

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

07 JUL 20 PM 4:17

901 N. 5th STREET
KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:

MONTE CANNON
Cannon Builders, Inc.
193 North Lincoln Drive
Troy, Missouri 63379

Respondent

Proceedings under Section 309(g) of the
Clean Water Act, 33 U.S.C. ' 1319(g)

)
) Docket No. CWA-07-2007-0046
)
) COMPLAINT AND,
) CONSENT AGREEMENT/
) FINAL ORDER
)
)
)
)
)
)
)

The United States Environmental Protection Agency, Region 7 (“EPA”) and Mr. Monte Cannon, of Cannon Builders, Inc. (“Cannon”) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

COMPLAINT

Jurisdiction

1. This Administrative Complaint (Complaint) has been filed under the authority vested in the Administrator of the United States Environmental Protection Agency, pursuant to Section 309 (g) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319 (g) and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22 (Consolidated Rules of Practice).

2. This Complaint and Consent Agreement/Final Order alleges that the Respondent discharged pollutants into the waters of the United States in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

3. Upon satisfactory completion by Respondent of all activities required by this Order an authorized representative of the Complainant shall notify the Respondent in writing of said completion.

Parties

4. The Complainant, by delegation from the Administrator of EPA to the Regional Administrator, EPA Region VII, is the Director of Region VII's Water, Wetlands, and Pesticides Division.

5. Respondent, Cannon Builders, Inc. ("Cannon"), is an owner of 6.75 acres of property located along a stream/wetland/lake complex locally known as "Trojan Lake" in the city of Troy, Missouri, in U.S. Survey 379, Township 49 North, Range 1 West, Lincoln County, Missouri. Cannon has a mailing address of 193 North Lincoln Drive, P.O. Box 266, Troy, Missouri 63379.

Statutory and Regulatory Background

6. 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. Section 404 of the CWA provides that pollutants may be discharged only in accordance with the terms of a permit for the discharge of dredged or fill material.

7. 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.

Factual Background

8. At various times in the spring of 2005, the Respondent and/or persons acting on its behalf, discharged dredged or fill material including dirt, spoil, rock and sand, into an area in and adjacent to Trojan Lake and along Buchanan Creek in Troy, Lincoln County, Missouri. The Respondent placed dredged or fill material in and around the lake and creek while trying to construct homes on lots adjacent to the lake property. These actions impacted approximately 0.49 acres of wetlands.

9. Respondent and/or persons acting on its behalf, used mechanized land-clearing and/or earth moving equipment to accomplish the discharges described in Paragraph 8.

10. Respondent did not have a CWA Section 404 permit for the discharge of fill material into waters of the United States.

Finding of Violations

11. The dirt, spoil, rock and sand discharged by the Respondent into the areas in and adjacent to Trojan Lake and along Buchanan Creek constitutes a “pollutant” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

12. Respondent’s work within the Trojan Lake and Buchanan Creek area described above, constitutes a “discharge of a pollutant” within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

13. The equipment used by the Respondent in performing the work described above constitutes a “point source” as defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

14. The affected areas of Trojan Lake and Buchanan Creek are “navigable waters” of the United States, as defined by CWA Section 502(7), 33 U.S.C. § 1362(7).

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

16. Respondent’s discharge of pollutants from a point source into waters of the United States was performed without a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, and therefore this discharge violated Section 301 of the CWA, 33 U.S.C. § 1311.

CONSENT AGREEMENT

17. Respondent admits the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agrees not to contest EPA’s jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.

18. Respondent neither admits nor denies the factual allegations contained in this Complaint and Consent Agreement/Final Order.

19. Respondent consents to the issuance of the Final Order and consents to the payment of a civil penalty as set forth below.

20. Respondent waives any right to contest the allegations and his right to appeal the proposed Final Order accompanying this Consent Agreement.

21. Respondent and Complainant each agree to bear their own costs and attorney's fees.

22. Nothing contained in the Final Order shall alter or otherwise affect Respondent's obligations to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

23. The undersigned representative of Respondent certifies that he is fully authorized to enter the terms and conditions of this Complaint and Consent Agreement/Final Order and to execute and legally bind Respondent to it.

FINAL ORDER

IT IS HEREBY AGREED BY THE PARTIES, and pursuant to Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g), it is ORDERED that:

1. Respondent shall pay a civil penalty of Fifty Seven Thousand Dollars (\$57,000). Said penalty shall be paid in full within thirty (30) days following receipt by Respondent of a fully executed copy of this Complaint and Consent Agreement/Final Order. 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:

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:

Kathy Robinson
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 civil 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.

2. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement/Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

Parties Bound

3. This Final 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 Consent Agreement and Final Order.

Reservation of Rights

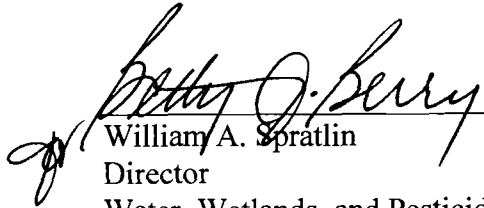
4. The EPA reserves the right to enforce the terms of this Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

5. With respect to matters not addressed in this Final Order, EPA reserves the right to take any enforcement action pursuant to the CWA, or any other available legal authority, including without limitation, the right to seek injunctive relief, monetary penalties and punitive damages.

Effective Date

6. This Final Order shall become effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this Final Order.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY



William A. Spratlin
Director
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency
Region VII

07/19/07
Date




Steven L. Sanders
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII

RESPONDENT:
MONTE CANNON
CANNON BUILDERS, INC.



Monte Cannon



Date

IT IS SO ORDERED.

July 20, 2007
Date

Robert L. Patrick
Robert L. Patrick
Regional Judicial Officer

IN THE MATTER OF Monte Cannon, Cannon Builders, Respondent
Docket No. CWA-07-2007-0046

CERTIFICATE OF SERVICE

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


Copy hand delivered to:

Steven L. Sanders
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Monte Cannon
Cannon Builders
193 North Lincoln Drive
Troy, Missouri 63379

7/20/07
Dated


Kathy Robinson
Hearing Clerk, Region 7