

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

FILED

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REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of:

Ward 2 Water District

Respondent

§
§ Docket No. CWA 06-2012-2725
§
§ Proceeding Under Sections 308 and 309(a)
§ of the Clean Water Act
§

ADMINISTRATIVE ORDER ON CONSENT AND INFORMATION DEMAND

I. AUTHORITY

1. The following findings of fact and conclusions of law are made and order issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Sections 308 and 309(a) of the Clean Water Act ("the Act"), 33 U.S.C. §§ 1318 and 1319(a). The Administrator has delegated the authority to issue this Order on Consent to the Regional Administrator, EPA Region 6, who has further delegated such authority to the Director of the Water Quality Protection Division, EPA Region 6.

II. INTENT OF THE PARTIES

2. The Acting Director of the Water Quality Protection Division, EPA Region 6, on behalf of the Administrator of the EPA, together with Mr. Preston Killcrease, Manager, enter into this Section 309(a)(3) Compliance Order on Consent in order to carry out the goals of the Act, 33 U.S.C. § 1251 *et seq.*, to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters."

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

3. Ward 2 Water District ("Respondent"), is a "person", as defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5).

4. At all times relevant to the violations alleged herein, Respondent owned real property located north of Springfield Road (LA Hwy 1019), west of West Fork Beaver Creek, Tract A-1-A, Sections 49, 30, & 31, Township 5 South, Range 3 East, in Livingston Parish, Louisiana ("subject property").

5. On multiple dates between approximately April 2008 and approximately August 2010, Respondent discharged, caused the discharge, directed the discharge, and/or agreed with other persons or business entities, to "discharge dredged material" and/or "discharge fill material," as defined by Section 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 232.2 from point sources, including heavy equipment, in, on and to approximately 2.5 acres of pine/oak flat wetlands within the subject property in connection with expansion of its existing facility. The impacted wetlands were adjacent to, hydrologically connected to, or had a significant nexus to, a navigable-in-fact body of water.

6. Each piece of heavy equipment used during excavation or construction activities which resulted in a discharge acted as a "point source", as defined by Section 502(14) of the Act, 33 U.S.C. § 1362(14).

7. The discharged dredged and fill material is considered a "pollutant", as defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6).

8. At all times relevant to the violations alleged herein, the 2.5 acres of wetlands referred to in paragraph 5 supra, were "navigable waters", as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 232.2.

9. At all times relevant to the violations alleged herein, Section 301(a) of the Act, 33 U.S.C. § 1311(a), provides that it is unlawful for any person to discharge a pollutant from a point source to waters of the United States, except with authorization of and in compliance with a

permit issued under the Act.

10. At all times relevant to the violations alleged herein, Section 404 of the Act, 33 U.S.C. § 1344, authorized the Secretary of the Army, acting through the Chief of Engineers for the U.S. Army Corps of Engineers ("COE"), to issue permits for the discharge of dredged or fill material into navigable waters of the United States.

11. At no time relevant to the discharges alleged in paragraph 5, supra, did Respondent have a permit issued by the COE which authorized the discharges alleged in paragraph 5.

12. Each unauthorized discharge was a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

13. Based on these Findings of Fact and Conclusions of Law, EPA finds that Respondent committed the violations alleged herein.

IV. SECTION 309(a)(3) COMPLIANCE ORDER

14. Based on the foregoing Findings of Fact and Conclusions of Law, and pursuant to the authority vested in Section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3), EPA ORDERS AND RESPONDENT AGREES TO:

a. immediately cease any discharge of dredged and/or fill material to waters of the United States; and

b. within 30 days of Respondent's receipt of this Order, Respondent shall submit an application to the COE for an after-the-fact ("ATF") permit issued under Section 404 of the Act for the unauthorized discharges alleged herein. If Respondent fails to obtain an ATF permit for any reason, Respondent shall restore the impacted wetlands within 45 days following the COE's notice to EPA that Respondent failed to submit a permit application within 30 days of Respondent's receipt of this Order on Consent, or that Respondent's permit application has been

denied or returned to Respondent by the COE without final action.

V. SECTION 308 INFORMATION DEMAND

15. Based on the foregoing Findings and pursuant to the authority of Section 308 of the Act, 33 U.S.C. § 1318, Respondent is required to do the following:

a. if Respondent elects to retain the fill material in place, Respondent must submit a mitigation plan to EPA for the loss of and/or damage to 2.5 acres of directly impacted wetlands within 30 days of Respondent's receipt of this Order on Consent. The plan should be submitted to Ms. Tamara Mick, (6WQ-EM), EPA Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

b. if Respondent elects to restore the impacted land, Respondent must submit a plan to the EPA for restoration of the 2.5 acres of impacted wetlands. The plan should include the removal of all unauthorized fill and the planting of replacement wetland vegetation. The plan should be submitted to Ms. Tamara Mick, (6WQ-EM), EPA Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

VI. GENERAL PROVISIONS

16. Issuance of this Section 309(a)(3) Order on Consent and the Section 308 Information Demand shall not be deemed an election by EPA to forego any administrative action or judicial civil or criminal action to seek penalties, fines, or other relief under the Act for the violations alleged herein, or other violations that become known to EPA. EPA reserves the right to seek any remedy available under the law that it deems appropriate.

17. Respondent acknowledges the jurisdiction of EPA to issue the Section 309(a)(3) Order on Consent and Section 308 Information Demand.

18. Respondent waives any and all claims for relief and otherwise available rights or

remedies to judicial or administrative review which the Respondent may have with respect to any issue of fact or law set forth in this Order on Consent, including, but not limited to, any right of judicial review of the Section 309(a)(3) Order on Consent under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.

19. If EPA issues an administrative complaint, or a civil judicial action is initiated by the U.S. Department of Justice, Respondent may be ordered to pay a monetary penalty. If a criminal judicial action is initiated by the U.S. Department of Justice, Respondent may be subject to a monetary fine and/or imprisonment.

20. Failure to comply with this Order on Consent can result in civil penalties of up to \$37,500 per day of violation. The actual determination of the amount of any penalty will be made by the relevant United States District Court after considering the seriousness of Respondent's violations, Respondent's economic benefit (if any) resulting from the violations, any history Respondent may have of such violations, any good faith efforts Respondent has made to comply with legal requirements, the economic impact a penalty may have upon the Respondent, and such other matters as justice may require.

21. Failure to comply with the requirements of the Section 308 Information Demand may result in Respondent's liability for civil penalties for each violation of up to \$37,500 per day under Section 309(d) of the Act, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Upon suit by EPA, the relevant United States District Court may impose such penalties if the court determines that Respondent has failed to comply with the terms of the Information Demand. As noted above, in determining the amount of any penalty the court will consider the seriousness of Respondent's violations, Respondent's economic benefit (if any) resulting from the violations, any history Respondent may have of such violations, any good faith efforts Respondent has made

to comply with legal requirements, the economic impact a penalty may have upon the Respondent, and such other matters as justice may require. The Respondent may also be subject to administrative remedies for a failure to comply with the Information Demand as provided by Section 309 of the Clean Water Act, 33 U.S.C. § 1319.


22. Respondent reserves the right to contest liability in any subsequent action filed by EPA to seek penalties for violation of this Order on Consent or Information Demand, and reserves the right to contest liability in any subsequent action filed by EPA for any violations alleged in the Findings above.

23. Compliance with the terms and conditions of this Order on Consent does not relieve Respondent of its obligation to comply with all applicable local, state, and federal law.

24. The effective date of this Order on Consent is the date it is signed and returned by Respondent.

Dated this 30th day of July 2012

Signed:  _____

 William K. Honker, P.E.
Acting Director
Water Quality Protection Division

Signed:  _____

Preston Killcrease
Manager
Ward 2 Water District

CERTIFICATE OF SERVICE

I certify that the original of the foregoing Administrative Order on Consent was hand-delivered to and filed with the **Regional Hearing Clerk**, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and a true and correct copy was sent to the following on this 30th day of July, 2012, in the following manner:

Via Certified, First Class Mail

Mr. Preston Killcrease
Ward 2 Water District
P.O. Box 637
Denham Springs, Louisiana 70727-0637