

J. Rose Construction and Restoration, Inc.; and Missouri Land Development I, L.L.C., a construction company. General George C. Marshall Memorial Post No. 2184, Inc., J. Rose Construction and Restoration, Inc., and Missouri Land Development I, L.L.C. are registered under the laws of the state of Missouri and General George C. Marshall Memorial Post No. 2184, Inc. is authorized to conduct business in the state of Missouri.

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 adjacent to waters of the United States.

7. 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

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

9. At all times relevant to this action, Respondent General George C. Marshall Memorial Post No. 2184, Inc., owned, operated, or otherwise controlled property located at 6327 Lemay Ferry Road, in St. Louis County, Missouri.

10. The General George C. Marshall Memorial Post No. 2184, Inc. contracted with J. Rose Construction and Restoration, Inc. in February 2008 to perform activities associated with the construction of volleyball courts, parking lots, and roadways. J. Rose Construction and Restoration, Inc., was an active corporation in good standing with the state of Missouri at that time, but was administratively dissolved by the state on March 21, 2008. Upon EPA’s understanding and belief, John P. Rose continued these construction activities after J. Rose Construction and Restoration, Inc. was administratively dissolved.

11. J. Rose Construction and Restoration, Inc. hired Missouri Land Development I, L.L.C., to perform some of the construction activities described in Paragraph 10.

12. Sometime between January 2008 and September 2010, Respondents and/or persons acting on their behalf and using earth moving equipment authorized and/or directed the dredge and fill of approximately 470 linear feet of an unnamed tributary to the Meramec River, as well as 3.56 acres of forested wetlands, as part of the construction activities described in Paragraph 10.

13. The unpermitted dredge and fill activities were conducted on the General George C. Marshall Memorial Post No. 2184, Inc. property located at 6327 Lemay Ferry Road and upon at least three neighboring properties located at 6369, 6371 and 6661 Lemay Ferry Road (the latter two of which are owned by St. Louis County), collectively hereinafter "the Site." The Site is located in U.S. Survey 403, Township 43 North, Range 06 East, in St. Louis County, Missouri.

14. On September 23, 2010, the Corps visited the Site and documented the discharges of dredge and fill material described in Paragraph 12.

15. The dredge and fill materials discharged by Respondents into the tributary to the Meramec River referenced in Paragraph 12 are "pollutants" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

16. The discharge of the dredge and fill materials into the tributary to the Meramec River referenced in Paragraph 12 constitutes the "discharge of a pollutant" within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

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

18. The unnamed tributary to the Meramec River and the wetlands referenced in Paragraph 12, 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.

19. Respondents 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 in Paragraph 12, nor did Respondents perform the work described in Paragraph 12 under any prior permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344.

Findings of Violation

20. The facts stated in Paragraphs 8 through 19 above are herein incorporated.

21. Respondents' discharges of pollutants from a point source into a water of the United States was performed without a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344. Therefore, these discharges violated Section 301 of the CWA, 33 U.S.C. § 1311.

Order for Compliance

Based on the Factual Background and Findings of Violation set forth above, and pursuant to the authority of Sections 308(a) and 309(a)(3) of the CWA, 33 U.S.C. §§ 1318(a) and 1319(a)(3), Respondents are hereby ORDERED as follows:

22. Within 30 days of receipt of this Order, Respondents shall submit a Work Plan to EPA for review and approval that describes Respondents' proposed restoration of the impacted Site described in Paragraph 10 above. If Respondents believe that restoration of the impacted Site is not feasible, Respondents must contact EPA within 7 days of receipt of this Order to discuss the basis for its concerns. If Respondents and EPA agree that restoration of the impacted Site is not feasible, Respondents shall submit a Work Plan to EPA for review and approval within 45 days of receipt of this Order that describes Respondents' proposed mitigation project. The restoration or mitigation work shall be completed within 9 months of EPA's approval of Respondents' Work Plan and in accordance with the specifications set forth in the Work Plan.

- a. The Work Plan shall include, at a minimum: the projected work and materials necessary to restore the Site or mitigate for lost wetlands and/or stream functions, including characterization of the soil, plant, and hydric conditions; the projected cost of the work; a projected schedule for completing the work; and a monitoring plan to maintain and document proper wetland and/or stream functions, pursuant to Paragraph 25 below.
- b. If EPA approves the Work Plan, it shall be implemented according to the schedule for implementation in the approved Work Plan.
- c. If EPA does not approve the Work Plan, Respondents shall address EPA's comments and resubmit the Work Plan for review within 30 days of receipt of EPA's disapproval.
- d. 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 Respondents with a copy of the Work Plan as modified. Respondents shall implement the modified Work Plan according to the schedule contained therein.

23. Once approved by EPA, the Work Plan identified in Paragraph 22 shall be incorporated by reference and fully enforceable under the terms of this Order.

24. Once the work identified in Paragraph 22 has been completed, Respondents shall submit photographic evidence, copies of relevant documents, and a signed statement confirming that the work is complete.

25. Respondents 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 narrative description of the status of the Site, and the corrective actions, if any, that will be taken to correct the deficiencies in order to maintain proper wetland and/or stream functions.

26. The submission of documents by Respondents, as identified in Paragraphs 22, 24, and 25, shall include the following written statement, followed by signature of a duly authorized representative of Respondents:

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.

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

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

28. In the event that Respondents fail to comply with the terms of this 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 Respondents and/or seek additional penalties against Respondents for such noncompliance with the terms of the Order.

General Provisions

Effect of Compliance with the terms of this Order

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

30. 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 Section 309 of the CWA, 33 U.S.C. § 1319,

for any violation cited in 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 CWA for any violation whatsoever.

Access and Requests for Information

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

Severability

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

Parties Bound

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

Effective Date

34. The terms of this Order shall be effective and enforceable against Respondents upon the date of receipt of an executed copy of the Order.

Termination

35. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of EPA. Such notice shall not be given until all of the requirements of this Order have been met.

July 7, 2011
DATE

Karen A. Flournoy
for KAREN A. FLOURNOY
Acting Director
Water, Wetlands and Pesticides Division

Erin Weekley
ERIN WEEKLEY
Assistant Regional Counsel
Office of Regional Counsel

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Findings of Violation and Administrative Order for Compliance to the Regional Hearing Clerk, United States Environmental Protection Agency, 901 North Fifth Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent a copy of the foregoing Findings of Violation and Administrative Order for Compliance by first class certified mail, return receipt requested, to:

Richard O'Dell
Registered Agent, General George C. Marshall Memorial Post No. 2184, Inc.
6327 Lemay Ferry Road
St. Louis, Missouri 63129,

John Rose
Registered Agent, J. Rose Construction and Restoration, Inc.
3644 Baumgartner Road
St. Louis, Missouri 63129,

John Rose
3644 Baumgartner Road
St. Louis, Missouri 63129,

and

Missouri Secretary of State
Registered Agent, Missouri Land Development I, L.L.C.
600 West Main Street
Jefferson City, Missouri 65102,

and by first class mail to:

Holly Francois
Missouri Land Development I, L.L.C.
5854 Crystal Tree Corner
St. Louis, Missouri 63128,

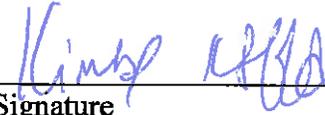
Danny D. McClendon
Chief, Regulatory Branch
St. Louis District Corps of Engineers
1222 Spruce Street
St. Louis, Missouri 63103-2833,

and

Kevin Mohammadi
Chief, Water Pollution Compliance and Enforcement Section
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102-0176.

JUL 07 2011

Date



Signature