



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

April 24, 2009

Ref: ENF – L

SENT VIA CERTIFIED MAIL
RETURN-RECEIPT REQUESTED

Mr. and Mrs. Christopher Janowski
4 Silver Lakes Drive
Lawson, CO 80436

Re: Administrative Order on Consent
In the Matter of Chris and Linda Janowski
Docket No. CWA-08-2009-0012

Dear Mr. and Mrs. Janowski:

I am enclosing for your information and files a fully-executed copy of the Administrative Order on Consent in the above-referenced matter, filed with the Regional Hearing Clerk on April 22, 2009. Please be mindful that the timeframes for complying with AOC, including submittal of a Restoration Plan, begin on the day of receipt.

A Small Business Regulatory Enforcement and Fairness Act (SBREFA) information sheet, U.S. EPA Small Business Resources, containing information on compliance assistance resources and tools available to small businesses, also is enclosed. SBREFA does not eliminate your responsibility to comply with the CWA, but provides resources you may find helpful.

If you have any questions or need additional time to comply with the terms of the AOC, please do not hesitate to contact me at 303-312-6906, or Ken Champagne, Enforcement Officer, at 303-312-6608. Thank you again for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Amy Swanson".

Amy Swanson, Attorney
Legal Enforcement Program
Office of Enforcement, Compliance and
Environmental Justice

Enc:

Administrative Order on Consent
SBREFA Information Sheet

cc:

Mary Powell, ERO Resources
Timothy T. Carey, U.S. Army Corps of Engineers, Denver Regulatory Office
David L. LaGrone, U.S. Army Corps of Engineers, Omaha District
Steve Gunderson, Colorado Department of Public Health and Environmental
Water Quality Control Division



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2009 APR 22 09:10:18

IN THE MATTER OF)	ADMINISTRATIVE ORDER
)	ON CONSENT
Christopher and Linda Janowski)	
4 Silver Lakes Dr.)	
Lawson, Colorado 80436)	Docket No. CWA-08-2009-0012
)	
Respondents.)	
_____)	

I. INTRODUCTION

1. This Administrative Compliance Order on Consent (Consent Order or Order) is entered into between the United States Environmental Protection Agency (EPA) and the Respondents, Christopher and Linda Janowski. The Consent Order requires completion of compliance actions to address the environmental damages caused by alleged illegal discharges of dredged or fill material at the Respondents' property in Clear Creek County, Colorado.

II. STATUTORY AUTHORITY

2. This Consent Order is issued pursuant to the authority vested in the Administrator of the EPA by section 309 of the Clean Water Act (CWA), 33 U.S.C. § 1319. This authority has been properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8. The Consent Order is based on the alleged violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a), which, among other things, prohibits the discharge of pollutants into waters of the United States except as in compliance with section 404 of the CWA, 33 U.S.C. § 1344.

III. PARTIES BOUND

3. This Consent Order shall apply to and be binding upon EPA and the Respondents, their agents, heirs, successors, and assigns. The signatories to this Consent Order certify that they are authorized to execute and legally bind the parties they represent to this Consent Order. No change in the ownership or legal status of the property that is the subject of this Consent Order shall alter Respondents' responsibilities under this Consent Order other than those described in paragraph 40.

IV. STATEMENT OF PARTIES

4. The following FINDINGS OF FACT AND OF VIOLATION is made solely by EPA. The Respondents neither admit nor deny the FINDINGS OF FACT AND OF VIOLATION. To provide for the complete resolution of the alleged violations of the CWA and without acknowledging any further liability, the Respondents consent to the issuance of this Consent Order and agree to abide by all of its terms and conditions and agree not to challenge the jurisdiction of EPA or the FINDINGS OF FACT AND OF VIOLATION below in any proceeding to enforce this Consent Order.

5. Respondents' purpose for the project was the restoration of Silver Lake caused by siltation. The Respondents assert that silt runoff from Silver Creek into Silver Lake was causing severe degradation to the lake and its ecological stability. The violation alleged in this Consent Order resulted from placing excavated soils (dredged material) into Silver Lake, Silver Creek and their adjacent wetlands without a permit. The dredged material is the "pollutant" referred to in this Consent Order.

V. FINDINGS OF FACT AND OF VIOLATION

6. Respondents Christopher and Linda Janowski are individuals with a mailing address of P.O. Box 97, Dumont, CO 80436.

7. At all relevant times, Respondents owned, controlled or operated the property containing Clear Creek, Silver Creek, Silver Lake and their adjacent wetlands located in Section 25, Township 3 South, Range 74 West, Lawson, Clear Creek County, Colorado (the Site).

8. Silver Creek is tributary to Silver Lake, which is tributary to Clear Creek, which is tributary to the South Platte River. Clear Creek is, and was at all relevant times, a navigable water. The South Platte River is, and was at all relevant times, a navigable, interstate water.

9. Sometime in the spring of 2008, Respondents and/or persons acting on their behalf, using their own equipment, began rerouting Silver Creek, excavating Silver Lake, and filling adjacent wetlands for the purpose of a lake improvement project at the Site.

10. On June 23, 2008, the United States Army Corps of Engineers (Corps) conducted an inspection of the Site after receiving a complaint of impacts to Silver Creek, Silver Lake and their adjacent wetlands. The Corps found, and EPA through issuance of this Consent Order finds, that Respondents and/or persons acting on their behalf discharged dredged or fill material into approximately 1.00 acre of Silver Creek, Silver Lake and their adjacent wetlands during the lake improvement project at the Site.

11. In a letter to Respondents, dated June 24, 2008, the Corps found, and EPA through issuance of this Order finds, that Respondents' activities, as described in paragraphs 9 and 10 of this Consent Order, required prior authorization from the Corps and that the required

authorization had not been sought or granted. Further, the Corps directed Respondents to “cease and desist” any further unauthorized work at the Site.

12. On June 24, 2008, the Corps referred this case to EPA for enforcement in accordance with the “Memorandum of Agreement Between the Department of the Army and the Environmental Protection Agency Concerning Federal Enforcement of the Section 404 Program of the Clean Water Act,” dated January 19, 1989.

13. The activities described in paragraphs 9 and 10 of this Consent Order were performed using common earthmoving vehicles and equipment, all of which were operated by Respondents and/or by persons acting on their behalf.

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

15. The discharged dredged or fill material referenced above is and was at all relevant times “dredged material” or “fill material” within the meaning of 33 C.F.R. § 323.2(c) or 33 C.F.R. § 323.2(e), respectively, and “pollutants” within the meaning of section 502(6) of the CWA, 33 U.S.C. § 1362(6).

16. Silver Creek, Silver Lake and their adjacent wetlands filled and disturbed by Respondents’ unauthorized activities provided various functions and values, including: wildlife habitat for birds, mammals, reptiles and amphibians; water quality enhancement; flood attenuation; and aesthetics.

17. The vehicles and equipment described in paragraph 13 of this Consent Order are and were at all relevant times each a “point source” within the meaning of section 502(14) of the CWA, 33 U.S.C. § 1362(14).

18. Silver Creek, Silver Lake and their adjacent wetlands referenced above are and were at all relevant times “waters of the United States” within the meaning of 33 C.F.R. § 328.3(a) and therefore “navigable waters” within the meaning of section 502(7) of the CWA, 33 U.S.C. § 1362(7).

19. The placement of dredged or fill material into Silver Creek, Silver Lake and their adjacent wetlands constitutes the “discharge of pollutants” within the meaning of section 502(12) of the CWA, 33 U.S.C. § 1362(12).

20. Section 301(a) of the CWA, 33 U.S.C. § 1311, prohibits, among other things, the discharge of pollutants by any person into waters of the United States except as in compliance with section 404 of the CWA, 33 U.S.C. § 1344.

21. Section 404 of the CWA, 33 U.S.C. § 1344, sets forth a permitting system authorizing 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 which are defined as waters of the United States.

22. 33 C.F.R. § 323.3(a) specifies that, unless exempted pursuant to 33 C.F.R. § 323.4, a permit issued by the Corps is required for the discharge of dredged or fill material into waters of the United States.

23. Respondents are not and never have been authorized by a permit issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344, to conduct any of the activities described in paragraphs 9 and 10 of this Consent Order.

24. The activities conducted by Respondents and/or by persons acting on their behalf as described in paragraphs 9 and 10 of this Consent Order violate section 301 of the CWA,

33 U.S.C. § 1311. Each discharge of pollutants from a point source by Respondents into waters of the United States without the required permits issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344, constitutes a violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a). Each day the discharges remain in place without the required permits constitutes an additional day of violation of section 301(a).

25. The removal of the dredged or fill material illegally discharged into waters of the United States at the Site and restoration of the impacted waters, including Silver Creek, Silver Lake and their adjacent wetlands, to a condition that closely approximates their condition and function prior to the discharge of the dredged or fill material, can be achieved as a practical matter through commonly used methods of construction, digging, revegetation, and best management practices.

26. Activities to be carried out under this Consent Order are remedial, not punitive, and are necessary to achieve the CWA's objective "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters," as specified in section 101(a) of the CWA, 33 U.S.C. § 1251(a). The removal and restoration described in paragraph 25 of this Consent Order are appropriate to alleviate actual and potential harm to water quality, aquatic habitat, and wildlife habitat caused by Respondents' unpermitted activities.

27. To resolve the violations alleged herein by EPA, Respondents have agreed to comply with this Consent Order and agree to abide by all of its terms and conditions herein and not to challenge the jurisdiction of EPA or these Findings of Fact in any proceeding to enforce this Consent Order.

28. These preceding FINDINGS OF FACT AND OF VIOLATION and the ORDER FOR COMPLIANCE below have been made after consultation and coordination with the Corps' Omaha District.

VI. ORDER FOR COMPLIANCE

Based upon the foregoing FINDINGS OF FACT AND OF VIOLATION, and pursuant to the authority vested in the Administrator of the EPA pursuant to sections 308 and 309(a) of the CWA, 33 U.S.C. §§ 1318 and 1319(a), as properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8, it is hereby ORDERED and AGREED:

29. Respondents shall immediately terminate all unauthorized discharges of dredged or fill material, now and in the future, into waters of the United States, unless specifically authorized by the Corps under a valid permit issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344. This prohibition includes all mechanical land clearing, dredging, filling, grading, leveling, installation of utilities, construction, and any other activities that result in a discharge of dredged or fill material into waters of the United States.

30. Upon EPA approval of the Restoration Plan required by paragraph 32 of this Consent Order, Respondents shall remove all dredged or fill material that was discharged as a result of the violations identified in this Consent Order and restore the impacted waters and wetlands at the Site to their pre-impact condition and grade, unless otherwise approved by EPA in the Restoration Plan.

31. All dredged or fill material removal and restoration activities shall be conducted in accordance with an EPA-approved Restoration Plan prepared by a consultant experienced in stream and wetland restoration. The consultant also shall directly supervise all work performed

pursuant to the EPA-approved Restoration Plan. A statement of the consultant's qualifications, including professional resume and business references, shall be submitted to EPA within twenty-one (21) calendar days of receipt of this Consent Order.

32. Within sixty (60) calendar days of receipt of this Consent Order, Respondents shall submit to EPA for review, comment, and approval a Restoration Plan, prepared by the consultant referenced in paragraph 31 of this Consent Order, providing for the: (1) removal of all dredged or fill material that was discharged into the waters and wetlands at the Site and (2) restoration, to their pre-impact configuration and/or grade, of the waters and wetlands that were impacted as a result of Respondents' unauthorized discharges of dredged or fill material at the Site.

33. The Restoration Plan shall be prepared in accordance with "U.S. Environmental Protection Agency, Region 8 - Clean Water Act § 404 Enforcement: Removal/Restoration Plans and Habitat Mitigation/Monitoring Proposals," attached hereto as Exhibit A, and with the guidelines referenced in section 404(b)(1) of the CWA, 33 U.S.C. § 1344(b)(1), and set forth in 40 C.F.R. Part 230. In addition, the Restoration Plan shall include:

- a. A detailed work plan and schedule for completion of all of the work and activities identified by the Restoration Plan, including the application for any required permits, providing for completion of all aspects of the restoration work no later than six (6) months after EPA approves the Restoration Plan;
- b. Locations and delineations of all wetlands and other waters of the United States included in the restoration. The delineations shall be performed in accordance with the procedures in the "Corps of Engineers Wetlands Delineation Manual,

January 1987 - Final Report," including the procedures for atypical situations, and subsequent interpretive guidance published by the Corps;

- c. Grading, planting, and monitoring plans, measurable criteria for success of restoration or mitigation, and provisions for proper disposal of any excess soils or other materials generated during construction and/or restoration; and
- d. A description of all costs to prepare and implement the Restoration Plan, including the costs of all consultations, permits, construction, monitoring, and land acquisition.

34. EPA will review the Restoration Plan and approve it, approve it with modifications, or reject it with comments. If EPA rejects the Restoration Plan, Respondents shall, within thirty (30) calendar days of receipt of EPA's rejection letter, submit a revised plan that corrects the deficiencies identified by EPA.

35. Upon receiving EPA's written approval of the Restoration Plan, Respondents shall make a timely and complete application for each permit necessary to implement the EPA-approved plan and for conducting restoration in accordance with the approved plan, including the schedule specified therein, with all granted permits, and with all applicable laws. Respondents shall demonstrate that all necessary permits have been granted by providing complete copies of all such permits, and any amendments thereto, to EPA within seven (7) calendar days of issuance of each permit.

36. This Consent Order is not a permit or an authorization to place or discharge dredged or fill material in waters of the United States. Respondents shall consult with the Corps at the address and telephone number below to determine if any work to be performed pursuant to this Order requires a permit from the Corps under section 404 of the CWA, 33 U.S.C. § 1344. If

any such permit is required, Respondents shall obtain such permit(s) and provide a copy or copies to EPA pursuant to paragraph 35 of this Order prior to initiating any work.

U.S. Army Corps of Engineers
Denver Regulatory Office
9307 South Wadsworth Ave.
Littleton, CO 80128-6901
Telephone: 303-979-4120
Facsimile: 303-979-0602

37. Respondent shall submit two (2) paper copies of the Restoration Plan, one (1) electronic copy of the Restoration Plan, all notifications, and related correspondence to:

Kenneth M. Champagne, 8ENF-W
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
Telephone: 303-312-6608
Facsimile: 303-312-7518

A paper copy and electronic copy of the Restoration Plan, all notifications, and related correspondence also shall be provided to:

Amy Swanson, 8ENF-L
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
Telephone: 303-312-6906
Facsimile: 303-312-6953

A paper copy and electronic copy of the Restoration Plan also shall be provided to the Corps at the address noted in paragraph 36 of this Consent Order.

38. In addition to the notification requirements set forth in paragraph 37 of this Consent Order, after issuance of any Corps authorization for the restoration work, Respondents shall submit all notifications and correspondence to the Corps in accordance with the terms and conditions in the Corps permit.

39. All plans (including, but not limited to, the Restoration Plan), deliverables, reports, specifications, schedules, or attachments required by this Consent Order are, upon approval by EPA, incorporated into this Consent Order. Any non-compliance with such EPA-approved plans, deliverables, reports, specifications, schedules, or attachments shall be deemed a failure to comply with this Consent Order and subject to EPA enforcement.

40. If Respondents lease, sublease, or transfer control and/or ownership of any property, in whole or in part, where work is to be performed pursuant to the Restoration Plan before they have fulfilled their obligations under this Consent Order, Respondents shall provide a copy of this Consent Order and the EPA-approved Restoration Plan to the lessee, sublessee, or transferee not less than thirty (30) calendar days before the lease, sublease, or transfer. A lease, sublease, or transfer of such property interest shall not relieve Respondents of any responsibility in the Consent Order unless EPA, Respondents, and the lessee, sublessee, or transferee agree in writing to allow the lessee, sublessee, or transferee to assume such responsibility. Additionally, at least thirty (30) calendar days before such lease, sublease, or transfer, Respondents shall notify EPA regarding the details of the lease, sublease, or transfer at the addresses specified in paragraph 37 of this Consent Order.

41. Respondents shall allow, or use its best efforts to allow, access by any authorized representatives of EPA, the Corps, the Natural Resources Conservation Service, the U.S. Fish and Wildlife Service, and the Colorado Department of Public Health and Environment, or any of the agencies' contractors, upon proper presentation of credentials, to sites and records relevant to this Consent Order for any of the following purposes:

- a. To inspect and monitor progress of the activities required by this Consent Order;

- b. To inspect and monitor compliance with this Consent Order; and
- c. To verify and evaluate data and other information submitted to EPA.

42. This Consent Order shall in no way limit or otherwise affect EPA's authority, or the authority of any other governmental agency, to enter the Site, conduct inspections, have access to records, issue notices and orders for enforcement, compliance, or abatement purposes, or monitor compliance pursuant to any statute, regulation, permit, or court order.

43. Respondents' obligations under this Consent Order are joint and several.

44. This Consent Order shall be effective upon receipt by Respondents.

45. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), authorizes civil penalties of up to \$32,500 per day for each violation which occurred before January 12, 2009, and \$37,500 per day for each violation thereafter, of section 301 of the CWA, 33 U.S.C. § 1311, and for each violation of an order issued by the Administrator of EPA under section 309(a) of the CWA, 33 U.S.C. § 1319(a), including this Consent Order. Additionally, section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes EPA to impose administrative penalties for violations of the CWA. Further, section 309(c) of the CWA, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations of the CWA.

46. Issuance of this Consent Order shall not be deemed to be an election by the United States to forego any civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA for violations giving rise to the Consent Order.

47. Compliance with the terms and conditions of the Consent Order shall not be construed to relieve Respondents of their obligation to comply with any applicable Federal, state, or local law or regulation.

48. Failure by Respondents to complete the tasks described herein in the manner and time frame specified pursuant to this Consent Order may subject Respondents to a civil action under section 309 of the CWA, 33 U.S.C. § 1319, for violation of this Consent Order.

49. Each party shall bear its own costs and attorneys fees in connection with this matter.

50. This Consent Order constitutes the final, complete and exclusive agreement and understanding among the parties with respect to the settlement embodied in this Consent Order. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement of this matter other than those expressly contained in this Consent Order.

51. Each undersigned representative of Respondents certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to execute and legally bind such party to this document.

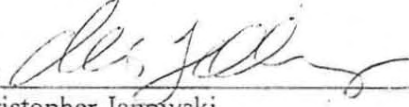
**FOR UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,**

Date: April 16, 2009

By: Sharon L Kercher
for Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice


FOR CHRISTOPHER JANOWSKI

Date: 4-07-07

By: 
Christopher Janowski
4 Silver Lakes Dr.
Lawson, Colorado 80436

FOR LINDA JANOWSKI

Date: 4-7-09

By: 
Linda Janowski
4 Silver Lakes Dr.
Lawson, Colorado 80436