

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH 5th STREET

KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)

E&A CONSULTING GROUP, INC.)

Docket No. CWA-07-2010-0006

Respondent)

CONSENT AGREEMENT/
FINAL ORDER

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

The United States Environmental Protection Agency, Region 7 (EPA) and E&A Consulting Group, Inc. ("Respondent") have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Subpart I 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), 40 C.F.R. Part 22 Subpart I.

COMPLAINT

Jurisdiction

1. This Consent Agreement/Final Order (CA/FO) is being filed under the authority vested in the Administrator of EPA, pursuant to Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g) and in accordance with 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, 40 C.F.R. Part 22 Subpart I (Administrative Proceedings Not Governed by Section 554 of the Administrative Procedure Act).

2. This CA/FO alleges that the Respondent discharged pollutants into waters of the United States in violation of Sections 301 and 404 of the CWA, 33 U.S.C. §§ 1311 and 1344.

Parties

3. Complainant, by delegation from the Administrator of EPA to the Regional Administrator, EPA, Region 7, and re-delegation is the Director of Region 7's Water, Wetlands and Pesticides Division.

4. Respondent, E&A Consulting Group, Inc, was contracted to design and implement construction plans for developing the Heritage residential housing development project (Heritage Development) in Douglas County, Nebraska. Respondent has a mailing address of 330 North 117th Street, Omaha, Nebraska 68154.

Statutory and Regulatory Background

5. 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. Section 404 of the CWA provides that pollutants may be discharged only in accordance with the terms of a permit for the discharge of dredged or fill material.

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

Factual Background

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

8. At all times relevant to this action, Respondent operated on or otherwise controlled the property located in part of the North ½ and part of the Southwest ¼ of Section 23, part of the South ½ of Section 14, and part of the West ½ of Section 24, Township 16 North, Range 11 East, Douglas County, Nebraska (hereafter referred to as the "Heritage Development"). Specifically, Respondent contracted with Sanitary Improvement District No. 531 ("SID No. 531") to design and implement the site construction plans at the Heritage Development.

9. A Nationwide Permit No. 39 was authorized for the SID No. 531 on January 25, 2006. The permit prohibits the disruption of "aquatic life movement" and the "management of water flow."

10. At some time in the fall of 2007, Respondent and/or persons acting on their behalf and using earth moving equipment, created two road crossings at the Heritage Development that were not authorized by Section 404 permits. Specifically, road crossing number six disrupted

aquatic life movement and the management of water flow, in violation of Nationwide Permit No. 39. Road crossing four was identified as an unpermitted structure that diverted stream flow and caused discharges of dredged and/or fill material into adjacent wetlands.

11. On May 9, 2008, the Corps inspected the Heritage Development and issued a Notice of Noncompliance and Violation for violations of Nationwide Permit No. 39 and discharges of dredged and/or fill material, as described in Paragraph 10.

12. The dredged and/or fill materials discharged by Respondents into the unnamed tributaries of Big Papillion Creek and adjacent wetlands include spoil, rock, sand, and dirt and are "pollutants" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

13. The earth moving equipment and the road crossings referenced in Paragraph 10 above, constitute a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

14. The discharge of the dredged and/or fill material into the unnamed tributaries of Big Papillion Creek and adjacent wetlands, described in Paragraph 10 above, constitutes the "discharge of a pollutant" within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

15. The unnamed tributaries of Big Papillion Creek and adjacent wetlands are all "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.

FINDINGS OF VIOLATION

16. The facts stated in Paragraphs 8 through 15 above are herein incorporated.

17. Violations of the Nationwide Permit No. 39 at road crossing number six, as described in paragraph 10 above, are violations of Section 404 of the CWA, 33 U.S.C. § 1344.

18. Respondents' discharge and disposal of pollutants from road crossing number four into waters of the United States, as described in paragraph 10 above, occurred without a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, and, therefore, these discharges and disposals violated Section 301 of the CWA, 33 U.S.C. § 1311.

CONSENT AGREEMENT

19. Respondent admits the jurisdictional allegations of this CA/FO and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.
20. Respondent neither admits nor denies the factual allegations contained in this CA/FO.
21. Respondent waives any right to contest the allegations and his right to appeal the proposed Final Order accompanying this Consent Agreement.
22. Respondent and Complainant each agree to bear their own costs and attorney's fees.
23. Nothing contained in the Final Order shall alter or otherwise affect Respondent's obligations to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.
24. The undersigned representative of Respondent certifies that he is fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondent to it.
25. Respondent certifies by the signing of this CA/FO that, to the best of his knowledge, Respondent's facility is in compliance with all requirements of Sections 301 and 404 of the CWA.
26. The effect of settlement is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 25 above, of this CA/FO.
27. Respondent consents to the issuance of the Final Order and consents to the payment of a civil penalty in the amount of \$11,800.
28. Payment of the entire civil penalty shall resolve all civil and administrative claims of the United States alleged in the Findings of Violations.

Reservation of Rights

29. EPA reserves the right to enforce the terms of this CA/FO by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

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30. With respect to matters not addressed in this CA/FO, EPA reserves the right to take any enforcement action pursuant to the CWA, or any other available legal authority, including without limitation, the right to seek injunctive relief, monetary penalties and punitive damages.

FINAL ORDER

IT IS HEREBY AGREED BY THE PARTIES, and pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), it is ORDERED that:

1. Respondent shall pay a civil penalty of Eleven Thousand Eight Hundred dollars (\$11,800). The penalty shall be paid in full within thirty (30) days following receipt by Respondent of a fully executed copy of this CA/FO. Respondent shall pay the penalty by certified or cashier's check payable to "Treasurer, United States of America" and shall deliver it, with a transmittal that identifies the case name and docket number to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, Missouri 63197-9000.

The check must also be annotated with the docket number and with the name of the case. Copies of the transmittal letter and the check shall be simultaneously sent to:

Kathy Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
901 North 5th Street
Kansas City, Kansas 66101

and

Chris Muehlberger
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 7
901 North 5th Street
Kansas City, Kansas 66101.

Should the civil penalty not be paid as provided above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

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2. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CA/FO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

Parties Bound

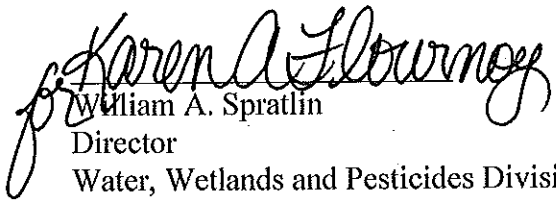
3. This Final Order shall apply to and be binding upon the Respondent, its agents, successors, and assigns. Respondent shall ensure that any directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for it with respect to matters included herein comply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

Effective Date


4. This Final Order shall become effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this Final Order.

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COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY


William A. Spratlin
Director
Water, Wetlands and Pesticides Division

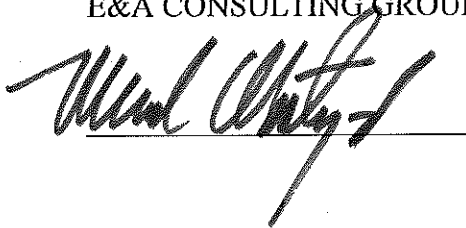
1-19-10
Date


Chris Muehlberger
Assistant Regional Counsel

1. 15. 10
Date

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RESPONDENT:
E&A CONSULTING GROUP, INC.



1-12-10
Date

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IT IS SO ORDERED.

March 16, 2010
Date

Robert L. Patrick
Robert L. Patrick
Regional Judicial Officer

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CERTIFICATE OF SERVICE

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


Copy hand delivered to
Attorney for Complainant:

Chris Muehlberger
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Mr. Mark Westergard
E&A Consulting Group, Inc.
330 North 117th Street
Omaha, Nebraska 68154

Dated: 3/16/10


Kathy Robinson
Hearing Clerk, Region 7