



**REGION 3**

PHILADELPHIA, PA 19103

**FILED**

**Aug 06, 2024**

**8:02 am**

**U.S. EPA REGION 3  
HEARING CLERK**

**In The Matter of:**

Bogarad Family Partnership  
3412 West Street,  
Weirton, WV 26062

**Respondent**

**Property Located At:**

**Lat/Long: 40.424889, -80.549523**

U.S. EPA Docket No. CWA-03-2024-0114DW

Proceeding Under Section 309(a) of the Clean  
Water Act, 33 U.S.C. § 1319(a)

**ADMINISTRATIVE ORDER ON CONSENT**

**I. STATUTORY AUTHORITY**

1. This Administrative Order for Compliance ("Order") is issued under the authority vested in the United States Environmental Protection Agency ("EPA") by Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a) ("CWA" or "Act"). The Administrator has delegated this authority to the Regional Administrator of the EPA Region 3, who in turn has re-delegated it to the Director of the Enforcement & Compliance Assurance Division.

**II. FINDINGS OF FACT and CONCLUSIONS OF LAW**

2. Section 301(a) of the CWA, 33 U.S.C. §1311(a), prohibits any person from discharging dredged and/or fill material from a point source to "waters of the United States" except in compliance with a permit issued by the U.S. Army Corps of Engineers ("Corps") under Section 404 of the CWA, 33 U.S.C. § 1344.
3. Bogarad Family Partnership ("Respondent") is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

4. Bogarad is the owner and operator of the property located in Weirton, West Virginia, parcel identification number 15-06-W39M-0023-0000 Lat/Long 40.424889, -80.549523, ("the Site"), depicted in Exhibit A.
5. The Site contains streams and unnamed tributaries ("UNTs") that are relatively permanent waters and connect in a general northern direction to Kings Creek, a relatively permanent water. Kings Creek is connected to the Ohio River, a Traditional Navigable Water ("TNW"). The streams and UNTs on the Site are therefore "waters of the United States" within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
6. As early as spring of 2022 workers on behalf of Bogarad, operated equipment at the Site which discharged dredged and/or fill material to waters of the United States, an unnamed tributary ("UNT") that flows to Kings Creek, without authorization from the Corps. Respondent's unauthorized discharge of fill material at the Site associated with construction and earth-moving activities impacted approximately 150 linear feet of streams along the UNT.
7. The Corps conducted an inspection at the Site on August 5, 2022, observing that 150 linear feet of the UNT had been buried and a new channel of approximately 75 linear feet was cut. The impacted areas are shown in Exhibit A.
8. The term "fill material," within the meaning of 40 C.F.R. § 232.2, includes any pollutant which replaces portions of "waters of the United States" with dry land or which changes the bottom elevation of a water body for any purpose. The term "discharge of fill material," includes "placement of fill that is necessary for the construction of any structure or infrastructure in a water of the United States."
9. The equipment referenced in Paragraph 6, above, from which the dredged and/or fill material was discharged to "waters of the United States," constitutes a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
10. At no time during the discharge of dredged and/or fill material into waters of the United States at the Site did the Respondent has a permit from the Corps as required by Section 404 of the CWA, 33 U.S.C. § 1344.
11. Upon information and belief, since at least the Spring of 2022, Respondent has violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), by discharging dredged and/or fill material to the "waters of the United States" without authorization.

### III. ORDER FOR COMPLIANCE

Therefore, the Respondent is hereby ORDERED, pursuant to Section 309(a) of the CWA, 33 U.S.C. § 1319(a), to do the following:

12. Cease and desist all discharges to waters of the United States at the Site, including filling, clearing, and grading, except in compliance with a CWA Section 404 or 402 permit or in accordance with the plans submitted and approved pursuant to this Order.
13. Within ninety (90) calendar days of the effective date of this Order, Respondent shall submit a detailed fill removal and stream restoration plan ("Removal and Restoration Plan") to the EPA for review and approval. The restoration work outlined in the Restoration and Mitigation Plan shall return the Site to compliance with Section 404 of the CWA, 33 U.S.C. § 1344. The Plan must:
  - a. Be prepared by a qualified professional.
  - b. Identify a point of contact for implementation of the Removal and Restoration Plan
  - c. Describe the actions to be taken to remove the material from the regulated waters, to permanently stabilize the Site, and to return the streams to pre-disturbance grade and conditions.
  - d. Include a construction, maintenance, and monitoring schedule in accordance with this section of the Order.
14. After review of the Removal and Restoration Plan, the EPA will: (a) approve the Plan, in whole or in part; (b) approve the Plan upon specified conditions; (c) modify the Plan to correct any deficiencies; (d) disapprove the Plan, in whole or in part, or (e) any combination of the above.
15. If the EPA disapproves all or part of the Removal and Restoration Plan, Respondent shall, within thirty (30) calendar days of receipt of the EPA's disapproval, correct the deficiencies and resubmit the Plan for approval. If the Plan is not approved as provided in this Order, the EPA retains the right to order restoration in accordance with a plan to be developed by the EPA.
16. Following the EPA's approval of the Removal and Restoration Plan (either with or without conditions or modifications by the EPA), Respondent shall implement the Plan. All restoration work shall be completed within one hundred and eighty days (180) calendar days of the EPA's approval of the Plan.
17. For any land disturbance and related activities at the Site associated with the Removal and Restoration Plan, Respondent shall comply with all applicable federal, State or local environmental laws, including erosion and sediment control measures in compliance with local, County, and/or West Virginia Department of Environmental Protection

regulations and any applicable Erosion and Sediment Control Plan or National Pollutant Discharge Elimination System ("NPDES") Permit.

18. No later than twenty (20) calendar days after completion of the restoration activities, Respondent shall submit a certification, including the language set forth in Paragraph 24, certifying that the work described in the approved Removal and Restoration Plan has been completed.
19. Respondent shall monitor the restored area at the Site for a period of five (5) years to ensure the objective of restoring impacted aquatic resources. Respondent shall monitor the Site twice per year for years 1-3 and once per year for years 4-5 and submit to the EPA a monitoring report at the address listed in Paragraph 23. Each monitoring report shall be certified consistent with Paragraph 24 and will contain information documenting the progress towards meeting the performance standards for the restored aquatic resources established in the approved Removal and Restoration Plan. If Respondent has fully met all the requirements of the Removal and Restoration Plan before completion of the five (5) year period, then Respondent may submit a written request for Order Termination pursuant to Paragraph 22, below.
20. The EPA will review each monitoring report to determine whether the restoration efforts undertaken by Respondent pursuant to this Order have been successful.
21. Respondent's failure to complete the work in a manner consistent with this Order and the approved Restoration and Mitigation Plan shall be deemed a violation of this Order.
22. Order Termination. The required restoration, as set forth in the approved Removal and Restoration Plan, will not be considered fulfilled until Respondent has:
  - a. Demonstrated that the Removal and Restoration Plan has been fully implemented; and
  - b. Provided written verification to the EPA of full implementation of the Removal and Restoration Plan; and
  - c. Provided written verification to the EPA of the success of the Removal and Restoration plan in accomplishing the restoration of the Site.

Once all conditions in the approved Removal and Restoration Plan have been met and written verification has been provided, the EPA will terminate the Order.

23. All correspondence related to this Order shall be sent electronically to:

Monica Crosby  
Enforcement & Compliance Assurance Division  
U.S. EPA Region 3  
[Crosby.Monica@epa.gov](mailto:Crosby.Monica@epa.gov)

And

Douglas Frankenthaler  
Assistant Regional Counsel  
Office of Regional Counsel, U.S. EPA Region 3  
[Frankenthaler.douglas@epa.gov](mailto:Frankenthaler.douglas@epa.gov) AND R3\_ORC\_mailbox@epa.gov

#### IV. GENERAL PROVISIONS

24. The following certification must accompany each submission by Respondent pursuant to this Order and must be signed by a Representative of the submitting Respondent authorized to sign on behalf of the Respondent:

*I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, 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.*

Signed:

Title:

Date:

25. Respondent's compliance with the terms of this Order shall not relieve Respondent of its obligation to comply with all applicable provisions of the CWA or any other Federal, State or local law or regulation. Issuance of this Order is not an election by the EPA to forego any civil or criminal action otherwise authorized by the Clean Water Act. The EPA reserves the right to seek any remedy available under the law that it deems appropriate to the violations described herein. Compliance with this Order shall not be a defense to any action commenced pursuant to such authorities.
26. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this AOC, including any right of judicial review pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

27. The EPA reserves all existing inspection authority otherwise available to the EPA pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, or pursuant to any other statute or law.
28. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2), performance of the activities in Section III (Order for Compliance), Paragraphs 12 - 22 is restitution, remediation, or required to come into compliance with the law.

**V. EFFECTIVE DATE**

29. This AOC may be signed in counterparts and its validity shall not be challenged on that basis.
30. The effective date of this Order shall be the date of Respondent's receipt of a copy of this fully executed AOC ("Effective Date").

ON BEHALF OF RESPONDENT BOGARAD FAMILY PARTNERSHIP:

Date: \_\_\_\_\_

7/9/24

Name: Sharon Bogarad  
Title: Landowner/Respondent

**SO ORDERED, ON BEHALF OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY:**

**KAREN  
MELVIN**

Digitally signed by KAREN  
MELVIN  
Date: 2024.08.05 07:53:10  
-04'00'

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*[digitally signed and dated]*

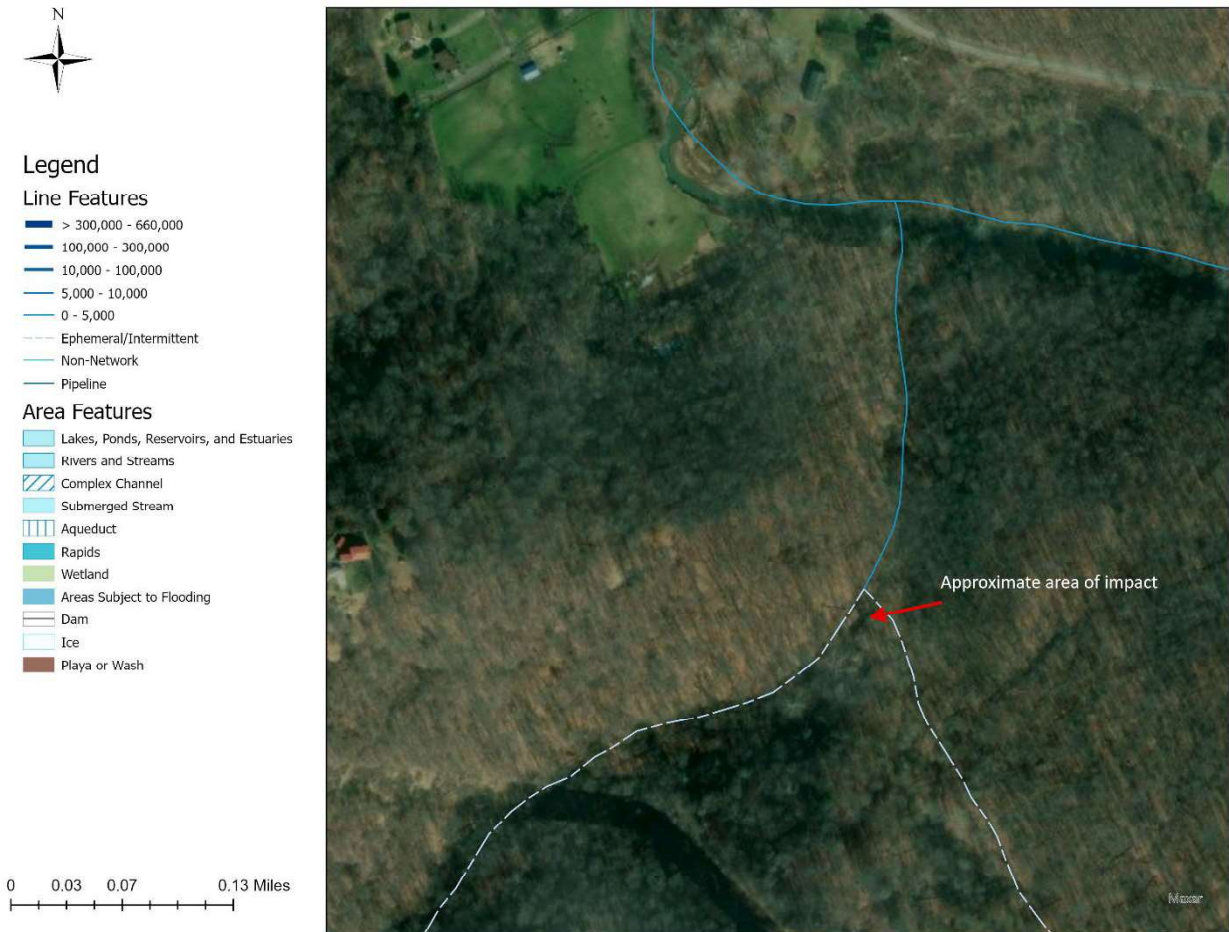
Karen Melvin, Director

Enforcement and Compliance Assurance Division

U.S. EPA, Region 3



## Exhibit A SITE MAP





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 3  
Philadelphia, Pennsylvania 19103

In the Matter of:	:	
	:	
Bogarad Family Partnership	:	
3412 West Street	:	U.S. EPA Docket No. CWA-03-2024-0114DW
Weirton, West Virginia 26062	:	
	:	Proceeding under Section 309(a) of the Clean
	:	Water Act, 33 U.S.C. § 1319(a)
	:	
Property Located At:	:	ADMINISTRATIVE ORDER ON CONSENT
Lat/Long: 40.424889, -80.549523	:	
	:	
Facility	:	

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**CERTIFICATE OF SERVICE**

I certify that the foregoing ***Administrative Order on Consent*** was filed with the EPA Region 3 Regional Hearing Clerk on the date that has been electronically stamped on the **Administrative Order on Consent**. I further certify that on the date set forth below, I caused to be served a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following addresses:

Copies served via UPS to:

Sharon Bogarad  
Bogarad Family Partnership  
[REDACTED]  
3412 West Street  
Weirton, West Virginia 26062

Joseph C. Unger, Esq.  
Spilman Thomas & Battle  
junger@spilmanlaw.com

David R. Croft, Esq.  
Spilman Thomas & Battle  
dcroft@spilmanlaw.com

Douglas Frankenthaler  
Assistant Regional Counsel  
U.S. EPA, Region 3  
Frankenthaler.douglas@epa.gov

Monica Crosby  
Water Branch – NPDES & Wetlands Section  
U.S. EPA, Region 3  
crosby.monica@epa.gov

CATHERINE  
MCCOOL

Digitally signed by CATHERINE  
MCCOOL  
Date: 2024.08.06 08:07:33 -04'00'

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*[Digital Signature and Date]*

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 3