

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BLVD.
LENEXA, KANSAS 66219

Received by
EPA Region 7
Hearing Clerk

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)	
)	
)	Docket No. CWA-07-2022-0080
WATTS GROUP CONSTRUCTION, LLC)	
)	
and)	
)	
AXIOM CONSULTANTS, LLC)	
)	
Respondents)	
)	
)	COMPLAINT AND
)	CONSENT AGREEMENT/
)	FINAL ORDER
Proceedings under Section 309(g) of the)	
Clean Water Act, 33 U.S.C. § 1319(g))	
_____)	

COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. Part 22.

2. Complainant, the U.S. Environmental Protection Agency Region 7 (“EPA”) and Respondents, Watts Group Construction, LLC and Axiom Consultants, LLC (“Respondents”), have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

3. This Complaint and Consent Agreement/Final Order serves as notice that the EPA has reason to believe that the Respondents have violated Sections 301 and 404 of the CWA, 33 U.S.C. §§ 1311 and 1344 and regulations promulgated thereunder.

Parties

4. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of the EPA. The Administrator has delegated this authority to the Regional Administrator, EPA Region 7, who in turn has delegated the authority under Section 309(g) to the Director of the Enforcement and Compliance Assurance Division of EPA Region 7 (collectively referred to as the “Complainant”).

5. Respondents are each limited liability companies registered under the laws of the state of Iowa.

Statutory and Regulatory Framework

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.

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.

8. Section 404 of the CWA, 33 U.S.C. § 1344, specifically requires a person to obtain a permit from the Secretary of the Army acting through the Chief of Engineers, commonly referred to as the U.S. Army Corps of Engineers (hereinafter “Corps”), for any discharge of “dredged or fill material” into the “navigable waters” of the United States.

9. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters,” in part, as the “waters of the United States,” which are defined at 40 C.F.R. § 232.2 and 33 C.F.R. Part 328, and which include wetlands adjacent to waters of the United States. “Wetlands” are further defined as “those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.”

10. 40 C.F.R. § 232.2 defines “discharge of fill material” as “the addition of fill material into waters of the United States.”

11. 40 C.F.R. § 232.2 defines “fill material” as any material that has the effect of “replacing any portion of a water of the United States with dry land or changing the bottom elevation of any portion of a water of the United States.”

12. Section 309(a) of the CWA, 33 U.S.C. § 1319(a), authorizes the issuance of an order against any person who violates Section 301 of the CWA, 33 U.S.C. § 1311, requiring such person to comply.

EPA's General Allegations

13. Respondents are “persons” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

14. At all times relevant to this action, Respondents owned, operated, or otherwise controlled property containing portions of wetlands adjacent to an unnamed tributary to Mill Creek located in Section 23, Township 81 North, Range 6 West, Johnson County, Iowa (hereinafter “the Site”). Respondents were collectively involved in grading and clearing a 104-acre residential development named Trail Ridge Estates. Watts Group Development, Inc., is the record title owner of the real estate on which the relevant wetland is located. Watts Group Development, Inc., engaged the Respondents to provide construction and engineering services.

15. On November 15, 2021, Respondent Axiom Consultants, LLC submitted a wetland delineation to U.S. Army Corps of Engineers, Rock Island, Iowa District, as part of a CWA Section 404 permit application. In the delineation, Respondent acknowledged that approximately one acre of a high-quality wetland had been filled in. The delineation reported that the wetland was “significantly disturbed by recent clearing and earthwork.”

16. A November 29, 2021 Notice of Violation submitted by the Corps to Respondent Watts Group Construction, LLC, asserted that the clearing and earthwork “constitutes a discharge of dredged or fill material into a water of the U.S., including wetlands which was not authorized by this office.”

17. The wetland impacted by Respondents’ fill activity is adjacent to a perennial unnamed tributary to Mill Creek. Mill Creek flows into Lake McBride. Lake McBride is connected to Coralville Lake which is an impoundment of the Iowa River. The Iowa River is a “traditionally navigable water.”

18. The wetland adjacent to the unnamed tributary to Mill Creek is a “water of the United States” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), 40 C.F.R. § 232.2 and 33 C.F.R. Part 328.

19. The fill material placed by Respondents into the wetland adjacent to the unnamed tributary to Mill Creek are “pollutants” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

20. The earth moving equipment used to grade the Site and place the fill material into the wetland adjacent to the unnamed tributary to Mill Creek constitutes a “point source” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

21. The discharge of the fill material into the wetland adjacent to the unnamed tributary to Mill Creek constitutes the “discharge of a pollutant” within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

EPA's Allegations

22. Respondents did not obtain a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, prior to the performance of the fill placement described herein, nor did Respondents perform the work described herein under any prior permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344.

23. Respondents' discharge of pollutants from a point source into waters of the United States occurred without a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, and, therefore, these discharges violated Section 301 of the CWA, 33 U.S.C. § 1311.

Penalty

24. As alleged in the preceding Count, and pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), as adjusted pursuant to 40 C.F.R. § 19.4, Respondents are liable for civil penalties of up to \$23,989 per day for each day during which the violation continues, up to a maximum of \$299,857.

CONSENT AGREEMENT

25. Respondents and the EPA agree to the terms of this Consent Agreement/Final Order.

26. Respondents admit the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agree not to contest the EPA's exclusive jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement/Final Order.

27. Respondents neither admit nor deny the factual allegations and legal conclusions asserted by the EPA in this Complaint and Consent Agreement/Final Order.

28. Respondents waive their rights to contest any issue of fact or law set forth above, and their rights to appeal this Consent Agreement/Final Order.

29. Respondents and Complainant agree to conciliate the matters set forth in this Consent Agreement/Final Order without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.

30. The undersigned representative(s) of Respondents certify that he or she is/are fully authorized to enter the terms and conditions of this Consent Agreement/Final Order and to execute and legally bind Respondents to it.

31. Respondents understand and agree that this Consent Agreement/Final Order shall apply to and be binding upon Respondents and Respondents' agents, successors and/or assigns.

Respondents shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondents with respect to matters included herein comply with the terms of this Consent Agreement/Final Order.

32. Respondents certify by the signing of this Consent Agreement/Final Order that Respondents are in current compliance with Sections 301, 402, and 404 of the CWA, 33 U.S.C. §§ 1311, 1342, and 1344 and applicable regulations.

33. Respondents consent to receiving the filed Consent Agreement/Final Order electronically at the following email addresses: *adam@wattsgroupiowa.com* and *bboelk@axiom-con.com*.

Penalty Payment

34. Respondents agree that, in settlement of the claims alleged in this Consent Agreement/Final Order, Respondents shall pay a civil penalty of Thirty-Six Thousand, Nine Hundred and Twenty-Nine dollars (\$36,929) pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), to be paid in full no later than 30 days after the effective date of this Consent Agreement/Final Order as set forth below.

35. Respondents shall pay the penalty identified above by certified or cashier's check made payable to "Treasurer, United States of America," with a transmittal that identifies the case name, facility address, and docket number CWA-07-2022-0080 to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

36. Respondents shall simultaneously email copies of the transmittal letter and the check, as directed above, to the following:

R7_Hearing_Clerk_Filings@epa.gov
Regional Hearing Clerk

and

muehlberger.christopher@epa.gov
Chris Muehlberger
Office of Regional Counsel.

37. Respondents agree that no portion of the civil penalty or interest paid by Respondents pursuant to the requirements of this Consent Agreement/Final Order shall be claimed by Respondents as a deduction for federal, state, or local income tax purposes.

38. Interest on any late payment will be assessed at the annual interest rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on any overdue amount from the due date through the date of payment. Failure to pay the civil penalty when due may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs or interest.

Effect of Settlement and Reservation of Rights

39. Respondents' payment of the entire civil penalty pursuant to this Consent Agreement/Final Order resolves all civil and administrative claims pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for alleged violations identified in this Complaint and Consent Agreement/Final Order. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

40. The effect of settlement described above is conditional upon the accuracy of the Respondents' representations to the EPA, as memorialized in this Consent Agreement/Final Order.

41. Nothing contained in this Consent Agreement/Final Order shall alter or otherwise affect Respondents' obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

42. Notwithstanding any other provision of this Consent Agreement/Final Order, the EPA reserves the right to enforce the terms of this Consent Agreement/Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, and to seek penalties against Respondents or to seek any other remedy allowed by law.

43. With respect to matters not addressed in this Consent Agreement/Final Order, the EPA reserves the right to take any enforcement action pursuant to the CWA and its implementing regulations, or any other available legal authority, including without limitation, the right to seek injunctive relief, penalties, and damages.

General Provisions

44. The Parties acknowledge that this Consent Agreement/Final Order is subject to the public notice and comment required pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45.

45. Pursuant to 40 C.F.R. § 22.31(b), this Consent Agreement/Final Order shall be effective after signature by the authorized regional official and upon filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa,

Kansas 66219. All time periods herein shall be calculated therefrom in calendar days unless otherwise provided in this Consent Agreement/Final Order.

46. The state of Iowa has been provided an opportunity to consult with Complainant regarding this matter in accordance with the requirements of 40 C.F.R. § 22.38(b) and Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1).

47. The headings in this Consent Agreement/Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement/Final Order.

48. Respondents and Complainant agree that this Consent Agreement/Final Order may be signed in part and counterpart.

For the Complainant, United States Environmental Protection Agency Region 7:

Date

David Cozad
Director
Enforcement and Compliance Assurance Division

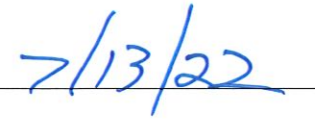
Date

Chris Muehlberger
Office of Regional Counsel

For Respondent Watts Group Construction, LLC



Signature



Date



Title

For Respondent Axiom Consultants, LLC



Signature

07-05-2022

Date

BRIAN BOELK

Title

FINAL ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

The Respondents are ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Date

Karina Borromeo
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify a true and correct copy of the Complaint and Consent Agreement/Final Order was sent this day in the following manner to the addressees:

Copy by electronic mail to Respondents:

Watts Group Construction, LLC
Mr. Adam Hahn, Director of Construction Services
425 East Oakdale Boulevard
Coralville, Iowa 52241
adam@wattsgroupiowa.com

and

Axiom Consultants, LLC
Mr. Brian Boelk, Owner-Principal
1901 16th Avenue, Number 3
Cedar Rapids, Iowa 52404
bboelk@axiom-con.com

Copy emailed to Attorney for Complainant:

Chris Muehlberger
U.S. Environmental Protection Agency Region 7
muehlberger.christopher@epa.gov

Date