

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

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REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF: )  
Sidwell Materials, Inc. )  
IM – 1283 Limestone Quarry )  
Belmont County, Ohio )  
Respondent. )

Docket No. CWA-05-2012-0001  
Proceeding to Assess Class II  
Administrative Penalty under  
Section 309(g) of the Clean Water Act,  
33 U.S.C. § 1319(g)

**CONSENT AGREEMENT AND FINAL ORDER**

1. This is an administrative action commenced and concluded under Section 309(g) of the Clean Water Act (Act), 33 U.S.C. § 1319(g), and Sections 22.13(b) and 22.18(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b).
2. Complainant is the Director of the Water Division, United States Environmental Protection Agency, Region 5 (Complainant or U.S. EPA).
3. Respondent is Sidwell Materials, Inc. (Sidwell), a corporation organized under the laws of Ohio with a business address of 5240 Wortman Road, Zanesville, Ohio 43701.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Sidwell consents to entry of this CAFO and the assessment of the specified civil penalty,

and agrees to comply with the terms of the CAFO.

### **Jurisdiction and Waiver of Right to Hearing**

7. Sidwell admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations or alleged violations in this CAFO.

8. Sidwell waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c) and Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), any right to contest the allegations in this CAFO, and its right to appeal this CAFO under Section 309(g)(8)(B) of the Act, 33 U.S.C. § 1319(g)(8).

### **Statutory and Regulatory Background**

9. Section 301 of the Act, 33 U.S.C. § 1311, prohibits the discharge of pollutants into navigable waters except in compliance with, *inter alia*, a permit issued pursuant to CWA Section 404, 33 U.S.C. § 1344.

10. Section 404 of the CWA, 33 U.S.C. § 1344, authorizes the Secretary of the Army, acting through the Chief of Engineers, U.S. Army Corps of Engineers (Corps), to issue permits for the discharge of dredged or fill material into navigable waters.

11. Section 502(5) of the Act defines “person” as an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body. 33 U.S.C. § 1362(5).

12. Section 502(6) of the Act defines “pollutant,” as “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.” 33 U.S.C. § 1362(6).

13. Section 502(12) of the Act defines “discharge of pollutants,” as, *inter alia*, any addition

of any pollutant to navigable waters from any point source. 33 U.S.C. § 1362(12).

14. Section 502(14) of the Act defines “point source,” as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

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

16. The regulation at 40 C.F.R. § 230.3(s) defines the term “waters of the United States” as “all other waters such as . . . streams . . . , wetlands . . . “; and “wetlands adjacent to waters [such as lakes, rivers and streams].”

17. The regulation at 40 C.F.R. § 230.3(t) defines “Wetlands” as “those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.”

#### **Factual Allegations and Alleged Violations**

18. Respondent is a corporation incorporated under the laws of Ohio.

19. Respondent is a “person” under Section 502(5) of the Act, 33 U.S.C. § 1362(5).

20. Respondent owns a limestone and coal mining operation located at Section 32, T8N, R4W in Wheeling Township, Belmont County, Ohio (hereinafter referred to as “the Site”).

21. Beginning in June 2008 and at other times known to the Respondent, Respondent arranged for a logging company to timber the Site, and in the course of the timber harvest, a stream crossing was constructed. After the Site was timbered, Respondent directly or through its contractor began mining operations on the Site. In the course of these activities, dredged or fill

material was discharged into approximately 185 linear feet of a stream and 0.1 acres of wetlands at the Site.

22. The streams and abutting wetlands identified in paragraph 21 flow to Crabapple Creek, Wheeling Creek, and to the Ohio River. The Ohio River is a traditional navigable water.

23. Beginning in June 2008 or earlier and continuing to the present, the Respondent did not have a permit issued pursuant to Section 404 of the Act, 33 U.S.C. § 1344, to add dredged or fill material into the waters of the United States on the Site.

24. The streams and abutting wetlands on the Site are “waters of the United States” as defined by the regulations at 40 C.F.R. §§ 230.3(s) and 232.2, and constitute “navigable waters” as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7).

25. The dredged material deposited in the site’s streams and wetlands is a “pollutant” as defined Section 502(6) of the Act, 33 U.S.C. § 1362(6).

26. The depositing of dredged material described in paragraph 21, above, constitutes the “discharge of pollutants” as defined at Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

27. Therefore, Respondent is a person who discharged pollutants from a point source into waters of the United States, without a permit, in violation of Section 301 of the Act, 33 U.S.C. § 1311.

28. Respondent has been granted a water quality certification issued pursuant to Section 401 of the Act, 33 U.S.C. § 1341, from the Ohio Environmental Protection Agency (Ohio EPA). This water quality certification requires Respondent to undertake certain mitigation activities. Respondent has also applied for a permit from the Corps issued pursuant to Section 404 of the Act, 33 U.S.C. § 1344.

**Civil Penalty**

29. In consideration of Sidwell's cooperation in settling this matter, U.S. EPA agrees to a penalty of \$25,000.

30. Within 30 days after the effective date of this CAFO, Sidwell must pay the \$25,000 civil penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

**For checks sent by regular U.S. Postal Service mail**

U.S. EPA Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

**For checks sent by express mail**

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

31. A transmittal letter, stating Sidwell's name, complete address, the case docket number, and the billing document number must accompany the payment. Sidwell must write the case docket number and the billing document number on the face of the check and send copies of the check and transmittal letter to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd. (E-19J)  
Chicago, Illinois 60604-3590

Scott McWhorter, Enforcement Officer  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd. (WW-16J)  
Chicago, Illinois 60604-3590

Connie Puchalski  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd. (C-14J)  
Chicago, Illinois 60604-3509

32. This civil penalty is not deductible for federal tax purposes.
33. If Sidwell fails to pay the civil penalty timely Complainant may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and Complainant's enforcement expenses for the collection action.
34. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15.00 handling charge each month that any portion of the penalty due is more than thirty (30) days past due. Complainant will assess a six percent (6%) per year penalty on any principal amount not paid timely pursuant to this CAFO.

#### **General Provisions**

35. This CAFO resolves only Sidwell's liability for federal civil penalties for the violations and facts alleged in the CAFO.
36. This CAFO does not affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any other violations of law.
37. This CAFO does not affect Sidwell's responsibility to comply with the Clean Water Act and other applicable federal, state, local laws or permits.
38. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31 and the EPA's Clean Water Act Section 404 Settlement Penalty Policy (December 2001).
39. The terms of this CAFO bind Sidwell, its successors, and assigns.

40. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.
41. Each party agrees to bear its own costs and attorney's fees in this action.
42. This CAFO constitutes the entire agreement between the parties.

**SIGNATORIES**

Each undersigned representative of a party to this Consent Agreement and Final Order certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and Final Order and to bind legally such party to this document.


**Sidwell Materials Inc., Respondent**

10-10-11  
Date

  
Jeffrey R. Sidwell, President

**United States Environmental Protection Agency, Complainant**

10-20-11  
Date


  
Tinka G. Hyde, Director  
Water Division  
United States Environmental Protection Agency  
Region 5  
Chicago, Illinois



**In the Matter of:**  
**Sidwell Materials, Inc.**  
**Docket No. CWA-05-2012-0001**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

By:   
\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 5

Date: 12-9-11

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