

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

901 NORTH FIFTH STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF )  
)  
)  
**Kaw Valley Companies, Inc.,** )  
and )  
**Kaw Valley Sand and Gravel, Inc.,** )  
)  
Respondents. )  
)  
Proceedings under Section 309(g) of the )  
Clean Water Act, 33 U.S.C. § 1319(g) )  
\_\_\_\_\_ )

Docket No. CWA-07-2007-0019

**CONSENT AGREEMENT AND  
FINAL ORDER**

**PRELIMINARY STATEMENT**

The United States Environmental Protection Agency (EPA), Region VII (Complainant) and Kaw Valley Companies, Inc. and Kaw Valley Sand and Gravel, Inc. (jointly referred to as "Respondents") have agreed to a settlement of this action before the filing of a complaint, and 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, 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).

**ALLEGATIONS**

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA), 33 U.S.C. § 1319(g), and in accordance with 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.
2. This Complaint serves as notice that the United States Environmental Protection Agency (EPA) has reason to believe that Respondents have violated Sections 301 and 404 of the CWA, 33 U.S.C. § 1311 and § 1344, and regulations promulgated thereunder.

### Parties

3. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of EPA. The Administrator has delegated this authority to the Regional Administrator, EPA, Region VII, who in turn has delegated it to the Director of the Water, Wetlands and Pesticides Division of EPA, Region VII.

4. Respondent Kaw Valley Companies, Inc., is a corporation incorporated under the laws of Kansas and authorized to conduct business in the State of Kansas. Respondent Kaw Valley Sand and Gravel, Inc., is a corporation incorporated under the laws of Kansas and authorized to conduct business in the State of Kansas.

### Statutory and Regulatory Framework

5. Section 301 of the CWA, 33 U.S.C. § 1311, prohibits the discharge of “pollutants” by any “person” into “navigable waters” as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362, except in compliance with, *inter alia*, a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344.

6. Section 404 of the CWA, 33 U.S.C. § 1344, provides that pollutants may be discharged only in accordance with the terms of 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 (Corps), for any discharge of dredged or fill material into the navigable waters of the United States.

7. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, *inter alia*, dredged spoil, rock, sand and agricultural waste.

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,” which are defined at 40 C.F.R. § 232.2 and 33 C.F.R. Part 328.

9. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the commencement of an action for administrative penalties against any person who violates Section 301 of the CWA, 33 U.S.C. § 1311.

### General Allegations

10. Respondents are “persons” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

11. At all times relevant to this action, Respondents operated or otherwise controlled the property located in Sections 12 and 14, Township 11 south, Range 24 east, in Wyandotte County, Kansas, which is bounded by the Kansas River between River Miles 9.4-10.4 and 12.8-13.9 (hereinafter the Site).

12. On or about June 2005, Respondents and/or persons acting on Respondents' behalf, discharged dredged or fill material into the Kansas River at the Site. Respondents and/or persons acting on Respondents' behalf, using earth moving equipment, pushed fill material into the Kansas River.

13. The discharge and disposal of dredged and/or fill material into the Kansas River altered the bottom elevation and hydrology of the Kansas River and adversely impacted aquatic life.

14. The earth moving equipment, referenced in Paragraph 12 above, constitutes a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

15. The fill and/or dredged materials discharged and disposed of into the Kansas River at the Site included rock, sand and dirt, and are "pollutants" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

16. The discharge and disposal of the fill and/or dredged material into the Kansas River at the Site, as described in Paragraph 12 above, constitutes the "discharge of a pollutant" within the meaning of Section 501(12) of the CWA, 33 U.S.C. § 1362(12).

17. The Kansas River is a "water of the United States" within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), 40 C.F.R. § 232.2 and 33 C.F.R. Part 328.

18. The Corps conducted a Site Visit on June 28, 2005, and referred the matter to EPA by correspondence dated July 26, 2005.

#### Count 1: Unauthorized Discharge

19. The facts stated in paragraphs 1 through 18 above are herein incorporated.

20. The Respondents did not obtain a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, to perform the work described in paragraph 12 above, nor were Respondents performing the work described in paragraph 12 above under any prior permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344.

21. Respondents' discharge and disposal of pollutants from a point source into waters of the United States, as described above, occurred without a permit issued pursuant to Section 404

of the CWA, 33 U.S.C. § 1344, and, therefore, these discharges and disposals violated Section 301 of the CWA, 33 U.S.C. § 1311.

Relief

22. Based on the foregoing Findings of Violation, and pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA, Region VII hereby proposes to issue a Final Order assessing an administrative penalty against the Respondents for the violations cited above, in the amount of \$9,900.

**CONSENT AGREEMENT**

23. Respondents and EPA agree to the terms of this Consent Agreement and Final Order and Respondents agree to comply with the terms of this Consent Agreement and Final Order.

24. Respondents admit the jurisdictional allegations of this Consent Agreement and Final Order and agree not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement and Final Order.

25. Respondents neither admit nor deny the factual allegations set forth in this Consent Agreement and Final Order.

26. Respondents waive the right to a judicial or administrative hearing on any issue of fact or law set forth above, and waive the right to appeal this Consent Agreement and Final Order.

27. Respondents and Complainant agree to conciliate the matters set forth in this Consent Agreement and Final Order without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.

28. This Consent Agreement and Final Order addresses all civil and administrative claims for the CWA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

29. Nothing contained in this Consent Agreement and Final Order shall alter or otherwise affect Respondents' obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

30. The undersigned representative for each Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.

31. Respondents certify by the signing of this Consent Agreement and Final Order that they are in compliance with the requirements of Sections 301 and 404 of the CWA, 33 U.S.C. §§ 1311 and 1344.

32. The effect of settlement described in paragraph 28 above of this Consent Agreement is conditional upon the accuracy of the Respondents' representations to EPA, as memorialized in paragraph 31 above, of this Consent Agreement and Final Order.

33. Respondents agree that, in settlement of the claims alleged in this Consent Agreement and Final Order, Respondents shall pay a penalty of \$9,900 as set forth in paragraph 1 of the Final Order.

34. Respondents understand that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

## **FINAL ORDER**

### Payment Procedures

Pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and according to terms of this Consent Agreement and Final Order, IT IS HEREBY ORDERED THAT:

1. Respondents shall pay a civil penalty of Nine Thousand Nine Hundred Dollars (\$9,900) within thirty (30) days of the effective date of this Final Order.

2. Payment of the penalty shall be by cashier or certified check made payable to the "United States Treasury" and remitted to:

U.S. Environmental Protection Agency Region VII  
P.O. Box 371099M  
Pittsburgh, Pennsylvania 15251.

The payment shall identify the Respondents by name and docket number (CWA-07-2007-0019). Copies of the check shall be mailed to:

Kathy Robinson  
Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region VII  
901 North 5th Street  
Kansas City, Kansas 66101

and

Kristi J. Denney  
Assistant Regional Counsel  
U.S. Environmental Protection Agency - Region VII  
901 North 5th Street  
Kansas City, Kansas 66101.

3. No portion of the civil penalty or interest paid by Respondents pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondents as a deduction for federal, state, or local income tax purposes.

Parties Bound

4. This Final Order portion of this Consent Agreement and Final Order shall apply to and be binding upon Respondents and Respondents' agents, successors and/or assigns. Respondents shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondents with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

General Provisions

5. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of the Final Order portion of this Consent Agreement and Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, and to seek penalties against Respondents or to seek any other remedy allowed by law.

6. With respect to matters not addressed in this Final Order, 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.

7. This Order shall be entered and become effective only after the conclusion of the period of public notice and comment required pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45.

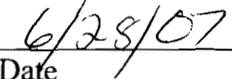
8. Respondents and Complainant shall bear their respective costs and attorney's fees.

9. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

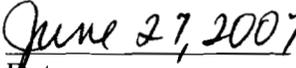
**For the Complainant:**

The United States Environmental Protection Agency

  
\_\_\_\_\_  
William a. Spratin  
Director  
Water, Wetlands and Pesticides Division

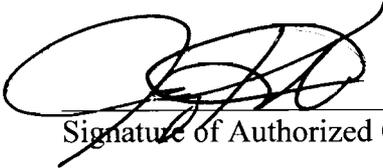
  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Audrey B. Asher  
Senior Assistant Regional Counsel

  
\_\_\_\_\_  
Date

**For the Respondents:**

**Kaw Valley Companies, Inc.**

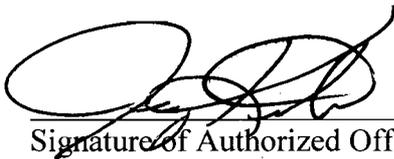
  
\_\_\_\_\_  
Signature of Authorized Official

3-13-07  
Date

JOEY KATES  
Printed Name

VICE PRESIDENT  
Title

**Kaw Valley Sand and Gravel, Inc.**

  
\_\_\_\_\_  
Signature of Authorized Official

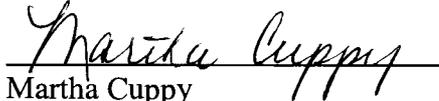
3-13-07  
Date

JOEY KATES  
Printed Name

VICE PRESIDENT  
Title

IN THE MATTER of Kaw Valley Companies, Inc., and Kaw Valley Sand and Gravel, Inc.  
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IT IS SO ORDERED. This Order shall become effective immediately.

  
\_\_\_\_\_  
Martha Cuppy  
Acting Regional Administrator  
U.S. Environmental Protection Agency  
Region VII

\_\_\_\_\_  
6/29/07  
Date

IN THE MATTER OF Kaw Valley Companies, Inc., and Kaw Valley Sand and Gravel, Inc.,  
Respondents  
Docket No. CWA-07-2007-0020

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to:

Audrey B. Asher  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 7  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

David R. Erickson  
Counsel for Kaw Valley  
Shook, Hardy & Bacon LLP  
2555 Grand Boulevard  
Kansas City, Missouri 64108-2613

6/29/07  
Dated

  
Kathy Robinson  
Kathy Robinson  
Hearing Clerk, Region 7