



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH 5<sup>th</sup> STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF: )

JERRY MODDE, INC. )  
1358 Rose Hill Lane )  
St. Peters, Missouri 63376 )

Respondent )

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

Docket No. CWA-07-2009-0034

CONSENT AGREEMENT/  
FINAL ORDER

The United States Environmental Protection Agency, Region 7 ("EPA") and Jerry Modde, 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 Rules 22.13(b) and 22.18(b)(2) 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. §§ 22.13(b) and 22.18(b)(2).

COMPLAINT

Jurisdiction

1. This Administrative Complaint (Complaint) 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 (Consolidated Rules of Practice).

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

Parties

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

4. Respondent, Jerry Modde, Inc., is the owner of property located along Indian Camp Creek in St. Charles County, Missouri. Mr. Modde has a mailing address of 1358 Rose Hill Lane, St. Peters, Missouri 63376.

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. At various times between 1990 and 2007, the Respondent and/or persons acting on his behalf, discharged dredged or fill material including dirt, spoil, rock, and sand into an area in and adjacent to Indian Camp Creek in St. Charles, Missouri. The Respondent placed dredged or fill material to dam the creek and create a pool in order to pump water for Respondent's sod farm.

8. Respondent, and/or persons acting on his behalf, used mechanized land-clearing and/or earth moving equipment to accomplish the discharges described in Paragraph 7.

9. Respondent did not have a CWA Section 404 permit for the discharge of fill material into waters of the United States.

Finding of Violations

10. The dirt, spoil, rock, and sand discharged by the Respondent into the areas in and adjacent to the Indian Camp Creek constitute "pollutants" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

11. Respondent's work within the Indian Camp Creek area described above constitutes a "discharge of a pollutant" within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

12. The equipment used by the Respondent in performing the work described above constitutes a "point source" as defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

13. The affected areas of the Indian Camp Creek are "navigable waters" of the United States, as defined by CWA Section 502(7), 33 U.S.C. § 1362(7).

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

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

#### CONSENT AGREEMENT

16. 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.

17. Respondent admits the factual allegations contained in this CA/FO.

18. Respondent waives any right to contest the allegations and his right to appeal the proposed Final Order accompanying this Consent Agreement.

19. Respondent and Complainant each agree to bear their own costs and attorney's fees.

20. 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.

21. 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.

22. EPA has considered the appropriateness of the penalty pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and has determined that the appropriate penalty for the violations set forth in the Complaint is \$28,000. However, Respondent has demonstrated an inability to pay any penalty in this matter. Therefore, Complainant agrees to resolve the claims alleged in the Complaint for zero dollars.

23. Respondent certifies by the signing of this CA/FO that it is in compliance with all requirements of Sections 301 and 404 of the CWA, and all regulations promulgated thereunder; and that Respondent agrees to continue to comply with the CWA.

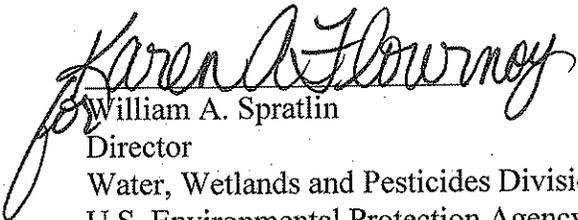
24. The effect of settlement is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 23 above, of this CA/FO.

Reservation of Rights

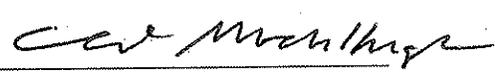
25. EPA reserves the right to enforce the terms of this CA/FO by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

26. 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.

COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY

  
for William A. Spratlin  
Director  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency  
Region 7

7-1-09  
Date

  
Chris Muehlberger  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 7

7.2.09  
Date

FROM :MODDE SOD CO  
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9135517925

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To:636 272 3385 P.4/4

In the Matter of Jerry Modde, Inc.  
Docket No CWA-07-2009-0034

RESPONDENT:  
GERALD MODDE

*Gerald Modde*  
Gerald Modde

7-15-09 —  
Date

FINAL ORDER

The foregoing Consent Agreement is hereby approved and ratified pursuant to 40 C.F.R. § 22.18(b)(3).

IT IS SO ORDERED.

August 6, 2009  
Date

Robert L. Patrick  
Robert L. Patrick  
Regional Judicial Officer

IN THE MATTER OF Jerry Modde, Inc., Respondent  
Docket No. CWA-07-2009-0034

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. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Gerald R. Modde  
Jerry Modde, Inc.  
1358 Rose Hill Lane  
St. Peters, MO 63376

Dated: 8/6/09



Kathy Robinson  
Hearing Clerk, Region 7