

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**In the Matter of:**

**Oregon Holdings IV, LLC,  
4140 Lockburne Road  
Columbus, Ohio**

**Respondent.**

) **Docket No. CWA-05-2010-0015**  
)  
) **Proceeding to Assess a Class II Civil Penalty**  
) **Under Section 309(g) of the Clean Water Act**  
) **33 U.S.C. § 1319(g).**  
)  
)

**RECEIVED**

**AUG 09 2010**

**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.



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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



 Tinka G. Hyde  
Director

4 AUGUST 2010  
Date

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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.

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

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Date

**Attachment A**

**The Site, Oregon, OH**

