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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6

REGIONAL HEARING CLERK  
EPA REGION VI

IN THE MATTER OF

David Griffin

Respondent.

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§

Docket No. CWA 06-2011-2710

Proceeding Under § 309 of  
the Clean Water Act

Administrative Complaint

I.

STATUTORY AUTHORITY

1. This Administrative Complaint (“Complaint”) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Section 309(g) of the Clean Water Act (“the Act”), 33 U.S.C. § 1319(g). The Administrator of EPA has delegated the authority to issue this Complaint to the Regional Administrator of EPA Region 6, who has further delegated this authority to the Director of the Water Quality Protection Division, Region 6 (Complainant). This Class II Administrative Complaint is issued in accordance with the Consolidated Rules of Practice, published at 40 CFR Part 22.

2. Based on the following Findings, Complainant finds that David Griffin (“Respondent”) has violated the Act and the regulations promulgated under the Act and should be ordered to pay a civil penalty.

## II.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

3. Respondent is a “person” as that term is defined at Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 232.2.

4. Under Section 301(a) of the Act, 33 U.S.C. §1311(a), it is unlawful for any person to discharge any pollutant from a point source to waters of the United States except with the authorization of, and in compliance with, a permit issued under the Act.

5. Section 404 of the Act, 33 U.S.C. §1344, provides that the Secretary of the Army, acting through the Chief of Engineers for the U.S. Army Corps of Engineers (“COE”), may issue permits for the discharge of dredged or fill material into navigable waters.

6. Fill activities began during the month of October, in 2006, and were completed by the end of the year 2006. Respondent, and/or individuals acting on his behalf, discharged “dredged” and/or “fill” material, as those terms are defined at Section 502 of the Act, 33 U.S.C. §1362, and 40 C.F.R. §232.2, by means including heavy equipment into the Mississippi River Chute No. 69 which is designated a Traditional Navigable Waterway located in Desha County, Arkansas (Section 29, Township-7 South, Range-2 East). The unauthorized fill included, but may not be limited to, placement of an earthen dam, with a road on top, from top bank to top bank, of the Chute. Additional blockages occurred in the chute as a result of erosion and siltation.

7. The discharged dredged and/or fill material are “pollutant[s]” within the meaning of Section 502(6) of the Act, 33 U.S.C. §1362(6).

8. Each piece of mechanized equipment used to carry out the discharges, is considered a “point source” within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

9. At all times relevant to the violations alleged herein, the waters/wetlands referred to in paragraph 6 were “waters of the United States” as defined by Section 502(7) of the Act, 33 U.S.C. §1362(7), and 40 C.F.R. §232.2.

10. At no time relevant to this action did Respondent have a permit issued by the COE for the discharges described above in Paragraph 5.

11. At times stated in Paragraph 5, Respondent and/or individuals acting on his behalf discharged pollutants from a point source into waters of the United States without a permit issued by the COE. Each day of unauthorized discharge was a violation of Section 301(a) of the Act, 33 U.S.C. §1311(a).

12. Under Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), Respondent is liable for administrative civil penalties in an amount not to exceed \$11,000.00 per day for each day during which a violation occurred or continued, up to a maximum of \$157,500.00.

13. EPA has notified the public of the filing of this Complaint and has afforded the State of Arkansas an opportunity to consult with EPA regarding the assessment of an administrative penalty against Respondent, as required by Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1) of the Act.

14. EPA has notified the public of the filing of this Complaint and has afforded the public thirty (30) days to comment on the Complaint and on the proposed penalty as required by Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A). At the expiration of the notice period, EPA will consider any comments filed by the public.

### III.

#### **PROPOSED PENALTY**

15. Based on the foregoing Findings, and pursuant to the authority of Sections 309(g)(1) and (g)(2)(B) of the Act, 33 U.S.C. §§ 1319(g)(1) and (g)(2)(B), EPA, Region 6 hereby proposes to assess against Respondent a penalty of eighty six thousand four hundred dollars (\$86,400.00). The proposed penalty amount has been determined based on the statutory factors specified in Section 309(g)(3), 33 U.S.C. §1319(g)(3), which include such factors as the nature, circumstances, extent and gravity of the violation(s), any economic benefits, any prior history of such violations, degree of culpability, and such matters as justice may require. The penalty amount proposed in this Paragraph 15 includes a ten percent (10%) adjustment for an anticipated rapid settlement.

### **IV.**

#### **FAILURE TO FILE AN ANSWER**

16. If Respondent wishes to deny or explain any material allegation listed in the above Findings or to contest the amount of the penalty proposed, **RESPONDENT MUST FILE AN ANSWER TO THIS COMPLAINT WITHIN THIRTY(30) DAYS AFTER SERVICE OF THIS COMPLAINT**, whether or not Respondent requests a hearing as discussed below.

17. The requirements for such an Answer are set forth at 40 C.F.R. § 22.15. Failure to file an Answer to this Complaint with thirty (30) days of service of the Complaint shall constitute an admission of all facts alleged in the Complaint and a waiver of the right to a hearing. Failure to deny or contest any individual material allegation contained in the Complaint will constitute an admission as to that finding or conclusion under 40 C.F.R. § 22.15(d).

**18. IF RESPONDENT DOES NOT FILE AN ANSWER TO THIS COMPLAINT**

**WITHIN THIRTY (30) DAYS AFTER SERVICE OF THIS COMPLAINT, A DEFAULT ORDER MAY BE ISSUED AGAINST RESPONDENT PURSUANT TO 40 C.F.R. § 22.17.**

A Default Order, if issued, would constitute a finding of liability, and could make the full amount of the penalty proposed in this Complaint due and payable by Respondent without further proceedings thirty (30) days after a final order issued upon default.

19. Respondent must send his Answer to this Complaint, including any request for hearing, and all other pleadings to:

Regional Hearing Clerk (6RC-D)  
Lorena Vaughn  
U.S. EPA Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733

Respondent shall also send a copy of his Answer to this Complaint to the following EPA attorney assigned to this case:

Russell Murdock (6RC-EW)  
U.S.EPA Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733

20. The Answer must be signed by Respondent, Respondent's counsel, or other representative on behalf of Respondent and must contain all information required by 40 C.F.R. §§ 22.05 and 22.15, including the name, address, and telephone number of Respondent and Respondent's counsel. All other pleadings must be similarly signed and filed with the Regional Hearing Clerk.

**V.**

**NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

21. Respondent may request a hearing to contest any material allegation contained in this

Complaint, or to contest the appropriateness of the amount of the proposed penalty, pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g). The procedures for hearings are set out at 40 C.F.R. Part 22, including Subpart I, 40 C.F.R. §§ 22.50 and 22.52.

22. Any request for hearing should be included in the Respondent's Answer to this Complaint; however, as discussed above, Respondent must file an Answer meeting the requirements of 40 C.F.R. § 22.15 in order to preserve the right to a hearing or to pursue other relief.

23. Should a hearing be requested, members of the public who commented on the issuance of the Complaint during the public comment period will have a right to be heard and to present evidence at such hearing under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B).

## **VI.**

### **SETTLEMENT**

24. EPA encourages all parties against whom civil penalties are proposed to pursue the possibility of settlement through informal meetings with EPA. Regardless of whether a formal hearing is requested, Respondent may confer informally with EPA about the alleged violations or the amount of the proposed penalty. Respondent may appear at any informal conference or formal hearing personally, by counsel or other representative, or both. To request an informal conference on the matters described in this Complaint, please contact Jeanene Peckham at (214) 665-6411.

25. If this action is settled without a formal hearing and issuance of an opinion by the Presiding Officer pursuant to 40 C.F.R. § 22.27, this action will be concluded by issuance of a

Consent Agreement and Final Order (“CAFO”) pursuant to 40 C.F.R. 22.18(b). The issuance of a CAFO would waive Respondent’s right to a hearing on any matter stipulated to therein or alleged in the Complaint. Any person who commented on this Complaint would be notified and given an additional thirty (30) days to petition EPA to set aside any such CAFO and to hold a hearing on the issues raised in the Complaint. Such a petition would be granted and a hearing held only if the evidence presented by the petitioner’s comment was material and was not considered by EPA in the issuance of the CAFO.

26. If Respondent chooses to mail a cashier’s check or certified check payable to “Treasurer of the United States”, the matter of this Complaint will be concluded with issuance of a Final Order by EPA.

27. Neither assessment nor payment of a penalty in resolution of this action will affect Respondent’s continuing obligation to comply with all requirements of the Act, the applicable regulations and permits, and any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), including one relating to the violations alleged herein.

April 22, 2011

Date

Miguel Flores

Miguel Flores  
Director  
Water Quality Protection Division  
U.S. EPA, Region 6

CERTIFICATE OF SERVICE

I certify that on April 22, 2011 the original and a true and correct copy of this Complaint were filed with the Regional Hearing Clerk, Region 6, and that true and correct copies of this Complaint were deposited with the U.S. Postal Service addressed to the following persons.

Certified Mail, return receipt requested:

Mr. David Griffin  
P.O. Box 650  
Helena, Arkansas 72342

First-class Mail:

Mr. Robert Serio  
Attorney At Law  
P.O. Box 224  
Clarendon, Arkansas 72029

Mr. Gary Inman  
P.O. Box 650  
Helena, Arkansas 72342

Jeanene Beckham