

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

IN THE MATTER OF:)
)
) Docket No. CWA-07-2023-0105
Eric Tedrow,)
)
Respondent) FINDINGS OF VIOLATION,
) ORDER FOR COMPLIANCE
)
Proceedings under Section 309(a)(3) of the)
Clean Water Act, 33 U.S.C. § 1319(a)(3))
_____)

Preliminary Statement

1. The following Findings of Violation are made and Order for Compliance (“Order”) is issued pursuant to the authority of Section 309(a)(3) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(a)(3). The authority to take action under Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), is vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”). The Administrator has delegated this authority to the Regional Administrator, EPA Region 7, who in turn has delegated it to the Director of the Enforcement and Compliance Assurance Division of EPA Region 7, with concurrence by the Regional Counsel.

2. The Respondent in this case is Eric Tedrow, an individual owning property in the state of Iowa (“Respondent”).

3. This CWA Section 309(a)(3) Order for Compliance is issued to carry out the objective of the CWA, 33 U.S.C. § 1251 *et seq.*, to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

Statutory and Regulatory Framework

4. 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.

5. The CWA prohibits the discharge of “pollutants” from a “point source” to a “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

6. 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 “navigable waters.”

7. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters,” in part, as the “waters of the United States.”

8. 40 C.F.R. § 232.2 defines “dredged material” as material that is excavated or dredged from waters of the United States.

9. 40 C.F.R. § 232.2 defines the “discharge of dredged material” in part as any addition of dredged material into, including redeposit of dredged material other than incidental fallback within, the waters of the United States.

10. 40 C.F.R. § 232.2 defines “fill material” in part as material placed in waters of the United States where the material has the effect of replacing any portion of a water of the United States with dry land or changing the bottom elevation of any portion of a water of the United States.

11. 40 C.F.R. § 232.2 defines “discharge of fill material” in part as the addition of fill material into waters of the United States.

12. Section 309(a) 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.

Allegations of Facts

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

14. At all times relevant to this action, Respondent owned, operated, or otherwise controlled property located in Section 30, Township 71 North, Range 10 West, Jefferson County, Iowa, with coordinates of Lat: 40.925481 and Long: -92.050991 (hereinafter “the Site”).

15. Starting in or around May of 2022, Respondent, using earth moving equipment at the Site, authorized, directed, and/or placed dredged and/or fill material into the East Branch of Lick Creek, including but not limited to placing dirt and cut trees into the stream channel, constructing berms and/or dams, and rerouting the stream channel through stream channelization activities.

16. On May 16, 2022, Iowa Department of Natural Resources (“IDNR”) conducted a site visit at the Site.

17. On May 20, 2022, IDNR sent a Notice of Violation to Respondent pursuant to Iowa flood plain and solid waste disposal laws, requesting that Respondent remove the fill material from the stream.

18. On May 23, 2022, the U.S. Army Corps of Engineers for the Rock Island District (“Corps”) sent a Notice of Violation to Respondent requesting information regarding the

unauthorized stream work and advising him not to conduct further stream work without authorization pursuant to CWA Section 404.

19. On July 7, 2022, IDNR conducted a second site visit and observed that the fill material was not removed and additional work in the stream had been conducted.

20. On July 15, 2022, IDNR sent a second Notice of Violation to Respondent.

21. On July 13, 2022, representatives of the Corps conducted a site visit and confirmed Respondent's placement of fill and/or dredged material into the East Branch of Lick Creek at the Site. The Corps documented fill material including trees in the original stream channel, fill material blocking the original stream channel, and the construction of a new straightened channel at the Site.

22. Respondent's discharges of fill and/or dredged material into the East Branch of Lick Creek resulted in the loss of approximately 900 linear feet of stream.

23. The dredged and/or fill material discharged by Respondent's activities into the East Branch of Lick Creek are "pollutants" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

24. The earth moving equipment used by Respondent to place the dredged and/or fill material into the East Branch of Lick Creek constitutes a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

25. The discharge of the dredged and/or fill material into the East Branch of Lick Creek constitutes the "discharge of a pollutant" within the meaning of Section 501(12) of the CWA, 33 U.S.C. § 1362(12).

26. The East Branch of Lick Creek is a perennial stream that connects to Lick Creek, which connects to the Des Moines River, a traditional navigable water.

27. The East Branch of Lick Creek is a relatively permanent water that is connected to a traditional navigable water.

28. The East Branch of Lick Creek is a "water of the United States" within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

FINDINGS OF VIOLATION

29. The facts and allegations stated above are herein incorporated.

30. Respondent discharged pollutants from a point source to waters of the United States as described herein without a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344.

31. Respondent's unauthorized discharge of pollutants from a point source to waters of the United States is a violation of Section 301 of the CWA, 33 U.S.C. § 1311.

ORDER FOR COMPLIANCE

Based on the ALLEGATIONS OF FACT and FINDINGS OF VIOLATION set forth above, and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), EPA hereby ORDERS Respondent to take the actions described below:

32. Respondent shall comply with the CWA by immediately ceasing the placement of fill and/or dredged material into the East Branch of Lick Creek and taking steps to ensure that Respondent does not place fill material into the East Branch of Lick Creek in the future.

33. Work Plan: Within 30 days of the Effective Date of this Order, Respondent shall submit a Work Plan to EPA for review and approval. The Work Plan shall describe Respondent's proposed full restoration of the impacted Site described herein to conditions prior to the start of Respondent's unauthorized fill material, including the seeding and stabilization of all disturbed areas and appropriate erosion control measures, ecologically based performance standards, parameters to monitor to determine if the performance standards are being met or if corrective action is needed, and a projected schedule, including milestones, for completing the work no later than six (6) months after EPA's approval of the Work Plan and in accordance with the specifications in the Work Plan.

34. Review and Approval of Work Plan: The EPA will review and approve the Work Plan as follows:

a. If EPA approves the Work Plan, it shall be implemented according to the schedule for implementation in the approved Work Plan. All work shall be completed by a qualified contractor.

b. If EPA does not approve the Work Plan, Respondent shall address the comments and resubmit the Work Plan for review within twenty (20) days of receipt of EPA's disapproval.

c. Upon resubmission, EPA, in its sole discretion, may either approve the Work Plan, or if EPA determines that the Work Plan does not adequately address the comments provided by EPA, EPA may modify the Work Plan and provide Respondent with a copy of the Work Plan as modified. Respondent shall implement the modified Work Plan according to the schedule contained therein.

d. Once approved or modified by EPA, the Work Plan identified above shall be incorporated by reference and fully enforceable under the terms of this Order.

35. Completion Report: Within thirty (30) days of completion of the work identified in the Work Plan, Respondent shall submit a completion report, which shall include photographic evidence, copies of relevant documents, and a signed statement indicating that the work is complete.

36. Annual Monitoring Reports: Respondent shall submit annual monitoring reports to EPA, beginning on the date of the first anniversary of the completion of the Work Plan, for a period of five years, reporting the status of the site and corrective actions taken to maintain proper stream functions. If at the end of the five-year monitoring period, the site is providing adequate wetland and/or stream functions and values, then additional monitoring will not be required. If at the end of the five-year monitoring period, the site is not functioning as a wetland and/or stream, then corrective measures shall be implemented.

37. The submission of documents by Respondent, as identified above, shall include the following written statement, followed by signature of a duly authorized representative of Respondent:

I certify under penalty of law that 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.

38. All documents to be submitted to EPA under this Order shall be submitted via email to:

Hannah Lewis, or her delegate
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 7
lewis.hannah@epa.gov

General Provisions

Opportunity to Confer

39. Respondent has the opportunity to confer with and/or submit information to EPA concerning the validity of this Order, including the basis for the Order, the terms of the Order, and the applicability of this Order to the Respondent. Within ten days of receipt of this Order, Respondent may request a conference regarding the Order or to submit information to EPA. If Respondent requests a conference or wishes to submit information, the conference or submission of information shall take place within twenty days of receipt of this Order. EPA shall deem a failure to request a conference or to submit information as a waiver of the opportunity to confer.

Failure to Comply

40. Respondent's failure to comply with the terms of this Section 309(a)(3) Compliance Order may result in liability for statutory civil penalties under Section 309(d) of the Act, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Should EPA commence an action seeking penalties for violations of this Compliance Order, a United States District Court may impose civil penalties if the court determines that Respondent has violated the Act and failed to comply with the terms of the Order.

Effect of Compliance

41. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondent of its responsibility to obtain any required local, state, and/or federal permits.

42. This Order does not constitute a waiver or a modification of any requirements of the CWA, 33 U.S.C. § 1251 et seq., all of which remain in full force and effect. EPA retains the right to seek any and all remedies available under Sections 309(b), (c), (d) or (g) of the CWA, 33 U.S.C. § 1319(b), (c), (d) or (g), for any violation cited in this Order. EPA reserves the right to enforce the terms of this Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

Access and Requests for Information

43. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect property owned or operated by Respondent and/or to request additional information from Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318 and/or any other authority.

Confidential Business Information

44. Pursuant to 40 C.F.R. §§ 2.201-2.311, Respondent may assert a business confidentiality claim covering any portion of the submitted information which is entitled to confidential treatment and which is not effluent data. For any such claim, describe the basis for the claim under the applicable regulation. Any material for which business confidentiality is claimed should be placed in a separate envelope labeled, "Confidential Business Information." Failure to assert a claim in the manner described in 40 C.F.R. § 2.203(b) allows EPA to release the submitted information to the public without further notice. EPA may disclose information subject to the business confidentiality claim only to the extent set forth in the above-cited regulations. Special rules governing information obtained under the CWA appear in 40 C.F.R. § 2.302.

Severability

45. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

Parties Bound

46. This 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 Order.

Judicial Review

47. Respondent has the right to seek federal judicial review of the Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706 upon the effective date. Section 706, which is set forth at <http://uscode.house.gov/download/pls/05C7.txt>, provides the grounds for such review.

Effective Date

48. The terms of this Order shall be effective and enforceable against Respondent thirty days after receipt of an executed copy of the Order.

Termination

49. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of EPA.

For the Complainant, United States Environmental Protection Agency Region 7:

JODI BRUNO
Acting Director
Enforcement and Compliance Assurance Division

CERTIFICATE OF SERVICE

I certify that on the date noted below I delivered a true and correct copy of this Findings of Violation and Order for Compliance by electronic mail to the Regional Hearing Clerk:

U.S. Environmental Protection Agency
R7_Hearing_Clerk_Filings@epa.gov

I further certify that on the date noted below I mailed the foregoing Findings of Violation and Order for Compliance by USPS Certified Mail to:

Eric Tedrow
2606 Grasstree Ave
Fairfield, Iowa 52556

And by electronic mail to:

Representative for Respondent:

Eldon McAfee
eldon.mcafee@brickgentrylaw.com

Representatives for Complainant:

Shane McCoin
Office of Regional Counsel
U.S. Environmental Protection Agency Region 7
mccoin.shane@epa.gov

Hannah Lewis
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency Region 7
lewis.hannah@epa.gov

Signature: _____