

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII  
901 N. 5<sup>th</sup> STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF: )  
)  
) Docket No. CWA-07-2006-0120  
)  
John Odell, )  
) FINDINGS OF VIOLATION  
) AND ORDER FOR  
Respondent ) COMPLIANCE ON CONSENT  
)  
)  
Proceedings under Section 309(g) of the )  
Clean Water Act, 33 U.S.C. § 1319(g) )  
\_\_\_\_\_ )

**FINDINGS OF VIOLATION**

**Jurisdiction & Preliminary Statement**

1. The FINDINGS OF VIOLATION are made and ORDER FOR COMPLIANCE ON CONSENT (Order on Consent) is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (EPA), by Section 309(a)(3) of the Clean Water Act (CWA), 33 U.S.C. §1319(a)(3), as delegated by the Administrator to the Regional Administrator, EPA, Region VII, and further delegated to the Director of the Water, Wetlands and Pesticides Division, EPA, Region VII.

2. The EPA has reason to believe that John Odell (Respondent) violated Section 301 of the CWA, 33 U.S.C. §1311, by discharging dredged or fill material into navigable waters of the United States without obtaining the necessary permits required by Section 404 of the CWA, 33 U.S.C. §1344.

3. The EPA and Respondent, having determined that settlement of this matter is in the best interest of both parties, enter into this Order on Consent.

### **Parties**

4. The Complainant, by delegation from the Administrator of EPA to the Regional Administrator, EPA, Region VII, is the Director of Region VII's Water, Wetlands, and Pesticides Division.

5. Respondent John Odell is the owner of property located in Section 3, Township 3 South, Range 4 West, Republic County, Kansas.

### **Statutory and Regulatory Background**

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. Section 404 of the CWA provides that pollutants may be discharged only in accordance with the terms of a permit for the discharge of dredged or fill material.

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.

### **Factual Background**

8. Some time between February 2005 and May 2005, the Respondent and/or persons acting on his behalf, discharged dredged or fill material including dirt, spoil, rock and sand, into a tributary of School Creek located at Section 3, Township 3 South, Range 4 West, in Republic County, Kansas. The Respondent discharged dredged and/or fill material within the tributary of School Creek while removing meanders and cutting a new channel. This work altered the natural drainage pattern of the tributary, affecting approximately 1,200 linear feet of the waterway.

9. Respondent and/or persons acting on his behalf, used mechanized land-clearing and/or earth moving equipment to accomplish the discharges described in Paragraph 7.

10. Respondent did not have a CWA Section 404 permit for the discharge of fill material into waters of the United States.

### **Finding of Violations**

11. The dirt, spoil, rock and sand discharged by the Respondent into the tributary of School Creek constitutes a "pollutant" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

12. Respondent's work along the tributary to School Creek, described above, constitutes a "discharge of a pollutant" within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

13. The equipment used by the Respondent in performing the work described above constitutes a "point source" as defined in Section 502(14) of the CWA, 33 U.S.C. §1362(14).

14. The tributary to School Creek is ultimately connected to the Republican River, all of which are navigable waters within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and waters of the United States as defined by 40 C.F.R. § 232.2 and 33 C.F.R. Part 328.

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

16. Respondent's discharge of pollutants from a point source into waters of the United States was performed without a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, and therefore this discharge violated Section 301 of the CWA, 33 U.S.C. § 1311.

#### **ORDER FOR COMPLIANCE ON CONSENT**

Based on the authority of Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), Respondent CONSENTS and is hereby ORDERED as follows:

17. Respondent agrees to implement Mitigation as described in Attachment 1, enclosed to and incorporated into this Order on Consent, and to complete such Mitigation by September 1, 2006, unless he provides specific justification for delay to the EPA. Respondent agrees that it shall be in EPA's sole discretion to determine whether delay in completing the Mitigation is justified.

18. Respondent agrees to submit a Completion Report to EPA within thirty (30) days of completion of Mitigation. The Completion Report shall include a description of the work performed and photographs of the finished project. Failure to submit the completion report to EPA by October 1, 2006, shall be a violation of this Order on Consent.

19. Respondent agrees that it shall be in EPA's sole discretion to determine whether Respondent has fully implemented Mitigation. In making these determinations, EPA will take into account Respondent's good-faith efforts as well as any factors beyond Respondent's control.

20. Respondent agrees to execute and file with the Republic County Recorder of Deeds, Belleville, Kansas, a conservation easement for the Mitigation Area depicted in Attachment 1, to maintain the Mitigation Area as a waterway in its natural state for perpetuity and to provide access to EPA, the Army Corps of Engineers (Corps), the Natural Resources Conservation

Service, and the authorized representatives of these three agencies in order to inspect the Mitigation Area. Respondent shall submit a draft conservation easement to EPA within ninety (90) days of the Effective Date (defined in Paragraph 33 herein) for review and comment, shall revise the restrictive covenant to conform to EPA's comments, if any, and shall resubmit the restrictive covenant to EPA within thirty (30) days of receipt of EPA's comments. Failure to address EPA's comments, if any, shall be a violation of this Order on Consent.

21. Respondent agrees to send EPA a file-stamped copy of the conservation easement within 10 days of receiving a final copy from the Republic County Recorder of Deeds.

22. Respondent agrees that this Order on Consent shall not constitute a permit under the CWA. Compliance with the terms of this Order on Consent shall not relieve Respondent of its responsibility to obtain any required local, State, and/or Federal permits. Specifically, Respondent agrees to consult with the Corps and agrees to obtain all permits that the Corps determines necessary before commencing any work required by this Order on Consent.

23. Respondent agrees that no changes shall be made to the Mitigation Plan, described in Attachment 1, without prior written approval from EPA.

24. Respondent shall submit all reports and deliverables required by this Order on Consent to EPA and the Corps at the following addresses:

Dewayne L. Knott  
Water, Wetlands, and Pesticides Division  
U. S. Environmental Protection Agency – Region VII  
901 N. Fifth Street  
Kansas City, Kansas 66101

and

Mark D. Frazier  
Regulatory Program Manager  
Kansas City District, U. S. Army Corps of Engineers  
601 E. 12<sup>th</sup> Street  
Kansas City, Missouri 64106.

#### **General Provisions**

25. Respondent admits the jurisdictional allegations in this Order on Consent and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Order on Consent.

26. Respondent neither admits nor denies the factual allegations contained in this Order on Consent.

27. Nothing contained in the Order on Consent shall alter or otherwise affect Respondent's obligations to comply with all applicable Federal, State, and local environmental statutes and regulations and applicable permits.

28. Compliance with the terms of this Order on Consent shall not relieve Respondent of liability for any violations of the CWA not addressed in this Order on Consent or in the Consent Agreement/Final Order that was filed as a companion to this Order on Consent. In addition, nothing in this Order on Consent shall prohibit EPA from seeking additional injunctive relief pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

29. Nothing in this Order on Consent shall limit EPA's right to obtain access to the area where the Mitigation is being performed and to request additional information from Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318, and any other authority.

30. If any provision or authority of this Order on Consent, or the application of this Order on Consent to Respondent, is held by Federal judicial authority to be invalid, the application to Respondent of the remainder of this Order on Consent shall remain in force and effect and shall not be affected by such a holding.

31. The signatory below certifies that he is fully authorized to enter into the terms and conditions of this Order on Consent.

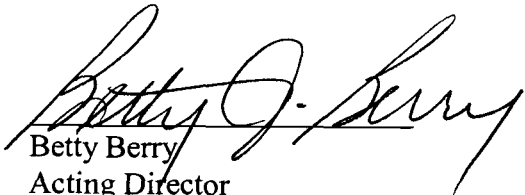
32. The terms of this Order on Consent shall be effective and enforceable against Respondent on the Effective Date, which is the date this Order on Consent is signed by EPA.

33. This Order on Consent may be modified by mutual agreement of the parties. Such modification shall be in writing.

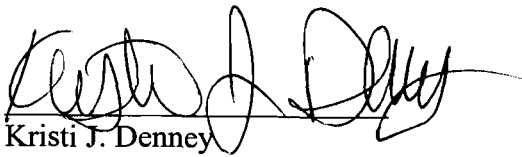
34. This Order on Consent shall remain in effect until a written notice of termination is issued by an authorized representative of EPA. Such notice shall not be given until all of the requirements of this Order on Consent have been met.

Issued this 17<sup>th</sup> day of May, 2006

COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY

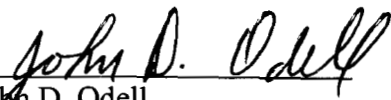


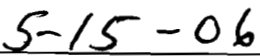
Betty Berry  
Acting Director  
Water, Wetlands, and Pesticides Division  
U.S. Environmental Protection Agency  
Region VII



Kristi J. Denney  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region VII

RESPONDENT:  
JOHN ODELL

  
\_\_\_\_\_  
John D. Odell

  
\_\_\_\_\_  
Date