

IN THE MATTER OF:) ADMINISTRATIVE
) ORDER ON CONSENT
PIERCE TOWNSHIP BOARD)
AND ITS MEMBERS)
)
Respondents) Docket No. CWA-07-2006-0242
)
Proceedings under)
Section 309(a)(3) of the Clean Water Act,)
33 U.S.C. § 1319(a)(3))
_____)

A. INTRODUCTION

Preliminary Statement

1. This Administrative Order on Consent (Order) is entered into by the Respondents Pierce Township Board and its members ("Respondents"), and the United States Environmental Protection Agency, Region VII (EPA), pursuant to Section 309(a)(3) of the Clean Water Act ("CWA"), as amended, 33 U.S.C. § 1319(a)(3). This authority has been delegated by the Administrator to the Regional Administrator, of the Environmental Protection Agency ("EPA"), Region VII, as redelegated to the Director of Region VII's Water, Wetlands, and Pesticides Division. Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), authorizes EPA to issue administrative orders to require persons to take those actions necessary to eliminate non-compliance with the terms of the CWA.
2. The Respondents in this Order are the Pierce Township Board and its members. Pierce Township is located within Texas County in south central Missouri.
3. This Order addresses discharges of dredge and/ or fill materials by Respondents into the waters of the United States without the permit(s) required by law. 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. Pursuant to Section 502(6) of the CWA, pollutants include fill materials such as "dredged spoil..., rock, sand, [and] cellar dirt." Section 404 of the CWA, 33 U.S.C. § 1344, specifically requires a person to obtain a permit from the United States Army Corps of Engineers ("Corps") for any discharge of "dredged or fill material" into the "navigable waters" of the United States. 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.

4. By entering into this Order, Respondents (1) consent to and agree not to contest EPA's authority or jurisdiction to issue or enforce this Order, (2) agree to undertake all actions required by the terms and conditions of this Order, and (3) consent to be bound by the requirements set forth herein.

Statement of Purpose

5. The objectives of the parties in entering into this Order are to perform the following, in accordance with the terms and conditions of this Order:

a. To comply with the requirements of the Clean Water Act regarding the performance of gravel mining and/or discharges of dredge and/or fill materials within waters of the United States; and

b. To establish and perform Mitigation which will minimize the need for future maintenance of low flow/water crossings within Pierce Township.

Applicability

6. This Order shall apply to and be binding upon Respondents, their agents, successors, and assigns and upon all persons, contractors, and consultants acting under or on behalf of Respondents in matters related to compliance with this Order.

7. No change in the identity or makeup of the Respondent Pierce Township Board shall alter the Respondents' obligations under this Order. Specifically, this Order shall be binding on future members of the Respondent Pierce Township Board.

8. Respondents shall provide a copy of this Order to all contractors, subcontractors, laboratories, and consultants retained to perform or monitor any portion of the work called for by this Order, on or before the date of such retention, and shall condition all such contracts on compliance with the terms of this Order.

9. Respondents shall give notice of this Order to any new board members within ten (10) days of the certification of the election of any new board members.

B. FINDINGS OF FACT

Preliminary Statement

1. Respondent and its members, are each a "person," within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
2. On several occasions before October 2004, Respondents through its employees and/or contractors, and using earth moving equipment, channelized several separate stream locations, dozing river gravel out of the stream channels and piling the gravel on the stream banks within Pine Creek, the south prong of Jacks Fork River, and/or Little Pine Creek.
3. After receiving citizen complaints, in approximately November 2001, the Corps performed an inspection of channelization work being performed in Pine Creek. During this inspection, the Corps confirmed that an unauthorized channelization of a portion Pine Creek had occurred. After this inspection, the Corps contacted the Texas County Commission and informed the Commission that this type of activity was prohibited without a permit issued under Section 404 of the Clean Water Act.
4. After receiving citizen complaints, in approximately August 2002, the Corps performed an inspection of channelization work again being performed in Pine Creek at the location of the Bartlett Drive bridge. During this inspection, the Corps confirmed that an unauthorized channelization of a portion Pine Creek had occurred. After this inspection, the Corps contacted the Texas County Commission and informed the Commission that this type of activity was prohibited without a permit issued under Section 404 of the Clean Water Act.
5. On March 10, 2003, the Corps provided notice to the Texas County (Missouri) Commission that channelization activities which had occurred in Pine Creek, upstream and downstream of the Bartlett Drive crossing, required a permit under Section 404 of the CWA. Notice of the March 10, 2003 letter was provided to the Respondent, Pierce Township Board.
6. After receiving citizen complaints, in approximately October 2004, the Corps performed an inspection of channelization work again being performed in Pine Creek at the location of the Bartlett Drive bridge. During this inspection, the Corps again confirmed that an unauthorized channelization of a portion Pine Creek had occurred. After this inspection, the Corps contacted Respondents and informed Respondents that this type of activity was prohibited without a permit issued under Section 404 of the Clean Water Act.
7. The areas of excavation and channelization and resulting discharges of fill and/or dredged material described above ("discharge/disposal sites") occurred in locations below the ordinary high water mark of the impacted streams and are characterized as "waters of the United States."
8. The areas of excavation and channelization and resulting discharge of fill and/or dredged material described above ("discharge/disposal sites") occurred in locations below the ordinary

high water mark of the impacted streams and altered the natural drainage pattern and hydrology of the discharge/disposal sites.

9. The earth moving equipment referenced in Paragraph A.2 to A.7, above, constitutes a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

10. The fill and/or dredged materials excavated and discharged and disposed of into the wetlands, or below the ordinary high water mark or the waters of the United States described above, are "pollutants" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

11. The discharge and disposal of the fill and/or dredged material into the waters of the United States, as described in Paragraphs A.2 to A.7, above, constitutes the "discharge of a pollutant" within the meaning of Section 501(12) of the CWA, 33 U.S.C. § 1362(12).

12. At the time of the excavation and discharge and disposal of the pollutants, the discharge/disposal sites were within the "waters of the United States," within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), 40 C.F.R. § 232.2 and 33 C.F.R. Part 328.

13. The discharge and disposal of pollutants from a point source into waters of the United States by Respondents, as described above, occurred without a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, and therefore these discharges and disposals violated Section 301 of the CWA, 33 U.S.C. § 1311.

C. ORDER FOR COMPLIANCE

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

1. Within sixty (60) days of the effective date of this Order, Respondent shall submit to the EPA and Corps contacts described in Paragraph C.2, below, a bridge Maintenance Report and Plan which shall contain the following information:
 - a. A map and description of the locations of all low water crossings within Pierce Township which require entry into waters of the United States for the performance of maintenance of such structures by the removal of gravel; and
 - b. The anticipated schedule for the performance of any future maintenance for the period of two (2) years after the effective date of this Order (EPA understands that this anticipated schedule may change based on funding and/or emergency maintenance requirements).

Compliance with the Clean Water Act

2. Except as required to comply with the mitigation provisions in below, Respondents shall hereafter not discharge dredged or fill material in waters of the United States, as defined in 33 C.F.R. §§ 323.2(c) and (e) (and any successor provision of current Corps regulations), except in conformity with CWA Section 404.

3. The use of earth-moving equipment or other heavy machinery in streambeds, below the ordinary high water mark as defined in 33 C.F.R. § 328.4(c)(1), for the purpose of gravel mining or bank stabilization, will be deemed a discharge of dredged or fill material requiring a Corps permit, as will any bank stabilization activity below the ordinary high water mark. If in doubt as to whether an act is prohibited by the CWA, Respondents shall consult the Corps before undertaking the act.

4. For the purpose of this Order, a “bank stabilization activity” is any placement, replacement or supplementation of dredged or fill material, or the construction or placement of any structure, on a channel bank, between the bed of the channel and the edge of the high bank, for the purpose of controlling erosion or preventing channel migration.

5. Respondents will cooperate with the Corps to arrange a meeting, to occur as promptly possible following the entry of this Order, and then annually thereafter until a total of three (3) annual meetings have been held at a time and place reasonably suitable to Respondent and the Corps, at which a representative or representatives of the Corps may address the employees of Respondent Pierce Township Board and its members concerning the requirements of the CWA, and answer questions. Respondents and the Corps will each bear their own expenses of holding these meetings.

6. Beginning within sixty (60) days following entry of this Order, and continuously thereafter, Respondent Pierce Township Board will clearly display a notice or notices, in a place or places reasonably calculated to be seen by the employees of the Respondent, and future Board members, that informs such employees and Board members of the applicability of the CWA to in-stream gravel mining and bank stabilization activities, and of the Corps permit requirements for such activities. Within sixty days of, and for a period of three (3) years following the entry of this Order, Respondents will similarly post notices of the requirements of paragraphs C.2 to C.5 of this Order. Respondents may consult with the Corps concerning the content of these notices.

Mitigation

7. Respondents shall perform the mitigation of the impact of the channelization and discharges described in Section B, above, by the expenditure of at least \$14,500 on work designed to minimize the need for future entry into waters of the United States to perform maintenance on low water crossings. Within thirty (30) days of Respondent's receipt of this Order, Respondents shall submit a proposed Mitigation Workplan to the following EPA and Corps contacts:

Ms. Diane Huffman
U.S. Environmental Protection Agency - Region VII
901 N. 5th Street
Kansas City, Kansas 66101

Mr. Louis Clarke
U.S. Army Corps of Engineers, Little Rock District
P.O. Box 865
Walnut Ridge, Arkansas 72476-0865

8. The proposed Mitigation Workplan referenced in Paragraph C.7, above, shall identify the approximate location of the required mitigation site(s), and shall propose all actions necessary to perform work that will minimize the need for future entry into waters of the United States to perform maintenance on low water crossings. The proposed Mitigation Workplan shall propose a schedule for completion of all such work no later than September 1, 2009. EPA will review Respondent's submission of the Mitigation Workplan and will notify Respondents in writing of EPA's approval or disapproval of the Workplan, or any part thereof. If the Mitigation Workplan is disapproved in whole or in part by EPA, EPA will provide written comments to Respondent explaining the basis for its decision. Within thirty (30) days of receipt of EPA's comments, Respondents shall amend the Workplan by addressing all of EPA's comments, and resubmit the Workplan to EPA. If EPA disapproves the revised Workplan, EPA may modify and approve the same. In the event of such modification and approval, EPA will notify Respondent of the modification/approval. The approved Mitigation Workplan shall be deemed incorporated into and an enforceable part of this Order.

9. Upon receipt of EPA's approval, Respondents shall commence work and implement the Mitigation Workplan in accordance with the schedule and provisions contained therein. Within fifteen days (15) of completion of the work required by the approved Mitigation Plan, a notice of completion of work and a description of the location of the mitigation site(s) shall be provided to EPA and Corps contacts described in Paragraph C.7, above.

10. No later than October 1, 2009, or within sixty (60) days after completion of the work required by the Mitigation Workplan, whichever is sooner, Respondents shall submit to EPA a Mitigation Completion Report that shall include:

- a. A description of all work performed pursuant to the Mitigation Plan; and
- b. An itemized presentation of costs directly incurred in the performance of the mitigation. This itemization shall present breakouts for the costs of labor, materials, design and installation. Respondent may utilize the prevailing cost of local wages for similar labor in its itemization for any work performed by volunteers.

11. Only in the event that Respondents fail to submit a Mitigation Plan that EPA determines it is able to approve, or fail to perform the work required by the approved Mitigation Plan, Respondents shall make a payment of \$14,500 to finance the performance of the required mitigation of the impact of the discharges and/or channelization to the Missouri Conservation Heritage Foundation Stream Stewardship Trust Fund for the purpose of restoring, preserving, and enhancing stream systems within Missouri. Respondents agree that it would have been required to perform such mitigation if Respondents had properly applied for and obtained the required Section 404 permits, before the alleged violations had occurred. In lieu of performance of such mitigation, Respondents hereby agree to finance performance of the mitigation by payment of \$14,500, which shall be made in full within thirty (30) days following receipt by Respondents of notice of a demand for such payment by EPA, unless an alternative schedule for payment has been approved by EPA. Respondents shall finance the required mitigation by issuance of certified or cashier's check made payable to "Missouri Conservation Heritage Foundation - Stream Stewardship Trust Fund" and shall deliver the check, with a transmittal letter that identifies the captioned case name and docket number to:

Missouri Conservation Heritage Foundation
c/o Stream Stewardship Trust Fund
P.O. Box 366
Jefferson City, Missouri 65102-0366

A copy of the transmittal letter and check shall be mailed to:

Howard C. Bunch
Sr. Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency - Region VII
901 N. 5th Street
Kansas City, Kansas 66101.

Monitoring and Access

12. For a period of three (3) years from the date of entry of this Order, Respondents Pierce Township Board and its members will provide the EPA and Corps advance notice of the time and place of any streambed gravel mining or bank stabilization activity that it undertakes. The notice will be given at least three (3) days before the date by which the Corps must give the landowner notice in order to gain access by the time the project begins. This does not apply to any bank

possible, the authorization for entry by the EPA and the Corps shall extend at least three (3) months beyond the time that the gravel mining or bank stabilization activity is to be completed. Respondents will make such authorization available to the EPA and the Corps upon request.

14. If Respondents use access over its own property to conduct in-stream gravel mining or undertake any bank stabilization activity, it will allow the Corps access over the same property for the purpose of inspection.

Effective Date

15. This Order shall be effective with respect to Respondents upon receipt of a fully executed copy hereof. All time periods herein shall be calculated from the date of Respondents receipt of the Order.

Signatories

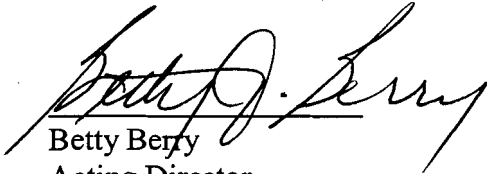
16. The undersigned for each party have the authority to bind each respective party to the terms and conditions of this Order. Specifically, the undersigned representative of Respondents Pierce Township Board and its members has the legal authority to bind these Respondents to the terms and conditions of this Order.

FOR RESPONDENT PIERCE TOWNSHIP BOARD


Title

6-28-06
DATE

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:


Betty Berry

07/11/06
DATE

Acting Director
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency - Region VII


HOWARD C. BUNCH

7/10/06
DATE

Sr. Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency - Region VII

CERTIFICATE OF SERVICE

I certify that on the date noted below I mailed the foregoing Administrative Order for Compliance on Consent by certified mail, return receipt requested, to:

Pierce Township Board
c/o Larry Curnutt, Board Member
c/o G. Steve Willard, Board Member
c/o George Beltz, Board Member
19506 Highway Y
Willow Springs, MO 65793

7/14/06
Date

