Winters, Hellerich, & Hughes, LLC
Attorneys at Law

William W. Hughes

whughes@wh-h.com

5587 W. 19th Street, Suite 101
Greeley, Colorado 80634
Phone: (970) 352-7800 ext. 225
Fax: (970) 352-6547
www.wintershellerichhugheslaw.com

Jerry D. Winters
Bradley D. Laue
William W. Hughes, II

Thomas E. Hellerich
(1947 - 2018)

October 19, 2020

Peggy Livingston
Senior Assistant Regional Counsel
United States Environmental Protection Agency
Region 8
1595 Wynkoop Street
Denver, CO

Livingston.peggy@epa.gov

November 5, 2020
4:21 PM
Received by
EPA Region VIII
Hearing Clerk

RE: Two Rivers Mine at Nature's Park
Administrative Order on Consent

Dear Ms. Livingston:

Enclosed is the revised Administrative Order on Consent which was signed by Craig Sparrow, President of Western Equipment & Truck, Inc., on October 16, 2020.

Please send me a copy of the Administrative Order on Consent after it is signed by Colleen Rathbone, Chief Water Enforcement Branch, of the United States Environmental Protection Agency, Region 8.

Very truly yours,

William W. Hughes

WWH:sp
pc: Craig Sparrow
P. Andrew Jones
Forrest Leaf
Greg Sherman
Brendan Calonge
Garrett Walstad
William W. Hughes, II
enc.

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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF: Western Equipment & Truck, Inc. 2055 1st Avenue Greeley, Colorado 80631 Respondent	)	**ADMINISTRATIVE ORDER ON CONSENT** Docket No. CWA-08-2021-0003

I. INTRODUCTION

1. This Administrative Order on Consent (Consent Order) is entered into voluntarily by the U.S. Environmental Protection Agency (EPA) and Western Equipment & Truck, Inc. (Respondent) to carry out the goals of the Clean Water Act (CWA), 33 U.S.C. §§ 1251-1387, to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters."

2. This Consent Order relates to property known as the Two Rivers Rock Mine at Natures Park (Site) located in Milliken, Colorado, at the confluence of the Little Thompson River and the Big Thompson River, in Section 2, Township 4 North, Range 67 West.

II. STATUTORY AUTHORITY

3. This Consent Order is issued under section 309(a) of the CWA, 33 U.S.C. § 1319(a). The authority to issue this Consent Order has been properly delegated to the undersigned EPA official. This Consent Order is based on the following findings of violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a), which prohibits the discharge of pollutants into waters of the United States except as in compliance with, among other provisions, sections 402 and 404 of the CWA, 33 U.S.C. §§ 1342 and 1344.

III. PARTIES BOUND

4. This Consent Order shall apply to and be binding upon the EPA and upon Respondent and Respondent's agents, successors, and assigns. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to bind Respondent to the terms and conditions of this Consent Order. No change in the ownership or operation of the Site or of Respondent shall alter the Respondent's responsibilities under this Consent Order unless the EPA, Respondent, and the transferee agree in writing to allow the transferee to assume such responsibilities. Additionally, no later than 30 calendar days prior to such transfer, Respondent shall notify the EPA and the Colorado Department of Public Health and Environment (CDPHE) of the

transfer at the addresses specified in paragraphs 104 and 105, respectively, of this Consent Order.

IV. STATEMENT OF THE PARTIES

5. The FINDINGS in Section VI of this Consent Order are made solely by the EPA. In signing this Consent Order, Respondent neither admits nor denies any of the FINDINGS. Without any admission of liability, Respondent consents to issuance of this Consent Order and agrees to abide by its terms. Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review Respondent may have with respect to any issue of fact or law set forth in this Consent Order including, but not limited to, any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-706, providing for judicial review of final agency action. Respondent further agrees not to challenge the jurisdiction of the EPA or the FINDINGS below in any proceeding to enforce this Consent Order or in any action taken pursuant to this Consent Order.

V. STATUTORY AND REGULATORY BACKROUND

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits, among other things, the discharge of any pollutant by any person into navigable waters, unless authorized by certain other provisions of the CWA, including sections 402 and 404 of the CWA, 33 U.S.C. §§ 1342 and 1344.

7. The term "discharge of a pollutant" is defined in section 502(12) of the CWA, 33 U.S.C. § 1362(12), to include "any addition of any pollutant to navigable waters from any point source."

8. The term "pollutant" is defined in section 502(6) of the CWA, 33 U.S.C. § 1362(6), to include "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," with certain exceptions not relevant here.

9. The term "point source" is defined in section 502(14) of the CWA, 33 U.S.C. § 1362(14), as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock . . . from which pollutants are or may be discharged."

10. The term "navigable waters" is defined in section 502(7) of the CWA, 33 U.S.C. § 1362(7), as "the waters of the United States, including the territorial seas."

11. At all times relevant to this matter, the term "waters of the United States" was defined to include, among other things, all waters which are currently used, were used in the past, or

may be susceptible to use in interstate or foreign commerce, all interstate waters, tributaries to such waters, and wetlands adjacent to such waters. 33 C.F.R. § 328.3(a) and 40 C.F.R. § 122.2 (1993).

12. The term "person" is defined in section 502(5) of the CWA, 33 U.S.C. § 1362(5), to include, among other things, a corporation.

A. Section 404 / Dredge and Fill Permitting

13. Section 404 of the CWA, 33 U.S.C. § 1344, establishes a permitting system under which the Secretary of the Army, acting through the Chief of Engineers of the U.S. Army Corps of Engineers (Corps), may issue permits for the discharge of dredged or fill material into navigable waters. These permits may be issued as general permits under the Corps' Nationwide Permit program or as individual permits.

B. Section 402 / Stormwater Permitting

14. Section 402 of the CWA, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System (NPDES) program, under which the EPA or states with approved NPDES programs may issue permits authorizing discharges into navigable waters, notwithstanding section 301(a) of the CWA, 33 U.S.C. § 1311(a), subject to specific terms and conditions.

15. Stormwater discharges associated with industrial activity are subject to the requirement to obtain an NPDES permit. See sections 301(a) and 402(p)(2)(B) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).

16. Stormwater includes stormwater runoff, snow melt runoff, and surface runoff and drainage. 40 C.F.R. § 122.26(b)(13).

17. Discharges associated with industrial activity include any discharge associated with construction activity that disturbs at least five acres of total land area. Construction activity includes clearing, grading, and excavating. 40 C.F.R. § 122.26(b)(14)(x).

18. Dischargers of stormwater associated with industrial activity must either apply for an individual permit or seek coverage under a promulgated general permit. 40 C.F.R. § 122.26(c)(1).

19. Colorado was approved by the EPA to administer the NPDES program on March 28, 1975 (40 Fed. Reg. 16713-14 (April 14, 1975)). A permit issued by CDPHE under Colorado's NPDES program is known as a Colorado Discharge Permit System (CDPS) permit.

20. Effective July 1, 2007, CDPHE issued General Permit COR-030000 for Stormwater Discharges Associated with Construction Activity (the 2007 Stormwater Permit). The 2007

Stormwater Permit authorizes discharges of stormwater associated with construction activities, if done in compliance with its terms and conditions.

21. The conditions in the 2007 Stormwater Permit include, among other things, requirements to develop a Stormwater Management Plan (SWMP) to implement and maintain best management practices (BMPs) to reduce pollutants in any stormwater discharges and to conduct site inspections.

22. Effective April 1, 2019, CDPHE issued General Permit COR-0400000 for Stormwater Discharges Associated with Construction Activity (the 2019 Stormwater Permit). The 2019 Stormwater Permit authorizes discharges of stormwater associated with construction activities if done in compliance with its terms and conditions.

23. Under the 2007 and 2019 Stormwater Permits, an individual discharger may obtain authorization to discharge by submitting a Notice of Intent under the relevant permit for coverage, and a certification of having prepared a SWMP prior to construction, to CDPHE.

VI. FINDINGS

24. Respondent is a Colorado corporation. Its registered agent for service of process in Colorado is Craig Sparrow, 2055 1st Avenue, Greeley, Colorado, 80631. Mr. Sparrow's mailing address is 1227 51st Avenue, Greeley, Colorado, 80634.

25. Respondent is a "person" for purposes of section 502(5) of the CWA, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.

26. At all relevant times, Respondent has owned and controlled the Site.

26. The Site is adjacent to the Little Thompson River and to the Big Thompson River.

27. The Little Thompson River is a perennial tributary of the Big Thompson River.

28. The Little Thompson River is a "navigable water" as defined by section 502(7) of the CWA, 33 U.S.C. § 1362(7).

29. The Big Thompson River is a navigable-in-fact water.

29. The Big Thompson River is a "navigable water" as defined by section 502(7) of the CWA, 33 U.S.C. § 1362(7).

30. The Site includes at least 55 acres.

31. Respondent has conducted gravel and aggregate mining at the Site.

32. In 2002, a Corps permit for the Site was transferred from a prior Site owner to Respondent.

33. Respondent was aware of the Corps' permitting program, as evidenced by the transfer referenced in the preceding paragraph and by Respondent having received authorization in 2003 under a Corps Nationwide Permit to discharge dredged or fill material at a location other than the Site.

34. In 2003, Respondent received a permit, Permit M-2002-052, from the Colorado Department of Natural Resources, for mining at the Site.

35. On July 10, 2017, the Colorado Mined Land Reclamation Board revoked Permit M-2002-052 due to lack of reporting and nonpayment of fees.

36. On April 16, 2018, Respondent submitted an application to the Town of Milliken (Town) for a Floodplain Development Permit (FDP) for the Site. On April 30, 2018, the Milliken Floodplain Administrator issued FDP #009 to Respondent.

37. On December 13, 2018, following a December 7, 2018 visit to the Site, the Town issued a Notice of Violation (NOV) order to Respondent, alleging that fill material had been discharged to the special flood hazard area at the Site, outside of what was approved by the FDP, in violation of the Town Municipal Code and the National Flood Insurance Program Regulations.

38. On December 13, 2018, the Town issued a Cease and Desist (C&D) order to Respondent, directing that the "operation of hauling fill material and placing it in the Special Flood Hazard area [at the Site] must immediately cease and a written letter shall be sent to the Town [by December 21, 2018] confirming that the operation has stopped and will not continue until all necessary permits have been issued by all authorities having jurisdiction."

39. On January 10, 2019, the Town issued a second NOV to Respondent alleging that grading activities at the Site had resumed, in violation of the prior C&D order, the Town Municipal Code, and the National Flood Insurance Program Regulations.

40. The Town's January 10, 2019 NOV also stated that FDP was being revoked.

41. The Town's January 10, 2019 NOV set forth steps for Respondent to complete in order to remedy the alleged violation, including, among other things, contacting the Corps, providing the Town with copies of correspondence with the Corps and the Corps' action items if a CWA violation had occurred, obtaining a CDPHE permit for stormwater discharges associated with construction activities, applying for a new FDP from the Town.

42. On January 23, 2019, the Town's Board of Trustees conducted a public hearing to consider the revocation of FDP #009. After hearing testimony and considering evidence provided

during the hearing, the Board of Trustees found Respondent in violation of the Milliken Municipal Code and voted to revoke FDP #009.

43. On August 27, 2019, the Town issued a third NOV to Respondent, alleging that work had continued at the Site despite an active C&D order being in effect. The third NOV specified, among other things, that any activity near or in the Little Thompson River must be reviewed and approved by the EPA, the Corps, and the U.S. Fish and Wildlife Service prior commencement of any work.

A. Fill Material

44. On January 14, 2019, the Corps conducted an inspection of the Site.

45. During its inspection, the Corps discovered that fill material consisting of soil and rock had been placed below the ordinary high water mark along at least 1,000 linear feet of the Big Thompson River at the Site.

46. During its inspection, the Corps also discovered that fill material consisting of soil and rock had been placed in wetlands at the Site, including:

a. a 5.9-acre wetland in the south-central portion of the Site that, after filling, was in use as a stockpile location;

b. the surface connection between the 5.9-acre wetland referenced in subparagraph paragraph a, above, and the Little Thompson River;

c. a fringe wetland of approximately 0.2 acre at the entrance to the Site in the northeast corner of the property and directly abutting the Big Thompson River along the right descending bank; and

d. a fringe wetland of approximately 0.4 acre 700 feet downstream from the fringe wetland described in subparagraph c, above, and directly abutting the Big Thompson River along the left descending bank.

47. On January 15, 2019, the Corps issued a Notice of Violation to Respondent citing instances of unauthorized placement of fill at the Site.

48. The Corps' Notice of Violation referenced in paragraph 47, above, included a C&D order, stating, in bold, "**Under authorities provided in 33 CFR 326.3, you and any other responsible party are hereby ordered to cease and desist all activities related to the unauthorized work.**"

49. On April 23, 2019, a consultant for Respondent provided a grading plan to the Town that showed the conditions of the Site after ". . . the work was stopped." The plan identified an additional area of fringe wetland directly abutting the Big Thompson River along the right descending bank 700 feet downstream from the fringe wetland described in paragraph 46.c, above. The grading plan noted that 7.79 acres of wetlands at the Site had been filled.

50. Prior to October 29, 2019, but after the Town's NOVs and the Corps' NOV referenced in paragraphs 37, 39, 40, 41, 43, 47, and 48, above, the entire wetland area of at least 4.0 acres in the northwest corner of the Site was filled, in violation of the C&D orders from the Town and the Corps.

51. The discharges of fill material referenced in paragraphs 45, 46, and 50, above, were performed by Respondent, by a person or persons under Respondent's direction and control, or both.

52. The fill material referenced in paragraphs 45, 46, and 50, above, is and was at all relevant times "fill material" as defined in 33 C.F.R. § 323.2(e).

53. The discharges of fill material referenced in paragraphs 45, 46, and 50, above, were performed using common earthmoving vehicles and equipment.

54. The earthmoving vehicles and equipment referenced in paragraph 53, above, are and were at all relevant times each a "point source" as defined in section 502(14) of the CWA, 33 U.S.C. § 1362(14).

55. The discharges of fill material referenced in paragraphs 45, 46, and 50, above, were not authorized by any CWA permit.

B. <u>Stormwater</u>

56. At the Site, Respondent has engaged in construction activities.

57. Respondent began construction at the Site prior to June 27, 2018.

58. Respondent's construction activities at the Site constitute a type of "industrial activity" as defined in 40 C.F.R. § 122.26(b)(14).

59. During the Corps' January 14, 2019 inspection referenced in paragraph 44, above, the Corps observed that no sediment and erosion control BMPs were in place at the Site.

60. On January 15, 2019, the Corps brought to CDPHE's attention that construction activities were being conducted at the Site.

61. Upon further investigation, CDPHE determined that construction activities at the Site began prior to June 27, 2018.

62. On January 18, 2019, Respondent submitted a Notice of Intent to CDPHE for stormwater discharges from the Site to be covered under the 2007 Stormwater Permit. The Notice of Intent indicated an anticipated construction schedule with a start date of February 1, 2019 and a final stabilization date of April 1, 2020.

63. The Notice of Intent referenced in paragraph 62, above, indicated 47.4 acres as the area of project disturbance from construction.

64. Effective January 23, 2019, CDPHE issued Certification No. COR03U788 to Respondent authorizing Respondent to discharge stormwater from the Site in accordance with the terms and conditions of the 2007 Stormwater Permit.

65. On February 19, 2019, CDPHE conducted a stormwater inspection of the Site.

66. On February 20, 2019, CDPHE transmitted a preliminary report of its stormwater inspection via email to Respondent.

67. On March 15, 2019, CDPHE issued a report of its stormwater inspection.

68. On April 4, 2019, a consultant for Respondent submitted a response to CDPHE's stormwater inspection report.

69. The Respondent's April 4, 2019 response noted, among other things, that prior to the CDPHE inspection, jurisdictional wetlands at the Site had been filled and prior to that work, proper stormwater management plans and best management practices had not been implemented.

70. During the inspection referenced in paragraph 65, above, CDPHE personnel reviewed Respondent's SWMP for the Site.

71. CDPHE's review of Respondent's SWMP indicated that the SWMP did not meet the requirements of part I.C.1 of the 2007 Stormwater Permit for describing the construction activity at the Site, in that the SWMP inadequately:

a. described the nature of the construction activity at the Site;

b. provided estimates of total acreage of the Site, the disturbed area acreage, and the location expected to be disturbed by clearing, excavation, grading, or other construction activities;

c. described the pre-existing vegetation at the Site and an estimate of the pre-disturbance percent density of vegetative ground cover;

d. provided the location and description of all potential pollutant sources; and

e. provided the location and description of any anticipated allowable sources of non-stormwater discharge at the Site, such as uncontaminated springs, construction dewatering, and concrete washout.

72. CDPHE's review of Respondent's SWMP indicated that the SWMP did not meet the requirements of part I.C.2 of the 2007 Stormwater Permit for a site map, in that the SWMP:

a. did not identify areas of cut and fill, ground surface disturbance, and soil stockpiles;

b. identified a silt fence that was to be installed on the eastern portion of the Site that had not been installed at the time of the inspection; and

c. did not identify some earthen berm and grading differential control measures that had been installed in the field.

73. CDPHE's review of Respondent's SWMP indicated that the SWMP did not meet the requirements of part I.C.3 of the 2007 Stormwater Permit for describing stormwater management controls to be implemented as part of construction activity, in that the SWMP:

a. did not identify the position/title or individual responsible for implementing and maintaining the SWMP;

b. did not describe all structural and non-structural erosion and sediment control measures implemented at the Site;

c. did not describe all practices implemented at the Site to minimize impacts from procedures or significant materials with a potential for contributing pollutants to stormwater runoff, to control potential discharges from vehicle tracking, and to control stormwater pollution from all construction site wastes and from dewatering uncontaminated groundwater or stormwater; and

d. did not adequately describe the installation and implementation specifications for control measures, such as the earthen berms and grading differentials observed in the field during the inspection.

74. CDPHE's review of Respondent's SWMP indicated that the SWMP did not meet the requirements of part I.C.4 of the 2007 Stormwater Permit for clearly describing the practices used to achieve final stabilization of all disturbed areas at the Site, in that the SWMP merely referred generally to a combination of native grasses and shrubs as "part of the streambank revegetation" and seeding areas with native grass "as part of the overall stabilization."

75. During CDPHE's January 2019 inspection of the Site, no records of Respondent's inspections of the Site were available for CDPHE's review, because Respondent had not conducted site inspections as required by part I.D.6 of the 2007 Stormwater Permit.

76. During CDPHE's January 2019 inspection, CDPHE noted that control measures had not been implemented for the area of disturbance along the Big Thompson River, despite the requirement in part I.B.3 of the 2007 Stormwater Permit.

77. During CDPHE's January 2019 inspection, CDPHE noted that control measures had not been implemented for the stockpiles and other areas of disturbance at the Site, despite the requirement in part I.B.3 of the 2007 Stormwater Permit.

78. During CDPHE's January 2019 inspection, CDPHE documented two stormwater discharge paths, directly into the Big Thompson River and into wetlands adjacent to the Big Thompson River.

79. Effective April 1, 2019, CDPHE issued Certification No. COR404991 to Respondent,

authorizing Respondent to discharge stormwater from the Site in accordance with the terms and conditions of the 2019 Stormwater Permit.

Count I: Unauthorized Discharges of Dredge and Fill Material

80. The activities described in paragraphs 45, 46, and 50, above, constitute discharges of pollutants into navigable waters without a CWA permit.

81. Each day Respondent or any person on Respondent's behalf discharged dredged or fill material without a permit issued under section 404 of the CWA constitutes a violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count II: Unauthorized Discharges of Stormwater

82. Prior to obtaining coverage under the 2007 Stormwater Permit, and while engaged in construction activities at the Site, Respondent or person(s) on Respondent's behalf discharged stormwater containing pollutants from the Site.

83. Each day Respondent or any person on Respondent's behalf discharged stormwater containing pollutants without an NPDES permit constitutes a violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count III: Inadequate SWMP

84. Parts I.B, I.C.1, I.C.2, and I.C.3 of the 2007 Stormwater Permit required Respondent to develop a SWMP for the Site, with specific requirements for describing the relevant construction activity, including a site map, and describing stormwater management controls.

85. As described in paragraphs 70 through 74, above, Respondent failed to prepare an adequate SWMP in compliance with the 2007 Stormwater Permit.

86. Each failure of Respondent to prepare an adequate SWMP constitutes a violation of the 2007 Stormwater Permit.

Count IV: Failure to Perform Site Inspections

87. Part I.D.6 of the 2007 Stormwater Permit required Respondent to conduct inspections of the Site to ensure BMPs are operating as needed to comply with permit requirements. The 2007 Stormwater Permit specified minimum scheduling frequencies and minimum requirements for preparing and maintaining inspection reports.

88. As described in paragraph 75, above, Respondent failed to conduct inspections in compliance with the 2007 Stormwater Permit.

89. Each failure of Respondent to conduct a required Site inspection constitutes a violation of the 2007 Stormwater Permit.

Count V: Failure to Implement Stormwater Control Measures

90. Part I.D.2. of the 2007 Stormwater Permit required Respondent to select, design, install, and implement control measures, including BMPs to minimize pollutant discharges.

91. As described in paragraphs 76 through 78, above, Respondent failed to select, design, install, and implement control measures to minimize pollutant discharges.

92. Each failure of Respondent to select, design, install, and implement control measures at the Site constitutes a violation of the 2007 Stormwater Permit.

VII. ORDER

Based on the FINDINGS, above, the EPA orders, and Respondent agrees to, the following:

93. Respondent shall immediately comply with the 2019 Stormwater Permit and any future permits issued by CDPHE.

94. Respondent 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.

95. Respondent has notified the EPA that it has retained Western Environment and Ecology, Inc. as a consultant to prepare a restoration plan (Plan) for the Site and to directly supervise all work performed pursuant to the Plan, once the Plan is approved by the EPA. If Respondent retains any other consultant to prepare the Plan or to supervise work under the Plan, Respondent will ensure the additional consultant has professional experience in stream and wetland restoration and will, upon retaining the consultant, provide the EPA that consultant's name and qualifications, including a professional resume.

96. Within 60 days of receipt of this Consent Order, Respondent shall submit the Plan to the EPA for review, comment, and approval.

97. The Plan must provide for (1) the removal and restoration of all dredged and fill material that was discharged into the waters of the United States at the Site and (2) monitoring of impacted areas. The Plan shall be prepared in accordance with the "U.S. Environmental Protection Agency, Region 8 Clean Water Act § 404 Enforcement: Removal/Restoration Plans and Habitat Mitigation/Monitoring Proposals" guidelines (Attachment 1 to this Consent Order). The Plan shall include:

a. a complete assessment of the impacts to the Big Thompson River and the Little Thompson River and their adjacent wetlands due to Respondent's unauthorized discharges of dredged and fill material at the Site;

b. a site map at an appropriate scale showing the entire area of unauthorized disturbance. The site map shall include existing undisturbed natural features that were not impacted and clearly identify all unauthorized man-made disturbances, fills, excavations, road crossings, culverts, structures, and any other work;

c. a detailed work plan and schedule for all work and activities to be accomplished as specified in the Plan, including the application for any required permits, providing for completion of all aspects of the work no later than 60 days after the EPA approves the Plan;

d. grading, planting, and monitoring plans; measurable criteria for the success of restoration; and provisions for proper disposal of any excess soils or other material generated during removal and restoration;

e. detailed professional drawings of the restoration site, including plan and profile drawings with control elevations for current conditions and proposed conditions;

f. a description of all costs to complete the restoration work, including the costs of all consultations, permits, construction, and monitoring; and

g. upon completion of the restoration component of the Plan, appropriate measures for preserving restored areas, such as provision for recording deed restrictions in county deed records.

98. The EPA will review the Plan and approve it, approve it with modifications, or reject it with comments. If the EPA rejects the Plan, Respondent shall, within 30 calendar days of receipt of the EPA's rejection letter, submit a revised Plan that corrects the deficiencies identified by the EPA.

99. Upon receiving the EPA's written approval of the Plan, Respondent shall obtain all necessary permits to implement the Plan and then commence all activities in accordance with the approved Plan, including the Plan's timeframes and all granted permits. Respondent shall demonstrate that all necessary permits have been granted by providing copies of all such permits and permit amendments to the EPA within seven calendar days of issuance of each permit or amendment.

100. All activities conducted pursuant to this Consent Order and involving the use of heavy construction equipment shall be undertaken under the on-site supervision of the consultant retained pursuant to paragraph 95, above, unless otherwise approved in advance by the EPA.

101. This Consent Order is not a permit or an authorization to place or discharge dredged or fill material in waters of the United States. Respondent shall consult with the Corps at the address and telephone number below to determine if any work to be performed pursuant to this Consent Order requires a permit from the Corps under section 404 of the CWA. If any such permit is required, Respondent shall obtain such permit(s) and provide a copy or copies to the EPA (with the contact information provided in paragraph 104, below), prior to initiating any work that is to be performed pursuant to this Consent Order.

U.S. Army Corps of Engineers, Omaha District
Denver Regulatory Office
9307 South Wadsworth Boulevard
Littleton, Colorado 80128-6901
Telephone: (303) 979-4120

102. No later than 30 days after the effective date of this Consent Order (see paragraph 115, below), Respondent shall provide the EPA and CDPHE with the following:

a. Written documentation and photographs of control measures implemented in response to deficiencies identified in CDPHE's inspection report referenced in paragraph 67, above;

b. A copy of each inspection report prepared since CDPHE's February 19, 2019 inspection; and

c. A copy of the current SWMP for the Site and the date and content of each update to the SWMP since CDPHE's February 19, 2019 inspection.

103. All submittals required by this Consent Order shall include the following certification statement, signed and dated by an individual meeting the definition in 40 C.F.R. § 122.22(a)(3) of a principal executive officer:

> I hereby certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations.

104. All submittals to the EPA required by this Consent Order shall be provided to:

Monica Heimdal, 8ENF-W-NW
U.S. EPA Region 8
Enforcement and Compliance Assurance Division
1595 Wynkoop Street
Denver, Colorado 80202-1129

105. All submittals to CDPHE required by this Consent Order shall be provided to:

Joe Campbell, Environmental Protection Specialist
Clean Water Compliance Unit
Water Quality Control Division
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

106. In addition to the notification requirements set forth above, after issuance of any Corps authorization for the restoration work, Respondent shall submit all notifications and correspondence to the Corps in accordance with the terms and conditions in the Corps permit(s).

107. The Plan and any other deliverables, reports, specifications, schedules, and attachments required by this Consent Order are, upon approval by the EPA, incorporated into this Consent Order. Any non-compliance with the Plan, deliverables, reports, specifications, schedules, permits, or attachments shall be deemed a failure to comply with this Consent Order and shall be subject to EPA enforcement.

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

109. This Consent Order does not constitute a waiver or modification of any requirements of the CWA, all of which remain in full force and effect, nor does it otherwise affect the EPA's ability to enforce or implement the CWA.

110. Compliance with the terms and conditions of this Consent Order shall not be construed to relieve Respondent of its obligation to comply with any applicable federal, state, or local law or regulation.

111. Failure to comply with the terms of this Consent Order may subject Respondent to civil penalties of up to $55,800 per day for each violation of this Consent Order, pursuant to section 309(d) of the CWA, 33 U.S.C. § 1319(d). The penalty amount has been adjusted for inflation as described in 40 C.F.R. part 19.

112. Respondent shall allow, or use its best efforts to allow, access by any authorized representatives of the EPA and CDPHE or any of the EPA's or CDPHE's contractors, upon

proper presentation of credentials, to the Site and to 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 by Respondent to the EPA or CDPHE.

113. This Consent Order shall in no way limit the EPA's or CDPHE's authority, or the authority of any governmental agency, to enter the Site, conduct investigations, 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.

114. Each party shall bear its own costs and attorney fees in connection with this matter.

115. This Consent Order shall become effective upon receipt by Respondent of a fully executed copy. Respondent consents to receipt of this Consent Order by email to Respondent's attorney, William W. Hughes, at whughes@wh-h.com, and waives any right to any other manner of service. All time periods herein shall be calculated from the date of receipt of a fully executed copy of the Consent Order, unless otherwise provided in this Consent Order.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 8

Date: _____

COLLEEN RATHBONE

Digitally signed by COLLEEN RATHBONE
Date: 2020.11.05 16:07:03 -07'00'

Colleen Rathbone, Chief
Water Enforcement Branch
Enforcement and Compliance Assurance Division

WESTERN EQUIPMENT & TRUCK, INC.

Date: 10/16/2020

Craig Sparrow, President

Attachment 1 to Administrative Order on Consent
In the Matter of: Western Equipment & Truck, Inc.

U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 8

CLEAN WATER ACT § 404 ENFORCEMENT: REMOVAL/RESTORATION PLANS AND HABITAT MITIGATION/MONITORING PROPOSALS

INTRODUCTION

These guidelines are designed to assist respondents in the preparation of (1) removal and restoration plans and (2) habitat mitigation and monitoring plans associated with projects required under EPA administrative orders. They have been developed from the experiences of many cases and are intended to be merely guidelines. In the event of a conflict between an administrative order and these guidelines, the administrative order controls.

For answers to questions regarding the interpretation of these guidelines or of acceptable restoration and mitigation for a specific project, please contact the person at EPA Region 8 in the Technical Enforcement Program who is handling the case.

CLEAN WATER ACT § 404 ENFORCEMENT:

GENERAL GUIDELINES FOR DEVELOPMENT OF REMOVAL AND RESTORATION PLANS

I. GENERAL INFORMATION

The following guidelines serve as general specifications for preparing removal and restoration plans to remediate the unpermitted filling of wetlands. As environmental conditions vary from site to site, precise specifications will depend upon the environment conditions peculiar to the site in question. The size of the wetland area to be restored, its biological and physical characteristics, and the level of disturbance the wetland has experienced will further define the scope and complexity of the restoration plan. In most cases, the types of information listed below represent only the minimum required to formulate an acceptable removal and restoration plan.

When these guidelines are incorporated into an EPA administrative order, the recipient of the order should obtain the approval of EPA's technical representative on the case before departing from the general specifications outlined below.

II. RECOMMENDED REMOVAL AND RESTORATION PLAN FORMAT

The removal and restoration plan should be presented using the following six subsections when possible. An explanation of the kind of information that should be included in each subsection is provided.

1. Existing Physical Conditions

A. A surveyed site plan depicting property boundaries, streets, buildings, waterbodies (with ordinary high water line indicated), wetlands, FEMA 100-year floodplain (if applicable), areas of unpermitted fill, elevation contours, and other ground surface features at a scale no greater than 1":40'. This plan shall include a cross-section view of the site which shows soil depths, fill depths, and average depth to groundwater across the site.

B. A narrative description of existing physical conditions, including the area of the site; area of unpermitted fill; existing wetlands (including the types of vegetation); the soil types present (including the types of unpermitted fill present); the hydrologic regime of the site; and other relevant information.

2. Proposed Physical Conditions

A. Using the site plan described in Subsection 1.A. as a base, show the exact areas where remedial activities will occur (e.g., removal of fill, replacing dredged material into ditches, etc.). Indicate proposed finished grades, expected ordinary high water elevations, the location of proposed plantings/seedings, and the location of all sediment and erosion control structures (e.g., hay bales, silt screens, etc.). This plan shall include a cross-section view of the site which shows proposed soil depths and average depth to groundwater across the site.

B. Provide a narrative description of the remedial work to occur, including the methods and equipment to be employed; how access to the site to perform the work will be obtained; how equipment will be brought to the site; the location of the ultimate disposal site for any removed fill; how the work will progress across the site; a listing of the plant species to be seeded/planted at the site; the sources of the plant material [*note*: as a rule, transplanting of plant stock will not be permitted]; the planting method(s) and scheme (i.e., physical layout of the how plant material will be installed); any methods to be used to minimize adverse impacts while remedial work is underway; the expected hydrologic regime of the site in its restored condition; and other relevant information.

C. Delineate the area(s) on the site to be restored by installation of flagging, sedimentation and erosion control structures, or other appropriate method. This delineation shall represent the limit of construction activities such that no work shall occur beyond those boundaries.

3. Actual Restored Physical Conditions

Using the site plan described in Subsection 1.A. as a base, show the actual physical conditions to exist at the site at the completion of grading activities (i.e., as "as-built" plan), including actual finished grades and all pertinent ground surface features. This plan shall include a cross-section view of the site which shows actual soil depths and average depth to groundwater across the site. This as-built plan shall be prepared and submitted prior to planting/seeding activities.

4. Monitoring/Measures of Success

A. Normally, monitoring shall be performed midway through and near the end of the first and second growing seasons, then annually near the end of each successive growing season for the duration of the required monitoring period. Monitoring shall be performed for a period of three to

five years, depending upon the scope and complexity of the remedial efforts required.

B. A monitoring plan shall incorporate a simple statistical approach to assessing relative success or failure of restoration efforts (e.g., transects with sampling stations for measuring parameters such as percent areal cover in each vegetative stratum). A permanent photographic record shall be included as part of the monitoring plan.

C. Depending upon the scope and complexity of the remedial efforts, general criteria to measure success shall be determined by EPA. These criteria shall be directly related to reestablishing the structural components of the aquatic ecosystem being restored. A general provision shall be included to allow for corrective action to be taken, at the direction of EPA, should monitoring show that criteria for success are not being met.

D. A report shall be prepared and submitted after each monitoring event which describes the environmental conditions at the site and assesses relative success or failure of restoration efforts. This report shall include photographic evidence as well. This report shall identify any problems discovered and recommend appropriate corrective action to ensure the success of restoration.

5. Inspections

The plan shall provide for inspections by EPA personnel after installation of all sedimentation and erosion control structures, after completion of grading activities, after completion of initial planting/seeding activities, and after monitoring indicates that the criteria for success have been attained.

6. Schedule

A comprehensive schedule integrating all removal, restoration, inspection, and monitoring activities as well as report/product submissions shall be included.

CLEAN WATER ACT § 404 ENFORCEMENT:

GENERAL GUIDELINES FOR DEVELOPMENT OF HABITAT MITIGATION AND MONITORING PROPOSALS

I. GENERAL INFORMATION

Submission of a mitigation and monitoring proposal as described in these guidelines will not be a substitute for complete compliance with the Memorandum of Agreement Between the Environmental Protection Agency and the Department of the Army Concerning the Mitigation under the Clean Water Act Section 404(b)(1) Guidelines dated November 7, 1989, which took effect on February 7, 1990. Therefore, mitigation proposals will only be considered if avoidance and minimization have been fully pursued.

Although all the individual components presented here may not be applicable to every project, a proposal should address each heading in the guidelines. Appendix A provides text and figure format guidelines.

II. PLACE OF MITIGATION AND MONITORING PROPOSAL IN CLEAN WATER ACT § 404 PERMIT PROCEDURE

1. Individual Permit

If a respondent is applying for an individual permit from the U.S. Army Corps of Engineers (the "Corps") and proposes mitigation, it is preferable that a preliminary mitigation and monitoring plan be submitted along with application materials. A detailed preliminary mitigation plan should generally not be completed until a final jurisdictional map has been accepted by EPA, and the area of fill to be mitigated for has been identified. The final mitigation plan will usually be submitted following the public comment period and Corps review of the preliminary plan.

2. Nationwide Permit

If a respondent is requesting confirmation of a project's qualification for a Corps nationwide permit and proposes mitigation, a detailed mitigation and monitoring plan must be submitted with the request for confirmation.

3. Final Submission

The final submission of all mitigation and monitoring plans must be in a *single* document. It must contain up-to-date versions of all materials, even if other versions were submitted earlier in the application process.

III. EPA/CORPS POLICY

In general, the goal of both EPA and the Corps is to permit no net loss of functions and values of wetland habitat. The replacement ratio of wetland acreage required to achieve this goal is typically *at least* 1:1, and is often higher. The attainment of replacement functions and values and an acreage replacement ratio are usually included in final success criteria associated with the completion of a respondent-permittee's mitigation responsibility.

V. SUMMARY OF RECOMMENDED MITIGATION AND MONITORING PROPOSAL FORMAT

The mitigation and monitoring proposal should be presented using the following nine subsections when possible. Detailed explanations of the kind of information that should be included in each subsection is provided in Section VI below.

1. PROJECT DESCRIPTION

A. Location of Project
B. Brief Summary of Overall Project
C. Responsible Parties
D. Jurisdictional Areas to be Filled
E. Type(s), Functions, and Values of the Jurisdictional Areas

2. GOAL(S) OF MITIGATION

A. Type(s) of Habitat to be Created
B. Functions and Values of Habitat to be Created
C. Time Lapse

3. FINAL SUCCESS CRITERIA

A. Target Functions and Values
B. Target Hydrological Regime
C. Target Jurisdictional Acreage to be Created

4. PROPOSED MITIGATION SITE

A. Location and Size of Mitigation Area
B. Ownership Status
C. Existing Functions and Values of Mitigation Area
D. Present and Proposed Uses of Mitigation Area
E. Jurisdictional Delineation (if applicable)
F. Present and Proposed Uses of All Adjacent Areas
G. Zoning

5. IMPLEMENTATION PLAN

A. Rationale for Expecting Implementation Success
B. Responsible Parties
C. Site Preparation
D. Planting Plan
E. Schedule
F. Irrigation Plan
G. As-Built Conditions

6. MAINTENANCE DURING MONITORING PERIOD

A. Maintenance Activities
B. Responsible Parties
C. Schedule

7. MONITORING PLAN

A. Performance Criteria
B. Monitoring Reports
C. Annual Reports
D. Schedule

8. COMPLETION OF MITIGATION

A. Notification of Completion
B. Corps Confirmation

9. CONTINGENCY MEASURES

A. Initiating Procedures
B. Alternative Locations for Contingency Mitigation
C. Funding Mechanism
D. Responsible Parties

VI. DETAILED RECOMMENDED MITIGATION AND MONITORING PROPOSAL FORMAT

Detailed information to be included in each subsection of the mitigation and monitoring proposal is presented below. The nine subsections should be preceded by a one-page summary of the report contents.

1. PROJECT DESCRIPTION

A. Location of Project

1. Describe
2. Provide:
   a. Road map with site location clearly indicated
   b. USGS quad map with project site outlines (clear photocopy is acceptable)

B. Brief Summary of Overall Project

In one or two paragraphs, describe the overall project (not just the jurisdictional area to be filled). Include type of development and project size.

C. Responsible Parties

Provide the name(s), title(s), address(es), and phone number(s) of the applicant(s)[1], including the contact person(s) if the applicant is a company, and of the preparer(s) of the mitigation plan.

D. Jurisdictional Areas to be Filled

Provide a full-size topo base map with verified Corps/EPA jurisdictional area(s) and area(s) of proposed fill outlines. (See Appendix A for map format information.)

E. Type(s), Functions, and Values of the Jurisdictional Areas

1. Type: e.g., seasonal wetland, vernal pool, freshwater marsh, playa, etc.

2. Functions and Values

Formal procedures to assess functions and values of wetlands have not yet been adopted. Therefore, to assist in evaluation of the project, a knowledgeable professional should provide a summary of the functions and values of the wetland to be filled. Any jurisdictional areas other than wetlands should also be assessed for functions and values. Examples of features to be addressed are:

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[1] The "applicant" refers to the permit applicant, who will in most instances be the respondent.

Water Quality

- ground water
- recharge/discharge
- flood storage
- other

Habitat

- rare/threatened/endangered species
- known or probable wildlife use
- plant communities
- complete species list
- known or probable fish, shellfish, and aquatic vertebrate use
- other

Recreational Use

- non-consumptive (e.g., birdwatching, walking)
- consumptive (e.g., fishing, hunting)

2. GOAL(S) OF MITIGATION

This refers to the long-term goals, which may not be reached until some years after the applicant's mitigation responsibilities have been completed.

A. Type(s) of Habitat to be Created

If out-of-kind, present rationale. (Refer to Subsection 1.E.1 above.)

B. Functions and Values of Habitat to be Created

Identify, describe, and provide location of any local reference site if different from the wetland to be filled. (Refer to Subsection 1.E.2. above.)

C. Time Lapse

Describe how many years it is likely to take for the long-term goal habitat to develop.

3. FINAL SUCCESS CRITERIA

These are the criteria that are proposed by the applicant for Corps approval and are used to determine completion of permittee's mitigation responsibilities. Fulfillment of these criteria should indicate that the mitigation area is progressing well toward the habitat

type, functions, and values which constitute the long-term goal of this mitigation. For mitigation plantings, final success criteria will not be considered to have been met until a minimum of two years after all human support (e.g., irrigation, replanting, rodent control, and fertilization) has ceased. Major factors to be considered are:

A. Target Functions and Values

- wildlife species
- percentage vegetation cover and/or density
- approximate plant height criteria (shrubs and trees)
- plant and animal species diversity
- root development
- canopy stratification
- other quantifiable measures of success

B. Target Hydrological Regime

- source(s) of water
- discharge point(s)
- area(s) affected by seasonal flooding
- direction(s) of flow
- size (and map) of watershed

C. Target Jurisdictional Acreage To Be Created

Where applicable, a wetlands delineation must be submitted for Corps approval as a part of the final success criteria.

4. PROPOSED MITIGATION SITE

A. Location and Size of Mitigation Area

1. Describe location, including rationale for choice. If offsite, indicate distance from project site.

2. Provide the following maps:

   a) full-size copy of USGS quad map with the mitigation location outlined
   b) road map marked with the site location
   c) base topo map with the proposed mitigation area outlined and acreage indicated. (See Appendix A for figure format information.)

B. Ownership Status

1. Indicate who presently owns the mitigation site. If any owner is different from the permit applicant(s), describe and explain the availability of the property. Describe and explain any easements or encroachments that the property carries. If any of the property is located on public land, describe and explain what arrangements, if any, have been discussed with the managing agency.

2. Indicate expected ownership of the mitigation area following completion of the mitigation project. Identify who will be responsible for long-term management and protection of the area. Describe and explain what if any long-term management plan been prepared for the area. If an entity other than the applicant will assume management responsibilities following completion of mitigation project, describe and explain any signed, written agreement that the manager will manage the area in conformance with goals of the mitigation. Include copies of any written plans or agreements.

3. Indicate what entity, if any, controls water flow to or from the site. Identify and describe the party who is to maintain water control structures. Describe and explain what arrangements have been made to guarantee appropriate water flow in the mitigation area during and after the establishment of the mitigation project.

C. Existing Functions and Values of Mitigation Area

(Refer to Section I.E. above.)

D. Present and Proposed Uses of Mitigation Area

Briefly describe all known present and proposed uses of the mitigation area. Discuss non-native landscape plantings, pipelines, powerlines, roads, distance and location of nearest structures, if any, etc., on the property containing the mitigation site.

E. Jurisdictional Delineation (if applicable)

Describe any jurisdictional areas that are already present on the mitigation site. Provide a topo base map of the site with jurisdictional areas (and any proposed fill) indicated. Describe the probable future of the mitigation area as habitat if left undisturbed.

F. Present and Proposed Uses of All Adjacent Areas

Briefly describe all known present and proposed uses of all property sharing a common border with the property containing the mitigation.

G. Zoning

Give all present and proposed zoning designations for the mitigation site and adjoining properties, including city, county, BCDC, etc.

5. IMPLEMENTATION PLAN

A. Rationale for Expecting Implementation Success

May refer to previous relevant experience of applicant and/or implementation consultant or to other similar and successful mitigation projects. Include hydrology and soils information.

B. Responsible Parties

Provide the name(s), title(s), address(es), and phone numbers of the person(s) responsible for implementing the mitigation project.

C. Site Preparation

1. Describe plans for grading, hydrologic changes, water control structures, soil amendments, erosion control, bank stabilization, equipment and procedures to be used, site access control, etc., as applicable. Include a description of exotic vegetation control techniques, planting hole excavation methods (e.g., auguring, hand digging), and the size of the planting hole (e.g., twice size of container).

2. Provide base topo maps showing planned site preparation. (See Appendix A for figure format information.)

3. Provide representative cross-sections of the mitigation site with elevations and scale indicated.

4. Provide the name, title, address, and phone number of the person supervising or providing biological monitoring during grading activities.

D. Planting Plan

1. Briefly describe the planting plan and methods

2. Provide a table of species to be planted, including numbers, spacing, types of propagules, pot sizes, etc.

3. Indicate the source-locale of seeds, plant plugs, cuttings, etc.

4. Show planting and species locations on a base topo map. (See Appendix A for figure format information.)

5. If transplanting is to be done, describe the storage method and duration.

6. Describe any expected volunteer native revegetation that is included in mitigation planning.

E. Schedule

Provide a schedule in the form of a legible flow chart showing intended timing of site preparation and plantings.

F. Irrigation Plan

1. Describe irrigation method(s), estimated frequency, and amount during dry months.

2. Indicate water source(s) for the mitigation area.

3. Show the planned irrigation system and/or water flow on base topo (may be included on the planting plan map).

G. As-Built Conditions

The plan should specify that the applicant will:

1. Submit a report to EPA within 6 weeks of the completion of site preparation and planting, describing the as-built status of the mitigation project. If avoidance is incorporated into development project design, describe the as-built status of the development project, including and deviations from the original plan in the vicinity of, or that will affect, jurisdictional area(s). Submit separate reports for grading and planting work if not completed within six weeks of each other.

2. Provide topo maps showing as-built contours of the mitigation area. Indicate the location of plantings and any other installations or structures.

6. MAINTENANCE DURING MONITORING PERIOD

A. Maintenance Activities

Describe planned maintenance activities, including irrigation system inspection, plant replacement, weeding, water structure inspection, fertilization, erosion control, herbivore protection, trash removal, and/or any other such activities.

B. Responsible Parties

Identify the persons/entities responsible for financing and carrying out maintenance activities, including names, titles, addresses, and phone numbers.

C. Schedule

Provide a table showing the schedule of maintenance inspections.

7. MONITORING PLAN

A. Performance Criteria

Provide yearly target criteria to be met, as appropriate, based on reasonably-paced progress toward final success criteria. (Refer to Section III.)

B. Monitoring Methods

1. Describe the monitoring methods. If using sampling methods, include sample sizes, statistical justification for sampling regime, and data analyses to be performed. If appropriate, include assessment of natural population growth by target species.

2. Provide samples of all proposed data sheets.

3. Photos shall be taken during each monitoring period. They shall be taken from the same vantage point and in the same direction every year, and shall reflect material discussed in the monitoring report.

When percent cover estimates are made of herbaceous vegetation, photographs shall be taken of sampling quadrants.

C. Annual Reports

1. Annual reports shall be submitted which present monitoring results. They shall assess both attainment of yearly target criteria and progress toward final success criteria.

2. Annual reports shall include the following:

a. A list of names, titles, and companies of all persons who prepared the content of the annual report and participated in monitoring activities for that year.

b. A copy of any Corps permit attached. Special Conditions and any subsequent Letters of Modification shall be included as an appendix.

c. Analysis of all quantitative monitoring data.

d. Prints of all included monitoring photographs (photocopies are not acceptable).

e. Maps identifying monitoring areas, transects, planting zones, etc., as appropriate. (See Appendix A for figure format information.)

3. Copies of all field data sheets shall be available for Corps review as needed.

D. Schedule

Since planting and/or site modification may not occur when planned, monitoring and performance criteria shall be tied to the actual implementation date rather than to predetermined years (e.g., the first annual report shall be delivered on (month, day) of the year following the first growing season after planting.)

8. COMPLETION OF MITIGATION

A. Notification of Completion

When the initial monitoring period is complete, and if the applicant believes that the final success criteria have been met, the applicant shall

notify the Corps when the annual report that documents this completion is submitted. If it is appropriate here, a current jurisdictional delineation of the created wetland areas should be submitted with the report. (This delineation shall be accompanied by legible copies of all field data sheets.)

B. Corps Confirmation

Following receipt of the report, the Corps may require a site visit to confirm the completion of the mitigation effort and any jurisdictional delineation.

9. CONTINGENCY MEASURES

A. Initiating Procedures

If an annual performance criterion is not met for all or any portion of the mitigation project in any year, or if the final success criteria are not met, the permittee shall prepare an analysis of the cause(s) of failure and, if determined necessary bythe Corps, propose remedial action for approval.

B. Alternative Locations for Contingency Mitigation

Indicate specific alternative mitigation locations that may be used in the event that mitigation cannot be successfully achieved at the intended mitigation site. Include current ownership information for any offsite alternative locations.

C. Funding Mechanism

Indicate what funds will be available to pay for planning, implementation, and monitoring of any contingency procedures that may be required to achieve mitigation goals.

D. Responsible Parties

List names, addresses, and phone numbers of persons/entities responsible for implementing and monitoring contingency procedures.

APPENDIX A – FORMAT INFORMATION

A. Text Format Notes for Mitigation/Monitoring Proposals, As-Built Reports, and Annual Reports.

1. The Corps file number and the date of the report should be included intitle-page reading.

2. Include a distribution page listing names, titles, companies/agencies and addresses of all persons/agencies receiving a copy of the report.

B. List of Figures to be Submitted

(Page and section numbers in parentheses indicate location of figure request in annotated outline. For recommended figure formats, refer to Section (C) below.)

1. Mitigation and Monitoring Proposal

   a. Jurisdictional Areas and Proposed Fill on Project Site *(p. 8, 1.D.)* (outlines and acreages indicated.).

   b. Location and Size of Mitigation Area

      – U.S.G.S. quad map *(p. 10, 4.A.2)*

      – road map *(p. 10, 4.A.2)*

      – topo map *(p. 10, 4.A.2)*

   c. Jurisdictional Areas and Any Proposed Fill on Mitigation Site *(p. 11, 4.E.)*

   d. Mitigation Site Preparation *(p. 12, 5.C.2)*
   (base topo map showing preparation plans)

   e. Planting Plan *(p. 13, 5.D.4)*

      – plan view of base topo

      – representative cross-sections

   f. Irrigation Plan *(p. 13, 5.F.3)* (may be on planting plan topo)

2. As-Built Report *(p. 14, 5.G.2)*

   a. Final site contours

   b. Plantings as installed

C. Figure Format Notes

- All maps and plans submitted shall be legible and include title, date of preparation, and date of submission.
- A legend shall be provided if symbols, patterns, or screens are used on the map or plan.
- If colors are used to indicate areas on the original map, color copies shall be included in all copies of the report submitted to the Corps.
- Indicate North and provide a scale and datum (if appropriate, i.e., tidal data).
- Scale and orientation shall be the same for all maps, except for detail sections.
- Base topo maps (i.e., for jurisdictional areas, location and size of mitigation areas, mitigation site preparation plans, planting plans, irrigation plans, and as-built reports) shall be full-size (1 inch = 100 feet or less, 1 inch = 200 feet for very large projects).
- USGS quad maps shall be full-size and full scale (may be photocopies, if clearly legible).

NOTE: Reduced copies of maps shall be bound with all documents to facilitate review by advisory agencies. For Corps review, at least two sets of full-sized copies shall accompany mitigation and monitoring proposal, and one set shall accompany each annual report.

D. Schedule

When submitting the mitigation and monitoring plan, the applicant shall indicate the month and date on which the yearly report will be delivered. If plan involves planting, this date should be made between growing seasons for the primary plants so that timely decisions can be made about any modifications to the plan.

Certificate of Service

This is to certify that on the ___ of _____, 2020, a fully executed copy of the preceding Administrative Order on Consent, including Attachment 1, was emailed to William W. Hughes, counsel for Respondent, at whughes@wh-h.com.

_____
Margaret J. (Peggy) Livingston
Assistant Regional Counsel

Certificate of Service

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_____
Margaret J. (Peggy) Livingston
Assistant Regional Counsel