

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

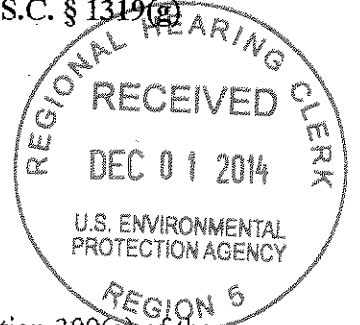
IN THE MATTER OF:

OHIO DEPARTMENT OF
TRANSPORTATION
1980 WEST BROAD STREET
COLUMBUS, OHIO 43223,

Respondent.

Proceeding to Assess a Class II Civil
Penalty Under Section 309(g) of the
Clean Water Act, 33 U.S.C. § 1319(g)

Docket No.
CWA-05-2015-0004



CONSENT AGREEMENT AND FINAL ORDER

JURISDICTIONAL ALLEGATIONS

1. This is an administrative action commenced and concluded under Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (the Consolidated Rules) as codified at 40 C.F.R. part 22, for violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).
2. According to 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).
3. Complainant is, by lawful delegation, the Director of the Water Division, U.S. Environmental Protection Agency (U.S. EPA) Region 5.
4. Respondent is the Ohio Department of Transportation, 1980 West Broad Street, Columbus, Ohio, an organization of state government under the laws of the State of Ohio. Respondent is a "person" as that term is defined at Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 501.2.

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to the terms of this CAFO, including the assessment of the civil penalty specified below.

JURISDICTION AND WAIVER OF RIGHT TO HEARING

7. Respondent stipulates that U.S. EPA has jurisdiction over the subject matter of this CAFO and waives any jurisdictional objections it may have.
8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.
9. By executing this CAFO, Respondent does not admit liability or admit Complainant's factual allegations set forth in this CAFO. Respondent's execution of this CAFO does not constitute a waiver or admission of any kind, including without limitation a waiver of any defense, legal or equitable, which Respondent may have in this or any other administrative or judicial proceeding, other than a proceeding to enforce this CAFO.

STATUTORY AND REGULATORY BACKGROUND

10. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), states that: "Whenever, on the basis of any information available the Administrator finds that any person has violated [Section 301 of the CWA, 33 U.S.C. § 1311], ... the Administrator ... may, after consultation with the State in which the violation occurs, assess a ... class II civil penalty under [Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B)]."
11. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), states that "Except as in compliance with [Section 404 of the CWA] the discharge of any pollutant by any person shall be unlawful."

12. Section 404(a) of the CWA, 33 U.S.C. § 1344(a), states: "The Secretary [of the Army] may issue permits ... for the discharge of dredged or fill material into the navigable waters at specified disposal sites."

13. Section 502(12)(A) of the CWA, 33 U.S.C. § 1362(12)(A), defines a "discharge of pollutants" as "... any addition of any pollutant to navigable waters from any point source."

14. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines "point source" as "... any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, ... [or] discrete fissure... from which pollutants are or may be discharged."

15. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines "pollutant" as "... dredged spoil, solid waste, ... biological materials, ... rock, sand [or] agricultural waste discharged into water."

16. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines "navigable waters" as "... the waters of the United States"

17. Federal regulations, at 40 C.F.R. § 232.2, define the term "waters of the United States" to include rivers, streams and "wetlands."

18. Federal regulations, at 40 C.F.R. § 230.3(t), define "wetlands" as "... those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions."

ALLEGATIONS OF LIABILITY

19. The property subject to this Order is located in the NE ¼ of Section 06, Township 09

North, Range 19 West along State Route 327, mile marker 7.45 in Vinton County, Ohio (the Site). The Site is within the Ohio State Route 327 right-of-way, which is under the ownership of the Respondent.

20. Respondent, using a dump truck, discharged approximately 15-20 dump truck loads of ditch spoil into Salt Creek from April 7 – 10, 2014. The purpose of the activity was to dispose of ditch spoil excavated during ditch clearing operations along State Route 327 and United States Route 50 in Ross County, Ohio.

21. Respondent's activities at the Site using a dump truck resulted in the discharge of ditch spoil consisting of sediment and dirt that impacted approximately 50 linear feet of Salt Creek, including 30 feet into the stream channel. Respondent's dump truck constituted a "point source" within the meaning of the definition set forth in Section 502(14) of the CWA, 33 U.S.C. § 1362(14). The sediment and dirt constituted "pollutants" within the meaning of the definition set forth in Section 502(6) of the CWA, 33 U.S.C. § 1362(6). The addition of sediment and dirt into the stream on the Site constituted a "discharge of pollutants" within the meaning of the definition set forth in Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

22. Salt Creek flows to the Scioto River, a traditional navigable water.

23. Salt Creek is a "waters of the United States" pursuant to 40 C.F.R. § 232.2.

24. At no time during the activities referenced in paragraph 20 did the Respondent possess a permit from the Secretary of the Army, through the Army Corps of Engineers, under Section 404(a) of the CWA, 33 U.S.C. § 1341(a), authorizing the fill activities in the streambed at the Site.

25. Respondent's deposition of sediment and dirt into the streambed at the Site constitutes

discharges of pollutants to the waters of the United States without an appropriate permit and consequently violates Section 301(a) of the CWA, 33 U.S.C. § 1415(a).

26. Each day Respondent's sediment and rock deposits remain in place in the streambed at the Site constitutes a separate violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

27. According to 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. Part 19, the Administrator may assess a penalty not to exceed \$16,000 for each day of violation of Section 301 of the CWA to a maximum of \$37,500 for these violations.

CIVIL PENALTY

28. Based on an analysis of the factors as specified in Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), and the facts of this case, Complainant has determined that an appropriate civil penalty to settle this action is \$35,000.

29. Within 30 days after the effective date of this CAFO, Respondent must pay the \$35,000 civil penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA, Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

30. The check must note the case caption and the docket number of this CAFO.

31. A transmittal letter, stating Respondent's name, the case title, Respondent's complete address and the case docket number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Kerryann Weaver (WW-16J)
Wetlands Enforcement Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Susan Tennenbaum (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

32. This civil penalty is not deductible for federal tax purposes.
33. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States' enforcement expenses for the collection action. Respondent acknowledges that the validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.
34. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States' enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue.

GENERAL PROVISIONS

35. This CAFO resolves Respondent's liability, and any liability of Respondent's owners,

parents, subsidiaries, affiliates, related corporations and entities, insurers, reinsurers, indemnitors, stockholders, officers, directors, employees, agents, servants, successors and assigns for only federal civil penalties for the violations and facts alleged in this CAFO.

36. This CAFO does not affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

37. This CAFO does not affect Respondent's responsibility to comply with the CWA or other applicable federal, state and local laws or regulations.

38. This CAFO is a "final order" for the purposes of any future enforcement action under Section 309 of the CWA, 33 U.S.C. § 1319.

39. The terms of this CAFO bind Respondent and Respondent's owners, parents, subsidiaries, affiliates, related corporations and entities, insurers, reinsurers, indemnitors, stockholders, officers, directors, employees, agents, successors and assigns.

40. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

41. Each party agrees to bear its own costs and fees, including attorneys' fees, in this action.

42. This CAFO constitutes the entire agreement between the parties.

43. The effective date of this CAFO is the date it is filed with the Regional Hearing Clerk, after having been signed by the Regional Administrator and subject to the requirements of Section 309(g)(4)(C) of the CWA, 33 U.S.C. § 1319(g)(4)(C).

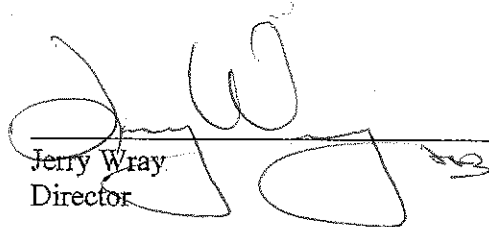
44. Complainant is providing public notice of and reasonable opportunity to comment on the proposed issuance of the CAFO according to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4).

In the Matter of: Ohio Department of Transportation, Columbus, Ohio

Docket No:

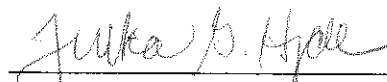
Ohio Department of Transportation, Respondent

11-7-2014
Date

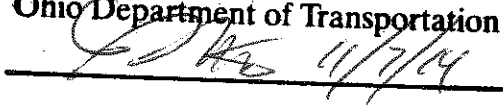

Jerry Wray
Director

U.S. Environmental Protection Agency, Complainant

11-24-14
Date


Tinka G. Hyde, Director
Water Division

Reviewed as to Form
Office of Chief Legal Counsel
Ohio Department of Transportation


11/7/14

In the Matter of: Ohio Department of Transportation, Columbus, Ohio
Docket No: CWA-05-2015-0004

FINAL ORDER

This Consent Agreement and Final Order, as agreed to by the parties, will become effective immediately upon filing with the Regional Hearing Clerk. **IT IS SO ORDERED.**

Date: _____

By: _____

Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5