

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. The Respondent is Ronald Roche. Respondent has a mailing address of 12417 Worthington Drive, St. Louis, Missouri 63128.

Statutory and Regulatory Framework

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.

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.

7. Section 404 of the CWA, 33 U.S.C. § 1344, specifically requires a person to obtain a permit from the Secretary of the Army acting through the Chief of Engineers, commonly referred to as the United States Army Corps of Engineers (hereinafter "Corps"), for any discharge of "dredged or fill material" into the "navigable waters" of the United States.

8. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines "navigable waters," in part, as the "waters of the United States," which are defined at 40 C.F.R. § 232.2 and 33 C.F.R. Part 328, and which include wetlands adjacent to waters of the United States.

9. Section 309(a) of the CWA, 33 U.S.C. § 1319(a), authorizes the issuance of an order against any person who violates Section 301 of the CWA, 33 U.S.C. § 1311, requiring such person to comply.

Factual Background

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

11. At all times relevant to this action, Respondent owned, operated, or otherwise controlled property located in Section 9, Township 44 North, Range 7 West, Osage County, Missouri (hereinafter "the Site").

12. During the first week of October 2008, Respondent and/or persons acting on its behalf and using earth moving equipment, authorized and/or directed the discharge of approximately 3,035 cubic yards of dredged or fill material including, but not limited to, dirt, spoil, rock, and sand, into approximately 1, 490 linear feet of Baileys Creek, which runs through the Site.

13. On April 6, 2009, the Corps inspected the Site and documented the discharges of fill material described in Paragraph 12.

14. The dredged and/or fill materials discharged by Respondent into the stream and adjacent wetlands referenced in Paragraph 12 are “pollutants” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

15. The earth moving equipment referenced in Paragraph 12 constitutes a “point source” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

16. The discharge of the dredged and/or fill material into Baileys Creek referenced in Paragraph 12 constitutes the “discharge of a pollutant” within the meaning of Section 501(12) of the CWA, 33 U.S.C. § 1362(12).

17. Baileys Creek referenced in Paragraph 12 is a “water 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.

18. Respondent did not obtain a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, prior to the performance of the work described herein, nor was Respondent performing the work described herein under any prior permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344.

A. FINDINGS OF VIOLATION

19. The facts stated in Paragraphs 10 through 18 above are herein incorporated.

20. Respondent’s discharge of pollutants from a point source into waters of the United States occurred without a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, and, therefore, these discharges violated Section 301 of the CWA, 33 U.S.C. § 1311.

CONSENT AGREEMENT

21. 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.

22. Respondent neither admits nor denies the factual allegations contained in this CA/FO.

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

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

25. 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.

26. 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.

27. Respondent certifies by the signing of this CA/FO that, to the best of his knowledge, Respondent is in compliance with all requirements of Sections 301 and 404 of the CWA, and is scheduled to be in compliance with EPA's May 21, 2010 Administrative Order for Compliance, Docket No. CWA-07-2010-0104.

28. The effect of settlement is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 27 above, of this CA/FO.

29. Respondent consents to the issuance of the Final Order and consents to the payment of a civil penalty in the amount of \$24,500.

30. 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

31. 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.

32. 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 Twenty Four Thousand, Five Hundred dollars (\$24,500), due thirty (30) calendar days from the effective date of the CA/FO. Respondent shall pay the penalty by certified or cashier's checks payable to "Treasurer, United States of America" and shall deliver them 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.

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.

2. No portion of the civil penalty or interest paid by Respondent pursuant to the

In the matter of:
Ronald Roche
CWA Docket No.: 07-2011-0075
Page 6 of 9

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.

In the matter of:
Ronald Roche
CWA Docket No.: 07-2011-0075
Page 7 of 9

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

 9-30-11
Date
Karen A. Flournoy
Acting Director
Water, Wetlands and Pesticides Division

 9.30.11
Date
Chris Muehlberger
Assistant Regional Counsel

In the matter of:
Ronald Roche
CWA Docket No.: 07-2011-0075
Page 8 of 9

RESPONDENT:
Ronald Roche

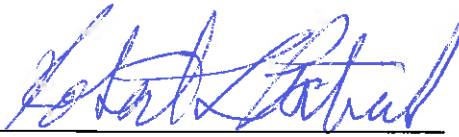
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20 September 2011
Date

In the matter of:
Ronald Roche
CWA Docket No.: 07-2011-0075
Page 9 of 9

IT IS SO ORDERED.

Nov. 21, 2011
Date


Robert L. Patrick
Regional Judicial Officer

IN THE MATTER OF Ronald Roche, Respondent
Docket No. CWA-07-2011-0075

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing 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 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Mr. Ronald Roche
12417 Worthington Drive
St. Louis, Missouri 63128

and

Robert J. Brundage
Newman, Comley & Ruth P.C.
601 Monroe Street, Suite 301
P.O. Box 537
Jefferson City, Missouri 65102-056

Dated: 11/21/11



Kathy Robinson
Kathy Robinson
Hearing Clerk, Region 7