

## ORDER

Judge Charneski's Initial Decision holding "that Smith Farm Enterprises, L.L.C., violated Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), as alleged in Count I, by discharging fill material into "waters of the United States," without having obtained a permit from the U.S. Army Corps of Engineers pursuant to Section 404 of the Act. 33 U.S.C. § 1344. It is further held that respondent violated Section 301(a) of the Clean Water Act, as alleged in Count II, by discharging pollutants associated with storm water, without having obtained a National Pollutant Discharge Elimination permit pursuant to Section 402 of the Act. 33 U.S.C. § 1342," is adopted for this Decision Upon Remand.

The Court also adopts Judge Charneski's determination for the penalties assessed, less the \$10,000.00 reduction. Thus, it adopts "[f]or the Section 301(a) violation involving the Section 404 permit, [by] Smith Farm Enterprises, L.L.C., [the assessment of] a civil penalty of \$ 80,000, [and for] the Section 301(a) violation involving the Section 402 permit, [the] [R]espondent is assessed a civil penalty of \$ 14,000. 33 U.S.C. § 1319(g)." Accordingly, upon application of the reduction, Respondent is directed to pay a total civil penalty of \$84,000.00 within 60 days of the date of this order.

Payment is to be made by certified or cashier's check, payable to "U.S. Environmental Protection Agency, Fines and Penalties, Cincinnati Finance Center, P.O. Box 979077, St. Louis, MO 63197-9000." Unless an appeal is taken to the Environmental Appeals Board pursuant to 40 C.F.R. § 22.30, this decision shall become a Final Order as provided in 40 C.F.R. § 22.27(c).

William B. Moran

William B. Moran

United States Administrative Law Judge

Washington, D.C.  
March 7, 2008

