

5. Based on visits to the Site conducted by representatives of the U.S. Army Corps of Engineers Norfolk District (“USACE”) beginning December 14, 2017, and the inspection conducted by representatives of the U.S. EPA Region III on August 13, 2020 and other information available to EPA, Respondent, or persons acting on behalf of Respondent, operated equipment in late 2017 which discharged dredged and/or fill material to waters of the United States located on the Site described in Paragraph 3, above, and further depicted on Exhibit A, attached hereto. Respondent’s activities include the discharge of fill material into approximately 400 linear feet of the unnamed tributary of Stacy Branch.
6. The term “fill material” within the meaning of 40 C.F.R. § 232.2, includes any pollutant which replaces portions of “waters of the United States” with dry land or which changes the bottom elevation of a water body for any purpose. The term “discharge of fill material” includes “[p]lacement of fill that is necessary for the construction of any structure or infrastructure in a water of the United States.”
7. The equipment referenced in Paragraph 5, above, which has discharged dredged and/or fill material to “waters of the United States,” constitutes a “point source” within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).
8. Section 301(a) of the Act, 33 U.S.C. §1311(a), prohibits any person from discharging dredged and/or fill material from point sources to “waters of the United States” except in compliance with a permit issued by the Secretary of the Army under Section 404 of the Act, 33 U.S.C. § 1344.
9. At no time during the discharge of dredged and/or fill material to the waters of the United States located on the Site did the Respondent have a permit from the Secretary of the Army as required by Section 404 of the Act, 33 U.S.C. § 1344.
10. Respondent, by discharging dredged and/or fill material to the “waters of the United States” without authorization, has violated Section 301(a) of the Act, 33 U.S.C. § 1311(a).

III. ORDER FOR COMPLIANCE

Therefore, the Respondent is hereby ORDERED, pursuant to Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a), to do the following:

11. Cease and desist all discharges including the grading, excavating, and ditching without a permit to waters of the United States at the Site.
12. Within one hundred and twenty (120) days of the effective date of this Order, the Respondent shall provide a plan for site restoration (“Restoration Plan”) to EPA for approval. This Restoration Plan will include a schedule for implementation of the proposed work and be prepared in accordance with good engineering practices. If this plan includes installation of a culvert, the plan shall include design drawings and size specifications for the proposed culvert.

13. EPA will review the Restoration Plan and either: a) approve the Restoration Plan, or b) approve the Restoration Plan in part, and request modifications to address and correct any noted deficiencies, or c) disapprove of the Restoration Plan, in writing.
14. Within thirty (30) days of Respondent's receipt of any EPA request for modifications, or disapproval, of the Restoration Plan required by Paragraph 13, above, Respondent shall address and correct all noted deficiencies and resubmit the Restoration Plan for EPA approval. If any portion of the resubmission is disapproved, EPA may again require Respondent to correct any deficiencies or EPA may revise the Plan and correct any deficiencies and notify Respondent to take all actions required by such revised Plan.
15. Upon receipt of EPA's written approval of the Restoration Plan, Respondent shall implement such plan in accordance with its terms. Respondent shall complete all restoration work within ninety (90) days of its receipt of the EPA's approval of the Restoration Plan or other implementation schedule as approved by EPA in the Restoration Plan.
16. For a period of five years following completion of the work, or until early termination by EPA, described in Paragraph 12, Respondent shall monitor the Site once per year and submit to EPA a monitoring report at the address listed in Paragraph 19. Each monitoring report shall be certified consistent with Paragraph 20 and will contain the following information:
 - (a) A description of the conditions at the Site, including whether flooding of adjacent properties or the access road has occurred and how frequently such flooding occurs;
 - (b) Description of the flow of the unnamed tributary to Stacy Branch, including any evidence of significant erosion occurring within the Site; and
 - (c) A minimum of eight color photographs taken of the Site from the north, northeast, east, southeast, south, southwest, west, and northwest sides of the restored area.
17. EPA will review each monitoring report to determine whether the restoration efforts undertaken by Respondent pursuant to Paragraph 12 have been successful. If, prior to termination of this Order, EPA determines based upon the information provided by the monitoring reports or upon any other information that the restoration efforts have not been successful, EPA may supplement this Order and direct Respondent to perform additional work to ensure success of the restoration. Respondent agrees to perform any additional work directed by EPA pursuant to this Paragraph. EPA also reserves the right to terminate this Order prior to completion of five years of monitoring if EPA deems the Site restoration work to be fully successful and no additional monitoring is necessary. This Order shall terminate upon EPA's determination of the completeness and adequacy of the work required, and submission by Respondent of documentation and certification that the work has been fully completed and implemented in accordance with requirements of the Order, including submission of all monitoring reports except as allowed pursuant to this paragraph for early termination.
18. Respondent's failure to complete the work in a manner consistent with this Order shall be deemed a violation of this Order.

19. Respondent shall send the certification described in Paragraph 20, the monitoring and status reports described in Paragraph 16 and all other correspondence electronically or by mail to:

Katelyn Almeter
Enforcement & Compliance Assurance Division
United States Environmental Protection Agency, Region III
almeter.katelyn@epa.gov

If mailed before October 1, 2021, hardcopies should be sent to:
1650 Arch Street (3ED31)
Philadelphia, PA 19103

If mailed after October 1, 2021, hardcopies should be sent to:
4 Penn Center (3ED31)
Philadelphia, PA 19103

IV. GENERAL PROVISIONS

20. The following certification must accompany each submission by Respondent pursuant to this Information Requirement and must be signed by a Representative of Respondent authorized to sign on behalf of Respondent:

"I certify under penalty of law that this document and all attachments were prepared by me or under my direction or supervision. Based upon my personal knowledge or inquiry of the person or persons who prepared the submission the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Signed: Joe Reynolds

Title: Western landowner

Date: 7-18-21

21. Respondent's compliance with the terms of this Order shall not relieve Respondent of his obligation to comply with all applicable provisions of the Clean Water Act or any other Federal, State or local law or regulation. Issuance of this Order is not an election by EPA to forego any civil or criminal action otherwise authorized by the Clean Water Act. EPA reserves the right to seek any remedy available under the law that it deems appropriate to the violations described herein. Compliance with this Order shall not be a defense to any action commenced pursuant to such authorities.

22. Respondent will permit EPA personnel on the Site for the purpose of inspecting work performed pursuant to this Order upon reasonable notice. EPA reserves all existing inspection authority otherwise available to EPA pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, or pursuant to any other statute or law.
23. Violation of the terms of this Order may result in further EPA enforcement action including, but not limited to, imposition of penalties, pursuant to 33 U.S.C. § 1319(d) as modified by the Debt Collection Procedures Act of 1996 and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, and/or initiation of judicial proceedings that allow for civil penalties of up to \$55,800 per day for each violation that occurs, and/or for the criminal sanctions of imprisonment and fines of up to \$25,000 per day, 33 U.S.C. § 1319(c).
24. The provisions of this Order shall apply to and be binding upon the Respondent and its officers, directors, employees, contractors, agents, trustees, successors and assigns of Respondent.
25. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Consent Order, including any right of judicial review pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

V. EFFECTIVE DATE

26. The Effective date of this Order shall be the date of receipt of the executed document.

ON BEHALF OF RESPONDENT.

Date: 7-18-21

Joe Reynolds

Name:

Title: Western landowner

SO ORDERED.

Date: _____

Karen Melvin, Director
Enforcement and Compliance Assurance Division
U.S. EPA, Region III

EPA Docket # CWA-03-2021-0085DW

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of this Administrative Order for Compliance on Consent, the original of which has been filed with the Regional Hearing Clerk, U.S. EPA Region III, has been sent to the following via UPS, signature requested and electronically to:

Mr. Joe Reynolds
Western Landowner
11515 Stacy Branch Road
Pound, Virginia 24279

US EPA Region III

Date:

Exhibit A: Reynolds Site

