

5. Before the taking of any testimony and without adjudication of any issue of law or fact, the Parties agree to the terms of this CAFO and to its issuance. Respondent consents to the assessment and payment of a civil penalty in the amount and by the method stated below.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

6. Mr. Jacob Giardina (“Respondent”) is an individual residing in the State of Louisiana and therefore considered a “person” as that term is defined at Section 502(5) of the Act, 33 U.S.C. § 1362(5) and 40 C.F.R. § 232.2.

7. At all times relevant to the violations alleged herein (relevant time period), Respondent owned real property, located between St. Louis Bayou and LA Highway 24, Section 145, Township 15 South, Range 16 East, and Section 1, Township 16 South, Range 16 East, Terrebonne Parish, Louisiana (herein the “Evergreen Site”).

8. On multiple dates between approximately March 25, 2009, and approximately April 27, 2009, Respondent discharged, caused the discharge, directed the discharge, and/or agreed with other persons or business entities, to discharge dredged and/or fill material as those terms are defined by Section 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 232.2, from point sources, including heavy equipment in, on, and to approximately 8.39 acres of forested wetlands within the Evergreen Site. This work was associated with agriculture or commercial development and was done without authorization under a permit issued by the United States Army Corps of Engineers (“Corps”).

9. During the relevant time period, Respondent owned real property located at the juncture of LA Highway 311 and LA Highway 90, Section 10, Township 16 South, Range 16 East, and Section 1, Terrebonne Parish, Louisiana (herein the “Rebecca Site”).

10. On multiple dates between approximately March 25, 2009, and approximately April 27, 2009, Respondent discharged, caused the discharge, directed the discharge, and/or agreed with other persons or business entities, to discharge dredged and/or fill material as those terms are defined by Section 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 232.2, from point sources, including heavy equipment in, on, and to approximately 0.94 acres of forested wetlands within the Rebecca Site. This work was associated with agriculture or commercial development and was done without authorization under a permit issued by the Corps.

11. During the relevant time period, Respondent owned real property, located east of South Acadia Road, Sections 136 and 137, Township 15 South, Range 16 East, Lafourche Parish, Louisiana (herein "Tract 4").

12. On multiple dates between approximately March 25, 2009, and approximately April 27, 2009, Respondent discharged, caused the discharge, directed the discharge, and/or agreed with other persons or business entities, to discharge dredged and/or fill material as those terms are defined by Section 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 232.2, from point sources, including heavy equipment in, on, and to approximately 3.16 acres of scrub/shrub wetlands and approximately 0.48 acres of other waters of the U.S. within the Tract 4. This work was associated with drainage and was done without authorization under a permit issued by the Corps.

13. During the relevant time period, Respondent owned real property, located west of South Acadia Road, Sections 137 and 138, Township 15 South, Range 16 East, Lafourche Parish, Louisiana (herein "Tract 5").

14. On multiple dates between approximately March 25, 2009, and approximately April 27, 2009, Respondent discharged, caused the discharge, directed the discharge, and/or

agreed with other persons or business entities, to discharge dredged and/or fill material as those terms are defined by Section 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 232.2, from point sources, including heavy equipment in, on, and to approximately 4.28 acres of forested wetlands within Tract 5. This work was associated with agriculture or commercial development and was done without authorization under a permit issued by the Corps.

15. The wetlands identified above in paragraph 8, 10, 12, and 14 are “waters of the United States” as that term is defined at Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 232.2.

16. The discharged dredged material and fill material are “pollutants” as that term is defined at Section 502(6) of the Act, 33 U.S.C. § 1362(6).

17. Each piece of equipment used to carry out the discharges acted as a “point source” as that term is defined at Section 502(14) of the Act, 33 U.S.C. § 1362(14).

18. Under Section 301(a) of the Act, 33 U.S.C. § 1311(a), it is unlawful for any person to discharge a pollutant from a point source to waters of the United States, except with the authorization of, and in compliance with, a permit issued under the Act.

19. Under Section 404 of the Act, 33 U.S.C. § 1344, the Secretary of the Army, acting through the Chief of Engineers for the Corps, is authorized to issue permits for the discharge of dredged or fill material into waters of the United States.

20. At no time during the relevant time period did Respondent have a permit issued by the Corps authorizing the discharges alleged herein.

21. Under Section 309(g)(1)(A) of the Act, 33 U.S.C. § 1319(g)(1)(A), the Administrator is authorized to assess a Class I or Class II civil penalty whenever, on the basis of any available information, the Administrator finds that a person has violated Section 301 of the Act.

22. Each day of unauthorized discharge by Respondent is a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

23. Under Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), Respondent is liable for a civil penalty in an amount not to exceed \$11,000 per day for each day during which a violation continues, up to a maximum of \$37,500.

24. The State of Louisiana was notified and given an opportunity to consult with EPA regarding the proposed assessment of an administrative penalty against Respondent.

25. EPA notified the public of the proposed CAFO and afforded the public forty (40) days to comment on the proposed penalty in accordance with 40 C.F.R. § 22.45. At the expiration of the notice period, EPA had received no comments from the public.

III. TERMS OF SETTLEMENT

A. PENALTY PROVISIONS

26. Based on the foregoing Findings of Fact and Conclusions of Law, EPA Region 6, considering the relevant criteria pursuant to Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), and acting pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), hereby orders that Respondent shall pay to the United States a civil penalty in the amount of TWENTY THOUSAND DOLLARS (\$20,000.00) to settle the violations as alleged in this CAFO, in accordance with 40 C.F.R. § 22.18(c).

27. Payment shall be made by one of the following methods within thirty (30) days of the effective date of this CAFO:

a. By mailing a bank check, a cashier's check, or certified check, payable to "Treasurer of the United States," to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

b. By wire transfer to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

c. By overnight mail (Express, FedEx, DHL, UPS, etc.) to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone: 314-418-401028

d. By credit card payment to <https://www.pay.gov/paygov/>
(enter sfo 1.1 in the search field)

The case name and docket number (In the Matter of Jacob Giardina, Docket No.

CWA-06-2012-2713) should be clearly marked on the check to ensure credit for payment.

28. Respondent shall send simultaneous notice of payment, including a copy of the check, to each of the following:

- (a) Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

- (b) Chief, Wetlands Section (6WQ-EM)
Water Quality Protection Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

- (c) Chief, Water Legal Branch (6RC-EW)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent's adherence to these procedures will ensure proper credit when payment is received by EPA.

29. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

30. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. See 40 C.F.R. § 13.11(b).

31. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent (6%) per year will be assessed monthly on any portion of the

debt which remains delinquent more than ninety (90) days. See 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. See 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

32. Pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States' enforcement expenses, including but not limited to, attorneys' fees and costs incurred by the United States for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be twenty percent (20%) of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

33. Failure by Respondent to pay the penalty assessed according to the terms of this CAFO, in full, by its due date, may subject Respondent to a civil action to collect the assessed penalty and any accrued interest and penalties.

34. In the event a collection action is necessary, Respondent shall pay - in addition to any applicable penalty, fees, and interest described herein - all reasonable costs and expenses, including legal expenses and court costs, incurred by the United States for enforcement and collection proceedings for nonpayment of the amounts agreed hereunder, pursuant to Section 309(g)(9) of the Act, 33 U.S.C. 1319(g)(9). In any such collection action, the validity, amount, and appropriateness of the penalty, and the terms of this CAFO, shall not be subject to review.

B. GENERAL PROVISIONS

35. To execute this Agreement, Respondent shall forward two (2) copies of this CAFO, with original signature, to:

Ms. Tamara Mick
Water Quality Protection Division (6WQ-EM)
U.S. EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733


36. Issuance of this CAFO does not relieve Respondent from responsibility to comply with all requirements of the Act and the requirements of any permits issued thereunder, as described in Section 309(g)(7) of the Act, 33 U.S.C. § 1319(g)(7), nor does it constitute a waiver by EPA of its right to enforce compliance with the requirements of Respondent's permits or other requirements of the Act by actions pursuant to Section 309 of the Act, 33 U.S.C. § 1319.

37. The provisions of this CAFO shall be binding upon Respondent, its officers or officials, managers, employees, and their successors or assigns, in their capacity on behalf of Respondent.

38. Each party agrees to bear its own costs and attorneys fees in this matter, except to the extent that Respondent may be responsible for reasonable costs and expenses of enforcement and collection proceedings for failure to comply with the terms of this CAFO. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorneys fees under the Equal Access to Justice Act (5 U.S.C. § 504), as amended by the Small Business Regulatory Enforcement Fairness Act (P.L.104-121), and any regulations promulgated pursuant to those Acts.


39. Each undersigned representative of the Parties to this agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this agreement and to execute and legally bind that party to it.

In recognition and acceptance of the foregoing:




Jacob Giardina
Respondent

3/8/12
Date



William K. Honker, P.E., Acting Director
Water Quality Protection Division
Complainant




4/16/12
Date

FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Complaint. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. This CAFO shall become effective upon filing with the Regional Hearing Clerk, pursuant to 40 C.F.R. § 22.31(b).

Issuance Date:

4-17-12
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of Apr. 1, 2012, the original of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, U.S. EPA, Region 6 (6RC-D), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and that a true and correct copy was placed in the United States Mail, by certified mail, return receipt requested, addressed to the following:

Mr. Jacob Giardina
Acadia Agricultural Holdings, LLC
110 Rue Angelique
Thibodeaux, Louisiana 70301

Copy hand-delivered:

Ms. Tamara Mick
Water Quality Protection Division (6WQ-EM)
U.S. EPA Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

A handwritten signature in blue ink, appearing to read "Tamara Mick", is written over a horizontal blue line.