

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



_____)
IN THE MATTER OF:)
)
DMI Martin County Farms, LLC,) Docket No.: CWA-05-2016-0011
Carmel, Indiana.)
)
Respondent) Consent Agreement and Final Order
)
) Pursuant to Section 309(g) of
) the Clean Water Act, 33 U.S.C.
_____) §1319(g).

CONSENT AGREEMENT AND FINAL ORDER

I. Preliminary Statement

1. The following agreement and order between the United States Environmental Protection Agency (“U.S. EPA”) and DMI Martin County Farms, LLC, (“DMI” or “Respondent”) is entered pursuant to the authority of section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g).
2. This is an administrative action for a penalty, commenced and concluded pursuant to section 309(g) of the CWA, 33 U.S.C. § 1319(g), and sections 22.13(b) and 22.18(b)(2) and (3) 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) and (3). The U.S. EPA is the lead enforcement agency for this matter as defined by the 1989 Memorandum of Agreement Between the Department of the Army and the

Environmental Protection Agency Concerning Federal Enforcement for the Section 404 Program of the Clean Water Act.

3. Prior to this action, U.S. EPA has consulted with the State of Indiana pursuant to section 309(g) of the CWA, 33 U.S.C. §1319(g).
4. The Complainant is, by lawful delegation, the Director of the Water Division, U.S. Environmental Protection Agency, Region 5 (Complainant or U.S. EPA).
5. Respondent is DMI Martin County Farms, LLC, doing business at 845 West 116th Street, Carmel, Indiana. Respondent is a limited liability corporation doing business in Indiana.
6. Where the parties agree to settle one or more causes of action before the filing of a complaint, the 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).
7. 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.
8. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of the CAFO.

II. Jurisdiction and Waiver of Right to Hearing

9. Respondent agrees to the terms of this order and further agrees not to contest the jurisdictional allegations in this CAFO. Respondent's agreement to this CAFO is not an admission of liability. Respondent retains the right to controvert EPA's findings in any subsequent proceedings, except in proceedings to implement or enforce this CAFO.
10. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c) and Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

III. Statutory and Regulatory Basis

11. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters except in compliance with, *inter alia*, a permit issued pursuant to Section 404 of the Act, 33 U.S.C. § 1344.
12. Section 404 of the Act, 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.
13. Section 502(5) of the Act defines “person” as “an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.” 33 U.S.C. § 1362(5).
14. Section 502(12) of the Act defines “discharge of pollutants,” as, *inter alia*, “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12).
15. Section 502(6) of the Act defines “pollutant,” as “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.” 33 U.S.C. § 1362(6).
16. Section 502(14) of the Act defines “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 vessel or other floating craft, from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).
17. Section 502(7) of the Act defines “navigable waters” as “the waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7).

18. The regulation at 40 C.F.R. § 230.3(s) defines the term “waters of the United States” to include “all waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce...[including] intrastate lakes, rivers, streams (including intermittent streams)...wetlands...the use, degradation, or destruction of which could affect interstate or foreign commerce including any such waters...tributaries of [such] waters...[and] wetlands adjacent to [all such] waters.”
19. The regulation at 40 C.F.R. § 230.3(t) defines “wetlands” as “those areas that are inundated or saturated by surface or ground water 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 soil conditions.”
20. Pursuant to section 309(g) of the CWA, 33 U.S.C. § 1319(g) the Administrator has authority to assess civil penalties for violations of sections 1311 or 1344 of the Clean Water Act.

IV. Specific Factual Allegations

21. Respondent is a limited liability corporation located in and doing business in the State of Indiana.
22. Respondent is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. §1362(5).
23. Respondent owns approximately 538 acres of contiguous property in Martin County, Indiana. Within a 120 acre subset of the 538 acres, south of Bear Hill Road, in the east half of the northeast quarter of Section 20 and in the northwest quarter of the northwest quarter of Section 21, all in Township 4 North, Range 3 West, Mitcheltree Township, Martin County, Indiana is the “Site,” with wetlands abutting Sulphur Creek.

24. Intermittently from approximately August 2010 – October 2010, Respondent caused the discharge of dredge and fill material or both at the Site into approximately two (2) acres of wetlands with earth moving and excavating machinery, which in turn caused the creation of an approximately 16 acre impoundment of surface water.
25. The Site's wetlands abutting Sulphur Creek drain to Sulphur Creek which flows into Indian Creek which flows in the East Fork of the White River, a traditional navigable water 20 miles above its mouth at the White River.
26. The Site's wetlands referenced in Paragraphs 24 and 25 are "waters of the United States" as defined at 40 C.F.R. § 230.3(s) and thus "navigable waters," as defined at section 502(7) of the CWA, 33 U.S.C. § 1362(7).
27. The machinery referenced in Paragraph 24 constitute "point sources" within the meaning of the definition set forth in section 502(14) of the CWA, 33 U.S.C. § 1362(14).
28. The discharged material referenced in Paragraph 24 constitutes "pollutants" within the meaning of the definitions set forth in section 502(6) of the CWA, 33 U.S.C. § 1362(6).
29. The placement of the material in the wetlands referenced in Paragraph 24 constitutes a "discharge of pollutants" within the meaning of the definition set forth in section 502(12) of the CWA, 33 U.S.C. § 1362(12).
30. Respondent did not have a permit issued under section 404 of the CWA, 33 U.S.C. § 1344, for the discharge of pollutants referenced in Paragraph 24.
31. Each discharge of pollutants into navigable waters without a permit issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344, constitutes a discrete violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).

32. Each day the discharged material remains in the wetlands without the required permit issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344, constitutes a discrete violation of section 301 of the CWA, 33 U.S. C. § 1311.

V. General Stipulations

33. Respondent and U.S. EPA entered into Tolling Agreements for the alleged violations described above for the period commencing on August 1, 2015, and ending on June 1, 2016.

34. Respondent neither admits nor denies the specific factual allegations of this Consent Agreement and Final Order (CAFO) pursuant to 40 C.F.R. § 22.18(b)(2).

35. Respondent consents to the assessment of the civil penalty of the CAFO pursuant to 40 C.F.R. § 22.18(b)(2).

36. Respondent waives any right to contest the allegations of this CAFO and its right to appeal the final order.

37. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

38. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

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

40. 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).

41. The terms of this CAFO bind U.S. EPA and Respondent and their successors and assigns.

42. Each person signing this CAFO certifies he or she has the authority to sign this CAFO for the party he or she represents and to bind that party to its terms.

43. Each party agrees to bear its own costs and fees, including attorney fees, for this action.
44. This CAFO constitutes the entire agreement between the parties.
45. Before the Regional Administrator signs this CAFO, it shall be subject to the requirements of Section 309(g)(4) of the CWA, 33 U.S.C. §1319(g)(4).
46. The effective date of this CAFO is the date EPA files it with the Regional Hearing Clerk.

VI. Civil Penalties

47. Respondent agrees to pay a civil penalty of \$60,000 within 30 days of the effective date of this CAFO. Respondent agrees to pay the penalty by sending a cashier's or certified check, payable to the order of the U.S. Treasury:

FOR CHECKS SENT BY REGULAR U.S. POSTAL SERVICE

MAIL:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 970977
St. Louis, Missouri 63197-9000

FOR CHECKS SENT BY EXPRESS MAIL:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

48. Respondent must include with its cashier's or certified check a transmittal letter stating the name of this action, Respondent's complete address, the Docket No. of this action and the Billing Document No. of this action. Respondent must send copies of each check and transmittal letter to:

LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency
77 West Jackson Boulevard (E-19J)

Chicago, Illinois 60604

Gregory Carlson (WW-16J)
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604

Leslie Kirby-Miles
Office of Regional Counsel
U.S. Environmental Protection Agency
77 West Jackson Boulevard (C-14J)
Chicago, Illinois 60604

49. This civil penalty is not deductible for federal tax purposes.
50. If Respondent fails to timely pay the civil penalty, Complainant may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and Complainant's enforcement expenses for the collection action.
51. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15.00 handling charge each month that any portion of the penalty due is more than 30 days past due. U.S. EPA will assess a six percent (6%) per year penalty on any principal amount not paid timely pursuant to this CAFO.

SIGNATORIES

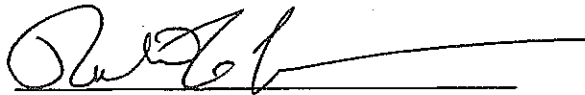
Each undersigned representative of a party to this Consent Agreement and Final Order certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and Final Order and to bind legally such party to this document.

In the Matter of: DMI Martin County Farms, LLC

**Docket No. CWA-05-2016-0011
Consent Agreement and Final Order**

**RESPONDENT
DMI Martin County Farms, LLC
Carmel, Indiana**

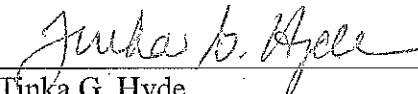
Date March 14, 2016

A handwritten signature in black ink, appearing to read 'R. Goad', is written over a horizontal line.

**Robert Goad, Managing Partner
DMI Martin County Farms, LLC**

COMPLAINANT
Water Division
Region 5
United States Environmental Protection Agency

Date: March 02, 2016



Tinka G. Hyde
Director, Water Division

In the Matter of: DMI Martin County Farms, LLC
Docket No. CWA-05-2016-0011
Consent Agreement and Final Order

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 Final Order concludes this proceeding pursuant to 40 C.F.R. §22.18 and 22.31. IT IS SO ORDERED.

Date: _____

Robert Kaplan
Acting Regional Administrator
Region 5
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604