

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219

IN THE MATTER OF: )  
)  
) ) Docket No. CWA-07-2024-0054  
Rooster Management, LLC )  
) ) FINDINGS OF VIOLATION,  
Respondent ) ) ORDER FOR COMPLIANCE  
) ) ON CONSENT  
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 Enforcement and Compliance Assurance Division of EPA Region 7, with concurrence by the Regional Counsel.

2. The Respondent in this case is Rooster Management, LLC, a limited liability company owning property in the state of Missouri (“Respondent”).

3. EPA, together with Respondent, enters into this Section 309(a)(3) Order for Compliance on Consent in order to carry out the goals of the CWA, 33 U.S.C. § 1251 *et seq.*, to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

4. It is the parties’ intent through this agreement to address discharges of pollutants by Respondent into the waters of the United States without a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, in violation of Section 301 of the CWA, 33 U.S.C. § 1311. Specifically, Section 301 of the CWA, 33 U.S.C. § 1311, provides that except as in compliance with certain specified provisions of the CWA, the unauthorized discharge of any pollutant into the waters of the United States by any person is unlawful.

5. By entering into this Order, Respondent (1) consents to and agrees not to contest EPA's authority or jurisdiction to issue or enforce this Order, (2) consents to personal service by electronic mail, (3) agrees to undertake all actions required by the terms and conditions of this Order, and (4) consents to be bound by the requirements set forth herein. Respondent neither admits nor denies the specific factual allegations or Findings of Violation in this Order on Consent, except that Respondent admits the jurisdictional allegations herein. Respondent also

waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which Respondent may have with respect to any issue of fact or law set forth in this Order, including, but not limited to, any right of judicial review of this Order under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

### **Statutory and Regulatory Framework**

6. 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.

7. The CWA prohibits the discharge of “pollutants” from a “point source” into a “navigable water” as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

8. 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.”

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. 40 C.F.R. § 232.2 defines “dredged material” as material that is excavated or dredged from waters of the United States.

11. 40 C.F.R. § 232.2 defines the “discharge of dredged material” as any addition of dredged material into, including redeposit of dredged material other than incidental fallback within, the waters of the United States.

12. 40 C.F.R. § 232.2 defines “fill material” as material that has the effect of replacing any portion of a water of the United States with dry land or changing the bottom elevation of any portion of a water of the United States.

13. 40 C.F.R. § 232.2 defines “discharge of fill material” as the addition of fill material into waters of the United States.

14. 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.

### **Allegations of Facts**

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

16. At all times relevant to this action, Respondent owned, operated, or otherwise controlled property located at Section 20, Township 46, Range 30, Cass County, Missouri. Lat: 38.777582885429595 Long: -94.26845970376097 (hereinafter “the Site”).

17. Sometime between May and September of 2021, Respondent, using earth moving equipment at the Site, authorized, directed, and/or placed fill material into a 0.47-acre area of wetlands near the southwest corner of the property. On or about October 15, 2021, the Army Corps of Engineers (“Corps”) received a citizen complaint regarding work being done at the Site.

18. On or about November 4, 2021, the Corps conducted a field investigation at the Site. The investigation documented that the Respondent or somebody acting on his behalf had filled approximately 0.47 acres of a wetland in the southwest corner of the Site. During this investigation the Corps told Mr. Clay Kehler, the owner of Rooster Management, LLC, that a CWA 404 permit would be required for any additional fill material added at the Site.

19. On March 1, 2022, Respondent was emailed a letter by the Corps informing him that the wetlands in question were presumed jurisdictional, and that no further fill of waters at the site was allowed without a Corps permit.

20. On July 6, 2022, Respondent was sent a Notice of Violation by the Corps confirming that no further fill material was to be added to the Site without a CWA Section 404 permit.

21. On or about July 20, 2022, the Corps conducted another field investigation at the Site. This investigation revealed that additional fill material had been added to the Site. Activities at the Site had filled 1.64 acres of jurisdictional wetlands with approximately 19,360 cubic yards of fill (the “Impacted Site”). Respondent had also filled part of an unnamed tributary that runs through the Site.

22. The unnamed tributary has continuous flow for at least three months of the year and is connected to Big Creek.

23. Big Creek is a perennial stream that typically flows year-round and is connected to South Fork Grand River.

24. South Fork Grand River is a perennial stream that typically flows year-round and is connected to Harry S. Truman Lake, a traditional navigable water.

25. The unnamed tributary at the site, Big Creek, and South Fork Grand River are each a relatively permanent water connected to Harry S. Truman Lake, a traditional navigable water.

26. The wetlands at the Site abut the unnamed tributary.

27. The wetlands at the Site have a continuous surface connection to relatively permanent waters that are connected to a traditional navigable water.

28. Respondent’s discharges of fill into the unnamed tributary and wetlands at the Site resulted in the total loss of approximately 330 linear feet of stream and 2.53 acres of wetlands.

29. The fill material discharged by Respondent's activities into the wetlands and unnamed tributary are "pollutants" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

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

31. The discharge of the fill material into the wetlands and unnamed tributary constitutes the "discharge of a pollutant" within the meaning of Section 501(12) of the CWA, 33 U.S.C. § 1362(12).

32. The wetlands and unnamed tributary at the Site are "waters of the United States" within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

### **Findings of Violation**

33. The facts and allegations stated above are herein incorporated.

34. Respondent did not obtain a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, prior to the performance of the fill material placement described herein.

35. Respondent's discharge of pollutants from a point source into waters of the United States occurred without a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, and, therefore, violated Section 301 of the CWA, 33 U.S.C. § 1311.

### **Order for Compliance on Consent**

Based on the ALLEGATIONS OF FACT and FINDINGS OF VIOLATION set forth above, and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), EPA hereby ORDERS, and Respondent hereby AGREES to take the actions described below:

36. Respondent shall comply with the CWA by immediately ceasing the placement of fill and/or dredged material into the stream and wetlands at the Site and will not place fill material into the stream and wetlands at the Site in the future.

37. Retention of a Qualified Environmental Consultant: Respondent will retain a qualified environmental consultant to prepare a Work Plan for the full restoration of the Impacted Site, as described further below:

a. Within thirty (30) days of the Effective Date of this Order, Respondent shall provide to EPA in writing the name, address, phone number, electronic mail address and qualifications of a consultant.

b. The EPA will approve/disapprove of Respondent's consultant based upon the person's qualifications and ability to effectively perform this role. The qualifications of the persons undertaking the work for Respondent shall be subject to the EPA's review, for verification that such person(s) meet minimum technical background and experience

requirements of the EPA. All persons under the direction and supervision of Respondent's consultant must possess all necessary professional licenses required by law.

38. Work Plan: Within 60 days of EPA's approval of the consultant, Respondent shall submit a Work Plan prepared by the approved qualified environmental consultant to EPA for review and approval. The Work Plan shall describe Respondent's proposed full restoration of the Impacted Site described herein to conditions prior to the start of Respondent's unauthorized fill material. The Work Plan shall include, at a minimum:

a. A work plan with detailed written specifications and work descriptions for the restoration project, including but not limited to: the geographic boundaries of the project; a description of the equipment to be used for the restoration work; a planting list for native trees, shrubs, and grasses for riparian planting; methods for establishing the desired plant community; plans to control invasive plant species; a proposed grading plan including elevations and slopes of substrate; soil management and erosion control measures; channel planform type, and channel form (e.g. typical channel cross-sections);

b. The seeding of all disturbed areas with native vegetation and appropriate erosion control measures to ensure that sediments are not introduced into waters of the United States during the restoration. A state National Pollutant Discharge Elimination System permit may be required for this work;

c. Ecologically based performance standards that will be used to determine success of site restoration;

d. A description of parameters to be monitored in order to determine if the restoration site is on track to meet performance standards and if adaptive management is needed;

e. An adaptive management plan that describes a management strategy to address unforeseen changes in site conditions or other components of the restoration project;

f. The projected cost of the work; and

g. A projected schedule, including milestones, for completing the work no later than six (6) months after EPA's approval of the Work Plan and in accordance with the specifications in the Work Plan.

39. Review and Approval of Work Plan: The EPA will review and approve the Work Plan as follows:

a. If EPA approves the Work Plan, it shall be implemented according to the schedule for implementation in the approved Work Plan. All work shall be completed by a qualified contractor.

b. If EPA does not approve the Work Plan, Respondent shall address the comments and resubmit the Work Plan for review within twenty (20) days of receipt of EPA's disapproval.

c. Upon resubmission, EPA, in its sole discretion, may either approve the Work Plan, or if EPA determines that the Work Plan does not adequately address the comments provided by EPA, EPA may modify the Work Plan and provide Respondent with a copy of the Work Plan as modified. Respondent shall implement the modified Work Plan according to the schedule contained therein.

d. Once approved by EPA, the Work Plan identified above shall be incorporated by reference and fully enforceable under the terms of this Order.

40. Completion Report: Within thirty (30) days of completion of the work identified in the Work Plan, Respondent agrees to submit a completion report, which shall include photographic evidence, copies of relevant documents, and a signed statement indicating that the work is complete.

41. Annual Monitoring Reports: Respondent agrees to submit annual monitoring reports to EPA, beginning on the date of the first anniversary of the completion of the Work Plan, for a period of five years. Monitoring shall be conducted by a qualified environmental consultant. Annual reports shall include photos of the site, a narrative description of the status of the site, and corrective actions, if any, that will be taken to correct deficiencies to maintain proper stream functions. If corrective actions are necessary, they shall be implemented within fourteen (14) days of any findings. Photographic evidence of corrective actions taken shall be submitted to EPA within forty-five (45) days. If at the end of the five-year monitoring period, the site is providing adequate wetland and/or stream functions and values, then additional monitoring will not be required. If at the end of the five-year monitoring period, the site is not functioning as a wetland and/or stream, then corrective measures shall be implemented.

42. The submission of documents by Respondent, as identified above, shall include the following written statement, followed by signature of a duly authorized representative of Respondent:

*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.*

43. All documents to be submitted to EPA under this Order shall be submitted via email to:

Delia Garcia, Ph.D.  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 7  
[Garcia.delia@epa.gov](mailto:Garcia.delia@epa.gov)

### **General Provisions**

44. Respondent's failure to comply with the terms of this Section 309(a)(3) Compliance Order may result in liability for statutory civil penalties under Section 309(d) of the Act, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Should EPA commence an action seeking penalties for violations of this Compliance Order, a United States District Court may impose civil penalties if the court determines that Respondent has violated the Act and failed to comply with the terms of the Order.

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

46. 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 Sections 309(b), (c), (d) or (g) of the CWA, 33 U.S.C. § 1319(b), (c), (d) or (g), for any violation cited in this Order. EPA reserves the right to enforce the terms of this Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

### **Access and Requests for Information**

47. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect property owned or operated by Respondent and/or to request additional information from Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318 and/or any other authority.

### **Severability**

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

### **Parties Bound**

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

### **Effective Date**

50. The terms of this Order shall be effective and enforceable on the Effective Date, which is the date this Order is signed by EPA. All time periods herein shall be calculated therefrom unless otherwise provided in this Order.

**Termination**

51. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of EPA.



**Signatories**

52. The undersigned for each party has the authority to bind each respective Party to the terms and conditions of this Order. The Order may be signed in part and counterpart by each Party.

**For the Complainant, United States Environmental Protection Agency Region 7:**

**WENDY  
LUBBE**

Digitally signed by  
WENDY LUBBE  
Date: 2024.03.25  
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David Cozad  
Director  
Enforcement and Compliance Assurance Division

**ADAM  
HILBERT**

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Adam Hilbert  
Attorney Adviser  
Office of Regional Counsel

**For Respondent:**

**Rooster Management, LLC**

3/8/24  
Date

  
Signature

John C. Koller  
Name

President  
Position

**CERTIFICATE OF SERVICE**

I certify that on the date noted below I delivered a true and correct copy of this Findings of Violation and Administrative Order for Compliance on Consent by electronic mail to:

Regional Hearing Clerk:

U.S. Environmental Protection Agency  
*R7\_Hearing\_Clerk\_Filings@epa.gov*

Representatives for Complainant:

Adam Hilbert  
Office of Regional Counsel  
U.S. Environmental Protection Agency Region 7  
*Hilbert.adam@epa.gov*

Delia Garcia, Ph.D  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency Region 7  
*Garcia.delia@epa.gov*

Representatives for Respondent:

Todd Hauser  
Attorney for Respondent  
Bushyhead Law, LLC  
*Todd@Bushyheadlaw.com*

Signature: \_\_\_\_\_