

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)

WENDELL CURTMAN)
Respondent)

Proceedings under Section 309(g) of the)
Clean Water Act, 33 U.S.C. § 1319(g))

) Docket No.CWA-07-2009-0065

) CONSENT AGREEMENT/
) FINAL ORDER

INTRODUCTION

The United States Environmental Protection Agency, Region VII (“EPA”) and Wendell Curtman (“Respondent”) 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 and Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. § 22.13(b), 40 C.F.R. § 22.18 (b)(2), and in accordance with Subpart I of the Consolidated Rules (Administrative Proceedings Not Governed by Section 554 of the Administrative Procedures Act).

COMPLAINT

Jurisdiction

1. This Consent Agreement/Final Order (“CA/FO”) is being filed under the authority vested in the Administrator of EPA, pursuant to Section 309 (g) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319 (g) and in accordance with the Consolidated Rules (Administrative Proceedings Not Governed by Section 554 of the Administrative Procedures Act), 40 C.F.R. Part 22, Subpart I.

2. This CA/FO alleges that Respondent discharged pollutants into the waters of the United States in violation of Sections 301 and 404 of the CWA, 33 U.S.C. §§ 1311 and 1344.

Parties

3. Complainant, by delegation from the Administrator of EPA to the Regional Administrator, EPA Region VII, has been further re-delegated to the Director of Region VII’s Water, Wetlands and Pesticides Division.

4. Respondent, Wendell Curtman, is the owner of property located in Section 31, Township 41 North, Range 4 West, Gasconade County, Missouri that abuts a portion of Red Oak Creek. Mr. Curtman has a mailing address of 1948 Highway 28, Owensville, Missouri 65066.

Statutory and Regulatory Framework

5. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants, by any person except in compliance with, inter alia, Section 404 of the CWA, 33 U.S.C. § 1344. Section 404 of the CWA provides that pollutants may be

discharged only in accordance with the terms of a permit for the discharge of dredged or fill material.

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.

Factual Background

7. Between October 2006 and February 2007, Respondent or one acting on his behalf, performed excavation activities with earth moving equipment in a portion of Red Oak Creek located in Gasconade County, Missouri at the southern ½ of Section 31, Township 42 North, Range 04 West. In performing these excavation activities, Respondent relocated approximately 10,000 cubic yards of dredged spoil onto the banks of Red Oak Creek below the Ordinary High Water Mark (“OHWM”). Three riprap revetments were installed at the end of the unauthorized channel work below the OHWM.

8. Between February 2007 and April 2009, Respondent or one acting on his behalf, using earth moving equipment, discharged rock below the OHWM in a portion of Red Oak Creek adjacent to Pump Station Road in Gasconade County at the southern ½ of Section 31, Township 42 North, Range 04 West.

9. Conditions existing on Respondent’s property described herein include four catch basins and a wing of a catch basin which Respondent may maintain.

10. The earth moving equipment referenced in Paragraphs 7 and 8 above, acted as a “point source” within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

11. The dredged spoil referenced in Paragraph 7 and the rocks referenced in Paragraph 8 above are “pollutants” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

12. The deposition of dredged spoil and rock into a water of the United States, as described in Paragraphs 7 and 8 above, constitutes the “discharge of pollutants” within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

13. Red Oak Creek is a perennial stream which flows into the Bourbeuse River, which flows into the Meramac River which flows into the Mississippi River. Red Oak Creek is a navigable water within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7) and is a water of the United States as defined by 40 C.F.R. § 232.2 and 33 C.F.R. § 328.3.

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

15. 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 this discharge violated Section 301 of the CWA, 33 U.S.C. § 1311.

CONSENT AGREEMENT

16. Respondent and EPA agree to the terms of this Consent Agreement/Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement/Final Order.

17. Respondent admits the jurisdictional allegations of this Consent Agreement/Final Order and agrees not to contest the EPA’s jurisdiction in this

proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this Consent Agreement/Final Order.

18. Respondent neither admits nor denies the factual allegations and the legal conclusions of this Consent Agreement/Final Order.

19. Respondent waives his rights to a judicial or administrative hearing on any issue of fact or law set forth in this Consent Agreement.

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

21. Respondent and Complainant agree to bear their own costs and attorneys' fees.

22. Respondent agrees, in settlement of the claim alleged in this Consent Agreement/Final Order, to a penalty amount of \$6,800.

Reservation of Rights

23. EPA reserves the right to enforce the terms of this CA/FO by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

24. With respect to matters not addressed in the Factual Background of 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.

FINAL ORDER

IT IS HEREBY AGREED BY THE PARTIES, and pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319, it is ORDERED that:

1. Respondent shall pay a civil penalty of Six Thousand Eight Hundred Dollars (\$6800). Said penalty shall be paid in full within thirty (30) days following receipt by Respondent of a fully executed copy of this CA/FO. Respondent shall pay the penalty by cashier or certified check made payable to "United States Treasury" and remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Respondent shall reference the name of the case, *In the Matter of Wendell Curtman*, EPA Docket No. CWA-07-2009-0065 on the check. A copy of the check shall also be mailed to:

Audrey Asher, Esq.
Office of Regional Counsel
EPA - Region VII
901 North 5th Street
Kansas City, Kansas 66101

Kathy Robinson
Regional Hearing Clerk
EPA - Region VII
901 North 5th Street
Kansas City, Kansas 66101

Should the civil penalty not be paid as provided above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

2. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CA/FO shall be claimed by Respondent as a deduction for Federal, state, or local income tax purposes.

3. This CA/FO addresses all civil administrative claims for the CWA violations identified above. EPA reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law and to enforce the terms and conditions of this CA/FO.

Parties Bound

4. This Final Order shall apply to and be binding upon Respondent and his agents, heirs, successors, and assigns.

Effective Date

5. This Final 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), 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45. The Effective Date shall be the date this Final Order is signed by the Regional Judicial Officer.

Termination Date

6. This Final Order will terminate upon EPA's written notice to Respondent after receipt of full payment of penalty.

Respondent Wendell Curtman

7/14/09
Date

Wendell Curtman
Wendell Curtman

For the United States Environmental Protection Agency – Region VII

7-21-09
Date

Karen A. Hourney
William A. Spratlin, Director
Water, Wetlands, and Pesticides Division
U. S. Environmental Protection Agency Region VII

7/17/09
Date

Audrey B. Asher
Audrey B. Asher
Senior Counsel
U. S. Environmental Protection Agency Region VII

IT IS SO ORDERED.

September 1, 2009
Date

Robert L. Patrick
Robert L. Patrick, Esq.
Regional Judicial Officer

IN THE MATTER OF Wendell Curtman, Respondent
Docket No. CWA-07-2009-0065

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:

Audrey B. Asher
Senior Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Wendell Curtman
1948 Highway 28
Owensville, Missouri 65066

Dated: 9/1/09



Kathy Robinson
Hearing Clerk, Region 7