

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

IN THE MATTER OF: )  
 )  
Magruder Limestone, Inc. ) Docket No. CWA-07-2019-0243  
 )  
 )  
Respondent )  
 )  
 ) FINDINGS OF VIOLATION, ORDER  
 ) FOR COMPLIANCE ON CONSENT  
 )  
Proceedings under Section 309(a)(3) of the )  
Clean Water Act, 33 U.S.C. § 1319(a)(3) )  
 )

Preliminary Statement

1. The following Findings of Violation are made and Order for Compliance on Consent (“Order”) is issued pursuant to the authority of Section 309(a)(3) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(a)(3). The authority to take action under Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), is vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”). The Administrator has delegated this authority to the Regional Administrator, EPA, Region 7, who in turn has delegated it to the Director of the Enforcement and Compliance Assurance Division of EPA, Region 7.

2. Respondent is Magruder Limestone, Inc. (“Respondent”).

3. EPA, together with Respondent, enters into this Section 309(a)(3) Order for Compliance on Consent in order to carry out the goals of the CWA, 33 U.S.C. § 1251 *et seq.*, to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

4. It is the parties’ intent through this agreement to address discharges of pollutants by Respondent into the waters of the United States without a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, in violation of Section 301 of the CWA, 33 U.S.C. § 1311. Specifically, Section 301 of the CWA, 33 U.S.C. § 1311, provides that except as in compliance

with certain specified provisions of the CWA, the unauthorized discharge of any pollutant into the waters of the United States by any person is unlawful.

5. By entering into this Order, Respondent (1) consents to and agrees not to contest EPA's authority or jurisdiction to issue or enforce this Order, (2) agrees to undertake all actions required by the terms and conditions of this Order, and (3) consents to be bound by the requirements set forth herein. Respondent also waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which Respondent may have with respect to any issue of fact or law set forth in this Order, including, but not limited to, any right of judicial review of this Order under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

6. Paragraph 5 is applicable only to this Order; any civil penalties associated with the factual allegations contained herein are to be negotiated at a later date and duly entered pursuant to a separate Agreement.

7. Respondent neither admits nor denies the Findings of Fact and legal conclusions contained in this Order.

#### Statutory and Regulatory Framework

8. 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.

9. 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.

10. 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 United States Army Corps of Engineers (hereinafter "Corps"), for any discharge of "dredged or fill material" into the "navigable waters" of the United States.

11. 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 tributaries to, waters of the United States.

12. 40 C.F.R. § 232.2 defines "discharge of fill material" as "the addition of fill material into waters of the United States."

13. 40 C.F.R. § 232.2 defines “fill material” as material that “replaces any portion of the waters of the United States with dry land” or which “changes the bottom elevation of a water of the United States.”

14. 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.

#### Findings of Fact

15. Respondent is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

16. At all times relevant to this action, Respondent owned, operated, or otherwise controlled the Foley Quarry property, a limestone mining operation, located in Section 26, Township 50 North, Range 2 East, Lincoln County, Missouri (hereinafter “the Site”).

17. Between approximately June 2017 to August 2017, Respondent and/or persons acting on its behalf authorized and/or directed the placement of fill material into approximately 1200 linear feet of an unnamed tributary to Barley Branch located on Respondent’s property.

18. On or about August 8, 2017, the St. Louis Corps District received a complaint regarding unauthorized activities at the Site.

19. On September 11, 2017, the Missouri Department of Natural Resources conducted an inspection at the Site.

20. On January 03, 2018, issued a Notice of Violate to Magruder Limestone, Inc. related to the Site.

21. On September 5, 2018, representatives from the EPA Region 7, the Corps, and the Missouri Department of Natural Resources conducted a site investigation on Respondent’s property and confirmed the presence of the fill material. By filling the tributary and relocating it to a newly excavated channel, the Respondent was able to create a pad to stockpile mined materials. The excavated channel had steep banks that were eroding and sediment deposits were visible throughout the length of the excavated channel. Erosion rills from the hill were also contributing to sediment in the excavated channel.

22. The sediment discharged by Respondent constitutes “fill material,” and its actions constitute the “discharge of fill material” as those terms are defined in 40 C.F.R. § 232.2.

23. The fill material discharged by Respondent into the unnamed tributary to Barley Branch is a “pollutant” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

24. The earth-moving equipment used to fill in the unnamed tributary to Barley Branch is a “point source” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

25. The discharge of sediment into the unnamed tributary of Barley Branch constitutes the “discharge of a pollutant” within the meaning of Section 501(12) of the CWA, 33 U.S.C. § 1362(12).

26. The unnamed tributary to Barley Branch is an intermittent stream which flows approximately 0.7 miles into Barley Branch. Barley Branch flows approximately 0.1 miles into Sandy Creek. Sandy Creek is a perennial stream that flows approximately 1 mile into the Mississippi River, a “traditionally navigable water.” Thus, the unnamed tributary to Barley Branch is a “water of the United States” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7) and 40 C.F.R. § 112.2 (1993).

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

#### **A. FINDINGS OF VIOLATION**

##### **Unauthorized Discharge into Waters of the United States**

28. Respondent’s 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.

#### **B. ORDER FOR COMPLIANCE ON CONSENT**

Based on the Findings of Fact and Findings of Violation set forth above, and, pursuant to the authority of Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), Respondent AGREES to and is hereby ORDERED as follows:

29. Work Plan: Within forty-five (45) days after receipt of this Order, Respondent shall submit a Work Plan predicated upon the proposals contained in the Conceptual Stream Restoration Plan submitted to EPA on or about September 19, 2019, and attached, to EPA for review and approval that shall include:

- a. A proposed, qualified consultant, subject to EPA's approval, to develop a restoration and enhancement plan of the unnamed tributary to Barley Branch and its rerouted and rechanneled segment at the Site.
- b. Respondent's proposed restoration and enhancement of the impacted Site to address the impacts from the unauthorized fill material and stabilize the new channel as contemplated by the Conceptual Stream Restoration Plan and described fully herein.
- c. A series of graduated benchmarks to achieve restoration no later than 24 months from the effective date of this Order.

30. Review and Approval:

- a. If EPA approves the Work Plan, it shall be implemented according to the schedule for implementation in the approved work plan.
- b. If EPA does not approve the Work Plan, Respondent shall address the comments and resubmit the work plan for review within thirty (30) days of receipt of EPA's disapproval.
- c. Upon resubmission, EPA, in its sole discretion, may either approve the Work Plan, or if EPA determines that the Work Plan does not adequately address the comments provided by EPA, EPA may unilaterally modify the work plan and will provide Respondent with a copy of the work plan as modified. Respondent shall implement the modified Work Plan according to the schedule contained therein.
- d. Once approved by EPA, the Work Plan shall be incorporated by reference and fully enforceable under the terms of this Order.

31. Completion Report: Once the work identified in the Work Plan has been completed, Respondent shall submit photographic evidence, copies of relevant documents, and a signed statement indicating that the work is complete.

32. Monitoring Reports: Respondent shall submit annual monitoring reports to EPA, beginning on the first anniversary of the completion of the Work Plan, for a period of five years. These reports shall include photos of the site, a description of the status of the site, and any corrective actions, if any, that will be taken to correct the deficiencies to maintain proper wetland and/or stream functions.

33. Any submission of documents by Respondent shall include the following written statement, followed by signature of a duly authorized representative of Respondent:

*I certify under penalty of law that 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 and imprisonment for knowing violations.*

34. All documents to be submitted to EPA under this Order shall be submitted by mail to:

Delia Garcia, Ph.D.  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Blvd.  
Lenexa, Kansas 66219.

35. In the event Respondent fails to comply with the terms of the Order, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, EPA may seek judicial enforcement of the terms of the Order against Respondent and/or seek additional penalties against Respondent for such noncompliance with the terms of the Order.

#### General Provisions

36. Failure to comply with the terms of this Section 309(a)(3) Compliance Order may result in liability for statutory civil penalties under Section 309(d) of the Act, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Should EPA commence an action seeking penalties for violations of this Compliance Order, a United States District Court may impose civil penalties if the court determines a violation the Act and failure to comply with the terms of the Order.

37. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondent of its responsibility to obtain any required local, state, and/or federal permits.

38. This Order does not constitute a waiver or a modification of any requirements of the CWA, 33 U.S.C. § 1251 et seq., all of which remain in full force and effect. EPA retains the right to seek any and all remedies available under Sections 309(b), (c), (d) or (g) of the CWA, 33 U.S.C. § 1319(b), (c), (d) or (g), for any violation cited in this Order. EPA reserves the right to

enforce the terms of this Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

#### Access and Requests for Information

39. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect property owned or operated by Respondent and/or to request additional information from Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318 and/or any other authority.

#### Severability

40. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

#### Parties Bound

41. This Order shall apply to and be binding upon the Respondent, its agents, successors and assigns. Respondent shall ensure that any directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for it with respect to matters included herein comply with the terms of this Order.

#### Effective Date

42. The terms of this Order shall be effective and enforceable on the Effective Date, which is the date this Order is signed by EPA. All time periods herein shall be calculated therefrom unless otherwise provided in this Order.

#### Termination

43. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of EPA.

#### Signatories

44. The undersigned for each party has the authority to bind each respective Party to the terms and conditions of this Order. The Order may be signed in part and counterpart by each Party.

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



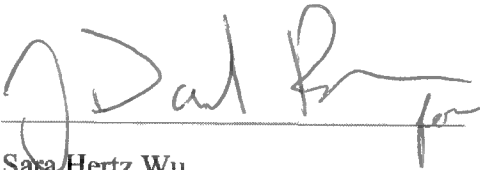
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David Cozad  
Director  
Enforcement and Compliance Assurance Division

10/30/19

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DATE



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Sara Hertz Wu  
Senior Counsel  
Office of Regional Counsel

10/28/19

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DATE



**CERTIFICATE OF SERVICE**

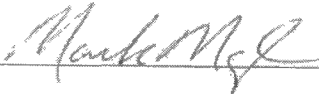
I certify that on the date noted below I mailed the foregoing Findings of Violation and Order for Compliance by certified mail, return receipt requested, to:


Mark H. Magruder  
255 Watson Road  
Troy, Missouri 63379

11/1/2019  
Date

Lawrence

**For Respondent:**

  
\_\_\_\_\_  
Mark Magruder, President

  
\_\_\_\_\_  
DATE