, Wynia & Hyland, P.C.
523 Broad Street
P.O. Box 160
Story City, Iowa 50248.

Feb 11, 2019
Date

