

Parties

3. Complainant, by delegation from the Administrator of EPA to the Regional Administrator, EPA, Region 7, and re-delegation to the Director of Region 7's Water, Wetlands and Pesticides Division.

4. Respondent Theodore Brown owns property north of West Kelley Street and east of Buford Boulevard near Section 6, Township 33 north, Range 7 east, Madison County, Missouri.

Statutory and Regulatory Framework

5. 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.

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

7. 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 the "navigable waters" of the United States.

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, and which include wetlands adjacent to waters of the United States.

9. 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.

Factual Background

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

11. At all times relevant to this action, Respondent owned, operated, or otherwise controlled property north of West Kelley Street and east of Buford Boulevard near Section 6, Township 33 north, Range 7 east, Madison County, Missouri (hereinafter "the Site").

12. Between 2007 and 2009, Respondent and/or persons acting on his behalf and using earth moving equipment, discharged dredged or fill material including, but not limited to, spoil, rock, sand, biological material and dirt, into wetlands adjacent to Saline Creek.

13. On February 10, 2009, the Corps inspected the Site and documented the discharges of fill material described in Paragraph 12.

14. On March 17, 2009, officials from EPA and the Corps conducted a site visit at the Site and documented the discharge of fill material as described in Paragraph 12.

15. The discharge and disposal of fill material in wetlands adjacent to Saline Creek has impacted approximately .56 acres of wetlands.

16. The fill materials discharged by Respondent into wetlands adjacent to Saline Creek include spoil, rock, sand, biological material and dirt, which are "pollutants" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

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

18. The discharge of fill material into wetlands adjacent to Saline Creek, described in Paragraph 12, constitutes the "discharge of a pollutant" within the meaning of Section 501(12) of the CWA, 33 U.S.C. § 1362(12).

19. Saline Creek and adjacent wetlands are "waters 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.

20. Respondent's discharge of pollutants from a point source into waters of the United States was performed without a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, and therefore these discharges violated Section 301 of the CWA, 33 U.S.C. § 1311.

FINDINGS OF VIOLATION

21. The facts stated in Paragraphs 10 through 20 above are herein incorporated.

22. Respondent did not obtain a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, prior to the performance of the work described herein, nor was the Respondent performing the work described herein under any prior permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344.

23. Respondent's 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.

CONSENT AGREEMENT

24. Respondent admits the jurisdictional allegations of this CA/FO and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.

25. Respondent admits the factual allegations contained in this CA/FO.

26. Respondent waives any right to contest the allegations and his right to appeal the proposed Final Order accompanying this Consent Agreement.

27. Respondent and Complainant each agree to bear their own costs and attorney's fees.

28. Nothing contained in the Final Order shall alter or otherwise affect Respondent's obligations to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

29. The undersigned representative of Respondent certifies that he is fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondent to it.

30. EPA has considered the appropriateness of the penalty pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and has determined that the appropriate penalty for the violations set forth in the Complaint is \$18,000. However, Respondent has demonstrated an inability to pay any penalty in this matter. Therefore, Complainant agrees to resolve the claims alleged in the Complaint for zero dollars.

31. Respondent certifies by the signing of this CA/FO that it is in compliance with all requirements of Sections 301 and 404 of the CWA, and all regulations promulgated thereunder; and that Respondent agrees to continue to comply with the CWA.

32. The effect of settlement is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 31 above, of this CA/FO.

Reservation of Rights

33. With respect to matters not addressed in this CA/FO, 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.

In the Matter of:
Theodore Brown
d/b/a Brown's Tree Service
Consent Agreement and Final Order
Docket No. CWA-07-2010-0079

Parties Bound


34. This Final 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 CA/FO.

Effective Date

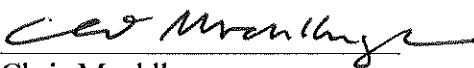
35. This Final Order shall become effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this Final Order.

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COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY


William A. Spratlin
Director
Water, Wetlands and Pesticides Division

7-27-10
Date


Chris Muehlberger
Assistant Regional Counsel

7.27.10
Date

In the Matter of:
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RESPONDENT:
THEODORE BROWN (d/b/a Brown's Tree Service)

7/20/10
Date

Theodore Brown
Signature

Theodore Brown, owner
Name/Title

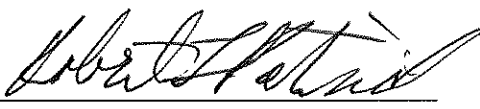
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FINAL ORDER

The foregoing Consent Agreement is hereby approved and ratified pursuant to 40 C.F.R. § 22.18(b)(3).

IT IS SO ORDERED.

September 22, 2010
Date


Robert L. Patrick
Regional Judicial Officer

IN THE MATTER OF Theodore Brown d/b/a Brown's Tree Service, Respondent
Docket No. CWA-07-2010-0079

CERTIFICATE OF SERVICE

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

Copy hand delivered to
Attorney for Complainant:

Chris Muehlberger
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Theodore Brown
d/b/a Brown's Tree Service
419 Collier Street
Fredericktown, Missouri 63645

Dated: 9/22/10



Kathy Robinson
Kathy Robinson
Hearing Clerk, Region 7