

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 )

FRAZIER LANDING, INC. )

and )

CHARLES FRAZIER )

Respondents )

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

Docket No. CWA -07-2006-0142

**I. CONSENT AGREEMENT/FINAL ORDER**

The United States Environmental Protection Agency, Region VII ("EPA"), Frazier Landing, Inc. and Charles Frazier ("Respondents") have agreed to a settlement of this action before 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, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules) 64 Fed. Reg. 40181, 40183 (July 23, 1999), to be codified at 40 C.F.R. §§ 22.13(b), 22.18(b)(2).

This Consent Agreement/Final Order is a complete and final settlement of all civil and administrative claims and causes of action for the violations set forth in this Consent

Agreement/Final Order relating to Respondents' discharge of fill material into waters of the United States through discharge of spent foundry sand into wetlands and surface water adjacent to the Mississippi River without the permit required by law.

## **II. ALLEGATIONS**

### **A. Jurisdiction**

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g)(2)(B) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(B) and in accordance with the Consolidated Rules.

2. This Consent Agreement/Final Order serves as notice that EPA has reason to believe that Respondents have violated Sections 301 and 404, 33 U.S.C. §§ 1311 and 1344 of the CWA, and the regulations promulgated thereunder.

3. Respondents are each a "person" as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

### **B. Section 404 Violation**

#### **Statutory and Regulatory Framework of Section 404**

4. 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.

5. Section 404 of the CWA, 33 U.S.C. § 1344, provides that the discharge of dredged or fill material into a "navigable water" of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362, occur in accordance with a permit issued under that Section.

6. Section 404 of the CWA, 33 U.S.C. § 1344, provides that the Secretary of the Army, acting through the Chief of Engineers, may issue permits for the discharge of dredged or fill material into navigable waters at specified disposal sites, after notice and opportunity for public comment.

7. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

8. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, *inter alia*, dredged spoil, rock, sand and cellar dirt.

9. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “...the waters of the United States, including the territorial seas.”

10. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” as “...any discernible, confined and discrete conveyance...from which pollutants are or may be discharged.”

11. 40 C.F.R. §§ 232.2 and 33 C.F.R. Part 328 define waters of the United States, in part, as, “...lakes, rivers and streams, ...wetlands.”

12. Section 502 of the CWA defines “person” to include an individual and a corporation.

13. Section 404 of the CWA requires a person to obtain a permit from the United States Army Corps of Engineers (“Corps”) prior to any discharge of dredged or fill material into the navigable waters of the United States.

**Factual Background**

14. Respondent Frazier Landing, Inc. is the owner of an abandoned rock quarry located near Montrose, Iowa in Township 66 North, Range 5 West, Lee County, Iowa, the Southwest ¼, Section 12. Charles Frazier is the President and Treasurer of Frazier Landing, Inc. On April 2, 2001, the Iowa Department of Natural Resources (“IDNR”) granted Respondent Charles Frazier approval to deposit spent foundry sand in the abandoned rock quarry described in this Paragraph. Between October and December 2001, Respondents or ones acting on their behalf, discharged spent foundry sand using a bulldozer in an area adjacent to the area approved by IDNR for disposal of spent foundry sand and identified in the map, Attachment A, attached to and incorporated herein. The area where the discharge of spent foundry sand occurred included wetlands and surface water connected to the Mississippi River.

15. The bulldozer used by Respondents or ones acting on their behalf, acted as a “point source” within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

16. The spent foundry sand that was discharged into the area described in Paragraph 14 above between October 2001 and December 2001 is a “pollutant” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

17. The discharge of spent foundry sand into waters of the United States constitutes the “discharge of pollutants” within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

18. The wetland where spent foundry sand was discharged is located along the northern lot line of the quarry parallel to the Burlington Northern Santa Fe Railroad right-

of-way. The surface water where the spent foundry sand was deposited is located approximately 191 feet northwest of the quarry. The wetland and surface water referenced in Paragraph 14 above are hydraulically connected to the Mississippi River. The Mississippi River is a navigable water within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7) and a water of the United States as defined by 40 C.F.R. § 232.2 and 33 C.F.R. § 328.3.

19. Respondents did not obtain a 404 permit prior to conducting the activities described in Paragraph 14 above.

**Findings of Violation**

20. The facts stated in paragraphs 14 through 19 above are herein incorporated.

21. The use of a bulldozer referenced in Paragraph 14 above indicates that Respondents or ones acting on their behalf, discharged pollutants into a water of the United States by using earth-moving equipment without obtaining a Section 404 permit.

22. Respondents' failure to obtain a Section 404 permit prior to conducting activities described in Paragraph 14 above is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

23. Based on the foregoing Findings of Violation, and pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA Region VII hereby proposes to issue a Final Order Assessing an Administrative Penalty against the Respondent for the violation cited above, in the amount of \$ 15,000.00.

### **III. CONSENT AGREEMENT**

1. Respondents and EPA agree to the terms of this Consent Agreement/Final Order and Respondents agree to comply with the terms of the Final Order portion of this Consent Agreement/Final Order.

2. Respondents admit the jurisdictional allegations of this Consent Agreement/Final Order and agree 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.

3. Respondents neither admit nor deny the factual allegations and legal conclusions set forth in this Consent Agreement/Final Order.

4. Respondents waive their right to a judicial or administrative hearing on any issue of fact or law set forth in this Consent Agreement/Final Order.

5. Nothing contained in the Final Order portion of this Consent Agreement/Final Order shall alter or otherwise affect Respondents' obligations to comply with applicable Federal, state and local environmental statutes and regulations and applicable permits.

6. Respondents agree, in settlement of the claim alleged in this Consent Agreement/Final Order, to pay a cash penalty of \$ 15,000.00.

7. This Consent Agreement/Final Order constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 309 of the Clean Water Act for the violation alleged herein. Nothing in this Consent Agreement/Final Order is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondents. Compliance with this Consent Agreement/Final Order shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered

by EPA, and it is the responsibility of Respondents to comply with such laws and regulations.

8. Respondents' failure to pay any portion of the civil penalty of \$15,000.00 may result in commencement of a civil action in Federal District Court to recover the total penalty required by the terms of the Final Order, together with interest thereon at the applicable statutory rate. Payment of a stipulated penalty shall be made in accordance with the instructions set forth in Paragraph 2 of the Final Order.

#### **IV. FINAL ORDER**

Pursuant to Section 309(g)(2)(B) of the Clean Water Act, 33 U.S.C. § 1319 (g)(2)(B), and according to the terms of this Consent Agreement/Final Order, IT IS HEREBY ORDERED THAT:

1. Respondents shall make payment in two installments. The first payment in the amount of \$5,000.00 shall be due within thirty (30) days of the Effective Date of this Consent Agreement/Final Order (defined in Paragraph 12 below). Within 120 days of the Effective Date, Respondents shall pay \$10,000.00 plus interest calculated from the due date of the first installment at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717.

2. Payment of the penalty shall be by cashier or certified check made payable to "United States Treasury" and remitted to:

U.S. EPA Region VII  
P.O. Box 371099M  
Pittsburgh, PA 15251

Respondents shall reference the name of the case, In the Matter of Frazier Landing, Inc. and Charles Frazier, Docket Number CWA 07-2006-0142 on the check. A copy of the check shall also be mailed to:

Audrey Asher, Esq.  
EPA - Region VII  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

3. Interest will be assessed on the first installment of \$5,000.00 if payment is not made within 30 days of the Effective Date. Interest will be assessed from the due date through the date of payment at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717.

6. Respondents and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

7. This Consent Agreement/Final Order addresses all civil administrative claims for the CWA violation 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 Consent Agreement/Final Order.

8. Notwithstanding any other provision of this Consent Agreement/Final Order, EPA reserves the right to enforce the terms of the Final Order by initiating a judicial or administrative action under Section 309 of the CWA, 33 U.S.C. § 1319, and to seek penalties against Respondents or to seek any other remedy allowed by law.

9. This Final Order will terminate upon satisfactory completion of all requirements as determined by EPA.

10. This Final Order shall apply to and be binding upon Respondents and their agents, successors, and assigns.

11. The parties may modify this Consent Agreement/Final Order by mutual agreement. Such modifications shall be in writing.

12. 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 it is signed by the Regional Judicial Officer.

**For Respondent Frazier Landing, Inc.:**

4/10/06  
Date

Charles Frazier  
Charles Frazier  
President, Frazier Landing, Inc.

4-10-06  
Date

Lynn Frazier  
Lynn Frazier  
Secretary, Frazier Landing, Inc.

**For Respondent Charles Frazier:**

4/10/06  
Date

Charles Frazier  
Charles Frazier, an Individual

4-10-06  
Date

Lynn Frazier  
Lynn Frazier, Attorney in Fact for Charles Frazier

**For the United States Environmental Protection Agency – Region VII**

04/17/06  
Date

Betty J. Berry  
Betty Berry, Acting Director  
Water, Wetlands, and Pesticides Division  
U. S. Environmental Protection Agency Region VII

4/17/06  
Date

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

**IT IS SO ORDERED.**

June 7, 2006  
Date

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

**CERTIFICATE OF SERVICE**

I hereby certify that on the \_\_\_ day of \_\_\_\_\_ 2006, I filed the original of the foregoing Consent Agreement/Final Order with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region VII, 901 North Fifth Street, Kansas City, Kansas 66101; a true and correct copy of the same was sent by first class mail on the \_\_\_ day of 2006 to Theodore F. Olt, III, Esq., Lane & Waterman LLP, 220 North Main Street, Suite 600, Davenport, Iowa 52801-1987, attorney for Frazier Landing, Inc. and Charles Frazier.

IN THE MATTER OF Frazier Landing, Inc. And Charles Frazier, Respondents  
Docket No. CWA-07-2006-0142

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to  
Attorney for Complainant:

Audrey B. Asher  
Senior Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Theodore F. Olt, III, Esq.  
Lane & Waterman LLP  
220 North Main Street, Suite 600  
Davenport, Iowa 52801-1987

Dated: 10/7/06

  
Kathy Robinson  
Regional Hearing Clerk