



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029  
04/08/2020

**VIA UNITED PARCEL SERVICE**

Mr. Shawn Claar  
590 Ridge Road  
Imler, Pennsylvania 16655

Re: EPA Docket No. CWA-03-2020-0049DW  
ORDER FOR COMPLIANCE ON CONSENT

Dear Mr. Claar:

Attached you will find the executed Administrative Order for Compliance on Consent that requires you to mitigate for the unauthorized work on and around the properties you own or control at 11945 William Penn Road in Kimmel Township, Pennsylvania ("Site"), identified in Exhibit "A."

The Order requires you to cease and desist all discharges of fill material into waters of the United States and to remove the unauthorized fill material at the Site which has impacted approximately 0.60 acres of floodplain wetlands and 25 linear feet of riparian streambanks associated with Boiling Spring Run.

Please note that the effective date of this Order is today, the date of your receipt of this Order. Under the Order, you must provide EPA with a written schedule for the completion of site stabilization and restoration within 10 days of the effective date.

If you have any questions regarding the Order please contact Ms. Rebecca Souto-Glyn of our Safe Drinking Water Act and Wetlands Section at (215) 814-2795 or [glyn.rebecca@epa.gov](mailto:glyn.rebecca@epa.gov) or your counsel may contact Pamela J. Lazos, the attorney assigned to this matter, at (215) 814-2658 or [lazos.pamela@epa.gov](mailto:lazos.pamela@epa.gov).

Sincerely,

KAREN  
MELVIN

Digitally signed by  
KAREN MELVIN  
Date: 2020.04.08  
07:40:42 -04'00'

Karen Melvin, Director  
Enforcement and Compliance Assurance Division

Enclosure

cc: Mr. Frank Plewa – U.S. Army Corps of Engineers, Baltimore District  
Mr. Daniel Swenson – U.S. Army Corps of Engineers, Baltimore District  
Ms. Andrea Blosser – Pennsylvania Department of Environmental Protection, Southeast Region

# Exhibit A





Exhibit A prepared by:  
Rebecca Souto-Glyn, U.S. EPA,  
Region III on 12/11/2019.  
Graphics adapted from U.S. Army  
Corps of Engineers, Baltimore District.

Prepared for: U.S. EPA Order for  
Compliance on Consent,  
Docket No. CWA-03-2020-0049DW  
Re: Shawn Claar, William Penn Road  
Kimmel Township, Bedford County,  
Pennsylvania.

Google earth

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## Legend

-  Boiling Spring Run
-  approximate wetland boundary
-  approximate limit of fill
-  restoration area ~ 0.6 acres



BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103

_____) )	
Mr. Shawn Claar )	Proceeding Under Section
) )	309(a) of the Clean Water
Property Located At: )	Act, 33 U.S.C. § 1319(a)
) )	
11945 William Penn Road )	
Kimmel Township, Pennsylvania 16655 )	
Bedford County Parcel Tax ID )	
No. F.03-0.00-003 )	
) )	ORDER FOR COMPLIANCE ON
) )	CONSENT
) )	
Respondent _____) )	Docket No. CWA-03-2020-0049DW

### I. STATUTORY AUTHORITY

1. This Order for Compliance on Consent (“Order”) is issued under the authority vested in the United States Environmental Protection Agency (“EPA”) by Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a) (“CWA” or “Act”). The Administrator has delegated this authority to the Regional Administrator of EPA Region III who in turn has re-delegated it to the Director of the Enforcement and Compliance Assurance Division.

### II. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS, AND CONCLUSIONS OF LAW

2. Respondent is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
3. Respondent, Mr. Shawn Claar, is an operator of the property located at 11945 William Penn Road, Kimmel Township, Pennsylvania, Bedford County Parcel Tax ID No. F.0-0.00-003, 40.252583°N, -78.46287°W, (“Site”), identified on the attached “Exhibit A.”
4. The Site is owned by Mr. Jason Dodson of Altoona, Pennsylvania, who has granted Respondent past and continued access to the Site.

5. The Site is bisected by Boiling Spring Run, a perennial tributary of the navigable-in-fact Frankstown Branch Juniata River, which flows to the navigable-in-fact Juniata River, which flows to the traditionally navigable Susquehanna River and the Chesapeake Bay. Therefore, Boiling Spring Run and its abutting wetlands at the Site are "waters of the United States" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7); 40 C.F.R. § 232.2; 40 C.F.R. § 122.2.
6. Commencing on or about November 14, 2017, Respondent, or persons acting on behalf of Respondent, operated equipment which discharged dredged and/or fill material to waters of the United States at the Site, as described in Paragraph 3 above and depicted in Exhibit A attached hereto, without authorization from the U.S. Army Corps of Engineers ("Corps"). Respondent's unauthorized discharge of fill material at the Site converted approximately 0.60 acres of floodplain wetlands directly abutting Boiling Spring Run and approximately 25 linear feet of Boiling Spring Run streambanks into a parking and staging area for Respondent's logging and mobile home park operations.
7. 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 "placement of fill that is necessary for the construction of any structure or infrastructure in a water of the United States."
8. The equipment referenced in Paragraph 6 above, from which the dredged and/or fill material was discharged 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).
9. Section 301(a) of the Act, 33 U.S.C. §1311(a), prohibits any person from discharging dredged and/or fill material from a point source to "waters of the United States" except in compliance with a permit issued by the Corps under Section 404 of the Act, 33 U.S.C. § 1344.
10. At no time during the discharge of dredged and/or fill material into waters of the United States at 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.
11. 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, on this 8th day of April, 2020, 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:

12. Cease and desist all discharges to waters of the United States at the Site, as delineated in Exhibit A, without a permit, including discharges associated with filling, dumping, and grading activities.
13. Within sixty (60) days of the effective date of this Order, Respondent may submit a revised delineation of waters of the U.S. at the Site or provide Respondent's own delineation of waters using the 1987 Corps of Engineers Wetland Delineation Manual. EPA will notify the Respondent of their approval or disapproval of the revised delineation within thirty (30) days of receipt. If EPA disapproves of all or part of Respondent's delineation report, Respondent shall, within thirty (30) days of receipt of EPA's disapproval, correct the deficiencies and resubmit the delineation for approval.
14. Within ninety (90) days of the effective date of this Order, Respondent shall restore the Site to conditions which existed prior to the unauthorized discharge of fill material to waters of the United States, as delineated in Exhibit A or as revised, in compliance with the following provisions:
  - a. Remove the unauthorized fill material from within the boundary of jurisdictional waters as depicted in Exhibit A attached to this Order to the depth of pre-fill conditions at the Site.
  - b. Provide the EPA with a written schedule for the completion of restoration and site stabilization work at the Site within ten (10) days of the effective date of this Order.
  - c. Implement all required erosion and sediment control measures in compliance with City, County, and/or PADEP regulations at 25 Pa. Code Chapter 102, Erosion and Sediment Control, including a written and implemented Erosion and Sediment Control Plan or National Pollution Discharge Elimination System (NPDES) Permit, as required. Any seed mix used for erosion and sediment control within waters of the United States, as identified in Exhibit A, shall follow provisions in Paragraph 14.b. above.
  - d. Notify the EPA via email or phone when Site work is nearing completion so that EPA may schedule an inspection during the final fill removal stage. This is to ensure the appropriate finished grade is achieved.
  - e. Following written confirmation from the EPA that fill removal work is sufficiently complete, Respondent shall aerate the soil within the fill removal area and apply an appropriate wetland seed mix and straw mulch to the fill removal area. Wetland seed mix shall be approved by the EPA prior to application.
  - f. Dispose of all unauthorized fill material removed from the Site, including asphalt, clean fill, and solid waste, in an upland area and in accordance with waste management regulations.

- g. Provide the EPA with names and addresses of all off-site fill disposal locations to in writing upon completion of fill removal work. Respondent shall take clean fill that cannot remain at the Site to a location meeting the requirements of 25 Pa. Code Chapter 102, Erosion and Sediment Control. Respondent shall take asphalt removed from the Site to an asphalt recycling facility.
  - h. Within 30 days of completion of restoration activities, submit to the EPA a final report documenting: (1) total volume of fill material removed from the areas of the Site demarcated as waters of United States; and (2) the names and locations of all disposal site(s). This report may be submitted to the EPA via email or mail.
15. Respondent's failure to complete the above-described restoration activities in a manner consistent with this Order shall be deemed a violation of this Order.
16. All correspondence related to this Order shall be sent to:

Rebecca Souto-Glyn  
SDWA and Wetlands Section  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street, Mailcode: 3ED31  
Philadelphia, PA 19103-2029  
Email: glyn.rebecca@epa.gov  
Telephone: (215) 814-2795

#### IV. GENERAL PROVISIONS

17. The following certification must accompany each submission by Respondent pursuant to this Information Requirement and must be signed by Respondent or 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 under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, 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."*
18. 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.

19. Violation of the terms of this Order may result in further EPA enforcement action including, but not limited to, imposition of administrative penalties, pursuant to 33 U.S.C. § 1319(g) 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 \$53,484 per day for each day of 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).

#### **V. WAIVER OF JUDICIAL REVIEW**

20. 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.

#### **VI. EFFECTIVE DATE**

21. The effective date of this Order shall be the date of receipt of the executed document.

FOR THE RESPONDENT:

Date: 3/27/20

  
Mr. Shawn Claar, Respondent



FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date: 04/08/2020

**KAREN  
MELVIN**

Digitally signed by  
KAREN MELVIN  
Date: 2020.04.08  
07:41:56 -04'00'

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

**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 certified mail, return receipt requested:

Mr. Shawn Claar  
590 Ridge Road  
Imler, Pennsylvania 16655

\_\_\_\_\_  
Rebecca Souto-Glyn  
US EPA Region III

\_\_\_\_\_  
Date:

**CERTIFICATE OF SERVICE**

I certify that on 4/8/2020, the original and one (1) copy of the foregoing ***Administrative Order For Compliance on Consent***, EPA Docket No. CWA-03-2020-0049DW, was filed with the EPA Region III Regional Hearing Clerk. I further certify that on this date, I served a true and correct copy of the foregoing to the following persons, in the manner specified below, at the following addresses:

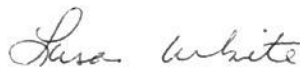
Copy served via **UPS, Signature Required, Postage Prepaid**, to:

Mr. Shawn Claar  
590 Ridge Road  
Imler, Pennsylvania 16655

with an electronic copy to:

Pamela J. Lazos, Senior Assistant Regional Counsel  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

Dated: 4/8/2020



\_\_\_\_\_  
Lisa White, Deputy Director  
Mission Support Division  
U.S. Environmental Protection Agency, Region III