

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

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| In the Matter of: |) Docket No. CWA-05-2010-0015 |
| |) |
| Oregon Holdings IV, LLC, |) Proceeding to Assess a Class II Civil Penalty |
| 4140 Lockburne Road |) Under Section 309(g) of the Clean Water Act |
| Columbus, Ohio |) 33 U.S.C. § 1319(g). |
| |) |
| Respondent. |) |

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CONSENT AGREEMENT AND FINAL ORDER

CONSENT AGREEMENT

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

I. Preliminary Statement

1. This is an administrative action commenced and concluded pursuant to Section 309(g) of the Clean Water Act, ("the Act"), 33 U.S.C. § 1319(g), and Sections 22.13(b) and 22.18(b)(2) and (3) 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, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

2. The Complainant is by lawful delegation the Director, Water Division, Region 5, U.S. Environmental Protection Agency.

3. The Respondent is Oregon Holdings IV, LLC, 4140 Lockburne Road, Columbus, Ohio, a corporation doing business in the State of Ohio.

4. Respondent admits the Administrator of the EPA has jurisdiction of this proceeding pursuant to Sections 301 and 309 of the Act, 33 U.S.C. §§ 1311 and 1319, and the regulations at 40 C.F.R. § 22.38, and pursuant to 40 C.F.R. § 22.18(b)(2).

5. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO) pursuant to 40 C.F.R. § 22.13(b).

6. 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 interests and in the public interest.

II. Statutory and Regulatory Background

7. Section 301 of the Act, 33 U.S.C. § 1311, prohibits the discharge of pollutants into “waters of the United States” except in compliance with, among other things, a permit issued under Section 404 of the Act, 33 U.S.C. § 1344.

8. Section 404 of the Act, 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 “waters of the United States.”

9. Section 502(12) of the Act, 33 U.S.C. § 1362(12), defines “discharge of pollutants” as “any addition of any pollutant to navigable waters from any point source . . .”

10. Section 502(14) of the Act, 33 U.S.C. § 1362(14), defines a “point source” as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged.”

11. Section 502(6) of the Act, 33 U.S.C. § 1362(6), defines “pollutant” as “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical

wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.”

12. Section 502(7) of the Act, 33 U.S.C. § 1362(7), defines “navigable waters” as “the waters of the United States . . .”.

13. 40 C.F.R. § 230.3 defines the term “waters of the United States” to include certain “wetlands” and “streams.”

III. Specific Factual Allegations

14. During May and June of 2004, Respondent added dirt, sand, and rock, via earthmovers, bulldozers, and graders, into 6.3 acres of the waters of wetlands located at approximately 750 Lallendorf Road, Oregon, Ohio, (the Site), which flowed into the waters of Johlin Ditch, which flowed into the waters of Lake Erie, an interstate water. (Attachment A).

15. Respondent was a corporation.

16. Therefore, Respondent was a "person" as defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5).

17. Respondent’s additions were “discharges” as defined by Section 502(12) of the Act, 33 U.S.C. § 1362(12).

18. Therefore, Respondent “discharged” as defined by Section 502(12) of the Act, 33 U.S.C. § 1362(12).

19. Dirt, sand, and rock are each a “pollutant” as defined by Section 502(12) of the Act, 33 U.S.C. § 1362(12).

20. Therefore, Respondent discharged “pollutant” as defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6).

21. Earthmovers, bulldozers, and graders are each point sources as defined by Section 502(14) of the Act, 33 U.S.C. § 1362(14).

22. Therefore, Respondent discharged pollutants from a “point source” as defined by Section 502(14) of the Act, 33 U.S.C. § 1362(14).

23. The Site was inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances did support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

24. Therefore, the Site was “wetlands” as defined by the regulation at 40 C.F.R. § 232.3.

25. The Site was “adjacent” to the waters of Johlin Ditch, and the waters of Lake Erie, as defined by the regulation at 40 C.F.R. § 232.3.

26. The water of the Site flowed into the waters of Johlin Ditch..

27. The waters of Johlin Ditch flowed approximately two (2) miles into the waters of Lake Erie.

28. The waters of Lake Erie flowed along Michigan, Ohio, Pennsylvania, New York, and Canada.

29. Therefore, the waters of Lake Erie were “interstate waters” as defined by the regulation at 40 C.F.R. § 232.3.

30. Therefore, Respondent discharged pollutants from a point source into “navigable waters” as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7).

31. Therefore, Respondent was a person who discharged pollutants from point sources into navigable waters in violation of Section 301 of the Act, 33 U.S.C. § 1311.

32. Each day the pollutants remained in navigable waters constituted an additional day of violation of Section 301 of the Act, 33 U.S.C. § 1311.

33. On April 17, 2009, Complainant and Respondent signed a Tolling Agreement to exclude April 17, 2009 - April 17, 2010, from any calculation of time made for the purpose of determining the statute of limitations applicable to any action under the laws of the United States for any legal action for the above facts.

34. On May 18, 2010, Complainant and Respondent signed a Tolling Agreement to exclude April 17, 2010 – June 17, 2010, from any calculation of time made for the purpose of determining the statute of limitations applicable to any action under the laws of the United States for any legal action for the above facts.

IV. Stipulations

35. Respondent neither admits nor denies the specific factual allegations of this Consent Agreement and Final Order pursuant to 40 C.F.R. § 22.18(b)(2).

36. Respondent consents to the assessment of the civil penalty of the Consent Agreement and Final Order pursuant to 40 C.F.R. § 22.18(b)(2).

37. Respondent waives any right to contest the allegations of the Consent Agreement and Final Order and its right to appeal the proposed final order accompanying the Consent Agreement and Final Order pursuant to 40 C.F.R. § 22.18(b)(2).

V. Civil Penalty

38. Respondent agrees to pay a civil penalty of \$75,000.00 within thirty (30) days of the effective date of this CAFO. Respondent agrees to pay the penalty by sending a cashier's or certified check, payable to the order of the U.S. Treasury:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

39. Respondent must include with its cashier's or certified check a transmittal letter stating the name of this action, Respondent's complete address, the Docket No. of this action, and the Billing Document No. of this action. Respondent must send copies of each check and transmittal letter to:

LaDawn Whitehead
Regional Hearing Clerk
Region 5
U.S. Environmental Protection Agency
77 West Jackson Boulevard (E-19J)
Chicago, Illinois 60604-3511

Melissa Gebien
U.S. Environmental Protection Agency
77 West Jackson Boulevard (WW-16J)
Chicago, Illinois 60604-3511

Jeffery M. Trevino
U.S. Environmental Protection Agency
77 West Jackson Boulevard (C-14J)
Chicago, Illinois 60604-3511

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

41. If Respondent fails to pay the civil penalty timely, Complainant may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and Complainant's enforcement expenses for the collection action.

42. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15.00 handling charge each month that any portion of the penalty due is more than thirty (30) days past due.

Complainant will assess a six percent (6%) per year penalty on any principal amount not paid timely pursuant to this CAFO.

43. This CAFO constitutes a complete and full settlement of, and resolves Respondent's, its owner's, and its affiliates' civil liability with prejudice for the violations alleged in the CAFO.

44. This CAFO does not affect the right of Complainant or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

45. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local, laws and regulations.

46. This CAFO is a "Final Order."

47. The terms of this CAFO bind EPA and Respondent and its successors and assigns.

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

49. Each party agrees to bear its own costs and fees, including attorney fees, for this action.

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

51. No modification shall be made to this CAFO without written notification to, and written approval of, all parties hereto. No oral modification of this CAFO shall be effective.

52. The effective date of this CAFO is the date EPA files it with the Regional Hearing Clerk.

53. Any and all obligations of Respondent under this CAFO terminate upon Respondent's payment of the civil penalty above.

In the Matter of: Oregon Holdings IV, LLC, Columbus, Ohio
Docket No. CWA-05-2010-0015
Consent Agreement and Final Order


RESPONDENT
Oregon Holdings IV, LLC
Columbus, Ohio



C. Edward Harmon
President

7/16/10
Date

COMPLAINANT
Water Division
Region 5
United States Environmental Protection Agency



for Tinka G. Hyde
Director

6 AUGUST 2010
Date

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PROTECTION AGENCY

In the Matter of: Oregon Holdings IV, LLC, Columbus, Ohio
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FINAL ORDER

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. IT IS SO ORDERED.

Susan Hedman
Regional Administrator
Region 5
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Date

Attachment A

The Site, Oregon, OH



PUBLIC NOTICE

Oregon Holdings IV, LLC
4140 Lockburne Road
Columbus, Ohio 43207
RHC Docket No. CWA-05-2010-0015

RECEIVED

AUG 09 2010

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

The U.S. Environmental Protection Agency (EPA), Region 5, is providing this notice of its proposal to assess a civil penalty of \$ 75,000.00 against Oregon Holdings IV, LLC, (Respondent), for its alleged violation of Section 301 of the Clean Water Act (CWA), 33 U.S.C. § 1311. This civil penalty would resolve the allegations that Respondent discharged pollutants from a point source into approximately 6.3 acres of wetlands in Oregon, Ohio, without a permit from the U.S. Army Corps of Engineers pursuant to Section 404 of the CWA, 33 U.S.C. § 1344. The alleged violation is of environmental significance because it allegedly led to the loss of wetlands and their functions and values within the Lake Erie watershed.

A copy of the proposed Consent Agreement and Final Order (CAFO) may be viewed on-line at <http://www.epa.gov/region5/publicnotices/index.htm> by clicking on the "complaint (PDF)" link at the Public Notices home page for the docket number identified above. Alternatively, the complaint may be received by contacting the Regional Hearing Clerk at the address listed below.

This proposed CAFO may be subject to further revision as additional facts may require.

OPPORTUNITY FOR COMMENT: Section 309(g) of the CWA, 33 U.S.C. §1319(g) requires that interested persons be given notice of the proposed penalty and a reasonable opportunity to comment on it.

Any person who wishes to comment on the proposed CAFO may submit written comments, may attend or present evidence at any hearing scheduled on this matter, or both, by following the procedures in Title 40 of the Code of Federal Regulations, Part 22, Section 45 (40 C.F.R. 22.45) particularly subpart (C) *Comment by a person who is not a party*. This portion of the code of federal regulations may be accessed at <http://www.gpoaccess.gov/cfr/retrieve.html> . A link to this site is also available at <http://www.epa.gov/region5/publicnotices/index.htm>, which is the site at which this notice and the associated complaint are also posted. The link is entitled "View 40 CFR Part 22.45". You may also wish to review 40 C.F.R. Part 22 to learn more about the procedures and rules of practice governing the administrative assessment of civil penalties.

Comments should be made in writing to the Regional Hearing Clerk at:

Docket No. CWA-05-2010-0015

LaDawn Whitehead
Regional Hearing Clerk
Mail Code (E-13J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Written comments may be submitted to the Regional Hearing Clerk electronically, by mail, or by delivery to the Clerk's address above. Your comments should include the case name, docket number, and your complete mailing address. If you plan to use a FAX or a messenger service to deliver your comments or other documents, please call the Regional Hearing Clerk at (312) 886-3617 for further instructions to insure delivery.

To submit comments electronically, go to the website: <http://epa.gov/region5/publicnotices/>, click the "Submit a Comment Online" phrase in the first paragraph, and complete the blanks. Note that EPA requires your regular mailing address, since we must use the U.S. Postal Service to fulfill our response obligations. If you wish to include any kind of attachment with your comment, please mail them instead to the Regional Hearing Clerk in hard copy (with a copy of the e-mail), so that we are certain to receive your documents in an unaltered, complete, and readable form.

Regardless of how you submit them, **all written comments must be received in the Regional Hearing Clerk's Office no later than 4:30 p.m., Central Time, of the "Comment Period End Date:" shown on the Public Notices home page for this docket number:** <http://www.epa.gov/region5/publicnotices/index.htm> (-----7-----)

Comments and documents sent to any EPA employee other than the Regional Hearing Clerk are not assured of consideration in this matter.

All documents filed in this proceeding (including documents submitted by the respondent or by public commenters) are available for public inspection by appointment only between 9 a.m. and 4:30 p.m. Monday through Friday at the EPA Regional Office. An appointment for such an inspection may be made by calling (312) 886-3617 or by writing the Regional Hearing Clerk at the address above.

Only the Respondent may request a hearing on the proposed penalty order. If a hearing is held, we will advise commentors who (during the public comment period) submitted a written request to participate in a hearing of the date, time, and place of the hearing, which they may attend and present evidence on the appropriateness of the proposed penalty assessment by following the instructions in 40 C.F.R. § 22.45(c)(1).

EPA will send a copy of the proposed CAFO to any person who submitted written comments or attended a hearing, provided they give us their current mailing address.

Only persons who submit written comments or ask to participate in any hearing held in this matter during this comment period preserve a right to petition the Regional Administrator to set aside the Consent Agreement and Proposed Final Order on the basis that material evidence was not considered, as described in 40 C.F.R. § 22.45(c)(4).

KEY

- (1) Name of Respondent
- (2) Address
- (3) Docket Number (to be completed by Regional Hearing Clerk)
- (4) Proposed Penalty Amount
- (5) Insert Clean Water Act for NPDES, Wetland or 311 actions, and Safe Drinking Water Act for UIC actions.
- (6) Describe the violations alleged; if facility is permitted, include permit number
- (6a) Describe in layman's terms, the environmental impact of the violations. The cover letter conveying the complaint to the respondent should have a statement of the environmental significance of the violations. That same statement may be inserted here.
- (7) OPA will select a date which is thirty days after the notice is posted. In those cases in which supplemental forms of notice are used, the program assignee may request that the OPA post the notice on the webpage on date certain, so that the phrase **“of the ‘Comment Period End Date:’ shown on the Public Notices home page for this docket number: <http://www.epa.gov/region5/publicnotices/index.htm>”** can be replaced with the actual comment period close date in all versions of the notice. To do this, the complaint must be received by the RHC at least 7 days prior to the posting date. **IRRESPECTIVE OF WHEN THE SUPPLEMENTAL FORMS OF NOTICE ARE ISSUED, THEY MUST ALWAYS USE THE SAME COMMENT PERIOD END DATE AS THE INTERNET NOTICE AS THAT NOTICE IS THE OFFICIAL NOTICE**