



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

AUG 16 2016

REPLY TO THE ATTENTION OF:
WW-16J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Scott Poettker
17709 East Street
Breese, Illinois 62230

Re: Wetlands Fill Violation Docket Number **CWA-05-2016-0021**

Dear Mr. Poettker:

The enclosed Administrative Compliance Order on Consent (Order) is issued by the U.S. Environmental Protection Agency pursuant to Section 309(a) of the Clean Water Act (CWA), 33 U.S.C. § 1319(a). The Order cites violations of Section 301 of the CWA, 33 U.S.C. § 1311 and outlines corrective actions that must be undertaken to resolve the violation.

Compliance with this Order is required within 30 days of the effective date of this Order or the timeframes outlined in the Order, whichever is sooner. This Order is effective immediately upon issuance. Failure to comply with this Order may subject you to further enforcement action.

Please direct questions concerning this matter to Mr. Yone Yu at (312) 886-2260. Legal questions can be directed through your attorney to Ms. Joanna Glowacki, Associate Regional Counsel, at (312) 353-3757.

Sincerely,

A handwritten signature in cursive script that reads "Tinka G. Hyde".

Tinka G. Hyde
Director, Water Division

Enclosures

cc: Danny D. McClendon, Chief (w/enclosure)
Regulatory Branch
U.S. Army Corps of Engineers, St. Louis District
1222 Spruce Street
St. Louis, MO 63103-2833

Peggy L. Crane (w/enclosure)
Hinshaw & Culbertson LLP
416 Main Street, 6th Floor
Peoria, IL 61602

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

Scott Poettker
Breese, IL

Respondent.



PROCEEDING UNDER
SECTION 309(a) OF THE
CLEAN WATER ACT,
33 U.S.C. § 1319(a).

DOCKET NO. CWA-05-2016-0021

ADMINISTRATIVE COMPLIANCE ORDER ON CONSENT

The following FINDINGS are made and ORDER issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency, (U.S. EPA), by section 309(a) of the Clean Water Act (CWA), 33 U.S.C. § 1319(a). The Administrator has delegated this authority to the Regional Administrator of the EPA, Region 5, who has duly redelegated this authority to the undersigned Director, Water Division, EPA, Region 5, who hereby issues these Findings and this Order.

The Respondent is Scott Poettker. The Respondent resides in Bond County at 17709 East St., Breese, Illinois 62230. The Respondent has consented to and entered into this Order for the sole purpose of settling the violations alleged in these Findings and this Order. The Respondent's consent to this Order shall not constitute an admission of any finding of fact or conclusion of law.

REGULATORY BASIS

1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), states: "Except as in compliance with Section 404 of the CWA, the discharge of any pollutant by any person shall be unlawful."

2. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines the term "person" as "an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body."

3. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines the term "discharge of pollutants" as "any addition of any pollutant to navigable waters from any point source"

4. Section 502(6) of the CWA, 33 U.S.C. § 1362(6) defines a "pollutant" as "solid waste, . . . biological materials, . . . rock, sand, cellar dirt, . . . and agricultural waste discharged into water."

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

6. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines the term "navigable waters" as "the waters of the United States"

7. The term "waters of the United States" includes: (i) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce ("traditional navigable waters"); (ii) all inter-state waters; (iii) tributaries to such waters; and (iv) wetlands adjacent to such waters or their tributaries. 40 C.F.R. § 232.2.¹

8. Section 309(a)(3) of the CWA, 33 U.S.C. 1319(a)(3), states that: "Whenever, on the basis of any information available . . . the Administrator finds that any person is in violation

¹ Citations to 40 C.F.R. Part 232 in this Order are to those effective through August 27, 2015. *See In re E.P.A.*, --- F.3d ---, 2015 WL 5893814 (6th Cir. 2015) (issuing a temporary nationwide stay of EPA and United States Army Corps of Engineers final rule defining the scope of waters protected under the CWA effective on August 28, 2015).

of Section 301(a) of the CWA, the Administrator shall issue an order requiring such person to comply with such Section"

FINDINGS

9. The property parcel subject to this Order is located in the Northeast ¼ of Section 13, Township 4 North, Range 2 West, Bond County, Illinois (the "Site"). The owner of record for the Site is Scott Poettker (see Figure 1 for a map of the Site).

10. Respondent Scott Poettker owned and/or operated the property at the time of the discharges described in paragraph 11 below. Diekemper Excavating LLC conducted the activities on the Site as a contractor for the Respondent.

11. In November 2012, and at other times known to Respondent, using a bulldozer, tractor, and scraper, Respondent Scott Poettker excavated or caused to be excavated 1,000 linear feet of a new, straight channel in an unnamed tributary to Spring Branch and discharged the dredged material into 1,300 linear feet of the original channel. This activity straightened a meandering stream, cleared forested riparian buffers, and improved drainage of the Site.

12. Respondent is a "person" within the meaning of the definition set forth in section 502(5) of the CWA, 33 U.S.C. § 1362(5).

13. The 1,300 linear feet of the unnamed tributary to Spring Branch that was filled in paragraph 11 above are "waters of the United States" as defined at 40 C.P.R. § 230.3(s) and "navigable waters," as defined at Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

14. The dredged material referenced in paragraph 11 constituted "pollutants" within the meaning of the definition set forth in section 502(6) of the CWA, 33 U.S.C. § 1362(6).

15. The discharge of dredged material into the original channel, referenced in paragraph 11, constituted a "discharge of pollutants" within the meaning of the definition set forth in section 502(12) of the CWA, 33 U.S.C. § 1362(12).

16. The bulldozer, tractor, and scraper referenced in paragraph 11 constituted "point sources" within the meaning of the definition set forth in section 502(14) of the CWA, 33 U.S.C. § 1362(14).

17. The Respondent's activities referenced in paragraph 11 were discharges of pollutants from point sources into navigable waters and constituted a violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).

18. At no time from the first date of the activities described in paragraph 11 above until the date of this Order did Respondent have a permit issued under Section 404 of the CWA, 33 U.S.C. § 1344, for the discharge of pollutants referenced in paragraph 11.

19. Each discharge of pollutants into navigable waters without a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, constitutes a discrete violation of Section 301 (a) of the CWA, 33 U.S.C. § 1311(a).

20. Each day the Respondent's discharged pollutants remained in the navigable waters constituted an additional day of violation of section 301 of the CWA, 33 U.S.C. § 1311.

ORDER

BASED ON THE FOREGOING FINDINGS, and pursuant to the authority under section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), duly delegated to the undersigned, **IT IS HEREBY ORDERED:**

21. Respondent shall refrain from any activity at the Site which will result in further

placement of pollutants in the unnamed tributary to Spring Branch, except in compliance with a permit issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344, and the CWA, 33 U.S.C. §§ 1251-1387.2.2.

22. Respondent submitted a Stream Restoration Plan (“Plan”) which is incorporated by reference into this Order. (Exhibit No. 1). This Plan is intended to restore the original length of the stream on the Site and its meandering pattern. The Plan is consistent with the requirements of 33 C.F.R. Section 332.4(c), 40 C.F.R. Section 230.94(c). The Plan describes how restoration activities on the Site will be conducted and prescribes performance standards, monitoring protocols, reporting protocols, and a schedule of activities that will occur on the Site.

23. Respondent shall commence restoration activities on the Site in accordance with the approved plan attached as Exhibit 1.

24. Within 30 days of completion of the restoration activities at the Site, Respondent shall submit to EPA written certification that he completed restoration activities in accordance with the approved Plan. Such certification shall include as-built drawings, before and after photographs of restoration areas, a description of the restoration activities, a timeline of the activities, and identification of any problems encountered during implementation.

25. Annual Reports required by the Plan must be submitted by the due dates contained within the Plan. These reports must summarize the year’s monitoring visits, how the Site is meeting performance standards specified in the Plan, and include supporting information, such as, but not limited to, photographs, figures, drawings, and surveys taken of the Site during the monitoring visits.

26. Respondent may request termination of the Plan upon meeting all performance standards and monitoring requirements outlined in the Plan. USEPA will approve termination in writing if it finds that all requirements of the Plan are met. If Respondent has failed to meet the requirements of the Plan, USEPA will notify the Respondent in writing of its non-compliance, articulate those failures and request corrective action pursuant to the Plan.

27. Submittals provided under this Order must be certified and submitted by the Respondent under authorized signature to the following address:

Yone Yu
Watersheds and Wetlands Branch
U.S. Environmental Protection Agency (WW-16J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

EPA reserves any rights to use the information requested herein in an administrative, civil, or criminal action. Respondent reserves any rights to object to the use of the information requested herein in any such administrative, civil, or criminal action.

28. Neither the issuance of this Order by EPA nor the compliance with its terms affects the Respondent's ongoing obligation to comply with the CWA or any other federal, state, or local law or regulation, nor does it preclude further enforcement action pursuant to section 309 of the CWA, 33 U.S.C. § 1319, for the violations cited herein.

29. Neither the issuance of this Order by EPA, nor consent of this Order by the Respondent, shall be deemed to relieve the Respondent of its liability for any penalty, remedy or sanction authorized to be imposed pursuant to section 309(b), (c), or (g) of the CWA, 33 U.S.C. § 1319(b), (c), or (g), for any violation of applicable requirements of the CWA. EPA

specifically reserves the right to seek any or all remedies authorized under these provisions for each violation specified in this Order.

30. Violation of the terms of this order may result in further enforcement action under section 309 of the CWA, 33 U.S.C. § 1319. The CWA includes provisions for administrative penalties, for civil injunctive relief and penalties, and for criminal sanctions for violations of the CWA. Specifically, EPA may assess civil administrative penalties of \$16,000 per day of violation, up to a maximum of \$177,500 under section 309(g) of the CWA, 33 U.S.C. § 1319(g), or seek civil judicial penalties of \$37,500 per day of violation of the CWA under section 309(b) of the CWA, 33 U.S.C. § 1319(b). Furthermore, EPA may seek criminal sanctions, including fines and imprisonment, for negligent or knowing violations of the CWA under section 309(c) of the CWA, 33 U.S.C. § 1319(c).

31. The Respondent's completion of this Order and the Plan resolves any and all claims for injunctive relief and penalties on behalf of EPA which arose from the violations alleged in this Order.

32. The Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review of this Order.

33. Notwithstanding the above paragraph, Respondent does not admit any statement of fact or conclusion of law in this Order. This Order shall not be construed as any admission of fact or conclusion of law.

For the Respondent:

Date: 7-20-16

Scott Poettker
Scott Poettker

For the U.S. Environmental Protection Agency:

Date: 8-16-16

Tinka G. Hyde
Tinka G. Hyde
Director, Water Division
United States Environmental Protection Agency
Region 5

Exhibit No. 1

Poettker Stream Restoration Plan
April 18, 2016

STREAM RESTORATION PLAN

BOND COUNTY, ILLINOIS

PREPARED BY:

Scott Poettker

SUBMITTED TO:

U.S. Environmental Protection Agency, Region 5

77 West Jackson Boulevard, WW-16J

Chicago, Illinois 60604-3590

April 18, 2016

1. Background Information

1.1. Project Location

The site is located in Keysport, Bond County, Illinois, in Section 13, Township 4N, Range 2W. The property is 75 acres and the waterway is located in the northeast corner.

1.2 Existing Conditions

The original waterway had trees and brush. Dead trees frequently fell and obstructed the waterway. Because of this frequent obstruction, water was causing significant erosion in my field around the sharp curves in the waterway. The project that resulted in the violation was started on November 8, 2012 by clearing the trees. On November 19, 2012, the waterway was straightened. To reduce erosion after the project was completed, it was seeded with wheat and grass. Unfortunately, this cover did not establish well due to the cold weather and frequent downpours of rain, and the waterway experienced erosion. The waterway is currently 13' wide with a 40' buffer of established grass.

2. Construction Plan

2.1. Proposed Project and Schedule

The project will begin with a surveying to stake off the waterway revision. Geotextile fabric will be placed at the construction site to reduce erosion. These erosion control measures will remain in place until planting occurs. The soil will be relocated so that the waterway more closely resembles the original waterway. The plan is illustrated on Exhibit A, attached hereto. After the waterway is back to its original length and design, it will be seeded during the appropriate planting season using the specifications set forth below.

The table below sets forth the schedule for the above-described project:

Work	Scheduled Dates
Surveying	August 2016
Site preparation and erosion control	August 2016
Construction	August-September 2016
Seeding	Fall 2016
Monitoring	Spring and Fall 2017 Fall and Spring 2018 Fall and Spring 2019
Reports: Initial Report Annual Report Annual Report Annual Report	30 days after project completion December 31, 2017 December 31, 2018 December 31, 2019

Seeding Specifications

The new waterway will be seeded with a mix of the following species and rates:

Species	Rate
Orchard grass	1 lb/acre
Red top	.5 lb/acre
Red Clover	5 lb/acre
Switchgrass	2 lb/acre
Virginia wild rye	3 lb/acre
Oats*	30 lb/acre
Wheat*	20 lb/acre

* Dependent on growing season.

The seed will be mixed with 100 pounds/acre of phosphate and potash and broadcasted and harrowed in.

3. Monitoring and Reporting

3.1. Monitoring

Site visits will take place at least twice annually during the growing season, once in the spring and once in the fall, following construction and continuing for three years. An annual monitoring report shall be prepared and submitted to the EPA by December 31 of each year, for a duration of three years.

An initial report will be generated 30 days after completion of the project, and annual reports will be submitted for three consecutive years thereafter, due no later than December 31st.

3.2. Performance Standards

These are the criteria which the restoration will be evaluated for success or failure:

- 3.2.1. The stream banks shall achieve 75% vegetative cover from top of bank to Ordinary High Water Mark (OHWM), and shall not exhibit active erosion above the OHWM. Areas within the 50-foot buffer along both stream banks shall achieve 90% vegetative cover with permanent vegetation.
- 3.2.2. Streambanks shall be stable and functioning as intended and shall exhibit the pattern, profile and dimensions as indicated in the restoration plan drawings in Figure 1, without active erosion above the OHWM and without undercutting the banks or washing out meanders.
- 3.2.3. By the end of the third growing season following construction, if performance standards are still not met, the landowner shall be required to take corrective actions and monitoring will continue at the direction of the EPA until performance standards are met or an alternative mitigation plan is approved by the EPA.

3.3. Adaptive Management

In the event that performance standards are not being met during the monitoring phase, the landowner will take corrective actions to attempt to correct the deficiency or mitigate its damage. For example, the landowner may use bank stabilization methods such as placement of riprap, root wads, or live fascines to remedy issues with the erosion of stream banks. Respondent will coordinate proposed adaptive management actions with EPA prior to implementation as outlined in the Monitoring Plan Section 3.3.

Poettker Stream Restoration Plan
April 18, 2016

EXHIBIT A

STREAM RESTORATION PLAN FOR PART OF THE NORTHEAST
QUARTER OF SECTION 13, TOWNSHIP 4 NORTH, RANGE 2 WEST,
BOND COUNTY, ILLINOIS - DATED 10/15/15

PREPARED BY NETEMEYER ENGINEERING ASSOCIATES,
INC.



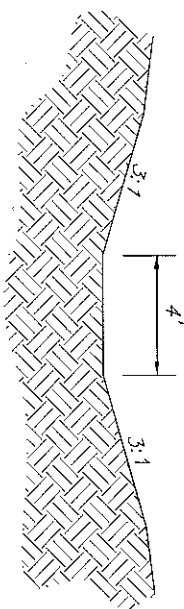
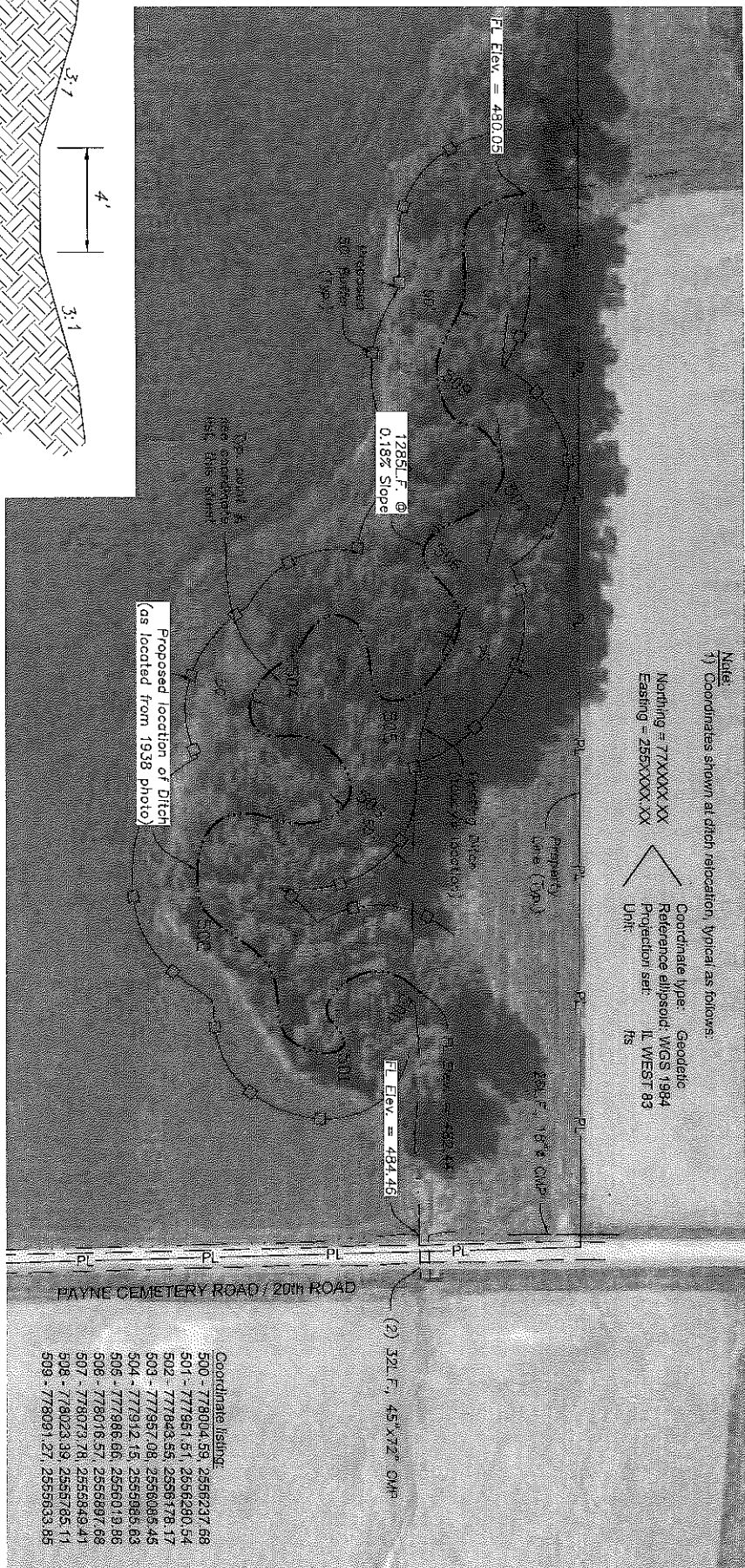
(ASSUMED)
SCALE: 1" = 80'



GRAPHIC SCALE

PLAT OF DITCH RELOCATION

PART OF THE NORTHEAST QUARTER OF SECTION 13, TOWNSHIP 4 NORTH, RANGE 2 WEST OF THE THIRD PRINCIPAL MERIDIAN, BOND COUNTY, ILLINOIS



TYPICAL DITCH CROSS SECTION
(NOT TO SCALE)

Note:
Coordinates shown at ditch relocation, typical as follows:
Northing = 77XXXXXX.XX
Easting = 258XXXXX.XX
Coordinate type: Geodetic
Reference ellipsoid: WGS 1984
Projection: set: IL WEST 83
Units: fts

Proposed location of Ditch
(as located from 1938 photo)

NOTES:
1. Client's name: Scott Poettker
17709 East Street
Breeese, IL 62230
2. Field work completed in April, 2015.

DKM
9-15-2015
109 215076
POETTNER SCOTT - KESPORTI2W6

Coordinate listing:
500 - 778014.59, 2558237.68
501 - 777951.51, 2558280.54
502 - 777843.55, 2558178.17
503 - 777957.08, 2558085.45
504 - 777912.15, 2555985.63
505 - 777898.66, 2556019.86
506 - 778016.57, 255897.68
507 - 778073.78, 2558949.41
508 - 778023.39, 2558785.11
509 - 778091.27, 2558633.85

IL Prof. Design Firm (LS/P/E/SE) 184-001027
NETEMEYER ENGINEERING ASSOCIATES, INC.
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