

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY 00 575 12: 52
 REGION 7
 901 NORTH 5TH STREET
 KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION
 AGENCY-REGION VII
 REGIONAL HEARING CLERK

IN THE MATTER OF:)	
)	
)	Docket No. CWA-07-2009-0017
Louis Clark, Robert Servaes, Randy Servaes, and Todd Servaes)	
)	
Respondents)	FINDINGS OF VIOLATION, ORDER FOR COMPLIANCE
)	
Proceedings under Section 309(a)(3) of the Clean Water Act, 33 U.S.C. § 1319(a)(3))	
)	

Preliminary Statement

1. The following Findings of Violation are made 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). The authority to take action under Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), is vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”). The Administrator has delegated this authority to the Regional Administrator, EPA, Region 7, who in turn has delegated it to the Director of the Water, Wetlands and Pesticides Division of EPA, Region 7.

2. Respondents in this case are Louis Clark, Robert Servaes, Randy Servaes, and Todd Servaes (“Respondents”). Mr. Clark owns property adjacent to Brush Creek, near the Missouri River at Section 26, Township 4 South, Range 21 East in Doniphan County, Kansas.

Statutory and Regulatory Framework

3. 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.

4. 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.

5. 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.

6. 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 interstate waters and "intrastate lakes, rivers, streams, and ... wetlands."

7. 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

8. Respondents are each a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

9. At all times relevant to this action, Respondents owned, operated or otherwise controlled the property located at Section 26, Township 4 South, Range 21 East in Doniphan County, Kansas ("the Property") adjacent to Brush Creek, near the Missouri River.

10. At various times between approximately 2003 and March 2004, Respondents and/or persons acting on their behalf, using earth moving equipment, discharged dredged or fill material including dirt, spoil, rock, and sand, at the Property into an area in and adjacent to Brush Creek near the confluence of the Missouri River in Doniphan County, Kansas. These actions altered the flow of Brush Creek for a distance of approximately 1,200 feet.

11. The discharge and disposal of dredged and/or fill material at the Property has altered the natural flow of Brush Creek.

12. The dredged and/or fill materials discharged by Respondents into Brush Creek, includes spoil, rock, sand, and dirt and are "pollutants" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

13. The earth moving equipment referenced in Paragraph 10 above, constitutes a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

14. The discharge of the dredged and/or fill material into Brush Creek, Missouri at the Property, described in Paragraph 10 above, constitutes the "discharge of a pollutant" within the meaning of Section 501(12) of the CWA, 33 U.S.C. § 1362(12).

15. Brush Creek flows into the Missouri River, and both 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.

16. 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

17. The facts stated in Paragraphs 8 through 16 above are herein incorporated.

18. Respondents 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 were Respondents performing the work described herein under any prior permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344.

19. 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.

ORDER FOR COMPLIANCE

Based on the Findings of Fact and Findings of Violation set forth above and, pursuant to the authority of Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), Respondents are hereby ORDERED as follows:

20. Within thirty (30) days after receipt of this Order, Respondents shall submit a Work Plan to EPA for review and approval that shall describe Respondents' proposed mitigation actions, including: (1) a proposal of the work required to restore the flow of approximately 1,200 feet of Brush Creek that was impacted by the discharge, and (2) a provision for the protection of land to be described in Respondents' Work Plan.

21. Respondent, Louis Clark, shall grant access for mitigation activities to Robert Servaes, Randy Servaes, or Todd Servaes within five days of receipt of a written request for access from them or their agents.

22. Once approved by EPA, the Work Plan identified in Paragraph 20 shall be incorporated by reference and fully enforceable under the terms of this Order for Compliance and shall be completed within six months of EPA's approval of the Work Plan in accordance with the specifications set forth in the Work Plan.

23. Once the work identified in Paragraph 20 has been completed, Respondents shall submit photographic evidence, copies of relevant documents and a signed statement indicating that the work is complete.

24. The submission of documents by Respondents, as identified in Paragraphs 21 and 22 shall include the following written statement, followed by Respondents' signature:

I certify under penalty of law that 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.

25. In the event Respondents fail 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 against Respondents and/or seek additional penalties against Respondents for such noncompliance with the terms of the Order.

26. All documents to be submitted to EPA under this Order shall be submitted by mail to the following individuals:

Delia Garcia, PhD.
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency, Region 7
901 North Fifth Street
Kansas City, Kansas 66101

and

Denise L. Roberts
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 7
901 North Fifth Street
Kansas City, Kansas 66101.

General Provisions

Effect of Compliance with the terms of this Order

27. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondents of their responsibility to obtain any required local, state and/or federal permits.

28. This Order does not constitute a waiver or a modification of any requirements of the CWA, 33 U.S.C. § 1251 et seq., all of which remain in full force and effect. EPA retains the right to seek any and all remedies available under Section 309 of the CWA, 33 U.S.C. § 1319, for any violation cited in this Order. Issuance of this Order shall not be deemed an election by EPA to forgo any civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA for any violation whatsoever.

Access and Requests for Information

29. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect property operated by Respondents and/or to request additional information from Respondents,

pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318, and/or any other authority.

Severability

30. If any provision or authority of this Order, or the application of this Order to Respondents, is held by federal judicial authority to be invalid, the application to Respondents of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

Parties Bound

31. This Order shall apply to and be binding upon Respondents, their agents, successors, and assigns. Respondents shall ensure that any directors, officers, employees, contractors, consultants, firms, or other persons or entities acting under or for him with respect to matters included herein comply with the terms of this Order.

Effective Date

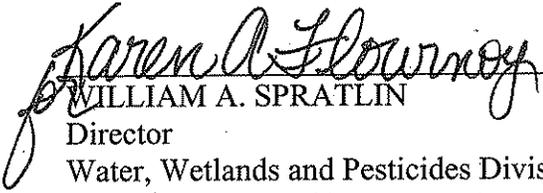
32. The terms of this Order shall be effective and enforceable against Respondents upon the date of his receipt of an executed copy of the Order.

Termination

33. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of EPA. Such notice shall not be given until all of the requirements of this Order have been met.

Compliance Order

In the Matter of Louis Clark, Robert Servaes, Randy Servaes, and Todd Servaes,
Docket No. CWA-07-2009-0017

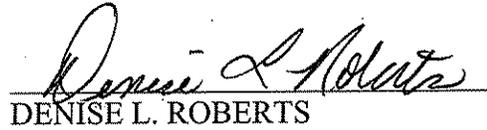

WILLIAM A. SPRATLIN

Director

Water, Wetlands and Pesticides Division

U.S. Environmental Protection Agency - Region 7

2-11-09
DATE


DENISE L. ROBERTS

Senior Assistant Regional Counsel

Office of Regional Counsel

U.S. Environmental Protection Agency - Region 7

2-11-09
DATE

Compliance Order

In the Matter of Louis Clark, Robert Servaes, Randy Servaes, and Todd Servaes,
Docket No. CWA-07-2009-0017

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:

Louis Clark
438 Monument Road
Wathena, Kansas 66090

Robert Servaes
8607 Old North Road
Rushville, Missouri 64484

Randy Servaes
P.O. Box 103
Atchison, Kansas 66002

Todd Servaes
8220 S.W. State Highway 116
Rushville, Missouri 64484.

FEB 11 2009

Date

Kimberly J. J. J.
