

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII

901 N. 5<sup>TH</sup> STREET

KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF: ) FINDINGS OF VIOLATION,  
) ORDER FOR COMPLIANCE  
Michael Huttenlocker, )  
an individual )  
)  
Respondent ) Docket No. CWA-07-2005-0093  
)  
)  
Proceedings under )  
Section 309(a)(3) )  
of the Clean Water Act )  
33 U.S.C. § 1319(a)(3) )  
)

**A. FINDINGS OF VIOLATION**

**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). This authority has been delegated by the Administrator to the Regional Administrator, EPA Region VII, and redelegated to the Director of Region VII's Water, Wetlands, and Pesticides Division.
2. The Respondent in this case is Michael Huttenlocker, an individual ("Respondent"). Mr. Huttenlocker is a residential real estate developer who between 2000 and 2001 developed a subdivision named Emerald Estates, near the city of Troy, in Section 27, Township 49 North, Range 1 West, Lincoln County, Missouri. During this development, Respondent filled and/or channelized an estimated 263 lineal feet of stream channel of an unnamed tributary of Town Branch, which flows into the Cuivre River, which is a primary tributary to the Mississippi River. Additionally, Respondent discharged fill and/or dredge materials into wetlands adjacent to the tributary.
3. The Findings of Violations and Order for Compliance address discharges of pollutants by Respondent into the waters of the United States, without the permits required by law. 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. Pursuant to Section 502(6) of the CWA, 33 U.S.C. § 1362(6), "pollutants" include fill materials such as "dredged spoil... , rock, sand, [and] cellar dirt." Section 404 of the CWA, 33 U.S.C. § 1344, specifically requires a person to obtain a permit from the United States Army Corps of Engineers for any discharge of "dredged or fill material" into the "navigable waters" of the United States. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines "navigable waters" in part, as the "waters of the United States," which are defined at 40 C.F.R. § 232.2 and 33 C.F.R. Part 328.

### **Specific Findings**

4. Respondent Michael Huttenlocker is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
5. On February 26, 2001, the United States Army Corps of Engineers ("Corps") received a complaint that Respondent's construction of the Emerald Estates subdivision was impacting a wetland and stream without the required Section 404 permit. In response to this complaint, the Corps contacted Respondent by telephone and sent Respondent a letter informing him that the activity was impacting waters within the jurisdiction of the CWA, and that the project would require permit review. The Corps' letter contained a permit application and, in order to facilitate the permit application, requested Respondent provide information describing the project.
6. Respondent failed to respond to the Corps letter, and on April 9, 2001, the Corps sent Respondent an additional letter, which again requested that Respondent submit the required permit application before proceeding any further with the Emerald Estates development.
7. On April 26, 2001, representatives of the Corps and Respondent meet at the Emerald Estates development site to conduct an inspection. During this site inspection the Corps observed that the development work of the Respondent had proceeded without the required permit, in conflict with the Corps' February 26, 2001 notice to Respondent. The Corps also observed that the Respondent had utilized earth moving equipment that had resulted in a discharge of fill material into waters of the United States, and which had resulted in a significant length of stream being replaced by a buried culvert (later measured as 263 feet of stream channel (hereafter "discharge sites").
8. On May 4, 2001, the Corps issued Respondent a Cease and Desist Order which informed Respondent that a 404 permit was required and directed Respondent "to do no further work at this site until proper authorization has been granted."
9. By correspondence dated July 19, 2001, the Corps referred Respondent's violations of the CWA to the United States Environmental Protection Agency (EPA) for enforcement. By correspondence dated on May 31, 2002, the EPA notified Respondent that the case had been referred to EPA by the Corps, and requested a site inspection.
10. On June 10, 2002, representatives of the Corps, EPA and Respondent meet at Emerald Estates to conduct the site inspection. During the June 10, 2002, inspection, EPA and the Corps

observed that work at the site was ongoing, in violation of the Corps' May 4, 2001, Cease and Desist Order. During the site inspection, Respondent agreed to submit an "after-the-fact" permit and to perform compensatory mitigation for the impact on the stream and wetlands.

11. By materials dated July 31, 2002, Respondent provided the Corps an "after-the-fact" permit application and site maps which documented the location of the discharge sites, and the impact of Respondent's development on waters of the United States.

12. By correspondence dated September 6, 2002, the Corps notified Respondent that the Corps would allow permit authorization if Respondent performed specified compensatory mitigation and documented the required mitigation to the Corps. The Corps specified that performance of the compensatory mitigation was required within sixty (60) days (by November 5, 2002), and that compliance certification was required within "30 days of project completion or the permit issuance may be revoked and considered null and void."

13. On or about November 7, 2002, Respondent requested a thirty (30) day extension of time to complete the required mitigation and provide documentation to the Corps. The Corps granted the requested one-time extension.

14. By correspondence dated May 13, 2003, the Corps provided Respondent notice that performance of the required mitigation and documentation was required within twenty-one (21) days of the May 13, 2003 letter. The May 13, 2003 letter also informed Respondent that until the Corps received the required documentation, the May 4, 2001, Cease and Desist Order would remain in effect and any work performed after May 4, 2001, would be in violation of the Cease and Desist Order. The May 13, 2003 letter also informed Respondent that unless the mitigation was performed, permit authorization would not be granted, and the discharges "conducted prior to, and resulting in the Cease and Desist Order is an ongoing violation that has not been resolved."

15. To date, Respondent has failed to perform the required mitigation and/or provide documentation of any such mitigation to the Corps, and further, has failed to obtain any permit authorization for the discharges described in Paragraph A.7.

16. The earth moving machinery described in Paragraph A.7, above, constitutes a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

17. The dredged and/or fill materials described in Paragraph A.7, above, and discharged by Respondent into the stream are "pollutants" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

18. At the time of the Respondent's discharge of pollutants, as described above, the discharge sites were "waters of the United States," within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), 40 C.F.R. § 232.2 and 33 C.F.R. Part 328.

19. The discharge of the dredged and/or fill material into the waters of the United States described in Paragraph A.7, above, constitutes the “discharge of a pollutant” within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

20. Respondent’s discharges of pollutants from a point source into a water of the United States were performed without a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, and therefore these discharges violated Section 301 of the CWA, 33 U.S.C. § 1311.

## **B. ORDER FOR COMPLIANCE**

Based on the Findings of Violations set forth above and, pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), Respondent is hereby ORDERED as follows:

1. Within seven (7) days after receipt of this Order, Respondent shall provide written notice to the EPA contact listed in Paragraph B.3, below, whether it intends to comply with the terms of this Order. In the event Respondent states that it does not intend to comply with the terms of this Order and/or fails to comply with the terms of the Order, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, EPA may seek judicial enforcement of the terms of the Order and/or seek additional penalties for such noncompliance.

### **Mitigation**

2. Respondent shall perform the mitigation of the impact of the unpermitted discharges by performing one of the following three (3) options:

a. Within thirty (30) days after receipt of this Order, submit a mitigation plan to EPA for review and approval that specifies the actions required to obtain and deed restrict a stream and riparian corridor.

b. Within thirty (30) days after receipt of this Order, obtain 0.49 acres of mitigation credits from the Fox Creek Mitigation Bank at the following address:

Fox Creek Mitigation Bank  
Attn: Greg Emmenegg  
640 Thorntree Lane  
Eureka, MO 63025

c. Within thirty (30) days after receipt of this Order, obtain 526 lineal feet of stream mitigation based on a stream size of a 4-foot top width, 2-foot bottom width, 3-foot depth and 25 feet of buffer on both sides of the stream, through the Missouri Stream Stewardship Trust fund, at the following address:

Missouri Conservation Heritage Foundation  
c/o Stream Stewardship Trust Fund  
P.O. Box 366  
Jefferson City, Missouri 65102-0366

3. If Respondent chooses to perform mitigation pursuant to an EPA approved Mitigation Workplan (pursuant to Paragraph B.2.a, above), within thirty (30) days of Respondent's receipt of this Order, Respondent shall submit a proposed Mitigation Workplan to the following EPA and Corps contacts:

Mr. Raju Kakarlapudi  
U.S. Environmental Protection Agency - Region VII  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Mr. Ward Lenz  
U.S. Army Corps of Engineers, St. Louis District  
1222 Spruce Street  
St. Louis, Missouri 63103

3. The proposed Mitigation Workplan referenced in Paragraph B.3, above, shall identify the approximate location of the required mitigation site, and shall propose all actions necessary to perform the required mitigation. The proposed Mitigation Workplan shall propose a schedule for completion of the mitigation no later than June 1, 2005. EPA will review Respondent's submission of the Mitigation Workplan and will notify Respondent in writing of EPA's approval or disapproval of the Workplan, or any part thereof. If the Mitigation Workplan is disapproved in whole or in part by EPA, EPA will provide written comments to Respondent explaining the basis for its decision. Within thirty (30) days of receipt of EPA's comments, Respondent shall amend the Workplan by addressing all of EPA's comments, and resubmit the Workplan to EPA. If EPA disapproves the revised Workplan, EPA may modify and approve the same. Alternatively, EPA may direct Respondent to perform mitigation as required by Paragraphs B.2.b and B.2.c, above. Upon EPA modification and approval of the Workplan, EPA will notify Respondent of the modification/approval. The approved Mitigation Workplan shall be deemed incorporated into and an enforceable part of this Order. Upon receipt of EPA's approval of the Mitigation Workplan, Respondent shall commence work and implement the Mitigation Workplan in accordance with the schedule and provisions contained therein. Within fifteen days (15) of completion of the mitigation, Respondent shall perform a survey and legal description of the mitigation site.

4. Within fifteen (15) days of completion of one of the mitigation options set forth in Paragraph B.2, above, Respondent shall provide notice of completion of the mitigation to the EPA and Corps contacts set forth in Paragraph B.3, above. If Respondent has chosen to perform mitigation pursuant to a mitigation plan approved by EPA, Respondent's notice shall include a copy of the legal description of the mitigation site.

## Permit

5. Within thirty (30) days of receipt of this Order, Respondent shall consult with the St. Louis Army Corps of Engineers and, if directed by the Corps, Respondent shall reapply for all permits that the Corps determines are necessary to address the discharges and/or to implement any Plan approved pursuant to this Order. If and when such permit(s) are issued and effective, Respondent shall comply with the terms and conditions of such permits, including any and all obligations which apply to future monitoring and/or maintenance of any mitigation.


## Effect of Compliance

6. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondents of its responsibility to obtain and comply with any required local, state and/or federal permits required to address the unpermitted discharges described in Paragraph A.7, above.

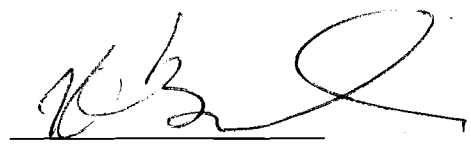
7. Compliance with the terms of this Order shall not relieve Respondent from liability for, or preclude EPA from initiating an enforcement action to recover penalties for any violations of the CWA, pursuant to Section 309(g) of the CWA, 42 U.S.C. § 1319(g).

## Effective Date

8. This Order shall be effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated from the date of Respondent's receipt of the Order.

*for*  
  
LEO J. ALDERMAN  
Director  
Water, Wetlands, and Pesticides Division  
U.S. Environmental Protection Agency - Region VII

12/21/04  
DATE

  
HOWARD C. BUNCH  
Sr. Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency - Region VII

12/20/04  
DATE

CERTIFICATE OF SERVICE

I certify that on the date noted below that I mailed the foregoing Findings of Violation and Order for Compliance by certified mail, return receipt requested, to:

Mr. Michael Huttenlocker  
#3 Rue DePaix  
Lake St. Louis, Missouri, 63367-1434

12/27/04  
Date

  
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