

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

IN THE MATTER OF:)

)
)
) Docket No. CWA-07-2014-0105
)

KENNETH C. WILLIAMS)

and)

ROGER WILLIAMS.)

Respondents)

)
) FINDINGS OF VIOLATION,
) ORDER FOR COMPLIANCE
) ON CONSENT
)

Proceedings under Section 309(a)(3) of the)
Clean Water Act, 33 U.S.C. § 1319(a)(3))
_____)

Preliminary Statement

1. The following Findings of Violation are made and Order for Compliance ("Order") is issued pursuant to the authority of Section 309(a)(3) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(a)(3). The authority to take action under Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), is vested in the Administrator of the U.S. Environmental Protection Agency ("EPA"). The Administrator has delegated this authority to the Regional Administrator, EPA, Region 7, who in turn has delegated it to the Director of the Water, Wetlands and Pesticides Division of EPA, Region 7.

2. The Respondents in this case are Kenneth C. Williams and Roger Williams ("Respondents").

3. EPA, together with Respondents, enter into this Section 309(a)(3) Order for Compliance on Consent in order to carry out the goals of the CWA, 33 U.S.C. § 1251 *et seq.*, to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters."

4. It is the parties' intent through this agreement to address discharges of pollutants by Respondents into the waters of the United States without a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, in violation of Section 301 of the CWA, 33 U.S.C. § 1311. Specifically, Section 301 of the CWA, 33 U.S.C. § 1311, provides that except as in compliance

with certain specified provisions of the CWA, the unauthorized discharge of any pollutant into the waters of the United States by any person is unlawful.

5. By entering into this Order, Respondents (1) consent to and agrees not to contest EPA's authority or jurisdiction to issue or enforce this Order, (2) agree to undertake all actions required by the terms and conditions of this Order, and (3) consent to be bound by the requirements set forth herein. Respondents also waive any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which Respondents may have with respect to any issue of fact or law set forth in this Order, including, but not limited to, any right of judicial review of this Order under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

Statutory and Regulatory Framework

6. 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.

7. 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.

8. 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.

9. 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 tributaries to waters of the United States.

10. 40 C.F.R. § 232.2 defines "discharge of fill material" to include the "placement of fill that is necessary for the construction of any structure in a water of the United States," including "dams and dikes."

11. 40 C.F.R. § 232.2 defines "fill material" as any pollutant that "replaces portions of the 'waters of the United States' with dry land or which changes the bottom elevation of a water body for any purpose."

12. 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

13. Respondents are "persons" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

14. At all times relevant to this action, Respondents owned, operated, or otherwise controlled property, recorded in Wayne county under the name "Williams Family Limited Partnership," located in Sections 28 and 29, Township 30 North, Range 7 East, in Wayne County, Missouri (hereinafter "the Site").

15. The property on which the Site is located lies in a rural, heavily forested area of northern Wayne County and is comprised of 1,921 acres of non-industrial, private forestland.

16. In 2007, Respondents directed their consultant, Clearwater Forest Consultants, LLC ("Clearwater"), to investigate and research potential sites to build a lake on the Site. Clearwater contacted the NRCS for assistance with this project. Due to the scope of the project, the NRCS directed Clearwater to the Corps for further assistance.

17. On February 19, 2008, Respondent Kenneth C. Williams, on behalf of the Williams Family Limited Partnership, submitted a permit application to the St. Louis District of the Corps to construct an impoundment of unnamed tributaries to Turkey Creek for the purpose of creating a lake ("lake project"). The Corps provided Respondent with information concerning mitigation for the lake project. The application was withdrawn and the project file was closed by the Corps on November 24, 2008 after learning the lake project was no longer being pursued.

18. In December 2011, Clearwater, on behalf of Respondents, contacted the Corps with inquiries about the lake project. At that time, the Corps reopened the case file and additional information concerning mitigation for the lake project was submitted to the consultant. The Corps also directed Clearwater to the NRCS for assistance in the planning of the lake project whose assistance was sought by Clearwater. Then, in April 2012, the Corps again closed the file having received no further contact from Clearwater.

19. In 2013, the NRCS presented Clearwater with new potential lake sites as well as a new impoundment structure design all of which had the effect of reducing the scope of the project relative to the project previously proposed to the Corps. This new project both relocated the site of the lake and reduced the footprint of the same. Based upon representations from the NRCS, Clearwater's understanding was that the scope of the new project did not require permits of any type. With this understanding, the new lake project commenced during the spring of 2013.

20. On February 24, 2014, the Corps received a complaint from a property owner downstream from the Site that an unnamed tributary to Turkey Creek was impounded.

21. On April 1, 2014, the Corps contacted Respondents. Respondents acknowledged that the new lake project was completed in the spring and summer of 2013.

22. On April 9, 2014, the Corps inspected the Site and confirmed that Respondents and/or persons acting on their behalf, authorized and/or initiated the discharge of fill material into three unnamed tributaries to Turkey Creek using earth moving equipment through grading and filling operations associated with the construction of a lake, impacting approximately 2,200 linear feet of stream channel as estimated by the Corp.

23. On May 19, 2014, the Corps issued a Cease and Desist order to Respondents pursuant to Notice of Violation No. MVS-2008-115, which is attached as Exhibit 1 for reference herein, and simultaneously referred the matter to the EPA for enforcement.

24. The fill material and sediment discharged by Respondents' activities into tributaries of Turkey Creek are "pollutants" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

25. The earth moving equipment referenced above constitutes a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

26. The discharge of the dredged and/or fill material into tributaries to Turkey Creek constitutes the "discharge of a pollutant" within the meaning of Section 501(12) of the CWA, 33 U.S.C. § 1362(12).

27. The tributaries to Turkey Creek are "waters 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.

28. Respondents 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 did Respondents perform 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

29. The facts stated in Paragraphs 13 through 28 above are herein incorporated.

30. Respondents' 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.

B. ORDER FOR COMPLIANCE ON CONSENT

Based on the FINDINGS OF FACT and FINDINGS OF VIOLATION set forth above, and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), EPA hereby ORDERS, and Respondents hereby AGREE to take, the actions described below:

31. Respondents shall comply with the CWA by immediately ceasing the discharge of fill material from the lake project into the unnamed tributaries to Turkey Creek and taking steps to prevent such future discharges of fill material from the lake project.

32. Respondents agree to fully implement the terms of the terms of the EPA-approved Mitigation Plan, attached as Exhibit 2 and incorporated into the terms of this Order. The Mitigation Plan shall be implemented within six months of approval of the Plan and in

accordance with the specifications set forth in the Plan or as otherwise agreed to by the parties in writing and signed by both parties.

33. Once the Mitigation Plan has been fully implemented, Respondents agree to submit a completion report, which shall include copies of relevant documents, including a copy of the executed legal instrument to protect the mitigated site, and a signed statement indicating that the Mitigation Plan has been fully implemented. The completion report must be submitted within 30 days after work has been completed. The completion report shall include the following written statement, followed by signature of a duly authorized representative of Respondents:

I certify under penalty of law that the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

34. All documents to be submitted to EPA under this Order shall be submitted by mail to:

Lantz Tipton, or designate
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

General Provisions

35. Respondents' failure to comply with the terms of this Section 309(a)(3) Compliance Order may result in your liability for statutory civil penalties under Section 309(d) of the Act, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Should EPA commence an action seeking penalties for violations of this Compliance Order, a United States District Court may impose civil penalties if the court determines that Respondents have violated the Act and failed to comply with the terms of the Order.

36. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondents of their responsibilities to obtain any required local, state, and/or federal permits.

37. This Order does not constitute a waiver or a modification of any requirements of the CWA, 33 U.S.C. § 1251 *et seq.*, all of which remain in full force and effect. EPA retains the right to seek any and all remedies available under Sections 309(b), (c), (d) or (g) of the CWA, 33 U.S.C. § 1319(b), (c), (d) or (g), for any violation cited in this Order. EPA reserves the right to enforce the terms of this Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

Access and Requests for Information

40. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect

property owned or operated by Respondents and/or to request additional information from Respondents, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318 and/or any other authority.

Severability

41. If any provision or authority of this Order, or the application of this Order to Respondents, is held by federal judicial authority to be invalid, the application to Respondents of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

Parties Bound

42. This Order shall apply to and be binding upon the Respondents, their agents, successors, and assigns. Respondents 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 Order.

Effective Date

43. The terms of this Order shall be effective and enforceable on the Effective Date, which is the date this Order is signed by EPA. All time periods herein shall be calculated therefrom unless otherwise provided in this Order.

Termination

44. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of EPA. Termination shall not be unreasonably withheld. The Parties agree full compliance with the terms of this Order and the Consent Agreement/Final Order in Docket No. CWA-07-2014-0105 shall constitute reasonable grounds for termination.

Signatories

45. The undersigned for each party has the authority to bind each respective Party to the terms and conditions of this Order. The Order may be signed in part and counterpart by each Party.

For the Complainant, United States Environmental Protection Agency, Region 7:



KAREN A. FLOURNOY

Director

Water, Wetlands and Pesticides Division

9-30-15

DATE



CHRIS MUEHLBERGER

Assistant Regional Counsel

Office of Regional Counsel

9.30.15

DATE

For Respondents:

Roger Williams

ROGER WILLIAMS

9/21/2015

DATE

21.07.8

21.07.8

Kenneth C. Williams

KENNETH C. WILLIAMS

9/24/15

DATE

Ken Williams

R.J.R.

CERTIFICATE OF SERVICE

I certify that on the date noted below I mailed the foregoing Findings of Violation and Order for Compliance by certified mail, return receipt requested, to:

Mr. Roger Williams
24291 North Forest Drive
Forest Lake, Illinois 60047

and

Mr. Kenneth C. Williams
109 South Hametown Road
Copley, Ohio 44321

10.7.15



Date