

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

901 North 5TH Street

KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:)

) Docket No. CWA 07-2006-0243

WILLIAM GEPFORD)

) ADMINISTRATIVE COMPLIANCE

Respondent)

) ORDER 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 Administrative Compliance Order 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 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 Water, Wetlands and Pesticides Division of EPA Region 7.

2. The Respondent in this case is Mr. William Gepford ("Respondent"), an individual whose mailing address is 911 Country Club Drive, Butler, Missouri 64730. Mr. Gepford operated farms at two locations. The first was operated in Vernon County, Missouri and contained approximately 31 acres of wetlands adjacent to the Little Osage River and a tributary of the Little Osage River. The second property was located in Bates County, Missouri and contained approximately 126 acres of wetlands adjacent to the Osage River. The Vernon County property is located in Section 16, Township 37 North, Range 33 West. The Bates County property is located in Sections 23, 24, 25, and 26, Township 38 North, Range 30 West.

Statutory and Regulatory Framework

3. 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.

4. 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.

5. 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.

6. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines "navigable waters," in part, as the "waters of the United States," which are defined at 40 C.F.R. § 232.2 and 33 C.F.R. Part 328, and which include "wetlands."

7. "Wetlands" are defined at 40 C.F.R. § 232.2 as those areas that are inundated or saturated by surface or groundwater at a frequency and duration to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

8. 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.

Factual Background

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

10. At all times relevant to this action, Respondent operated or otherwise controlled the property located in Section 16, Township 37 North, Range 33 West, in Vernon County, Missouri, which contains a tributary of the Little Osage River and adjacent wetlands (hereinafter "the Vernon County property").

11. At all times relevant to this action, Respondent operated or otherwise controlled the property located in Sections 23, 24, 25 and 26, Township 38 North, Range 30 West, in Bates County, Missouri, which contain wetlands adjacent to the Osage River (hereinafter "the Bates County property").

12. At various times during the winter of 1999 and the spring of 2000, Respondent and/or persons acting on his behalf discharged dredged or fill material into the tributary of the Little Osage River and adjacent wetlands at the Vernon County property. Respondent and/or persons acting on his behalf using earth moving equipment cleared and contoured approximately 29.5 acres of forested wetlands located in three areas at the Vernon County Property and placed fill in an emergent wetland area, approximately 1.75 acres in size. Additional work conducted by and/or for Respondent altered the hydrologic regime of the main channel and the west fork of the tributary impacting over 3,000 linear feet of the unnamed tributary of the Little Osage River. Approximately 385 linear feet of stream channel were filled and another 995 linear feet was eliminated. Fill material was placed in the main channel and approximately 2,460 linear feet of the main channel of the tributary were bypassed by a constructed waterway. The constructed

waterway, which intercepts and carries the primary flow of the tributary, has shortened the channel by approximately 690 linear feet.

13. Mr. Mel Stanford with the Corps conducted on-site inspections on March 27, 2003, April 14, 2003 and May 16, 2003 which documented the discharges of fill material described in Paragraph 12.

14. The areas of the discharge and disposal of fill and/or dredged material and the area of filling of the unnamed tributary channel on the Vernon County property are characterized as "waters of the U.S." or "wetlands," as defined at 40 C.F.R. § 232.2.

15. The discharge and disposal of dredged and/or fill material and the filling of the tributary within the wetlands has altered the natural drainage pattern and hydrology of the area, resulting in changes to the wetland characteristics of approximately 29.5 acres of forested wetlands, 1.75 acres of emergent wetlands and impacting over 3,000 linear feet of the tributary at the Vernon County property.

16. At various times during 2000 and 2001, Respondent and/or persons acting on his behalf discharged dredged or fill material into wetlands adjacent to the Osage River at the Bates County property. Respondent and/or persons acting on his behalf using earth moving equipment cleared and contoured approximately 126 acres of forested wetlands located in four areas at the Bates County property.

17. On April 15, 2004, Mr. Mel B. Stanford with the Corps inspected the Bates County property and observed the conditions described in paragraph 16.

18. The areas of the discharge and disposal of fill and/or dredged material at the Bates County property are characterized as "wetlands," as defined at 40 C.F.R. § 232.2.

19. The discharge and disposal of dredged and/or fill material within the wetlands has altered the natural drainage pattern and hydrology of the area, resulting in changes to the wetland characteristics of approximately 126 acres of forested wetlands at the Bates County property.

20. The dredged and/or fill materials discharged by Respondent into the wetlands and the tributary of the Little Osage River at the Vernon County property and the wetlands at the Bates County property includes spoil, rock, sand and dirt and are "pollutants" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

21. The earth moving equipment referenced in Paragraphs 12 and 16 above, constitutes a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

22. The discharge of the dredged and/or fill material into the wetlands and tributary at the Vernon County property, described in Paragraph 12 above, and into the wetlands at the Bates County property described in Paragraph 16 above, constitutes the "discharge of a pollutant" within the meaning of Section 501(12) of the CWA, 33 U.S.C. § 1362(12).

23. The tributary of the Little Osage River which flows into the Little Osage River, which flows into the Osage River, and the wetlands on the Vernon County and Bates County properties are "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.

24. Respondent's discharges of pollutants from a point source into waters of the United States were performed without a permit issued pursuant to 404 of the CWA, 33 U.S.C. § 1344, and therefore these discharges violated Section 301 of the CWA, 33 U.S.C. § 1311.

25. The Corps and the Respondent were not able to agree on a satisfactory resolution of the violations, and the Corps referred the matter to EPA, Region 7, through a letter dated July 29, 2004.

26. The EPA made several attempts to resolve the matter with the Respondent, including letters dated October 26, 2004 and April 5, 2005.

27. The EPA filed a complaint in this matter on November 30, 2005.

28. The EPA has negotiated a resolution to the Complaint which will be resolved in a Consent Agreement and Final Order. As a part of that resolution the Respondent agreed to prepare a restoration plan as outlined in this Order.

A. FINDINGS OF VIOLATION

29. The facts stated in paragraphs 9 through 28 above are herein incorporated.

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

31. Respondent's discharge and disposal of pollutants from a point source into waters of the United States, 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.

B. ORDER FOR COMPLIANCE

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 is hereby ORDERED as follows:

32. 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 and/or seek additional penalties for such noncompliance with the terms of Order.

- a. Respondent and EPA agree to the terms of this Order and Respondent agrees to comply with the terms of the Order.
- b. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Order.

Restoration Plan

33. Within ninety (90) days after receipt of this Order, Respondent shall submit a Restoration Plan to EPA for review and approval. Restoration will be defined to include the rehabilitation (i.e., repairing a degraded aquatic resource) or re-establishment (i.e, returning natural resource functions to a former aquatic resource). All restoration activities at the Bates County property are subject to the current owners of the Bates County property granting permission to the Respondent to perform those activities. The Restoration Plan shall satisfy the following requirements and include, at a minimum, the following information:

General

- a. The Restoration Plan shall be prepared by a Professional Engineer (P.E.) or another appropriate professional with a background in hydrology and wetland restoration;
- b. The Restoration Plan shall describe methods to minimize erosion and stabilize disturbed areas at all sites;
- c. The Restoration Plan shall propose a schedule of no more than twenty four (24) months to accomplish the restoration activities described herein;
- d. Under the Restoration Plan, all references to "area identification" below require coordinates (preferably using DGPS) & written location description (including block, lot, section/township/range, county, Hydrologic Unit Code (HUC) number, as appropriate and pertinent.

Vernon County Unnamed Tributary

- e. The Restoration Plan shall identify i) all areas in and adjacent to the original tributary of the Little Osage River directly impacted by the discharges of illegal fill and indirectly affected by the change in hydrology, ii) all areas in and adjacent to the created channel (i.e., that have suffered erosion, backup of water, scour by water), and iii) all downstream areas impacted by sedimentation from the site;

- f. The Restoration Plan shall propose the work required to remove the discharged fill and to restore the tributary of the Little Osage River to pre-discharge configurations (e.g., cross-sectional area, meander placement, etc.), including the work required to remove fill from the discharge sites and to fill the created channel, if necessary;
- g. The Restoration Plan shall propose the work required to restore a minimum 50 foot wide riparian buffer measured from the top of the bank along both sides of the original stream from the north property line south to the east-west road crossing and consisting of native tree species planted and maintained to achieve a density of 109 trees per acre, and consisting of ground cover between trees to stabilize any bare ground. The 50-foot buffer requirement may be waived for legitimate cause, including but not limited to, if a 50-foot buffer would cross a property boundary, or limit vehicular access between the buffer and the property boundary. Any difference between the required and actual buffer area shall be added to the required buffer on the other side of the stream to achieve no net loss in the total required buffer area;
- h. The Restoration Plan shall describe the types of equipment proposed to accomplish the removal of the fill, designated upland disposal locations for the removed fill, and methods to minimize erosion during the removal;
- i. The Restoration Plan shall evaluate alternatives for bank stabilization, and propose an appropriate method(s) of bank stabilization designed to prevent future erosion (i.e., seeding of new native grass, placement of erosion control measures);
- j. The Restoration Plan shall identify any additional proposed areas of fill within the tributary of the Little Osage River that are required to implement the Restoration Plan and shall describe compaction and surface stabilization methods for such proposed fill areas. Specifically, the Restoration Plan shall identify the work required to fill the created channel and to restore flow solely to the original channel of the tributary of the Little Osage River;
- k. The Restoration Plan shall identify clear, precise, quantifiable performance standards that can be used to evaluate the status of the restoration activities. These may include hydrological, vegetative, faunal and soil measures.
- l. The Restoration Plan shall address the As-built Report, Monitoring Plan to cover a period of no less than five years, and Adaptive Management Plan elements of the USEPA, Region 7 Compensatory Mitigation Plan Checklist for Addressing Enforcement-related Mitigation (draft, November 15, 2005) and which are further specified under the associated Supplement (draft, November 15, 2005).
- m. The Restoration Plan shall address plans for appropriate maintenance and a schedule for completing such maintenance (e.g. measures to control predation/grazing of mitigation plantings, replacement planting, structure maintenance/repair, etc.). Such

maintenance planning also shall address invasive species control (plant and animal).

Vernon County Wetlands

- n. The Restoration Plan shall identify the areas where restoration activities will be conducted in the wetlands at the Vernon County property and describe these restoration activities, including but not limited to specifying the type (i.e., herbaceous, shrub, tree), number, and species to be planted, standards set for determining success, and maintenance anticipated for achieving such success;
- o. The Restoration Plan shall propose the work required to remove the discharged fill, as necessary, and to restore to pre-discharge configuration the emergent wetland identified by the U.S. Army Corps of Engineers as Site 4;
- p. The Restoration Plan shall, as necessary, describe the types of equipment proposed to accomplish the removal of the fill at Site 4, designated upland disposal locations for the removed fill, and methods to minimize erosion during the removal;
- q. The Restoration Plan shall identify clear, precise, quantifiable performance standards that can be used to evaluate the status of the restoration activities. These may include hydrological, vegetative, faunal and soil measures;
- r. The Restoration Plan shall address the As-built Report, Monitoring Plan to cover a period of no less than five years, and Adaptive Management Plan elements of the USEPA, Region 7 Compensatory Mitigation Plan Checklist for Addressing Enforcement-related Mitigation (draft, November 15, 2005) and which are further specified under the associated Supplement (draft, November 15, 2005);
- s. The Restoration Plan shall address plans for appropriate maintenance and a schedule for completing such maintenance (e.g. measures to control predation/grazing of mitigation plantings, replacement planting, structure maintenance/repair, etc.). Such maintenance planning also shall address invasive species control (plant and animal);
- t. The Restoration Plan shall include the provision of a perpetual conservation easement to be placed on all of the Vernon County property described in this Order;

Bates County Wetlands

- u. The Respondent shall request permission from the current owners of the Bates County property to conduct the restoration activities outlined herein. If the current owners of the Bates County property do not grant permission, the Respondent will not be required to perform any restoration activities on the Bates County property, but instead shall be required to spend an additional \$20,000 (\$100,000 as opposed to \$80,000) purchasing and restoring wetland properties as outlined in paragraph z below. If

permission is granted, the Respondent shall proceed to conduct the activities for the Bates County property as outlined in the approved restoration plan;

v. The Restoration Plan shall identify the areas where restoration activities will be conducted in the wetlands at the Bates County property and describe and graphically illustrate these restoration activities. The Respondent shall provide for a perpetual conservation easement on at least 45 acres of the property at Bates County;

w. The Restoration Plan shall be accompanied by a copy of the agreement or other document that memorializes the understandings and arrangements that have been established between the Respondent and the Bates County property owner(s) for the purpose of meeting the requirements under this Order;

x. The Restoration Plan shall address the As-built Report, Monitoring Plan to cover a period of no less than five years, and Adaptive Management Plan elements of the USEPA, Region 7 Compensatory Mitigation Plan Checklist for Addressing Enforcement-related Mitigation (draft, November 15, 2005) and which are further specified under the associated Supplement (draft, November 15, 2005);

y. The Restoration Plan shall address plans for appropriate maintenance and a schedule for completing such maintenance (e.g. measures to control predation/grazing of mitigation plantings, temporary irrigation for plant establishment, replacement planting, structure maintenance/repair, etc.). Such maintenance planning also shall address invasive species control (plant and animal);

Additional Wetlands Mitigation

z. The Restoration Plan shall include the expenditure of Eighty Thousand Dollars (\$80,000) toward the purchase and restoration of additional acres of wetlands. Prices paid for property should reflect no more than the current market prices for the local area. If the Respondent is unable to perform the restoration actions at the Bates County property as described in paragraphs u through y above, then the amount of the expenditure toward the purchase and restoration of additional acres of wetlands will increase from Eighty Thousand to One Hundred Thousand dollars (\$100,000). The money required to be spent by Respondent for the purchase and restoration of additional wetland acres (either \$80,000 or \$100,000, depending upon whether restoration is conducted on the Bates County property) is hereinafter referred to as the 'Mitigation Amount'. All expenses incurred by Respondent relating to the purchase and restoration of these additional acres of wetlands are included in the Mitigation Amount, including but not limited to, reasonable fees and travel expenses for any contractor, consultant, firm or other person or entity acting under or for Respondent with regard to the restoration activity. For example, if Respondent purchases 50 acres of wetlands for \$50,000 and spends an additional \$50,000 doing restoration improvements on those 50 acres, then Respondent receives credit for spending \$100,000 toward the Mitigation Amount and has

no further obligation under this Order to purchase additional wetland acres. The Mitigation Amount does not, however, include expenses relating to placing a conservation easement on the purchased properties. The EPA agrees to assist the Respondent in locating available property for purchase, including, but not limited to, properties available under the Wetland Reserve Program. The purchases of property by Respondent shall be approved by EPA and such approval is not to be unreasonably withheld;

aa. The Restoration Plan shall include the provision of a perpetual conservation easement to be placed on all additional acres purchased by the Respondent under paragraph z above; and

bb. For all additional acres secured under paragraph z above, the Restoration Plan shall address all relevant elements of the USEPA, Region 7 Compensatory Mitigation Plan Checklist for Addressing Enforcement-related Mitigation (draft, November 15, 2005) and which are further specified under the associated Supplement (draft, November 15, 2005).

34. After review of the Restoration Plan, EPA shall (a) approve, in whole or in part, the Restoration Plan; (b) approve the Restoration Plan upon specified conditions; (c) modify the Restoration Plan to cure the deficiencies; (d) disapprove, in whole or in part, the Restoration Plan, directing Respondent to modify the Restoration Plan; or (e) any combination of the above. However, the EPA shall not modify the Restoration Plan without first providing the Respondent at least one written notice of deficiency and an opportunity to cure within 14 days. If EPA does not approve the Restoration Plan, EPA will notify the Respondent in writing of the deficiencies, specifying a due date for submission of a revised Restoration Plan. If EPA does not approve the revised Restoration Plan, EPA will work informally with Respondent for thirty (30) days to resolve the remaining deficiencies or issues. This thirty (30) day time period may be extended upon written agreement of the parties. If these informal efforts prove unsuccessful, EPA may modify the Restoration Plan and will notify Respondent in writing of the modification and EPA's final decision that the informal efforts were not successful. If Respondent disagrees with any EPA decision, Respondent can invoke the Dispute Resolution process as described in paragraph 35 of this Order. Compliance with the Restoration Plan, as approved by EPA, shall be enforceable under the authority of this Order and the CWA.

Dispute Resolution

35. Unless this Order expressly provides otherwise, the dispute resolution procedures of this Paragraph shall be the exclusive mechanism for resolving disputes arising under this Order. The Parties shall attempt to resolve any disagreement concerning this Order expeditiously and informally.

a. If Respondent objects to any EPA action taken pursuant to this Order he shall notify EPA in writing of his objection within 14 days of such action, unless the objection has

been resolved informally. The notice shall set forth the specific points of the dispute, the position Respondent maintains should be adopted as consistent with the requirements of this Order, the factual and legal bases for Respondent's position and all matters Respondent considers necessary for EPA to make a determination.

b. EPA and Respondent shall have thirty (30) days from EPA's receipt of Respondent's written objection to resolve the dispute informally or through formal negotiations. This thirty (30) day negotiation period may be extended by agreement of the parties. Any agreement reached by the parties pursuant to this paragraph shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Order.

c. If the Parties are unable to reach an agreement, the dispute shall be presented to the Director of the Water, Wetlands and Pesticides Division ("Director") of EPA Region 7, for resolution. The Director will issue a written decision on the dispute to the Respondent. The Director's decision is EPA's final decision.

d. Respondent's participation in this dispute resolution process shall not constitute a waiver of its right to challenge or object to the decision in an action taken by EPA resulting from or based upon the decision made by EPA under these procedures other than one reached by mutual agreement of the parties.

e. If the pendency of a dispute as defined herein and its resolution cause a delay that prevents Respondent from meeting a deadline set forth in, or established pursuant to this Order, that deadline shall be extended as necessary; provided, however, that any such deadline shall not be extended if EPA finds that the dispute was not in good faith or otherwise lacks a reasonable basis on the part of the Respondent.

Stipulated Penalties

36. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in this Paragraph for failure to comply with the requirements of this Order specified below, unless excused under Paragraph 37 (Force Majeure) or Paragraph 35 (Dispute Resolution). Payment and accrual of stipulated penalties with respect to a disputed matter pursuant to Paragraph 35 shall be stayed pending resolution of the dispute. Payment and accrual of stipulated penalties shall also be stayed (1) pending resolution of a claim of force majeure pursuant to Paragraph 37b; and (2) during any extension of time for performance allowed pursuant to Paragraph 37c. Compliance" by Respondent shall include completion of the activities under this Order and the Restoration Plan approved under this Order identified below in accordance with all applicable requirements of law, this Order, the Restoration Plan approved by EPA pursuant to this Order and within the specified time schedules established by, and approved under, this Order.

a. Stipulated Penalty Amounts – Work

The following stipulated penalties shall accrue per violation per day for any noncompliance for completion of any Work under this Order or the approved Restoration Plan pursuant to the time schedules established in this Order and the Restoration Plan, including all required mitigation activities.

Penalty Per Violation Per Day	Period of Noncompliance (Days)
\$ 500	1 - 14
\$ 1,000	15 – 30
\$ 2,500	31 and beyond

b. Stipulated Penalty Amounts – Reports

The following stipulated penalties shall accrue per violation per day for any noncompliance for provision of any reports under this Order or the approved Restoration Plan pursuant to the time schedules identifying when the reports are due established in this Order and the Restoration Plan.

Penalty Per Violation Per Day	Period of Noncompliance (Days)
\$ 250	1 - 14
\$ 500	15 – 30
\$ 1,000	31 and beyond

c. All penalties shall begin to accrue on the day after the complete performance is due, or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.

d. Following EPA's determination that Respondent has failed to comply with a requirement of this Order, EPA may give Respondent written notification of the failure and describe the noncompliance. EPA may send Respondent a written demand for payment of the penalties.

e. Respondent shall pay EPA all penalties accruing under this Paragraph within thirty (30) days of Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Paragraph 35 (Dispute Resolution). For each payment the Respondent shall pay the penalty by certified or cashier's check payable to "Treasurer, United States of America" and shall deliver it, with a transmittal that identifies the case name and docket number to:

U.S. EPA-Cincinnati Finance Center
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251

The check must also be annotated with the docket number and with the name of the case. Copies of the transmittal letter and the check shall be simultaneously sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region VII
901 N. 5th Street
Kansas City, Kansas 66101

And

Steven L. Sanders
Office of Regional Counsel
U.S. Environmental Protection Agency - Region VII
901 N. 5th Street
Kansas City, Kansas 66101

Should the penalty not be paid as provided above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

f. Respondent may dispute EPA's right to the stated amount of penalties by invoking the dispute resolution procedures in Paragraph 35. If Respondent prevails upon resolution, no penalties shall be paid.

g. The stipulated penalties provisions do not preclude EPA from pursuing any other remedies or sanctions which are available to EPA because of the Respondent(s) failure to comply with this Order. Payment of stipulated penalties does not alter Respondent(s) obligation to complete performance under this Order. The EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Order.

Force Majeure

37. Respondent agrees to perform all requirements of this Order within the time limits established under this Order, unless the performance, including but not limited to gaining access to the site, is delayed by a *force majeure*.

a. For purposes of this Order, a *force majeure* is defined as any event arising from causes beyond the control of the Respondent, or of any entity controlled by the Respondent, including, but not limited to, his contractors and subcontractors, that delays or prevents performance of any obligation under this Order despite Respondents' best efforts to fulfill the

obligation. The requirement that Respondents exercise best efforts to fulfill the obligation includes using best efforts to anticipate any potential *force majeure* event: (a) as it is occurring; and (b) following the potential *force majeure* event, such that the delay is minimized to the greatest extent possible. Examples of *force majeure* include, but are not limited to, natural disasters (earthquakes, tornado, flood, hurricane, or fire); wars, riots and other upheavals; and performance failure of parties beyond the control of the Respondent. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.

b. If any event occurs or has occurred that may delay the performance of any obligation under this Order, Respondent shall notify EPA within five (5) days after Respondent first knew that the event might cause a delay. Within fourteen (14) days of providing notice to EPA as described above, Respondent shall provide to EPA in writing: an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim. Failure to comply with the above requirements shall preclude Respondents from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

c. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Order that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Respondents in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

38. All documents required to be submitted to EPA by this Order, or by the approved Restoration Plan shall be submitted by mail and by email to the following individuals:

Raju Kakarlapudi
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency, Region 7
901 North Fifth Street
Kansas City, Kansas 66101

And

Steven L. Sanders
Assistant Regional Counsel
United States Environmental Protection Agency, Region 7
901 North Fifth Street
Kansas City, Kansas 66101.

39. At the time of its submission to EPA, Respondent shall also provide a copy of the proposed Restoration Plan to Mr. Mel Stanford, U.S. Army Corps of Engineers, Mr. Matt Jepsen, U.S. Army Corps of Engineers and Mr. Kevin Mohammadi, Missouri Department of Natural Resources at the following addresses:

Mr. Mel B. Stanford
Department of the Army
Kansas City District, Corps of Engineers
Regulatory Branch - Truman Regulatory Satellite Office
15837 Truman Road
Warsaw, Missouri 65355

Mr. Matt Jepsen
Department of the Army
Kansas City District, Corps of Engineers
601 E. 12th Street
Suite 700
Kansas City, Missouri 64106

Mr. Kevin Mohammadi, Chief
Enforcement Section
Water Pollution Control Program
Missouri Dept. of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102

40. Upon approval of the Restoration Plan by EPA, thereafter Respondent shall report in writing and by e-mail to EPA each quarter on all work undertaken pursuant to the requirements of the approved Restoration Plan.

General Provisions

Effect of Compliance with the Terms of this Order

41. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondent of his responsibility to obtain any required local, state and/or federal permits. Specifically, Respondent shall consult with the U.S. Army Corps of

Engineers, and shall obtain all permits that the Corps determines are necessary to address the discharges and/or to implement the approved Restoration Plan.

42. This Order does not constitute a waiver or a modification of any requirements of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, all of which remain in full force and effect. This Order and the Consent Agreement and Final Order mentioned in Paragraph 28 of this Order, resolve the specific matters set forth in this Order and in EPA's Complaint dated November 30, 2005. EPA agrees that except for the Consent Agreement and Final Order previously mentioned, EPA will not seek civil penalties based on the specific matters set forth in this Order. Respondent reserves all defenses available to it in any future civil or administrative action by EPA. The EPA retains the right to seek any and all remedies available under Sections 309 of the Act, 33 U.S.C. § 1319, for any violation of the terms and conditions of this Order. Issuance of this Order shall not be deemed an election by EPA to forgo any civil or criminal action to seek penalties, fines, or other appropriate relief under the Act for any violation whatsoever, except those based on the specific matters set forth in this Order.

Access and Requests for Information

43. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect property 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

44. 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

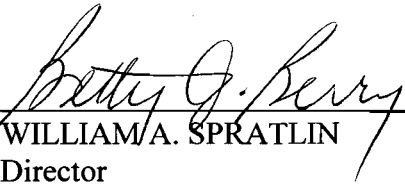
45. This Order shall apply to and be binding upon the Respondent, his successors and assigns. Respondent shall provide a copy of this Order to any directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for him with respect to matters included herein.

Effective Date

46. The terms of this Order shall be effective and enforceable against Respondent upon the date of its receipt of an executed copy of the Order.

Termination

47. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the U.S. Environmental Protection Agency. Such notice shall not be given until all of the requirements of this Order have been met.


WILLIAM A. SPRATLIN
Director

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

01/23/07
DATE


STEVEN L. SANDERS

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

RESPONDENT:
WILLIAM GEPFORD

William Gepford 1-6-07
William Gepford Date

IN THE MATTER OF William Gepford, Respondent
Docket No. CWA-07-2006-0243

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Administrative Compliance Order on Consent was sent this day in the following manner to the addressees:


Copy hand delivered to
Attorney for Complainant:

Steven L. Sanders
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Michael P. Comodeca, Esq.
Spencer Fane Britt & Browne LLP
9401 Indian Creek Parkway, Suite 700
Overland Park, Kansas 66210-2005

Dated: 1/25/07


Kathy Robinson
Kathy Robinson
Hearing Clerk, Region 7