

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

901 N. 5TH STREET

KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:)
)
MERUS PROPERTIES)
)
Respondent) Docket No. CWA-07-2004-0223
)
)
Proceedings under)
Section 309(a)(3))
of the Clean Water Act)
33 U.S.C. § 1319(a)(3))
_____)

A. FINDINGS OF VIOLATION

Preliminary Statement

1. The following Findings of Violation 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). This authority has been delegated by the Administrator to the Regional Administrator, EPA Region VII and redelegated to the Director of Region VII's Water, Wetlands, and Pesticides Division.
2. The Respondent in this case is Merus Properties, LLC (Respondent), a company organized and registered to do business in the state of Missouri, and located at 13588 Northwest Industrial Drive, Bridgeton, Missouri 63044. Merus Properties' registered agent for service is Russell Smith, located at the same address.
3. The Findings of Violations and Order for Compliance address discharges of pollutants by Respondent Merus Properties, into the waters of the United States, without the permits required by law. Specifically, Section 301 of the CWA, 33 U.S.C. § 1311, provides that except as in compliance with certain specified provisions of the CWA, the unauthorized discharge of any pollutant into the waters of the United States by any person is unlawful. Pursuant to Section 502(6) of the CWA, 33 U.S.C. § 1362(6), "pollutants" include fill materials such as "dredged spoil..., rock, sand, [and] cellar dirt." Section 404 of the CWA, 33 U.S.C. § 1344, specifically requires a person to obtain a permit from the United States Army Corps of Engineers for any discharge of "dredged or fill material" into the "navigable waters" of the United States. 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.

Specific Findings

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

5. In October 1999, Respondent initiated the permit process to fill 1.66 acres of jurisdictional farmed wetlands in conjunction with the construction of a project known as “Northwest Industrial V” project. This project was located in the 500-year flood plain of the Missouri River, on lots N-2 and O of Northwest Industrial Subdivision V in U.S. Survey 2038, Township 47 North, Range 5 East, St. Louis County, Missouri.

6. Following discussions and submission of comments obtained during the notice and comment period, a draft permit was finalized. This draft permit required mitigation to compensate for the impacts on the 1.66 acres of farmed wetlands. This mitigation called for the creation of 1.66 acres of emergent wetland on Bonhomme Island, St. Charles County, Missouri.

7. On May 7, 2002, the United States Army Corps of Engineers (Corps) sent Respondent two copies of the proposed permit. The proposed permit was to be final following acceptance of the terms contained therein, as documented by a signature by Respondent and return of the permit.

8. On March 25, 2003, the Corps sent Respondent a letter to notify Respondent that the proposed permit had not been signed and returned as required and, as such, the Corps could not issue final permit authorization. Further, the letter stated that if the proposed permit was not signed and returned by May 7, 2003, the proposed permit would be withdrawn.

9. On June 4, 2003, a site visit by the Corps verified that wetland impacts had already occurred without permit authorization by the discharge of dredge and/or fill material into “waters of the United States” through grading, excavating, and filling activities by earth moving machinery in 1.66 acres of jurisdictional farmed wetlands (hereafter “discharge sites”).

10. The earth moving machinery described in Paragraph A.9, above, constitutes a “point source” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

11. The dredged and/or fill materials described in Paragraph A.9, above, and discharged by Respondent into the farmed wetlands are “pollutants” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

12. At the time of the Respondent's discharge of pollutants, as described above, the discharge sites were "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.

13. The discharge of the dredged and/or fill material into the waters of the United States described in Paragraph A.9, above, constitutes the "discharge of a pollutant" within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

14. Respondent's discharges of pollutants from a point source into a water of the United States were 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.

15. On July 14, 2003, Respondent was issued a Cease and Desist Order by the Corps. The Order informed Respondent of its violations of the CWA and directed Respondent to stop work at the site until proper authorization is granted.

B. ORDER FOR COMPLIANCE

Based on the Findings of Violations set forth above and, pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), Respondent is hereby ORDERED as follows:

1. Within fifteen (15) days after receipt of this Order, Respondent shall notify EPA in writing whether it intends to comply with the terms of this Order. In the event Respondent states that it does not intend to comply with the terms of this Order and/or fails to comply with the terms of the Order, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, EPA may seek judicial enforcement of the terms of the Order and/or seek penalties for such noncompliance.

Mitigation

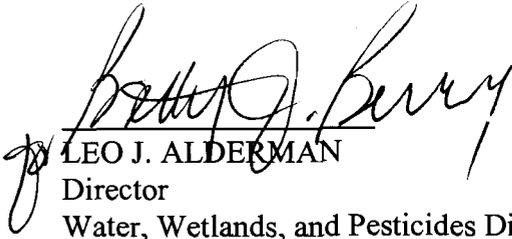
2. Respondent shall perform the mitigation of the impact of the unpermitted discharges by the design and creation of 2.0 acres of emergent wetlands (mitigation site). The required mitigation shall be performed on property owned by the Bonhomme Island Mitigation Company, located in St. Charles County, Missouri. This mitigation may be initiated by contacting:

Mr. Mark Thompson
Hanson Professional Services
4749 Lincoln Drive, Suite 401
Matteson, IL 60443
Phone: (708) 679-1395 ext. 104

Within thirty (30) days of Respondent's receipt of this Order, Respondent shall submit a proposed Mitigation Workplan to the following EPA and Corps contacts:

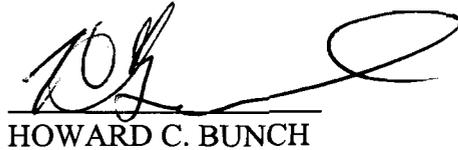
Effective Date

9. This Order shall be effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated from the date of Respondent's receipt of the Order.


LEO J. ALDERMAN
Director

Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency - Region VII

06/22/04
DATE


HOWARD C. BUNCH
Sr. Assistant Regional Counsel

Office of Regional Counsel
U.S. Environmental Protection Agency - Region VII

06/23/04
DATE

CERTIFICATE OF SERVICE

I certify that on the date noted below I mailed the foregoing Findings of Violation and Order for Compliance by certified mail, return receipt requested, to:

Russell J. Smith, Registered Agent for Service
Merus Properties
13588 Northwest Industrial Drive
Bridgeton, Missouri 63044

Date

6/24/4

Delly White