

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

901 North 5TH Street

KANSAS CITY, KANSAS 66101

08 FEB -8 PM 12: 20

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:)

C.S. PROPERTIES, LLC)

Respondent)

Proceedings under Section 309(a)(3) of the
Clean Water Act, 33 U.S.C. § 1319(a)(3))

Docket No. CWA 07-2008-0038

FINDINGS OF VIOLATION,
ORDER FOR COMPLIANCE

Preliminary Statement

1. The following Findings of Violation are made and Order for Compliance ("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 the U.S. Environmental Protection Agency ("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 C.S. Properties, L.L.C. ("CS Properties"). CS Properties is a development company, incorporated in the State of Missouri with offices located at 10851 East Highway WW, Columbia, Missouri 65201. CS Properties owns approximately 28 acres of property located at the SE Corner of Highway 63 and State Highway Y in Ashland, Missouri. The legal description of the property is Section 14, Township 46 north, Range 12 west in Boone County, Missouri. Nichols Creek runs through the property from the northern edge of the property to the southeast.

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. 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. Respondent CS Properties 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 CS Properties owned, operated or otherwise controlled approximately 28 acres of property located in Section 14, Township 46 north, Range 12 west in Boone County, Missouri ("the Property"). Nichols Creek runs through the Property.

10. In October 2006, Respondent CS Properties filed an application with the Corps for an individual permit under Section 404 of the CWA for work at the Property. To date the Corps has not granted the permit to the Respondent.

11. At various times between June and September 2007, the Respondent and/or persons acting on its behalf discharged dredged or fill material into Nichols Creek at the Property. Respondent and/or persons acting on his behalf using earth moving equipment cleared and contoured areas around Nichols Creek and placed a concrete junction box in Nichols Creek. The junction box was attached to a 60 inch corrugated metal pipe allowing the flow of water in Nichols Creek to be diverted into the pipe. In addition, a rock dam was placed further downstream in Nichols Creek. The rock dam has since been removed.

12. On September 12, 2007, representatives of the Corps, including Mr. Jon Miller inspected the Property and documented the discharges of fill material described in Paragraph 11.

13. The discharge and disposal of dredged and/or fill material within the creek has altered the natural drainage pattern of the area.

14. The dredged and/or fill materials discharged by Respondent into Nichols Creek 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).

15. The earth moving equipment referenced in Paragraph 11 above, constitutes a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

16. The discharge of the dredged and/or fill material into Nichols Creek at the Property, described in Paragraph 11 above, constitutes the "discharge of a pollutant" within the meaning of Section 501(12) of the CWA, 33 U.S.C. § 1362(12).

17. Nichols Creek which flows into Fowler Creek, which flows into Cedar Creek, which flows into the Missouri River, are all "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.

18. Respondent's discharge of pollutants from a point source into waters of the United States was 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.

A. FINDINGS OF VIOLATION

19. The facts stated in paragraphs 8 through 18 above are herein incorporated.

20. Respondent CS Properties 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 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.

21. 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:

22. Respondent CS Properties will place a 48-inch-diameter hole in the corrugated metal pipe at the area where the concrete junction box was placed in Nichols Creek. This action will be done to restore flow and allow for aquatic passage into Nichols Creek at the Property.

23. Once the work identified in paragraph 22 has been completed the Respondent shall submit photographic evidence and a signed statement indicating that the work is complete.

24. 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 against the Respondent and/or seek additional penalties against the Respondent for such noncompliance with the terms of the Order.

25. The work required by Respondent outlined in this Order shall be completed within 1 month from the effective date of this order.

26. All documents to be submitted to EPA under this Order shall be submitted by mail to the following individuals:

Delia M. Garcia, PhD
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.

General Provisions

Effect of Compliance with the terms of this Order

27. 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.

28. 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. 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 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 Act for any violation whatsoever.

Access and Requests for Information

29. 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

30. 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


31. This 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 him with respect to matters included herein comply with the terms of this Order.

Effective Date

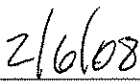
32. The terms of this Order shall be effective and enforceable against Respondent upon the date of his receipt of an executed copy of the Order.

Termination

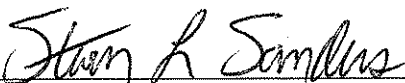
33. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the U.S. Environmental Protection Agency. Such notice shall not be given until all of the requirements of this Order have been met.



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



DATE



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

IN THE MATTER OF C.S. Properties, LLC, Respondent
Docket No. CWA-07-2008-0038

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Findings of Violation, Order for Compliance was sent this day in the following manner to the addressees:

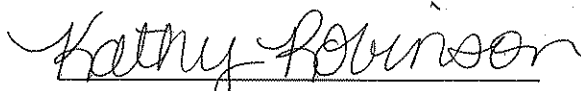
Copy hand delivered to
Attorney for Complainant:

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:

Mr. C.L. Richardson
C.S. Properties, LLC
10851 East Highway WW
Columbia, Missouri 65201

Dated: 2/8/08


Kathy Robinson
Hearing Clerk, Region 7