

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	
)	Docket No. CWA-05-2024-0003
)	
Sheridan-Joliet Land)	Proceeding to Assess a Class II Civil
Development, LLC, and)	Penalty under Section 309(g) of the Clean
Sheridan Sand & Gravel Co.;)	Water Act, 33 U.S.C. § 1319(g)
Chicago, Illinois,)	
)	
Respondents.)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 309(g) of the Clean Water Act (“CWA” or “the Act”), 33 U.S.C. § 1319(g), and Sections 22.13(b) and 22.18(b)(2)-(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2)-(3).

2. The Complainant is, by lawful delegation, the Director of the Enforcement and Compliance Assurance Division, EPA Region 5, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondents are Sheridan-Joliet Land Development, LLC, an Illinois limited liability company doing business in the State of Illinois and Sheridan Sand & Gravel Company, an Illinois corporation doing business in the State of Illinois.

4. According to 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).

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. Respondents consent to the terms of this CAFO, including the assessment of the civil penalty specified below.

Jurisdiction and Waiver of Right to Hearing

7. Respondents admit the jurisdictional allegations in this CAFO and neither admit nor deny the factual allegations in this CAFO.

8. Respondents waive any right to contest the allegations and their right to appeal the proposed final order accompanying the consent agreement.

Statutory and Regulatory Background

9. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters except in compliance with, *inter alia*, a permit for the discharge of dredged or fill material into navigable waters pursuant to Section 404 of the CWA, 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 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the Administrator to assess a Class II civil penalty under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), after consultation with the State in which the violation occurs, when the Administrator finds, on the basis of any information available, that a person has violated Section 301 of the CWA, 33 U.S.C. § 1311, which prohibits unpermitted discharges of any pollutant to navigable waters and discharges of any pollutant to navigable waters not in compliance with a

permit issued under Section 404 of the CWA, 33 U.S.C. § 1344. EPA may conduct such enforcement consistent with the January 1989 Memorandum Between the Department of the Army and The Environmental Protection Agency, Federal Enforcement for the Section 404 Program of the Clean Water Act.

Factual Allegations

12. Respondent Sheridan-Joliet Land Development, LLC is an Illinois limited liability company and so it is a “person,” as defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5) and/or 40 C.F.R. § 232.2.

13. Respondent Sheridan Sand & Gravel Co. is an Illinois corporation and so it is a “person,” as defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5) and 40 C.F.R. § 232.2.

14. Sheridan-Joliet Land Development, LLC, for all times relevant to this Order, has owned a clean construction or demolition debris (CCDD) fill operation facility located at 2679 N. 4201st Road, Sheridan, LaSalle County, Illinois (N4201 Road Site).

15. Sheridan Sand & Gravel Co. has, for all times relevant to this Order, operated the N4201 Road Site.

16. The Fox River, Roods Creek and the wetlands and open waters adjacent to Roods Creek are all “waters of the United States,” as that term is currently defined at 40 C.F.R. § 120.2 and as previously defined at 40 C.F.R. § 232.2.

17. The Fox River, Roods Creek and the wetlands and open waters adjacent to Roods Creek are “navigable waters” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

Unlawful Discharge of Pollutants into the Wetlands

18. The statements in paragraphs 1 through 17 are incorporated by reference as if set forth in full.

19. On June 30, 2008, the Illinois Environmental Protection Agency (IEPA) issued Permit No. CCDD2007-040-DE/OP to Sheridan-Joliet Land Development, LLC and Sheridan Sand & Gravel Co. to develop and operate a new CCDD fill operation at the N4201 Road Site.

20. On April 4, 2017, the IEPA conducted a CCDD inspection at the N4201 Road Site.

21. The IEPA inspectors observed a discharge of surface water run-off from the north side of the fill pile towards and entering Roods Creek. Surface water was flowing down an eroded channel in the side of the fill pile.

22. On January 29, 2018, the United States Army Corps of Engineers Rock Island District referred an enforcement case against Branko Vardijan to the EPA. Copies of the referral were sent via certified mail to, among others, Branko Vardijan, Sheridan-Joliet Land Development, LLC and Sheridan Sand & Gravel Co.

23. Branko Vardijan is the Registered Agent and Manager for Sheridan-Joliet Land Development, LLC.

24. On February 16, 2018, the Army Corps of Engineers issued a notice of violation to Branko Vardijan.

25. According to the notice of violation, based on information gathered via aerial photographs from 1969 to 2017, as well as on-site photos from July 23 and September 24, 2015, and January 9, 2018, fill material has continued to be discharged into a wetland and backwater area of Roods Creek since 2013.

26. According to the notice of violation, the Army Corps of Engineers made a determination that Roods Creek, the backwater area, and the directly abutting wetlands are jurisdictional waters of the United States under Section 404 of the Clean Water Act, 33 U.S.C. § 1344.

27. According to the notice of violation, the Army Corps of Engineers has not authorized the discharge of fill material into the wetlands or the backwater area of Roods Creek.

28. Two aerial photographs—one dated November 6, 2011 and one dated June 9, 2017—were provided with the notice of violation.

29. The June 9, 2017 aerial photograph identifies fill material that was not present in the November 6, 2011 aerial photograph. Surface water and vegetation have been replaced by or covered over by fill material.

30. On May 2, 2018, two EPA inspectors met with Branko Vardijan at the N4201 Road Site and conducted a Clean Water Act Section 404 inspection.

31. The EPA inspectors found a fill material pile 30 feet in height, which was comprised of, among other things, soil, rocks, bricks, cinder blocks, rubber gloves, metal, garbage bags and stone countertop.

32. The fill material had been placed in wet meadow/emergent wetlands that abut Roods Creek, which is a tributary to the Fox River.

33. Roods Creek is a perennial stream and it flows approximately 0.44 miles from the site to the Fox River.

34. The EPA inspectors observed flowing water in a channel from the toe of the north side of the fill material pile that runs into Roods Creek.

35. On September 24, 2020, EPA inspectors returned to the N4201 Road Site to conduct a wetland delineation.

36. The EPA inspectors observed asphalt, concrete, gravel, broken glass, metal pieces and aluminum cans in the fill pile.

37. The EPA inspectors observed flowing water in two channels from the base of the fill pile to Roods Creek.

38. The EPA inspectors sampled in four locations for hydrophytic vegetation, hydric soils and wetland hydrology.

39. Based on observations, the EPA inspectors concluded that scrub-shrub wetland and emergent wetland are present at the N4201 Site underneath and surrounding the fill pile.

40. The scrub-shrub wetland and emergent wetland are “wetlands,” as defined in 40 C.F.R. § 232.2.

41. The rock and soil, among other things, in the 30-foot-high pile at the N4201 Road Site are “fill material” as defined at 40 C.F.R. § 232.2.

42. The haul trucks, excavators, loaders, and bulldozers that Respondents allowed onto the N4201 Road Site and that dumped fill material into the wetland are each a “point source” as that term is defined at 33 U.S.C. § 1362(14).

43. The fill material pile is a “point source” as that term is defined at 33 U.S.C. § 1362(14).

44. The fill material and garbage are “pollutants,” as defined in Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

45. The dumping of fill material into the wetlands and the movement of sediment from the fill pile into the channel that leads to Roods Creek are each a “discharge of a pollutant,” as defined in Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

46. Because Respondents are persons who caused or who own or operate a facility or operation that caused the discharge of pollutants at a point source to navigable waters, Respondents have been subject to the CWA and the 404 program at all times relevant to this Order.

47. At all times relevant to this Order, Respondents had not applied for and were not issued a permit under Section 404 of the CWA, 33 U.S.C. § 1344, authorizing the discharge of pollutants from the point sources identified above.

48. Accordingly, Respondents are persons who discharged fill material from a point source into navigable waters, without a 404 permit, in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

49. Each day the pollutant remains in the navigable waters and/or each day the pollutant is discharged to the navigable waters constitutes a continuing violation of the CWA and an additional day in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

Civil Penalty

50. Under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. part 19, the Administrator may assess a Class II civil penalty up to \$25,847 per day of violation up to a total of \$323,081, for violations of the CWA that occurred after November 2, 2015, and for which penalties are assessed on or after January 6, 2023, or other amounts as penalty levels may be later adjusted at 40 C.F.R. part 19.

51. Based upon the facts alleged in this CAFO, and upon the nature, circumstances, extent and gravity of the violation alleged, as well as Respondent's ability to pay, prior history of such violations, degree of culpability, economic benefit or savings (if any) resulting from the violations, and such other matters as justice may require, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$71,443.

52. Within 30 days after the effective date of this CAFO, Respondent must pay the \$71,443 civil penalty by an on-line payment. To pay on-line, go to www.pay.gov. Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

53. Within 5 days of payment, Respondents must provide proof of payment via email to:

Juliane Grange
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5
R5HearingClerk@epa.gov

Yone Yu
Water Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency
yu.yone@epa.gov

Mark Koller
Associate Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
koller.mark@epa.gov

54. This civil penalty is not deductible for federal tax purposes.

55. If Respondents do not timely pay the civil penalty, Complainant may request the United States Department of Justice bring a civil action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States'

enforcement expenses for the collection action. Respondents acknowledge that the validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

56. Respondents must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established pursuant to 26 U.S.C. § 6621(a)(2); 31 U.S.C. § 3717. In addition to the assessed penalty and interest, Respondents must pay the United States' attorneys fees and costs for collection proceedings, and Respondents must pay a nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 20 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. *See* 33 U.S.C. § 1319(g)(9).

General Provisions

57. The parties consent to service of this CAFO by email at the following valid email addresses: koller.mark@epa.gov (for Complainant) and [insert email address or addresses] (for Respondents). Respondents understand that the CAFO will become publicly available upon proposal for public comment and upon filing.

58. Full payment of the penalty as described in paragraphs 52 and 53 and full compliance with this CAFO shall not in any case affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

59. As provided under 40 C.F.R. § 22.18(c), full payment of the penalty as described in paragraphs 52 and 53 and full compliance with this CAFO shall only resolve Respondents' liability for federal civil penalties under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for the particular violations alleged in this CAFO.

60. This CAFO does not affect Respondents' responsibility to comply with the CWA and other applicable laws, regulations, or permits.

61. Respondents certify that they are complying with Sections 301(a) and 404 of the CWA, 33 U.S.C. § 1311(a), 1344.

62. The terms of this CAFO bind Respondents and their successors and assigns.

63. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to the terms of this CAFO.

64. All parties agree to bear their own costs and attorneys fees in this action.

65. This CAFO constitutes the entire agreement between the parties.

66. Pursuant to 40 C.F.R. § 22.18(b)(3), this Consent Agreement does not dispose of this proceeding without execution of the Final Order. The Final Order will not be issued until after completion of the requirements of Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45(b), which require, among other things, public notice and a reasonable opportunity to comment on any proposed penalty order. Further, under Section 309(g), 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.45, this Consent Agreement may be withdrawn before execution of the Final Order. Please refer to Section 309(g) of the CWA, 33 U.S.C. 1319(g), 40 C.F.R. § 22.45, and 40 C.F.R. part 22 (the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties) for detailed information on the procedures regarding Consent Agreement and Final Order as a penalty order under the CWA and settlement under part 22.

67. When final and effective, this CAFO is a "final order" for purposes of 40 C.F.R. §§ 22.13, 22.18, 22.31, 22.45 and the EPA's Clean Water Act Section 404 Settlement Penalty Policy (Dec. 2001).

68. In accordance with Section 309(g)(5) of the CWA, 33 U.S.C. § 1319(g)(5), and 40 C.F.R. § 22.45, this CAFO shall become effective 30 days after the date of issuance unless, if applicable, a commenter files a petition for judicial review pursuant to 33 U.S.C. § 1319(g)(8) or a request for hearing pursuant to 33 U.S.C. § 1319(g)(4)(C), or, if applicable, 30 days after the request or petition is denied. The date of issuance is the date the Final Order is signed by the Regional Judicial Officer or Regional Administrator.

In the Matter of:
Sheridan-Joliet Land Development, LLC and Sheridan Sand & Gravel
Co. Docket No. CWA-05-2024-0003

Sheridan-Joliet Land Development, LLC
Respondent

Blye Vard
Signature

9/15/2023
Date

Branko Vardijan
Name

Manager
Title

Sheridan Sand & Gravel Co.
Respondent

Blye Vard
Signature

9/15/2023
Date

Branko Vardijan
Name

President
Title

In the Matter of:
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United States Environmental Protection Agency, Complainant

Carolyn
Person (for) Digitally signed by
Carolyn Person (for)
Date: 2023.09.26
13:36:04 -05'00'

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division
U.S. EPA Region 5

Date

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Final Order

In accordance with Section 309(g)(5) of the CWA, 33 U.S.C. § 1319(g)(5), and 40 C.F.R. § 22.45, this CAFO shall become effective 30 days after the date of issuance unless, if applicable, a commenter files a petition for judicial review pursuant to 33 U.S.C. § 1319(g)(8) or a request for hearing pursuant to 33 U.S.C. § 1319(g)(4)(C), or, if applicable, 30 days after the request or petition is denied. The date of issuance is the date the undersigned signed this Final Order. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18, 22.31, and 22.45. IT IS SO ORDERED.

By: _____ Date: _____
Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5