

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF: )  
 ) DOCKET NO. V-404-AO-14-01  
 )  
A&K Alexander Cranberry Co., LLC, )  
Tomah, Wisconsin, )  
 )  
 ) ADMINISTRATIVE COMPLIANCE  
 ) ORDER ON CONSENT  
 )  
Respondent. )  
 )  
 ) CWA-05-2014-0004



STATUTORY AUTHORITY

1. The Director of the Water Division, United States Environmental Protection Agency ("U.S. EPA"), Region 5, and A&K Alexander Cranberry Co., LLC ("Respondent"), have agreed to this Order on Consent pursuant to Section 309(a) of the Clean Water Act (the "CWA" or "Act"), 33 U.S.C. § 1319(a).
2. Under Section 309(a) of the Act, 33 U.S.C. § 1319(a), the Administrator of U.S. EPA may issue an order to comply to any person who is violating Section 301 of the Act, 33 U.S.C. § 1311. The Administrator has delegated this authority to the Regional Administrator of U.S. EPA, Region 5, who has delegated this authority to the Director, Water Division, U.S. EPA, Region 5.
3. Section 301 of the Act prohibits the discharge of pollutants, including dredged or fill material, into waters of the United States, without a permit issued by the U.S. Army Corps of Engineers ("Corps") under Section 404 of the CWA, 33 U.S.C. § 1344. These permits are called Section 404 permits.
4. Section 404 of the CWA, 33 U.S.C. § 1344, authorizes the Secretary of the Army, acting through the Chief of Engineers of the Corps, to issue permits for the discharge of dredged

or fill material into navigable waters.

5. Each discharge by Respondent of pollutants into navigable waters on the site described in paragraph 8 below without a Section 404 permit constitutes a day of violation of Section 301 of the CWA, 33 U.S.C. § 1311.

6. Each day the discharged material remains in the wetland without a Section 404 permit constitutes a day of violation of Section 301 of the CWA, 33 U.S.C. § 1311.

7. Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the Respondent may have with respect to any issue of fact or law set forth in this Order on Consent, including, but not limited to, any right of judicial review of the Section 309(a)(3) Compliance Order on Consent under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.

#### **FINDINGS OF VIOLATIONS**

8. U.S. EPA finds that Respondent, on various days, discharged an unknown amount of pollutants - namely dredged material, sand, and organic debris - from excavators, bulldozers, and land levelers into approximately 5.6 acres of forested and emergent wetlands abutting Rudd Creek, in the northwest quarter of Section 2, Township 19 North, Range 2 West, Grant Township, Monroe County, Wisconsin (the "Site", see Exhibit #1 for an illustration of impacts), without a Section 404 permit, in violation of Section 301 of the Act, 33 U.S.C. § 1311. The discharges of pollutants occurred intermittently between 2006 and 2010 paralleling cranberry bed construction during the expansion of a cranberry growing operation.

9. Respondent neither admits nor denies any of the factual allegations above.

### COMPLIANCE ORDER ON CONSENT REQUIREMENTS

Pursuant to the authority under Section 309(a) of the CWA, 33 U.S.C. 1319(a)(3), IT IS  
HEREBY AGREED THAT:

10. Respondent must implement the U.S. EPA-approved, or U.S. EPA-approved with conditions or modifications, Wetland Restoration Plan submitted to U.S. EPA on or about October 8, 2013, to restore the 2.206 acres of filled wetland areas depicted in Exhibit #1 and labeled as "R"

11. By the date specified in the approved Wetland Restoration Plan, Respondent shall commence site restoration activities according to the approved Plan and schedule.

12. By June 30, 2015, Respondent shall submit to U.S. EPA written certification that Respondent has restored the Site as nearly as possible to original conditions and contours according to the approved Wetland Restoration Plan. Respondent's certification must include photographs and/or videotape and "as built" drawings at one foot contours showing that Respondent has completed the restoration activities throughout the Site.

13. Respondent is responsible for obtaining an approval from U.S. EPA, the Corps and the Wisconsin Department of Natural Resources ("WDNR") of the after-the-fact federal and state CWA Section 404 permit filed with the WDNR on September 30, 2013, for 3.63 acres of unpermitted discharges of dredged or fill material remaining in Site wetlands (the "ATF Permit") as identified in Paragraph 8 of the Findings of Violation, above, and labeled "ATF" in Exhibit #1, and as further modified by the wetlands restored according to the approved Wetland Restoration Plan.

14. Respondent must select and propose an adequate amount of wetland mitigation acreage to the Corps and the WDNR for the 3.63 acres subject to the ATF Permit, within 90 days after the effective date of this Order on Consent.

15. If the ATF Permit application is denied in whole or part, then within 30 days after receiving notice of the denial Respondent must submit to U.S. EPA for approval a wetland restoration plan meeting the same standards and criteria as the Restoration plan submitted pursuant to Paragraph 10 for those areas of wetland fill which were denied a permit, and Respondent must then comply with the requirements of this Order on Consent for this wetland restoration plan.

16. During business hours, and upon verbal or written notice to Respondent, Respondent must allow U.S. EPA or Corps representatives access to the Site to determine compliance with this Order on Consent and the CWA.

17. Respondent shall send all submittals required by of this Order on Consent to U.S. EPA, the Corps, and WDNR at these addresses:

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

Dave Pericak  
WDNR  
3550 Mormon Coulee Road (Room 104)  
La Crosse, WI 54601

Ben Cox, Compliance Coordinator  
U. S. Army Corps of Engineers-St. Paul District  
180 5<sup>th</sup> Street East  
St. Paul, MN 55101-1678

18. U.S. EPA may use the information Respondent submits for an administrative,

civil, or criminal action.

19. Neither U.S. EPA's issuance of this Order on Consent, nor Respondent's compliance with the Order on Consent, affects Respondent's obligation to comply with the Act, or any other federal statute or regulation, state law, or local or municipal ordinance.

20. Neither U.S. EPA's issuance of this Order on Consent, nor Respondent's compliance with it, relieves Respondent of liability for any penalty, remedy or sanction under Section 309(b), (c), or (g) of the Act, 33 U.S.C. § 1319(b), (c) or (g), for any violation of the Act other than the violations resolved by this Order.

21. This Order on Consent does not 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 other than the violations resolved by this Order.

22. If Respondent violates any terms of this Order on Consent, U.S. EPA may take further enforcement action under Section 309 of the Act, including seeking administrative penalties, civil injunctive relief and penalties, and criminal sanctions. The Debt Collection Improvement Act of 1996 increased the statutory maximum penalty to \$11,000 per day of violation, up to a total of \$157,500, for violations on or after March 15, 2004, until January 12, 2009. The Debt Collection Improvement Act of 1996 again increased the statutory maximum penalty to \$16,000 per day of violation, up to a total of \$177,500, for violations after January 12, 2009. *See* 31 U.S.C. § 3701 and 40 C.F.R. Part 19. U.S. EPA may seek criminal sanctions, including fines and imprisonment, for negligent or knowing violations of the CWA under 33 U.S.C. § 1319(c). Respondent expressly waives its right to assert that such action is barred by any applicable statute of limitation, *see* 28 U.S.C. § 2462.

23. This Order on Consent constitutes a complete and full settlement of, and resolves Respondent's liability with prejudice for, the violations alleged in this Order on Consent.

24. The terms of this Order on Consent bind U.S. EPA and the Respondent and their successors and assigns.

25. Each person signing this Order on Consent certifies he or she has the authority to sign this Order on Consent for the party he or she represents and to bind that party to its terms.

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

27. This Order on Consent constitutes the entire agreement between the parties.

28. No modification shall be made to this Order on Consent without written notification to, and written approval of, all parties hereto and no oral modification of this Order on Consent shall be effective.

29. This Order on Consent is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501 et seq., because it seeks collection of information from specific individuals or entities as part of an administrative action.


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EFFECTIVE DATE

30. This Order on Consent is effective on the date that the U.S. EPA files it with the Regional Hearing Clerk.

Dated: 11/14/13



 Tinka G. Hyde  
Director, Water Division  
U.S. Environmental Protection Agency, Region 5



In the Matter of A&K Alexander Cranberry Co., LLC  
Docket No. V-404-AO-14-01

For Respondent A&K Alexander Cranberry Co., LLC:

Dated: 11/6/13

  
Albert 'Marty' Alexander  
Managing Partner





# A&K Alexander Cranberry Co., LLC Property

