



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

NOV 19 2019

Ms. Robin Allen
Petition Officer
Office of Regional Counsel
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Re: Complainant's Response to Petition to Set-Aside Consent Agreement and Final Order, Docket No. CWA-04-2018-5501(b), In the Matter of Jerry O'Bryan (CA/FO)

Dear Ms. Allen:

Pursuant to 40 C.F.R. § 22.45(c)(4)(iv), the U.S. Environmental Protection Agency, Region 4, hereby provides its written response to Petitioner Community Against Pig Pollution and Disease, Inc's Petition to set aside the above-referenced Consent Agreement and Final Order (CA/FO), as well as a copy of the CA/FO. A copy of this response is also being provided to the Petitioner and the Respondent, Mr. O'Bryan.

Thank you for your consideration. Please contact Suzanne Armor, Associate Regional Counsel, at (404) 562-9701, if you have any questions regarding this response.

Sincerely,

A handwritten signature in blue ink that reads "Daniel F. O'Neil for".

Mary Jo Bragan
Chief, Water Enforcement Branch
Enforcement and Compliance
Assurance Division

Enclosure

cc: CAPPAD, Inc. (via certified mail, return receipt requested)

Mr. Jerry O'Bryan (via certified mail, return receipt requested)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

In the Matter of)
) Docket No. CWA-04-2018-5501(b)
JERRY O'BRYAN,)
CURDSVILLE, KENTUCKY,) Administrative Consent Agreement and
) Final Order Under Section 309(g)(2)(A),
Respondent.) of the Clean Water Act, 33 U.S.C.
) § 1319(g)(2)(A)

**COMPLAINANT'S RESPONSE TO PETITION TO SET ASIDE
CONSENT AGREEMENT AND FINAL ORDER**

Complainant, the Chief of the Water Enforcement Branch of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region 4, is responding to the Petition to Set Aside the Consent Agreement and Final Order (Petition) by Community Against Pig Pollution and Disease, Inc. (CAPPAD), in the matter of Jerry O'Bryan, Docket No. CWA-04-2018-5501(b) (CA/FO). Complainant respectfully submits its Response to the assigned Petition Officer under 1319(g)(4)(C) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(4)(C), 40 C.F.R. § 22.45(c)(4)(iv) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Rules of Practice), and the EPA Region 4 Regional Administrator's Assignment of Petition Officer Pursuant to 40 C.F.R. § 22.45(c)(4)(iii) (Oct. 24, 2019).

Complainant has carefully reviewed and considered the Petition, and the information provided on the issues raised therein. For the reasons outlined below, Complainant has determined that Petitioners do not raise any issues that are relevant and material to the issuance of the CA/FO that have not already been considered.

I. Background

A. CA/FO

Under 40 C.F.R. §§ 22.13(b) and 22.45(a) of the Rules of Practice, where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a CA/FO pursuant to 40 C.F.R. § 22.18(b)(2) and (3).

Respondent, Mr. Jerry O'Bryan, owns certain parcels of land near Curdsville, Daviess County, Kentucky (referred to herein as the "Simpson/McKay Farm"), on which waters of the United States were impacted as a result of Respondent's unauthorized dredging and/or filling activities. Specifically, beginning in or around June 2016, Respondent discharged dredged and/or fill material using earth moving equipment during activities associated with the conversion of wetlands to agricultural land, impacting approximately 2.1 acres of wetlands adjacent to the Green River, a traditionally-navigable water of the United States, and approximately 800 linear feet of an unnamed tributary to the Green River. At no time during such discharge of dredged and/or fill material did Respondent have a permit under Section 404 of the CWA, 33 U.S.C. § 1344, authorizing him to perform such activities. Section 301 of the CWA, 33 U.S.C. § 1311, makes it unlawful for any person to discharge pollutants into waters of the United States without proper permit authorization, including Section 404 permit authorization.

Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), authorizes the EPA to issue orders to require compliance with the CWA. Pursuant to that authority, on May 10, 2018, the EPA entered into an Administrative Compliance Order on Consent, Docket No. CWA-04-2018-

5755 (AOC), with Respondent, whereby Respondent agreed to restore impacted wetlands.
(Bates No. 000001-000046).

Subsequently, pursuant to its authority under Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), the EPA and Respondent agreed to resolve Respondent's liability for federal civil penalties associated with Respondent's unauthorized discharge of dredged and/of fill material in the proposed CA/FO. Respondent has agreed to pay a civil penalty of \$3,346 and perform a Supplemental Environmental Project (SEP) to resolve the alleged CWA Section 404 violations. The SEP entails the conversion of approximately 281.9 acres of farmland located adjacent to the Green River from conventional farming practices to a soil health management farming system that will significantly reduce the sediment, nutrient, and pesticide runoff from the farm to the Green River.

B. CA/FO Public Notice and Comment Period

The EPA proposed the CA/FO and public noticed it in accordance on May 30, 2018, as required by 40 C.F.R. § 22.45(b)(1).¹ The 30-day public notice period closed on June 29, 2018, (Bates No. 000047-000050). The EPA received a total of six² comment letters during the public comment period, all opposed to the EPA's issuance of the proposed Settlement Agreement (Bates No. 000051-000097).

Pursuant to 40 C.F.R. § 22.45(c)(4), the EPA provided each commenter with a copy of the final CA/FO (Bates No. 000100-000126, 000145-000161) and a summary of and response to

¹ EPA Region 4 posts public notices for CWA CA/FOs on its website at: <https://www.epa.gov/aboutepa/about-epa-region-4-southeast#r4-public-notices>.

² The EPA received one additional comment letter, which lacked a return address. (Bates No. 000098-000099). See 40 C.F.R. § 22.3 (defining a "commenter" as a person who timely: (i) submits in writing to the Regional Hearing Clerk that he or she is providing or intends to provide comments on the proposed assessment of penalties pursuant to, *inter alia*, section 309(g) of the Clean Water Act, and intends to participate in the proceeding; and (ii) provides the Regional Hearing Clerk with a return address.). Hence, while the EPA considered the issues raised in that letter, the person providing those comments is not considered a "commenter" for purposes of this proceeding.

comments on August 20, 2019 (hereinafter, "Response to Comments") (Bates No. 000127-000146). The EPA subsequently corrected a ministerial error in Paragraph 35 of the CA/FO, and sent replacement pages to each commenter on August 23, 2019 (Bates No. 000162-000174). The certified mail return receipt and United States Postal Service tracking system indicate that Petitioner received the final, corrected CA/FO on August 27 (Bates No. 000163).

C. Petition to Set Aside the CA/FO

On September 24, 2019, Complainant received the timely Petition from CAPPAD on the basis that material evidence was not considered under Section 309(g)(4)(C) of the CWA, 33 U.S.C. § 1319(g)(4)(C) and 40 C.F.R. § 22.45(c)(4)(ii) (Bates No. 175-000180). After carefully considering the issues raised in the Petition, Complainant determined that the Petitioner did not raise any relevant and material issues that had not already been considered with respect to issuance of the CA/FO. Therefore, Complainant declined to withdraw the CA/FO under 40 C.F.R. § 22.45(c)(4)(iii).

On October 24, 2019, the Regional Administrator for EPA Region 4 (RA) assigned a Petition Officer to consider and rule on the Petition under 40 C.F.R. § 22.45(c)(4)(iii) (Bates No. 000181).

II. Standard of Review

Under Section 309(g)(4)(C) of the CWA, 33 U.S.C. § 1319(g)(4)(C), if no hearing is held before issuance of a CA/FO, any person who commented on the proposed CA/FO may petition, within 30 days after issuance of such CA/FO, the EPA to set aside the CA/FO and to provide a hearing on the penalty. If the evidence presented by the Petitioner in support of the Petition is material and was not considered in the issuance of the CA/FO, the EPA shall immediately set

aside the CA/FO and provide a hearing in accordance with Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A).

Section 22.45(c)(4) of the Rules of Practice implement the requirements of Section 309(g)(4)(C) of the CWA. Under 40 C.F.R. § 22.45(c)(4)(ii), within 30 days of receipt of the CA/FO, a commenter may petition the RA to set aside the CA/FO on the basis that material evidence was not considered. If Complainant does not withdraw the CA/FO to consider the matters raised in the Petition within 15 days of receipt, the RA subsequently assigns a Petition Officer to consider and rule on the Petition under 40 C.F.R. § 22.45(c)(4)(iii).

The assigned Petition Officer shall review the Petition and Complainant's response, and issue written findings as to: (1) the extent to which the Petition states an issue relevant and material to the issuance of the proposed final order; (2) whether Complainant adequately considered and responded to the Petition; and (3) whether a resolution of the proceeding by the parties is appropriate without a hearing. 40 C.F.R. § 22.45(c)(4)(v).

III. Complainant's Response to the Issues Raised in the Petition

A. Petitioner Raises Issues Outside of the Scope of the CA/FO in Support of Its Request that the EPA Set Aside the CA/FO.

The Petition raises concerns regarding Respondent's concentrated animal feeding operations³ on other properties owned by Respondent (not the Simpson/McKay Farm that is the subject of this CA/FO),⁴ and the Commonwealth of Kentucky's oversight and enforcement of such operations pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The Petitioner opines

³ Perhaps Petitioner is confused by similar acronyms: the Consent Agreement and Final Order (CA/FO) at issue here, and Respondent's concentrated animal feeding operations (CAFO), over which Petitioner raises a host of concerns in its Petition. To avoid further confusion, Complainant refrains from using any acronym to refer to concentrated animal feeding operations; the acronym "CA/FO" as used in this Response refers only to the Consent Agreement and Final Order that is the subject of this Petition.

⁴ As noted in the comment letter on the CA/FO, Petitioner appears to be primarily concerned with Respondent's animal feeding operations at the Hardy Farm, Iron Maiden Farm, and Doby/Bumblebee Farm. See Bates No. 00091.

that Respondent's operations fail to comply with certain Kentucky regulatory requirements and raises issues regarding Kentucky's "refusal" to conduct testing at these operations. Specifically, Petitioner contends that: (1) Respondent owns and operates animal feeding operations that meet the regulatory definition of "large" concentrated animal feeding operations pursuant to Kentucky Administrative Regulation (KAR), 401 KAR 5:002 and 40 C.F.R. § 122.23(b)(2) and therefore requires a Kentucky Pollutant Discharge Elimination System (KPDES) permit to comply with Section 402 of the CWA; (2) Respondent's animal feeding operations lack necessary wastewater treatment facilities; (3) the Kentucky Department of Water (KYDOW) has "refused to perform a hog count which would prove the combined number of swine" at the Respondent's operations; (4) KYDOW has "refused to test the [contents of certain lagoons at Respondent's operations]; (5) Respondent's lagoons "are nothing more than incubators for [b]acteria and [v]iruses[,] . . . are not covered,. . . have no liner[, and] create [h]ydrogen [s]ulfide [g]as and [a]mmonia gas; (6) Respondent "illegally bypassed" from the lagoon at the Hardy Farm and that wastewater contained high levels of e-coli and ammonia nitrogen; and (7) Respondent's animal feeding operations have impacted Petitioner's and the surrounding community's property values, contaminated the water, and depleted air quality.

None of the issues raised by Petitioner are relevant or material to the issuance of the CA/FO in this matter. The CA/FO at issue in this matter memorializes a class I administrative penalty action in settlement of Complainant's allegations against Respondent for unauthorized discharge of dredged and/or fill material in violation of Section 404 of the CWA, 33 U.S.C. § 1344, at the Simpson/McKay Farm beginning on or about June 2016. The EPA encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the CWA and applicable regulations. See 40 C.F.R. § 22.18(b). As described

above, Respondent entered into an AOC with the EPA to restore impacted waters of the United States. The EPA conducted an inspection of the Simpson/McKay Farm on April 17, 2019 to determine if Respondent had met the conditions of the AOC; the EPA found that Respondent had complied with such conditions and was satisfied with Respondent's restoration of the impacted area. (Bates No. 000182-000189). Additionally, the agreed-upon penalty of \$3,346 and performance of the SEP is consistent with the EPA's penalty⁵ and SEP⁶ policies, and conserves the significant government resources required by prolonged litigation. Therefore, this settlement is consistent with the provisions and objectives of Section 309 of the CWA.

Petitioner's concerns with Respondent's concentrated animal feeding operations and the Commonwealth of Kentucky's oversight of such operations are not related to this action, and do not provide bases for a hearing on this matter. While Petitioner raises a host of allegations regarding Respondent's animal feeding operations which, if true are indeed troubling, those allegations are simply not relevant and material to Respondent's unauthorized discharge of dredged and/or fill material to waters of the United States at the Simpson/McKay Farm. Moreover, although Petitioner levels a sharp critique of the Commonwealth of Kentucky's oversight of Respondent's operations, Kentucky has not assumed authority to administer the CWA Section 404 program, and its enforcement and oversight of the CWA Section 402 program is irrelevant and immaterial to this matter.

⁵ Clean Water Act Section 404 Settlement Penalty Policy (Dec. 21, 2001), available at <https://www.epa.gov/enforcement/issuance-revised-clean-water-act-cwa-section-404-settlement-penalty-policy-december-21>.

⁶ Supplemental Environmental Projects Policy 2015 Update (Mar. 10, 2015), available at <https://www.epa.gov/enforcement/2015-update-1998-us-epa-supplemental-environmental-projects-policy>.

B. Complainant Has Previously Considered and Addressed Petitioner's Comments.

Notwithstanding that Petitioner has raised issues which are irrelevant and immaterial to the CA/FO and the violations alleged therein, the EPA has previously considered and addressed such issues in the interest of transparency and principles of good governance. In its Response to Comments, the EPA addressed these concerns at length, devoting over two pages of the Response to Comments specifically to issues surrounding the animal feeding operations, the Commonwealth's oversight thereof, and the EPA's retention of enforcement authority for violations of the CWA. See Bates No. 000131-133.

C. Resolution of the Proceeding by the Parties is Appropriate Without a Hearing.

Section 309(g)(4)(C) and the Rules of Practice provide for a hearing on the merits of the CA/FO if a Petitioner presents evidence that is material and was not considered by Complainant in the issuance of the CA/FO. The purpose of such a hearing would be to determine whether Complainant has shown, by a preponderance of the evidence, that the violations alleged in the CA/FO occurred and that the relief sought is appropriate. See 40 C.F.R. §§ 22.24 and 22.45(c).

In this matter, Complainant would have the burden of establishing that Respondent discharged dredged and/or fill material into waters of the United States without proper authorization under Section 404 of the CWA, 33 U.S.C. § 1344, and that the proposed penalty and SEP are appropriate. None of the issues raised by Petitioner call into question whether Complainant has failed to meet its burden such that a hearing on the merits is warranted.

IV. Conclusion

In sum, Petitioner has failed to identify any evidence or witnesses to be introduced or description of any information to be presented that are relevant and material to the allegations

addressed in the CA/FO. For the reasons described above, Petitioner does not raise any issues that Complainant has failed to adequately consider or that warrant a hearing on the merits.

Respectfully submitted,

November 13, 2019
Date

Daniel F. O'Hone for
Mary Jo Bragan
Chief, Water Enforcement Branch
Enforcement and Compliance
Assurance Division

OF COUNSEL:
Suzanne K. Armor
Associate Regional Counsel
Office of Regional Counsel
Water Law Office
U.S. Environmental Protection Agency
Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
Tel: (404) 562-9701
Armor.Suzanne@epa.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a true and correct copy of the foregoing "Complainant's Response to Petition to Set Aside Consent Agreement and Final Order" in the matter of Jerry O'Bryan, Docket No. CWA-04-2018-5501(b), on the parties listed below in the manner indicated:

Copy by Certified mail,
Return receipt requested,
to Petitioner

CAPPAD, Inc.
P.O. Box 122
Maple Mount, Kentucky, 42356

Copy by Certified mail,
Return receipt requested,
to Respondent

Jerry O'Bryan
6939 Curdsville Delaware Road
Owensboro, Kentucky 42301

Copy by email
to Attorney for Complainant

Suzanne Armor
Associate Regional Counsel
U.S. EPA, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Dated: 11/19/19



Suzanne K. Armor
Associate Regional Counsel
U. S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9701



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAY 10 2018

CERTIFIED MAIL 7017145000079130179
RETURN RECEIPT REQUESTED

Mr. Jerry O'Bryan
6939 Curdsville Delaware Road
Owensboro, Kentucky 42301

Re: Administrative Compliance Order on Consent
Docket No.: CWA-04-2018-5755

Dear Mr. O'Bryan:

Enclosed please find the executed Administrative Compliance Order on Consent, Docket No.: CWA-04-2018-5755. The U.S. Environmental Protection Agency Region 4 has retained the original document for our enforcement files.

Thank you for your cooperation in this matter. If you have any further comments or questions, please contact Mr. Joel Strange, of my staff, at (404) 562-9455.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary S. Walker".

Mary S. Walker
Director
Water Protection Division

Enclosure

cc: Mr. Sam Werner, U.S. Army Corps of Engineers, Louisville District

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)	
)	
JERRY O'BRYAN)	ADMINISTRATIVE
)	COMPLIANCE ORDER
CURDSVILLE, KENTUCKY)	ON CONSENT
)	
)	
RESPONDENT.)	Docket No.: CWA-04-2018-5755
<hr/>		

I. Statutory Authority

1. Section 309(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(a), provides that, whenever the U.S. Environmental Protection Agency ("EPA") finds that any person is in violation of any condition or limitation which implements, *inter alia*, Sections 301 and 404 of the CWA, 33 U.S.C. §§ 1311 and 1344, the EPA may issue an order requiring such person to comply with such condition or limitation, and shall specify a time for compliance that the EPA determines to be reasonable.

2. The following Findings of Fact and Determinations of Law are made and this Administrative Compliance Order on Consent ("AOC") is issued pursuant to the authority vested in EPA by Section 309(a) of the CWA, 33 U.S.C. § 1319(a), as amended. The authority to issue this AOC has been delegated from the Administrator of the EPA to the Regional Administrator of the EPA, Region 4. The Regional Administrator has further delegated this authority to the Director of the Water Protection Division, EPA, Region 4.

II. Findings of Fact and Determinations of Law

3. To accomplish the objective of the CWA, defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), to restore and maintain the chemical, physical, and biological integrity of the nation's waters, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into waters of the United States except in compliance with a permit issued under, *inter alia*, Section 404 of the CWA, 33 U.S.C. § 1344; or if the discharge meets the requirements for an exemption under Section 404(f) of the CWA, 33 U.S.C. § 1344(f), authorizing the discharge of dredged and/or fill material into waters of the United States for activities associated with normal farming, silviculture, and ranching.

4. This AOC pertains to the deposition of dredged and/or fill material into jurisdictional wetlands and waters of the United States including approximately 2.1 acres of wetlands and 800 linear feet of an unnamed tributary of the Green River (the "Site"). The Site is located near latitude 37.731169° N and longitude -87.382159° W ("Discharge Area") (see Exhibits A and B). The deposition of the dredged and/or fill material occurred during the conversion of forested wetlands to agricultural land.

5. The impacted wetlands are adjacent to the unnamed tributary which flows directly to the Green River, a traditionally navigable water of the United States.

6. Mr. Jerry O'Bryan ("Respondent"), is a person within the definition set forth under Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

7. At all times relevant to this AOC, the Respondent was the owner and/or operator of a tract of land located west of Curdsville-Delaware Road and adjacent to the Green River, near Curdsville, in Daviess County, Kentucky ("the Site") that contain the Discharge Area.

8. Commencing on or about June 2016 to the present, the Respondent, and/or those acting on behalf of the Respondent, discharged dredged and/or fill material into jurisdictional wetlands on the Site using earth moving machinery, during activities associated with the conversion of wetlands to agricultural land. To date, the dredge and/or fill material remains in waters of the United States.

9. Respondent's unauthorized activities impacted approximately 2.1 acres of wetlands and 800 linear feet of an unnamed tributary of the Green River, a traditionally navigable water of the United States.

10. The discharged dredged and/or fill material, including earthen material deposited at the Discharge Area, are "pollutants" as defined under Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

11. The earth moving machinery employed by the Respondent to deposit the dredged and/or fill material at the Discharge Area are "point sources" as defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

12. A "discharge of a pollutant" as defined in Section 502(12)(A) of the CWA, 33 U.S.C. § 1362(12)(A), is any addition of any pollutant to navigable waters from any point source.

13. Respondent's placement of the dredged and/or fill material into the Discharge Area constitutes a "discharge of pollutants" as defined in Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

14. The term "navigable waters" as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), means the waters of the United States, including the territorial seas.

15. The Discharge Area includes "navigable waters" as that term is defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

16. At no time during the discharge of dredged and/or fill material into the Discharge Area from June 2016, to present, did the Respondent possess a permit under Section 404 of the CWA, 33 U.S.C. § 1344, authorizing the discharge of dredged and/or fill material by the Respondent.

17. Each discharge by the Respondent of pollutants into navigable waters without the required permit issued under Section 404 of the CWA, 33 U.S.C. § 1344, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

18. Each day the material discharged by the Respondent remains in waters of the United States without possessing the required permit under Section 404 of the CWA, 33 U.S.C. § 1344, constitutes a day of violation of Section 301 of the CWA, 33 U.S.C. § 1311.

19. Therefore, based on the above, the EPA finds that Respondent has violated Section 301 of the CWA, 33 U.S.C. § 1311, by discharging pollutants into navigable waters without a permit.

III. Agreement on Consent

20. Based on the foregoing Findings of Fact and Determinations of Law and pursuant to the authority of Sections 308 and 309(a) of the CWA, (33 U.S.C. §§ 1318 and 1319(a)), THE DIRECTOR HEREBY ORDERS AND THE RESPONDENT HEREBY AGREES AND CONSENTS TO THE PROVISIONS OF THE PARAGRAPHS BELOW:

a. The Respondent shall restore the Site in accordance with the signed restoration plan prepared for you by the Natural Resource Conservation Service on March 2, 2017 (Attachment A hereto).

b. Within 30 days after the Effective Date of this AOC, the Respondent shall notify the EPA of the anticipated construction start date for the restoration. Restoration must be completed within 180 days after the Effective Date of this AOC unless an extension is granted by the EPA.

c. Within 30 days after completion of the restoration, the Respondent shall submit a written statement of completion and schedule an inspection of the restored site.

21. All documentation required to be submitted by this AOC shall be sent by certified mail or its equivalent to the following address:

Mr. Joel Strange
U.S. Environmental Protection Agency
Marine Regulatory and Wetlands Enforcement Section
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

IV. General Provisions

22. The Respondent's compliance with this AOC does not necessarily constitute compliance with the provisions of the CWA, 33 U.S.C. § 1251 et seq., or its implementing regulations. The Respondent shall remain solely responsible for compliance with the terms of the CWA, its implementing regulations, and this AOC.

23. Nothing in this AOC shall constitute a waiver, suspension, or modification of the terms and conditions of the CWA or its implementing regulations, which remain in full force and effect.

24. Failure to comply with the requirements of this AOC shall constitute a violation of this AOC and the CWA, and may subject the Respondent to penalties as provided in Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19.

25. This AOC shall not relieve the Respondent of his obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any other federal, state, or local permit. Compliance with this AOC shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by the EPA.

26. Issuance of this AOC shall not be deemed as prohibiting, altering, or in any way limiting the ability of the EPA to pursue any other enforcement actions available to it under law. Such actions may include, without limitation, any administrative, civil, or criminal action to seek penalties, fines, injunctive, or other appropriate relief, or to initiate an action for imminent and substantial endangerment under the CWA or any other federal or state statute, regulation, or permit.

27. The EPA reserves all rights and remedies, legal and equitable, available to enforce any violation cited in this AOC and to enforce this AOC.

28. Nothing in this AOC is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent, or other liability resulting from violations that were not alleged in this AOC.

29. The provisions of this AOC shall apply to and be binding upon the Respondent, his agents, servants, employees, successors, and assigns.

30. Any change in the legal status of the Respondent, including but not limited to any transfer of assets or real or personal property, shall not alter the Respondent's responsibilities under this AOC.

31. The Respondent neither admits nor denies the factual allegations set forth within this AOC.

32. The Respondent admits to the jurisdictional allegations set forth within this AOC.

33. The Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the Respondent may have with respect to any issue of fact or law set forth in this AOC, including, but not limited to, any right of judicial review of this AOC under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

34. Each party shall bear its own costs and attorneys' fees in connection with the action resolved by this AOC.

35. Pursuant to Section 309(a)(4) of the CWA, 33 U.S.C. § 1319(a)(4), the EPA has sent a copy of this AOC to the Commonwealth of Kentucky.

36. Each undersigned representative of the parties to this AOC certifies that he or she is fully authorized to enter into the terms and conditions of this AOC and to execute and legally bind that party to it.

V. Effective Date

37. This AOC shall become effective upon the Respondent's receipt of the signed AOC.


FOR THE RESPONDENT:



Jerry O'Bryan

Date: 4/19/2018

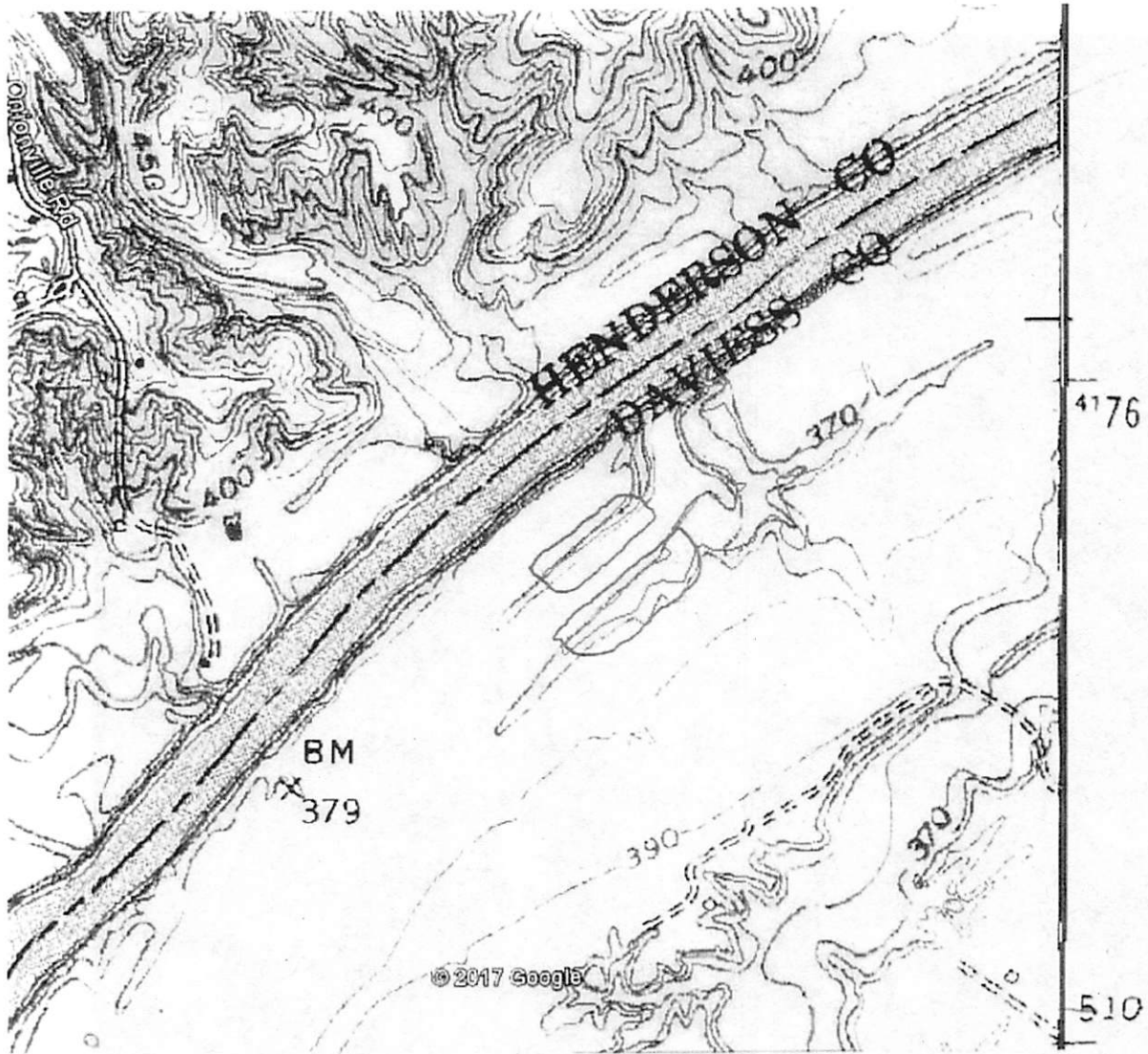
FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:



Mary S. Walker, Director
Water Protection Division
U.S. Environmental Protection Agency
Region 4

Date: 5/10/18

Exhibit A



O'Bryan Site
Mr. Jerry O'Bryan
Daviess County, Kentucky

Exhibit B



O'Bryan Site
Mr. Jerry O'Bryan
Davies County, Kentucky

WETLAND RESTORATION PLAN

For A Wetland Conversions Located On

FSN-4844 Tract-7

Located in Daviess County, Kentucky

For

Jerry O'Bryan

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- G. Wetland Restoration Plan Map**
- H. Conservation Plan Map**
- I. Record of Landowner Decision, NRCS-CPA-068**
- J. NRCS-CPA-068 Signature Page**
- K. Cost Estimate for Conservation Practices**
- L. NRCS-CPA-52**
- M. NRCS-CPA-52a**
- N. NEPA Special Environmental Concerns (SEC) Maps**
- O. Interagency Threatened, Endangered and Rare Species Report**
- P. Conservation Assistance Notes, CPA-6 (including 2004, 2008 and 2014 imagery)**

Section I

WETLAND RESTORATION AGREEMENT

This agreement is to stipulate the conditions, which must be created and maintained by Jerry O'Bryan in order to satisfy the conditions of the Clean Water Act (CWA) in regards to the wetland violation that occurred on Farm Serial Number (FSN)-4844 Tract-7. This agreement may also be used to regain USDA program eligibility if approved by the Daviess County Farm Services Agency (FSA) County Committee, and completely implemented by Jerry O'Bryan.

I, Jerry O'Bryan, hereby agree to the terms set forth in the following wetland restoration plan, and understand that any willful action on my part that (1) is not consistent with the stipulated terms, or (2) will diminish the value of the restored wetlands, will result in this agreement becoming void resulting in penalties and sanctions being levied by the U.S. ARMY CORPS of ENGINEERS (USACE) in regards to the CWA violation and the possible loss of future USDA program eligibility. I agree that the following terms of the wetland restoration plan will be installed and maintained in a condition that is in accordance with all provisions of the CWA and the National Food Security Act Manual (NFSAM), Fifth Edition, Part 515 Subparts B and D. I agree to provide the right of access to the wetlands involved to the US Environmental Protection Agency (USEPA), the USACE, the Kentucky Division of Water (KDOW) and USDA/NRCS personnel in order to monitor the development to ensure that the terms of the agreement are being met.

This Wetland Restoration Agreement is for the restoration of the 2.1 acre identified Converted Wetlands (CW+2016) sites on FSN-4844 Tract-7, which is located in Daviess County, Kentucky, as depicted in Section III, Project Location of this restoration plan.

The wetland restoration acres will be restored to the pre-existing conditions following the guidelines outlined in Section V (Restoration Techniques) of this restoration plan. Monitoring of implementation will be completed as outlined in Section VI (Monitoring Plan) of this restoration plan.

With the full implementation of this restoration plan, the 2.1 acre identified CW+2016 will be totally restored by planting bottomland hardwoods.

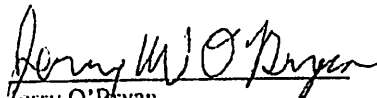
All requirements of this restoration plan are met with full compliance upon completion of this agreement. Mr. O'Bryan has also stated that he will implement conservation measures (riparian buffers, grassed waterways, soil health management system consisting of no-till farming and cover crops) on the entire farm. They will reduce erosion, build organic matter content in the soil, increase water infiltration, increases available water content and improve water quality.

With the full implementation of this restoration plan, the identified CW+2016 sites will be totally restored. Once this plan is fully implemented, NRCS will change the wetland

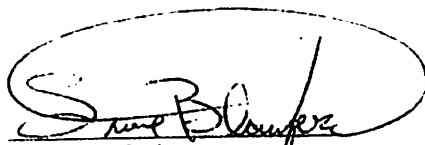
label from CW+2016 to Wetland (W) and provide the new determination to the FSA for their action regarding USDA benefits.

Successful performance will be based on the achievement of the goals of the restoration plan, which are functional in nature. If Mr. O'Bryan fails to restore and maintain the wetland values and functions as described and identified in this restoration plan, NRCS will report to the USEPA, the USACE, the KDOW and the FSA that Mr. O'Bryan is in non-compliance of this agreement. Failure to maintain the restored areas as outlined in this agreement may result in the loss of USDA program eligibility and possible penalties and sanctions being levied by the USACE in regards to the CWA violation. Should this occur, the areas will be relabeled as Converted Wetlands (CW+2016).

This wetland Restoration Agreement applies to the Clean Water Act and to the 1985 Food Security Act and its amendments. Other Federal and State permits may be required prior to project initiation. I, Jerry O'Bryan the landowner, will contact the USACE and/or the KDOW for the appropriate permits. This agreement becomes effective when signed by all parties.


Jerry O'Bryan
Landowner

8/8/2017
Date


Steve Blanford
NRCS State Soil Scientist

8/9/17
Date

Section II

PROJECT OVERVIEW

The USDA/NRCS received a letter dated July 15, 2016 from the USACE, Louisville District, soliciting comments as to whether an unauthorized activity on two unnamed tributaries on a property located at 37.729998 degrees North Latitude/-87.382107 degrees West Longitude, near Curdsville, Daviess County, Kentucky had significantly damaged the public's interest. The property is owned and operated by Jerry O'Bryan, and is identified as FSN-4844 Tract-7 with the USDA/FSA. Upon receipt of said letter, USDA/NRCS employees Coleman Gusler and Steve Blanford contacted USACE employee Sam Werner to discuss the issue. After the discussion, the participants agreed to meet at the site for further discussion. On August 17, 2016, USACE employees Sam Werner, Michael Ricketts and Jarred Bonnick; USDA/NRCS employees Dwayne Sandefur, David Gehring and Steve Blanford; The Nature Conservancy (TNC) employee Rachel Martin; and Wetland Services Inc. employee Tim Sandefur meet with Mr. O'Bryan at the site. After discussing the situation, it was mutually agreed that there was a violation, and that the USDA/NRCS would develop a restoration plan for the site. The plan would be submitted to the USACE for concurrence. It was also agreed that the USDA/NRCS would monitor the site. On August 24, 2016, USEPA employee Joel Strange; USACE employees Sam Werner and Michael Ricketts; KDOW employee Joyce Frye; USDA/NRCS employees Dwayne Sandefur, David Gehring, Donald Canary, Carlos Rhoda and Steve Blanford; and Wetland Services Inc. employee Tim Sandefur meet with Mr. O'Bryan at the site. After discussing the situation, it was mutually agreed that there was a violation, that the USDA/NRCS would develop a restoration plan for the site. The plan would be submitted to the USEPA for concurrence. It was also agreed that the USDA/NRCS would monitor the site.

The wetland restoration acres will be restored to the pre-existing conditions following the guidelines outlined in Section V (Restoration Techniques) of this restoration plan. Monitoring of implementation will be completed as outlined in Section VI (Monitoring Plan) of this restoration plan.

This restoration plan was developed at the request of the landowner with the intent to resolve the Clean Water Act wetland violation and the Food Security Act violation. It is the intent of the landowner to restore the wetland values and functions that were lost.

Section III

PROJECT LOCATION

The 2.1 acre CW+2016 areas, of this restoration plan, are located on FSN-4844 Tract-7, in Daviess County, Kentucky and currently owned and operated by Jerry O'Bryan. The site is located near the community of Curdsville, and is identified on the Curdsville 7.5 minute USGS quadrangle at 37.729998 degrees North Latitude/-87.382107 degrees West Longitude, NAD83.

The site is located on the floodplain and terrace landforms along the Green River. The land use of the areas adjacent to the site consists of agricultural croplands, prior converted wetlands, and areas of bottomland hardwood wetlands.

Section IV

SITE CHARACTERIZATION OF PRE-EXISTING PHYSICAL CONDITIONS

A. Wetland Classification

The 2.1 acre CW+2016 sites are not identified on the Cowardin/National Wetland Inventory wetland classification maps, from the USFWS. However, there are sites on the farm identified, as being: Palustrine, Scrub-Shrub, Broad-Leaved Deciduous, Semipermanently Flooded Wetland (PSS1F); Palustrine, Emergent, Persistent, Seasonally Flooded Wetland (PEM1C); Palustrine, Forested, Broad-Leaved Deciduous, Temporary Flooded Wetland (PFO1A).

B. Soils

The 2.1 acre CW+2016 sites were originally mapped as Otwell silt loam, 0 to 2 percent slopes, rarely flooded and Weinbach silt loam, rarely flooded. They are listed as soils having hydric inclusions. The on-site investigation conducted by David Gehring, USDA/NRCS Resource Soil Scientist, on July 18, 2016 confirmed that the soils on the site were hydric. The soil matrix color within the top 1 inch of the soil is (10YR 4/2) with redoximorphic colors of (7.5YR 4/6), at depths from 1 to 12 inches the soil matrix color is (10YR 5/2) with redoximorphic colors of (7.5YR 4/6), and at depths of 12 to 20 inches the soil matrix color is (10YR 5/1) with redoximorphic colors of (7.5YR 4/6). The soils at the sites are hydric, meeting the F3-Depleted Soil Matrix indicator.

According to the US Geologic Survey gauge data for the Green River, at Livermore, and where the Green River enters into the Ohio River, the elevation of frequent flooding for long duration is 365 feet. The O'Bryan site, which is located at mile marker 31 on the Green River, is located between the elevation of 360 and 380 feet. Any soils at or below 365 feet of elevation are considered hydric due to frequent flooding for long duration.

The soils in the 2.1 acre CW+2016 sites are hydric due to saturation and some are hydric due to frequent flooding for long duration.

C. Vegetation

At the time of the certified wetland determination, the areas had been mechanically cleared of all vegetation, and the vegetation information was obtained from an adjacent woodland to the east of the investigation area. The comparison site has a predominance of hydrophytic plants growing on an area of identical geomorphology and soils as the investigation area. The dominate plant species were identified as follows:

Silver Maple	<u><i>Acer saccharinum</i></u>
American Sycamore	<u><i>Platanus occidentalis</i></u>
Eastern Cottonwood	<u><i>Populus deltoides</i></u>
Pin Oak	<u><i>Quercus palustris</i></u>

D. Hydrology

The wetland hydrology of the site is driven by overbank flooding and back-water from the Green River watershed. At the time of the investigation the soils primary indicators of wetland hydrology included: High Water Table, Saturation, Sediment Deposits, Drift Deposits, and Water-Stained Leaves. Secondary indicators of hydrology included: the FAC Neutral Test, Drainage Patterns, and Geomorphic Position.

E. Topography

The topography of the site is identified on the Curdsville 7.5 minute USGS topographic quadrangle map, and is located between the elevation of 360 and 380 feet above mean sea level.

Section V

RESTORATION TECHNIQUES

A. Design Documentation

A restoration plan map showing the actual size and location of the restoration practices is located in section VII. This map will serve as a base map for the implementation of the restoration plan that will be discussed in this section. All restoration conditions and requirements of this section must be implemented within 12 months of the effective date of the signed Wetland Restoration Agreement located in Section I of this document.

B. Soils

Hydric soil conditions present before the conversion activity are still present, therefore no restoration of hydric soils are necessary.

C. Hydrology

Hydrologic conditions present before the conversion activity are still present, therefore no restoration of the hydrology is necessary.

D. Re-Vegetation

The 2.1 acre identified CW+2016 areas will be planted to bottomland hardwoods.

1. Species Selection

The areas will be planted with 3 gallon containerized trees at a rate of 70 trees per acre for a total of 147 trees. At least four or more species, from the following list of hard mast producing species, will be planted. The mixture must contain at least one species from the red oak family and at least one species from the white oak family.

<u>Common Name</u>	<u>Latin Name</u>	<u>Family</u>
Pin Oak	<u><i>Quercus palustris</i></u>	Red Oak
Shumard Oak	<u><i>Quercus shumardii</i></u>	Red Oak
Water Oak	<u><i>Quercus nigra</i></u>	Red Oak
Willow Oak	<u><i>Quercus phellos</i></u>	Red Oak
Cherrybark Oak	<u><i>Quercus falcata</i></u>	Red Oak
Swamp Chestnut Oak	<u><i>Quercus michauxii</i></u>	White Oak
Swamp White Oak	<u><i>Quercus bicolor</i></u>	White Oak
Overcup Oak	<u><i>Quercus lyrata</i></u>	White Oak
Big Shellbark Hickory	<u><i>Carya lacinosa</i></u>	Hickory
Pecan	<u><i>Carya illinoensis</i></u>	Hickory

Ultimately, specific tree species to be planted in the project area will be limited to nursery supply, but will be native to the general area.

Since hard mast species are typically slower growing and need a chance to attain sufficient growth to better establish themselves (compete for water, nutrients and light), we are not recommending the planting of any soft mass species.

Native, volunteer hardwood species will not be allowed to become established on the sites.

Native herbaceous wetland species will be allowed to volunteer on the sites for the establishment of herbaceous cover, wildlife habitat, and to help prevent erosion.

2. Site Preparation

The main purpose of site preparation is to create suitable growing conditions for the required tree seedlings. The planted areas shall be prepared by mowing the areas to a height of 8 inches or less and then by making two chemical applications before and after planting of the tree seedlings.

3. Planting Stock

The areas will be planted with 3 gallon containerized hard mast trees at a rate of 70 trees per acre for a total of 147 trees. Hard mast species will be native to the general area.

4. Planting Dates

The seedlings will be planted while they are dormant and when the soil is moist. Planting should be done between November 15 and April 15. Planting can be performed any time the ground is not frozen. The ideal planting weather is cloudy and cool.

5. Plant Spacing

The trees will be planted at the rate of 70 trees per acre for a total of 147 trees. The spacing to achieve this rate is approximately 25 feet by 25 feet.

6. Planting

The trees are to be planted by direct hand planting. The root collars should be planted between the ground surface and 2 inches below the ground surface.

7. Post Planting Weed Control

Unless the sites become infested with Johnson grass or woody vines, post-planting treatment will not be required. Mowing once or twice a year between the rows of trees will be adequate if a problem with weeds becomes evident in the first three years. Treatment with herbicides will be allowed with the approval of the USDA/NRCS personnel.

Section VI

MONITORING PLAN

Jerry O'Bryan and the USDA/NRCS will participate in the implementation of this monitoring plan.

Two monitoring stations will be created after the first growing season. These areas will be marked with a permanent post identifying the monitoring point. The latitude and longitude of the monitoring point marker will be recorded. The monitoring stations will consist of a circular sampling plot with a radius of 30 feet centered on each monitoring point marker. On site assessments will be performed once a year (at the end of the growing season) at each station for 5 years, or until the site is released by the USACE. Data recorded will consist of photos, species, and survival rates.

A. Soils

The soils investigation will be performed to demonstrate that wetland hydrology is achieving anaerobic soil conditions in the upper part of the soil profile. The investigation will also make sure that the soil conditions are consistent with the conditions described in the soils portion in Section IV, Site Characterization of Pre-existing Physical Conditions, of this restoration/mitigation plan.

B. Vegetation

Seedlings will be recorded by species and survival rates calculated. If the seedling survival rate is below 50% after the second growing season, replanting will be necessary. No single species can exceed 25% of the total stand diversity. Native, volunteer hardwood species will not be allowed to become established on the sites. After the five year monitoring period the sites will have a minimum survival rate of at least 80% of the planted trees.

Exotic invasive species, if found during the monitoring process, will be eradicated using herbicidal treatment methods that are consistent with all chemical label guidelines and specifications for use on areas that are water-safe and upland-safe.

C. Hydrology

The wetland hydrologic investigation will be performed to ensure that hydrology conditions are maintained. Surface water hydroperiod and seasonal groundwater table indicators of wetland functions will be observed and recorded to document hydrologic processes of wetland function.

D. Habitat

The habitat investigation will be performed to make a quantitative measure of the species utilizing the sites over time and a qualitative description of habitat development based on the HGM wetland functional assessment method.

E. Monitoring Reports

Monitoring reports will contain sufficient information and detail to assess the sites progress toward meeting the stated performance standards.

NRCS monitoring reports will be attached to this restoration plan which will be maintained in the NRCS customer case file in the Daviess County Field Office. Once all NRCS monitoring requirements document successful restoration, NRCS will complete a final status review which will be signed by NRCS and Jerry O'Bryan. After the final status review is completed, the restoration sites will only be monitored when deemed necessary by NRCS.

F. Success Criteria

After the fifth year of the monitoring period the sites will have a minimum survival rate of at least 80% of the planted trees. The sites shall be inundated and/or saturated for at least 5% of the growing season (<http://agacis.rcc-acis.org/?fips=21101>), and the soils will meet at least one current hydric soil indicator.

Exotic invasive species that are listed in the Kentucky Exotic Pest Plant Council lists 1 and 2 are to be controlled and are to comprise no more than 10% of the total vegetation cover in any year and are not to be included in the total aerial coverage of the site. Exotic invasive species shall be eradicated using spot herbicide application treatment methods that are consistent with all chemical label guidelines and specifications.

Failure to meet the specified criteria identified above may result in re-planting of hard mast tree species, modification of hydrology, soils remediation or other appropriate action as indicated by the NRCS representative. The NRCS representative should use best professional judgment to determine the relative success of each criterion outlined above on a case-by-case basis.

Section VII

CONSERVATION PLAN INFORMATION (Includes)

Location Map (highway)
Location Map USGS 7.5 Minute Topo
LiDAR Data
National Wetland Inventory Map
Soils Map
Soils Map Legend
Wetland Restoration Plan Map
Conservation Plan Map
Record of Landowner Decision, NRCS-CPA-068
NRCS-CPA-068 Signature Page
Cost Estimate for Conservation Practices
NRCS-CPA-52
NRCS-CPA-52a
NEPA Special Environmental Concerns (SEC) Maps
Interagency Threatened, Endangered and Rare Species Report
Conservation Assistance Notes, CPA-6 (including 2004, 2008 and 2014
imagery)

Location Map

Date: 4/20/2016

Customer(s): JERRY W OBRYAN
District: Daviess County Conservation District






Field Office: Owensboro Service Center
Agency: USDA-NRCS
Assisted By: Connie Mills

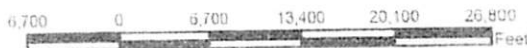
Legal Description: FN: 4844 TN: 7



Webster

Legend

-  Case PLUs
-  Daviess Co rdslocal
-  Daviess Co rdsprimary
-  Daviess Co roads100k
-  national 2000 counties utm16



Topo Map

Date: 10/5/2016

Customer(s): JERRY W OBRYAN

District: OWENSBORO SOIL & WATER CONSERVATION DISTRICT

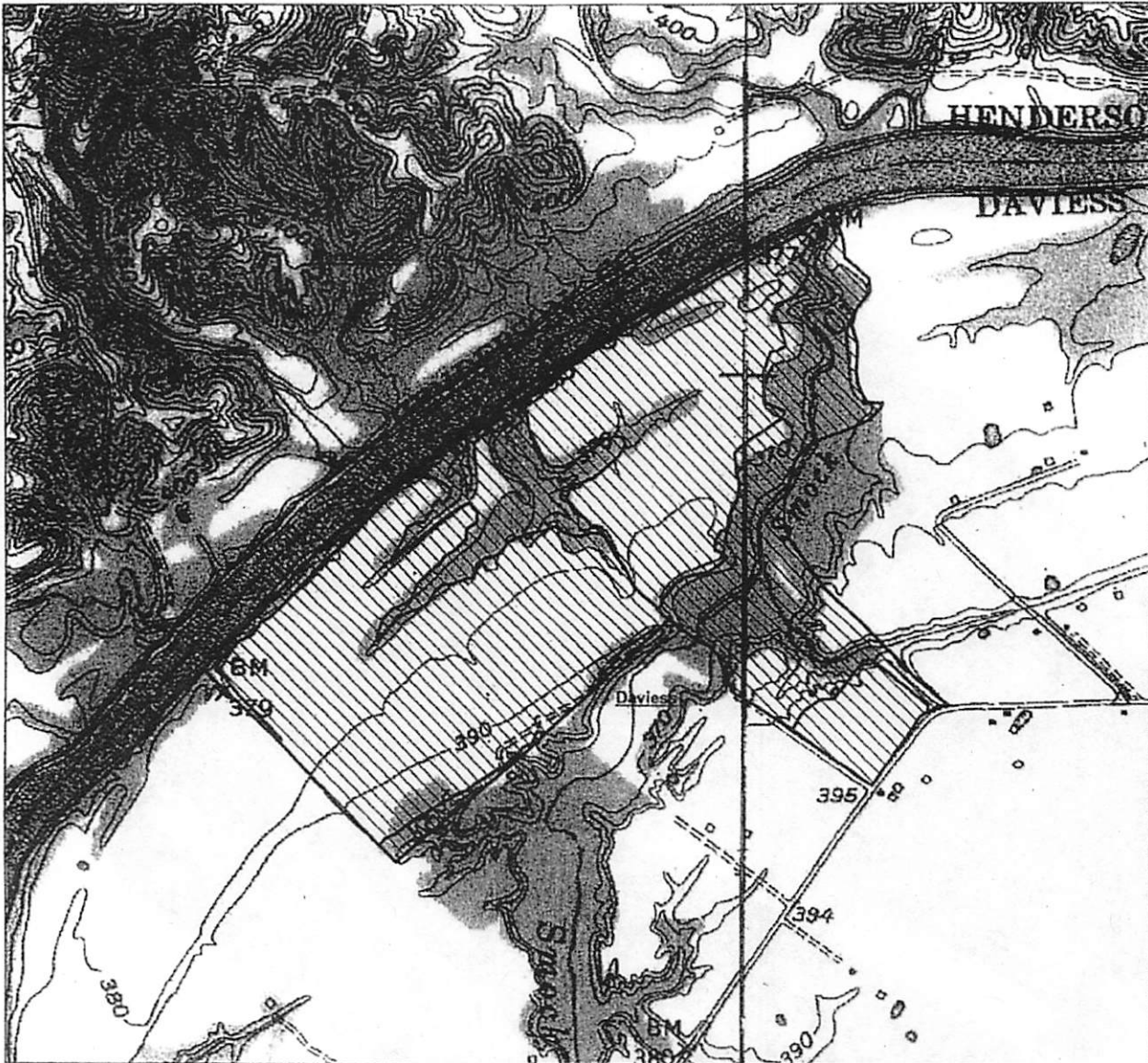
Field Office: OWENSBORO SERVICE CENTER

Agency: USDA-NRCS

Assisted By: MORGAN GENTRY

State and County: KY, Daviess County, Kentucky

Legal Description: FN: 4844 TN: 7



Legend

■ <all other values>

▨ Plan

▤ Locked

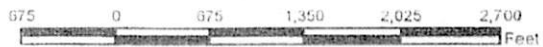
□ Legacy

▤ Draft

▨ Sketch

▨ national_2000_counties_utm16

Prepared with assistance from USDA-Natural Resources Conservation Service



LIDAR Data

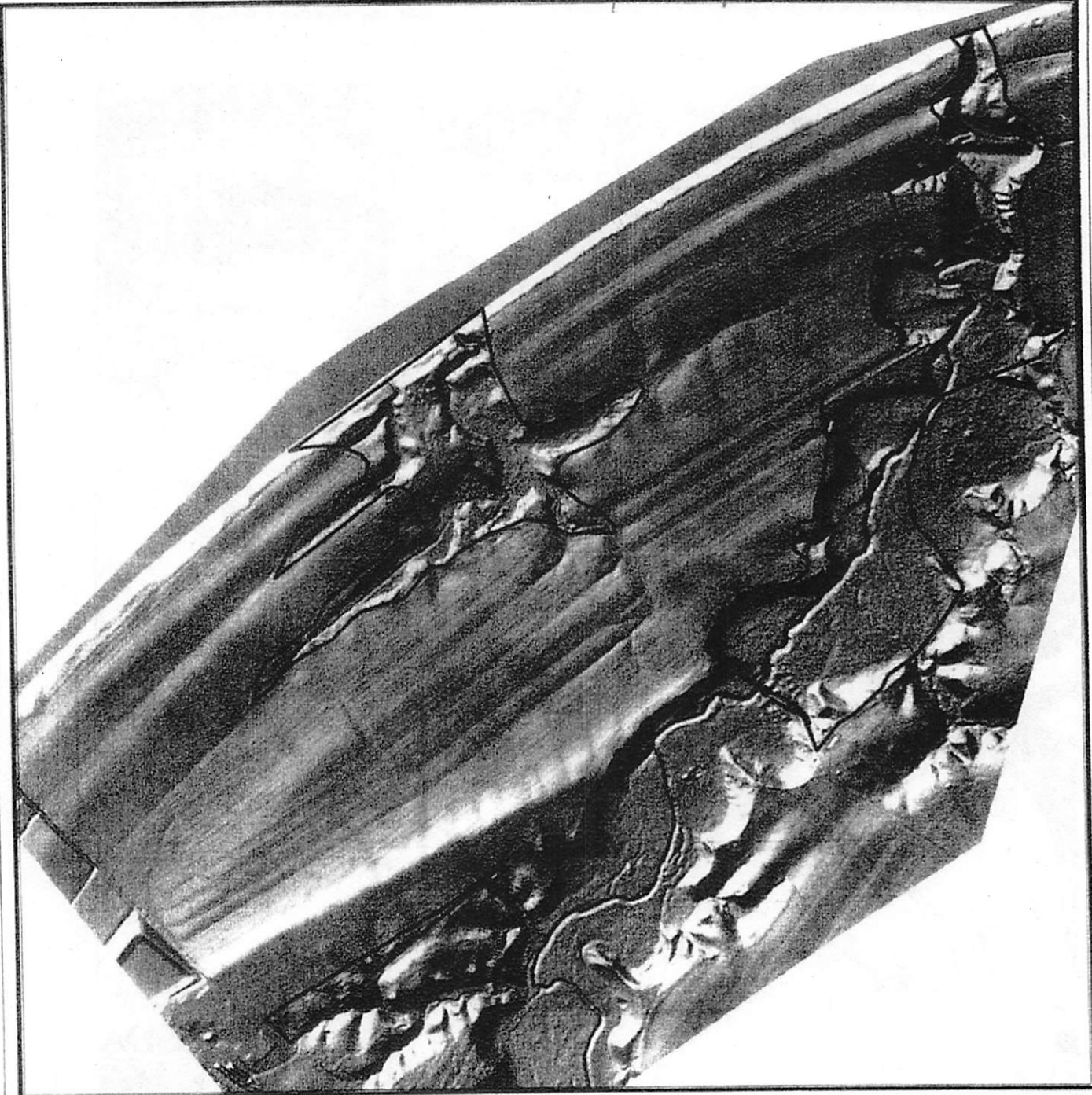
Certified Wetland Determination

Daviess County, KY

FSA Farm No. 4844

Owner: Jerry O Bryan

FSA Tract No. 7



Scale
1:8,000
(1"=667 ft.)



United States Department of Agriculture
NRCS National Conservation
3100 Alvey Park Drive West
Owensboro, KY 42303
(270) 685-1707

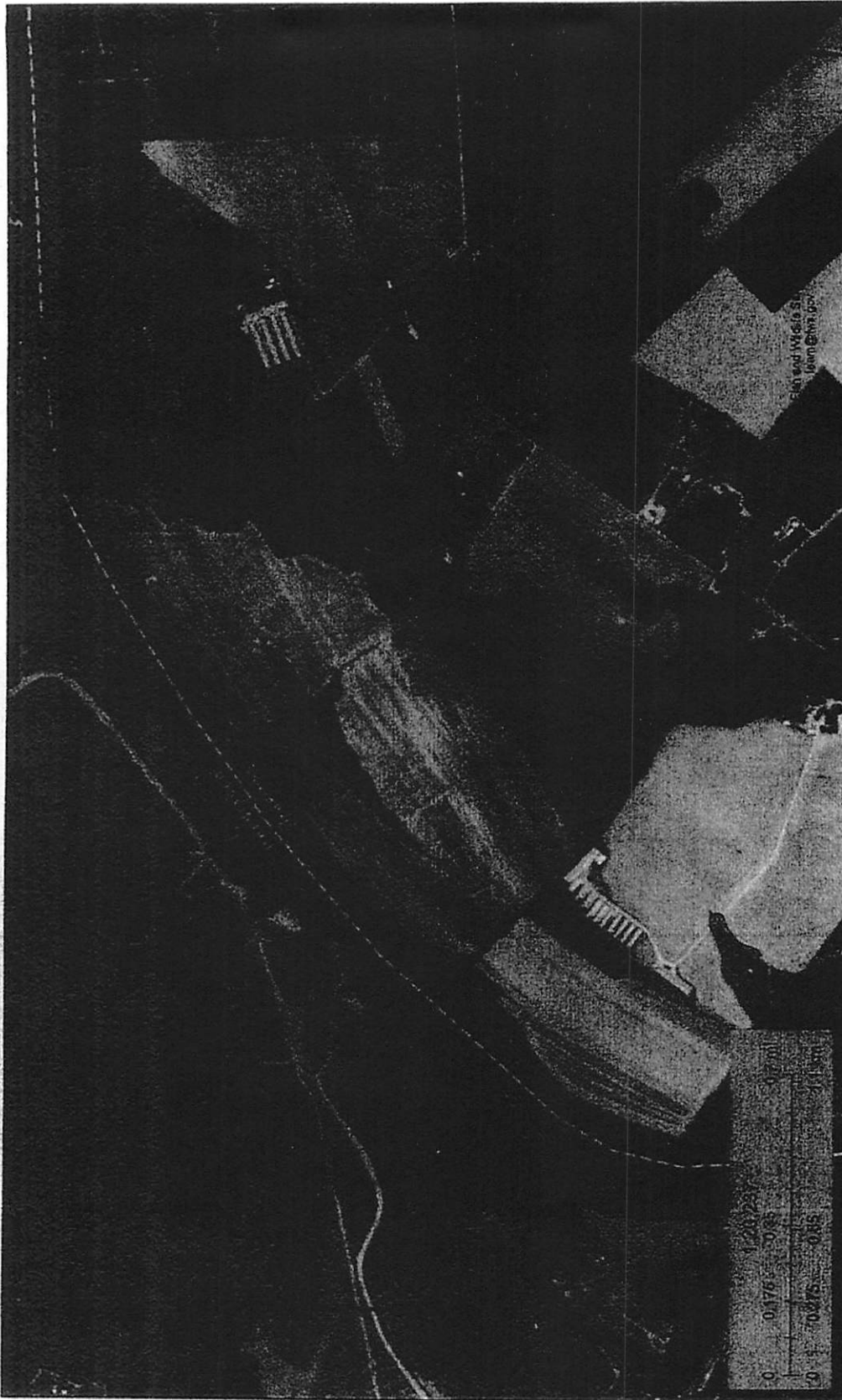
Created - 7/18/2016 by David Gehring
Soil Survey of Daviess and Hancock Counties, Kentucky
Soil Survey Version 14 - 9/15/2015
USDA-NRCS-NCGC 2014 NAIP Ortho MrSid Mosaic











U.S. Fish and Wildlife Service

National Wetlands Inventory

Jerry O'Bryan Farm Curdsville, KY



September 26, 2016

-  Estuarine and Marine Deepwater
-  Estuarine and Marine Wetland
-  Freshwater Emergent Wetland
-  Freshwater Forested/Shrub Wetland
-  Freshwater Pond
-  Lake
-  Other
-  Riverine

This map is for general reference only. The US Fish and Wildlife Service is not responsible for the accuracy or currentness of the base data shown on this map. All wetlands related data should be used in accordance with the layer metadata found on the Wetlands Mapper web site.

National Wetlands Inventory (NWI)
This page was produced by the NWI Mapper

Soils Map

Date: 4/20/2016





Customer(s): JERRY W OBRYAN
District: Daviess County Conservation District

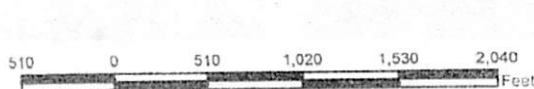
Field Office: Owensboro Service Center
Agency: USDA-NRCS
Assisted By: Connie Mills

Legal Description: FN: 4844 TN: 7



Legend

-  Case PLUs
-  Daviess Co rdslocal
-  Daviess Co rdsprimary
-  Daviess Co roads100k
- soilmu_a_ky615
- national_2000_counties_utm16



Map Unit Legend

Daviness and Hancock Counties, Kentucky (KY615)			
Map Unit Symbol	Map Unit Name	Acres in AOI	Percent of AOI
AIF	Alluvial land, steep (wheeling flooded)	45.9	14.9%
EkA	Elk silt loam, 0 to 2 percent slopes, rarely flooded	1.5	0.5%
EkB	Elk silt loam, 2 to 6 percent slopes, rarely flooded	5.3	1.7%
Hu	Huntington silt loam	0.4	0.1%
Ja	Jacob silty clay loam	0.3	0.1%
Ld	Lindsay silt loam	15.7	5.1%
Ne	Newark silt loam, 0 to 2 percent slopes, occasionally flooded	29.4	9.5%
OtA	Otwell silt loam, 0 to 2 percent slopes	48.6	15.7%
OtB	Otwell silt loam, 2 to 6 percent slopes	0.4	0.1%
Pa	Patton silt loam, 0 to 2 percent slopes, rarely flooded	0.0	0.0%
uAlfD3	Alford silt loam, 12 to 20 percent slopes, severely eroded	10.3	3.3%
uAlfF	Alford silt loam, 30 to 60 percent slopes	3.4	1.1%
uMeIA	Melvin silt loam, 0 to 2 percent slopes, occasionally flooded	13.9	4.5%
UnA	Uniontown silt loam, 0 to 2 percent slopes	7.0	2.3%
uRobA	Robbs silt loam, 0 to 2 percent slopes	17.7	5.7%
W	Water	4.8	1.5%
Wh	Weinbach silt loam	96.8	31.3%
WhC	Wheeling loam, 6 to 12 percent slopes	7.7	2.5%
Totals for Area of Interest		309.0	100.0%

Wetland Restoration Plan Map

Daviess County, KY


FSA Farm No. 4844


Owner: Jerry OBryan

FSA Tract No. 7



Legend

 Hydrography

 CW+2016 (2.1 acres)

Scale
1:2,760
1 inch = 230 feet



United States Department of Agriculture
 3100 Alvey Park Drive West
Owensboro, KY 42303
(270) 685 1707

Created - 10/5/2016 by David Gehring
Soil Survey of Daviess and Hancock Counties, Kentucky
Soil Survey Version 14 - 9/15/2015
USDA-NRCS-NCGC 2014 NAIP Ortho Mosaic

ENVIRONMENTAL EVALUATION WORKSHEET

A. Client Name: **Jorry O'Bryan**

B. Conservation Plan ID # (as applicable):
Program Authority (optional): **EQIP**

D. Client's Objective(s) (purpose):
To restore disturbed wetland per guidance

C. Identification # (farm, tract, field #, etc. as required):
F-4844 T-7

E. Need for Action:
1.) Landowner encroached on wetland in farming endeavors. Re-establishment of wetland conditions needed 2.) Headcutting in various places in the fields (see map). 3.) Two concentrated flow areas convey water rapidly without infiltration into forested area. 4.) Fields near major river (Green) and infiltration rates could be enhanced to improve water quality. 5.) Sediment deposition in two ditches affecting capacity for water-flow and quality. 6.) Excessive runoff of surface water in Field 1 causing pond issues AND 7.) Three gullies forming (total) in fields 1 and 2

H. Alternatives		Alternative 1	Alternative 2
No Action	✓ If RMS	✓ If RMS	✓ If RMS
Wetland will remain altered and functionality will be diminished. Water and any leachable/transportable sediment and nutrients will enter river without being filtered in any way	<input type="checkbox"/>	1.) Re-establish wetland areas with WETLAND RESTORATION (857). 2.) Install GSS's (410) to address headcutting issues 3.) Install GRASSED WATERWAYS (412) with SUBSURFACE DRAIN (608) to channel flow, improve infiltration and filtering of water before it reaches the river. GSS 9410 will stabilize outflow and HUA (561) will allow equipment to cross without compromising vegetated areas. 4.) NO-TILL (329) AND COVER CROP (340) will keep fields vegetated at all times, which will improve infiltration rates and minimize overland flow. 5.) Cleanout of ditches will re-establish conveyance capacity and remove sediment with potential to be lost into river 6.) Installation of TERRACE (600) will address portion of excess water and convey it to one of the established waterways, also increasing infiltration. 7.) WATER AND SEDIMENT CONTROL BASINS (638) with SUBSURFACE DRAIN (608) will address gully erosion problem in fields 1 and 2	<input type="checkbox"/>

Resource Concerns

In Section "F" below, analyze, record, and address concerns identified through the Resources Inventory process. (See FOTG Section III - Resource Planning Criteria for guidance).

F. Resource Concerns and Existing/Benchmark Conditions (Analyze and record the existing/benchmark conditions for each identified concern)	I. Effects of Alternatives		Alternative 1		Alternative 2	
	No Action		Alternative 1		Alternative 2	
	Amount, Status, Description (Document both short and long term impacts)	✓ If does NOT meet PC	Amount, Status, Description (Document both short and long term impacts)	✓ If does NOT meet PC	Amount, Status, Description (Document both short and long term impacts)	✓ If does NOT meet PC
SOIL: EROSION Concentrated flow Two concentrated flow areas that lead to forestland causing ephemeral gullies. Three ephemeral gullies (total) formed within fields 1 and 2	Ephemeral gullies will become classic gullies as flow remains uncheck	<input type="checkbox"/>	GRASSED WATERWAY (412) with SUBSURFACE DRAIN (608) will address concentrated flow into forested acres GSS (410) at the end will stabilize the outflow. HUA (561) on waterway in field 2 will allow equipment to cross without compromising vegetation of waterway once established. WASCOSBS (638) with SUBSURFACE DRAIN (608) will address gullies in fields 1 and 2 and channel water to grassed waterway for filtration	<input type="checkbox"/>		<input type="checkbox"/>
		NOT meet PC		NOT meet PC		NOT meet PC

Excessive bank erosion from streams, shorelines or water conveyance channels	Headcutting will continue and erode gully into field.	<input type="checkbox"/>	GRADE STABILIZATION STRUCTURE (410) will stabilize the area and prevent gullies from forming and soil from entering streams	<input type="checkbox"/>	<input type="checkbox"/>
Headcutting on streambank and ditches in various places in fields (see map)		NOT meet PC		NOT meet PC	NOT meet PC
SOIL: SOIL QUALITY DEGRADATION					
Organic matter depletion	Organic matter levels will remain steady or decline as field is dedicated to cropland	<input type="checkbox"/>	NO-TILL (329) of all planned crops and COVER CROP (340) over fallow period will slow rates of decay and add organic matter to improve OM levels over time	<input type="checkbox"/>	<input type="checkbox"/>
OM levels 2% according to Illinois Soil Color chart		NOT meet PC		NOT meet PC	NOT meet PC
No resource concern identified		<input type="checkbox"/>		<input type="checkbox"/>	NOT meet PC
		NOT meet PC		NOT meet PC	NOT meet PC
WATER: EXCESS / INSUFFICIENT WATER					
Excess (Ponding, flooding, seasonal high water table, seeps, and drifted portions of field 1 experiencing ponding from excessive runoff and lack of conveyance)	Situation will continue	<input type="checkbox"/>	TERRACE (600) will address excess water and convey to proper vegetated channels. Ditch cleanout will help in this endeavor	<input type="checkbox"/>	<input type="checkbox"/>
		NOT meet PC		NOT meet PC	NOT meet PC
WATER: WATER QUALITY DEGRADATION					
Other	Situation will continue and water quality of adjacent stream may suffer	<input type="checkbox"/>	WETLAND RESTORATION (657) will restore disturbed areas to their natural condition.	<input type="checkbox"/>	<input type="checkbox"/>
Manipulated wetland by landowner degrades functionality		NOT meet PC		NOT meet PC	NOT meet PC
No resource concern identified		<input type="checkbox"/>		<input type="checkbox"/>	NOT meet PC
		NOT meet PC		NOT meet PC	NOT meet PC

F. Resource Concerns and Existing/ Benchmark Conditions (Analyze and record the existing/benchmark conditions for each identified concern)	I. (continued)		Alternative 1		Alternative 2	
	No Action		Amount, Status, Description <i>(Document both short and long term impacts)</i>	✓ if does NOT meet PC	Amount, Status, Description <i>(Document both short and long term impacts)</i>	✓ if does NOT meet PC
	Amount, Status, Description <i>(Document both short and long term impacts)</i>	✓ if does NOT meet PC				
AIR: AIR QUALITY IMPACTS						
No resource concern identified		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
		NOT		NOT		NOT
No resource concern identified		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
		NOT meet PC		NOT meet PC		NOT meet PC
PLANTS: DEGRADED PLANT CONDITION						
No resource concern identified		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
		NOT meet		NOT meet		NOT meet
No resource concern identified		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
		NOT meet PC		NOT meet PC		NOT meet PC
ANIMALS: INADEQUATE HABITAT FOR FISH AND WILDLIFE						
No resource concern identified		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
		NOT meet PC		NOT meet PC		NOT meet PC

Per FOTG list. Copperbelly Watersnake and Indiana Bat Forastland manipulated. Also see KICT tool report	Copperbelly Watersnake habitat as some trees have been removed		Watersnake habitat and will involved restoration of disturbed trees No conventional tillage planned as part of vegetative establishment and no endangered plant species are listed for Daviess county			
Environmental Justice Guide Sheet Fact Sheet Per last census, 97.3% of the population is white. 0.9% is black, 1.1% is Hispanic. 14.3% of the population below poverty level.	No Effect Low-income populations, minority populations, Indian Tribes, or other specified populations are not currently experiencing disproportionately high and adverse human health impacts as a result of current practices.	<input type="checkbox"/>	No Effect Low-income populations, minority populations, Indian Tribes, or other specified populations will not experience disproportionately high and adverse human health impacts as a result of proposed action.	<input type="checkbox"/>	No Effect	<input type="checkbox"/>
Essential Fish Habitat Guide Sheet Fact Sheet PLU not in an EFH area, per NOAA	No Effect PLU not in an EFH area	<input type="checkbox"/>	No Effect PLU not in an EFH area	<input type="checkbox"/>	No Effect	<input type="checkbox"/>
Floodplain Management Guide Sheet Fact Sheet PLU adjacent to FEMA 100 yr floodplain per Gooddata layer. Land use has been agricultural for the last 3 of 5 years. Some previous disturbance of riparian area on part of landowner	No Effect No action alternative may result in an increased flood hazard or other adverse effect to the existing natural and beneficial values of the floodplain	<input type="checkbox"/>	No Effect Proposed action or alternative not likely to result in an increased flood hazard, incompatible development, or other adverse effect to the existing natural and beneficial values of the floodplain or lands adjacent or downstream	<input type="checkbox"/>		<input type="checkbox"/>
Invasive Species Guide Sheet Fact Sheet No FOTG invasive species noted during field visit	No Effect Current activities do no prevent invasive species establishment	<input type="checkbox"/>	No Effect Proposed activities preclude and/or alleviate invasive species establishment	<input type="checkbox"/>		<input type="checkbox"/>
Migratory Birds/Bald and Golden Eagle Protection Act Guide Sheet Fact Sheet No Bald Eagles noted within PLU	No Effect No eagles noted within the planning unit. Current activity will not result in the willful take of migratory birds.	<input type="checkbox"/>	No Effect No eagles noted within the planning unit. Proposed activity will not result in the willful take of migratory birds.	<input type="checkbox"/>		<input type="checkbox"/>
Natural Areas Guide Sheet Fact Sheet No Designated natural areas within PLU. Landscape mixed forest, cropland and natural areas	No Effect Current activity does not impact officially or unofficially designated natural areas	<input type="checkbox"/>	No Effect Planned practices will not degrade existing landscape aesthetics	<input type="checkbox"/>		<input type="checkbox"/>
Prime and Unique Farmlands Guide Sheet Fact Sheet PLU Prime Farmland, per GEO data layer	No Effect No conversion of Prime or Unique Farmland planned	<input type="checkbox"/>	No Effect No conversion of Prime or Unique Farmland planned	<input type="checkbox"/>		<input type="checkbox"/>
Riparian Area Guide Sheet Fact Sheet No streams run within PLU	No Effect No Action Alternative may affect the maintenance or improvement of water quality, water quantity, and fish and wildlife benefits provided by the riparian area.	<input type="checkbox"/>	No Effect Proposed action does not conflict with the values or functions of a riparian area	<input type="checkbox"/>		<input type="checkbox"/>
Scenic Beauty Guide Sheet Fact Sheet No designated Scenic Beauty areas in PLU	No Effect Maintaining current activities will not affect scenic beauty	<input type="checkbox"/>	No Effect Proposed action will not affect scenic beauty	<input type="checkbox"/>		<input type="checkbox"/>
Wetlands Guide Sheet Fact Sheet Designated Wetlands in PLU, per Soil Scientist determination. See map for delineation	No Effect Wetland determination has been completed and a proposal has been discussed with the CORPS, DOW, and the EPA for a restoration plan to replace 2.9 acres of disturbed Wetlands	<input type="checkbox"/>	No Effect A Restoration Plan has been developed by USDA-NRCS to restore the Wetland acres 2.9 to the natural state	<input type="checkbox"/>		<input type="checkbox"/>
Wild and Scenic Rivers Guide Sheet Fact Sheet Green River adjacent to PLU. No Designated Wild and Scenic Rivers in PLU, per FOTG	No Effect Lack of action alternative may have an effect on the natural values of nearby Green River if sediment or nutrients enter river	<input type="checkbox"/>	No Effect Proposed action(s) should restore the natural, cultural or recreational values of nearby rivers	<input type="checkbox"/>		<input type="checkbox"/>

K. Other Agencies and Broad Public Concerns		No Action	Alternative 1	Alternative 2
Easements, Permits, Public Review of Permits Required and Agencies Consulted:		Discussion with DOW, CORPS, USDA-NRCS and EPA for the permits and required paperwork for restoration	Gather correct permits and paperwork from listed government agencies for the restoration of 2.9 acres	
Cumulative Effects Narrative (Describe the cumulative impacts considered, including past, present and known future actions regardless of who performed the actions):		Effects have been discussed with the DOW, CORPS, and EPA along with USDA-NRCS on a site visit.	The effects will be monitored for 5 years by USDA-NRCS staff and will also follow a Wetland Restoration Plan approved by the EPA.	
L. Mitigation (Record actions to avoid, minimize, and compensate)		No mitigation actions required for maintaining current practices	no mitigation actions required for planned action. The 2.9 area that was destroyed will be replaced with a Stream restoration and Wetland Restoration Plan planting Trees and other Wetland Species	
M. Preferred Alternative	preferred alternative	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Supporting reason:		This alternative supports stated landowner objectives and fully addresses noted resources concerns with no negative environmental impacts	

N. Context (Record context of alternatives analysis) local local local

The significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality.

O. Determination of Significance or Extraordinary Circumstances

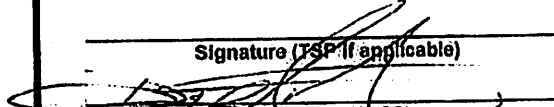
Intensity: Refers to the severity of impact. Impacts may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

If you answer ANY of the below questions "yes" then contact the State Environmental Liaison as there may be extraordinary circumstances and significance issues to consider and a site specific NEPA analysis may be required.

- | Yes | No | |
|--------------------------|-------------------------------------|--|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | • Is the preferred alternative expected to cause significant effects on public health or safety? |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | • Is the preferred alternative expected to significantly affect unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas? |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | • Are the effects of the preferred alternative on the quality of the human environment likely to be highly controversial? |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | • Does the preferred alternative have highly uncertain effects or involve unique or unknown risks on the human environment? |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | • Does the preferred alternative establish a precedent for future actions with significant impacts or represent a decision in principle about a future consideration? |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | • Is the preferred alternative known or reasonably expected to have potentially significant environment impacts to the quality of the human environment either individually or cumulatively over time? |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | • Will the preferred alternative likely have a significant adverse effect on ANY of the special environmental concerns? Use the Evaluation Procedure Guide Sheets to assist in this determination. This includes, but is not limited to, concerns such as cultural or historical resources, endangered and threatened species, environmental justice, wetlands, floodplains, coastal zones, coral reefs, essential fish habitat, wild and scenic rivers, clean air, riparian areas, natural areas, and invasive species. |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | • Will the preferred alternative threaten a violation of Federal, State, or local law or requirements for the protection of the environment? |

P. To the best of my knowledge, the data shown on this form is accurate and complete:

In the case where a non-NRCS person (e.g. a TSP) assists with planning they are to sign the first signature block and then NRCS is to sign the second block to verify the information's accuracy.

Signature (TSP if applicable)	Title	Date
	NRF	2-16-2017
Signature (NRCS)	Title	Date

If preferred alternative is not a federal action where NRCS has control or responsibility and this NRCS-CPA-52 is shared with someone other than the client then indicate to whom this is being provided.

The following sections are to be completed by the Responsible Federal Official (RFO)

NRCS is the RFO if the action is subject to NRCS control and responsibility (e.g., actions financed, funded, assisted, conducted, regulated, or approved by NRCS). These actions do not include situations in which NRCS is only providing technical assistance because NRCS cannot control what the client ultimately does with that assistance and situations where NRCS is making a technical determination (such as Farm Bill HEL or wetland determinations) not associated with the planning process.

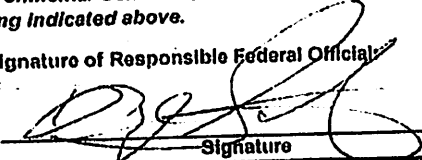
Q. NEPA Compliance Finding (check one)		Action required
<input type="checkbox"/>	1) is not a federal action where the agency has control or responsibility.	Document in "R.1" below. No additional analysis is required
<input type="checkbox"/>	2) is a federal action ALL of which is categorically excluded from further environmental analysis AND there are no extraordinary circumstances as identified in Section "O".	Document in "R.2" below. No additional analysis is required
<input checked="" type="checkbox"/>	3) is a federal action that has been sufficiently analyzed in an existing Agency state, regional, or national NEPA document and there are no predicted <u>significant adverse environmental effects or extraordinary circumstances</u> .	Document in "R.1" below. No additional analysis is required.
<input type="checkbox"/>	4) is a federal action that has been sufficiently analyzed in another Federal agency's NEPA document (EA or EIS) that addresses the proposed NRCS action and its effects <u>and has been formally adopted by NRCS</u> . NRCS is required to prepare and publish its own Finding of No Significant Impact for an EA or Record of Decision for an EIS when adopting another agency's EA or EIS document. (Note: This box is not applicable to FSA)	Contact the State Environmental Liaison for list of NEPA documents formally adopted and available for tiering. Document in "R.1" below. No additional analysis is required
<input type="checkbox"/>	5) is a federal action that has NOT been sufficiently analyzed or may involve predicted significant adverse environmental effects or extraordinary circumstances and may require an EA or EIS.	Contact the State Environmental Liaison. Further NEPA analysis required.

R. Rationale Supporting the Finding

R.1 Findings Documentation	
R.2 Applicable Categorical Exclusion(s) (more than one may apply)	(1) Planting appropriate herbaceous and woody vegetation, which does not include noxious weeds or invasive plants, on disturbed sites to restore and maintain the sites ecological functions and services; Requires that the established vegetative community maintain the sites ecological functions and services, which could not be accomplished by converting native forests or grasslands.
7 CFR Part 650 Compliance With NEPA, subpart 650.6 Categorical Exclusions states prior to determining that a proposed action is categorically excluded under paragraph (d) of this section, the proposed action must meet six skidboard criteria. See NECH 610.116.	(10) Constructing small structures or improvements for the restoration of wetland, riparian, in stream, or native habitats. Examples of activities include installation of fences and construction of small berms, dikes, and associated water control structures;

I have considered the effects of the alternatives on the Resource Concerns, Economic and Social Considerations, Special Environmental Concerns, and Extraordinary Circumstances as defined by Agency regulation and policy and based on that made the finding indicated above.

S. Signature of Responsible Federal Official:


Signature

NRP
Title

2-16-2017
Date

Additional notes

Request for Cultural Resource Review (NRCS-KY-CPA 52a)

(This document is Freedom of Information Act exempt) v7_06

County: Daviess Date: 2 9 2017 Evaluator: Rachel Martin

Program: CTA- Conservation Technical Assistance

USGS Quad:

Area of Potential Effect (APE)

Landowner/operator name(s): Jerry Obryan

Tract # 7

Field #(s) 1, 2, 6

Ground Cover: residue; forest

Affected Acres: 6

Select up to three potential or ground disturbing practices from the list, and enter extent planned.

PRACTICE	UNITS	PRACTICE	UNITS	
Grade Stabilization Structure (No.) (410)	24	Terrace (Ft.) (600)	3100	
Heavy Use Area Protection (No.) (561)	400	Water and Sediment Control Basin (Ft.) (638)	300	
Subsurface Drain (Ft.) (606)	4700	Wetland Restoration (Ac.) (657)	2.1	
Current Land Use:		Proposed Construction Date:	Nov	2017

Noteworthy Characteristics

Cultural Resource Review

	Yes	No
Is owner/operator aware of any historic structural remains, artifacts, etc?:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Are any structures, buildings etc within the APE that are more than 50 years old?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Are you aware of any National Register Sites in the APE?:	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Project Site Inspection

Date APE walked and visually searched for evidence of historic and prehistoric artifacts: July 31 2016

Walked by: Dwayne Sandefur

Percent of Ground Surface Visible?: 50 %

Was anything found? No

Briefly describe any potential cultural resources present:

Place this sheet in the "Determinations" folder of the corresponding Customer Service Toolkit file. The ArcGIS shapefile for the conservation plan showing farm boundaries and location of APE for all ground disturbing or potentially ground disturbing activities that require CRS review must be available in Toolkit. Notify the CRS of availability.

Project approved, proceed with construction

W Sharp 2-10-2017
Cultural Resources Specialist

Progress Reporting Items

- Undertakings Review
- Undertakings have Potential to Affect CR
- Field Investigations Conducted
- Sites Identified
- Sites Treated

Acres	
	6
	2

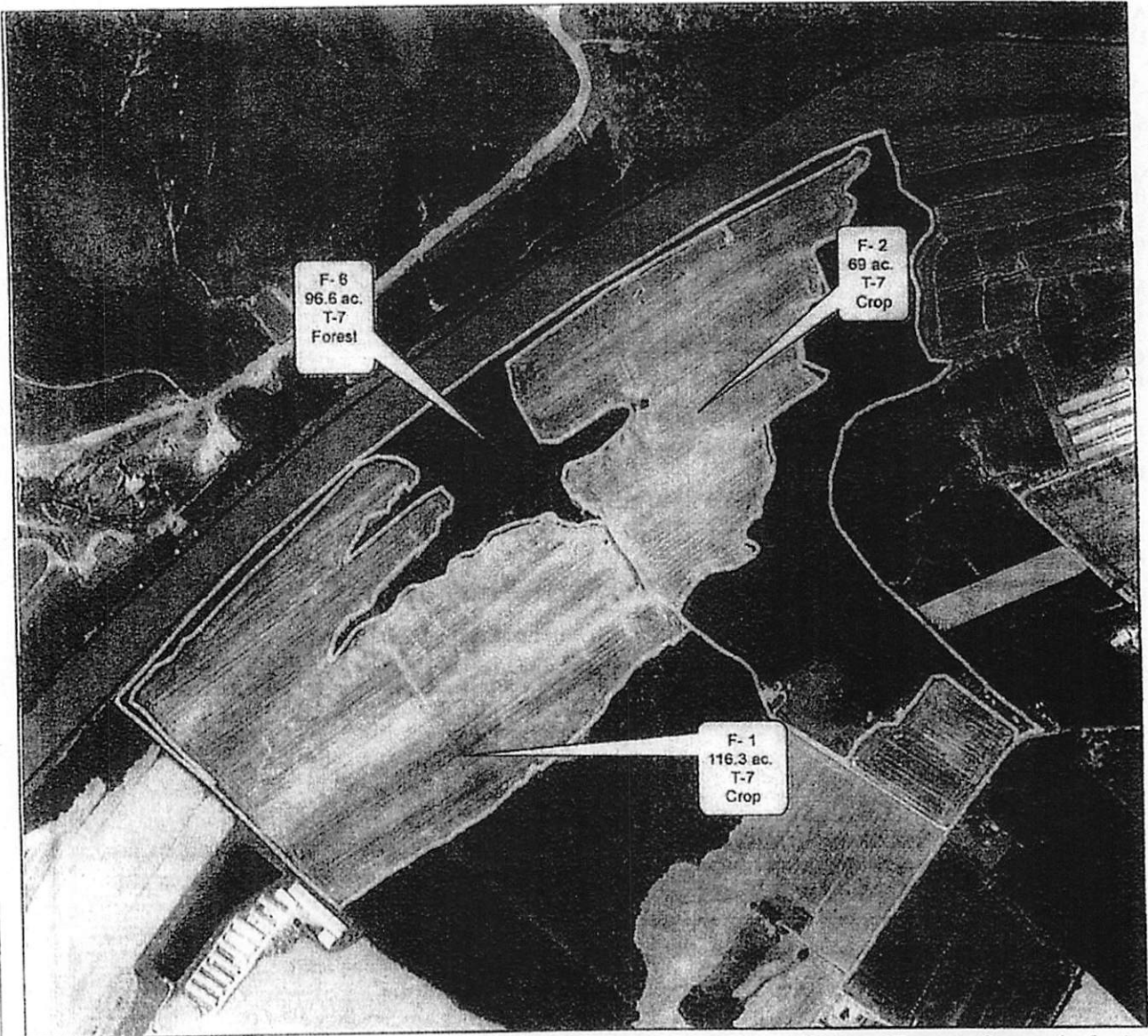
FIELD OFFICES SHOULD REPORT THE PROGRESS CHECKED ABOVE IN THE PRS CULTURAL RESOURCE DATA ENTRY SCREEN WHEN THIS FORM IS SIGNED AND RECEIVED FROM THE CRS or CRC.

NEPA SEC MAP

Date: 10/11/2016

Customer(s): JERRY W OBRYAN
Approximate Acres: 281.9
Legal Description: F- 4844 T-7

Field Office: OWENSBORO SERVICE CENTER
Agency: USDA-NRCS
Assisted By: RACHEL Martin



Prepared with assistance from USDA-Natural Resources Conservation Service



Legend

CTA-2016

Daviess Hyro

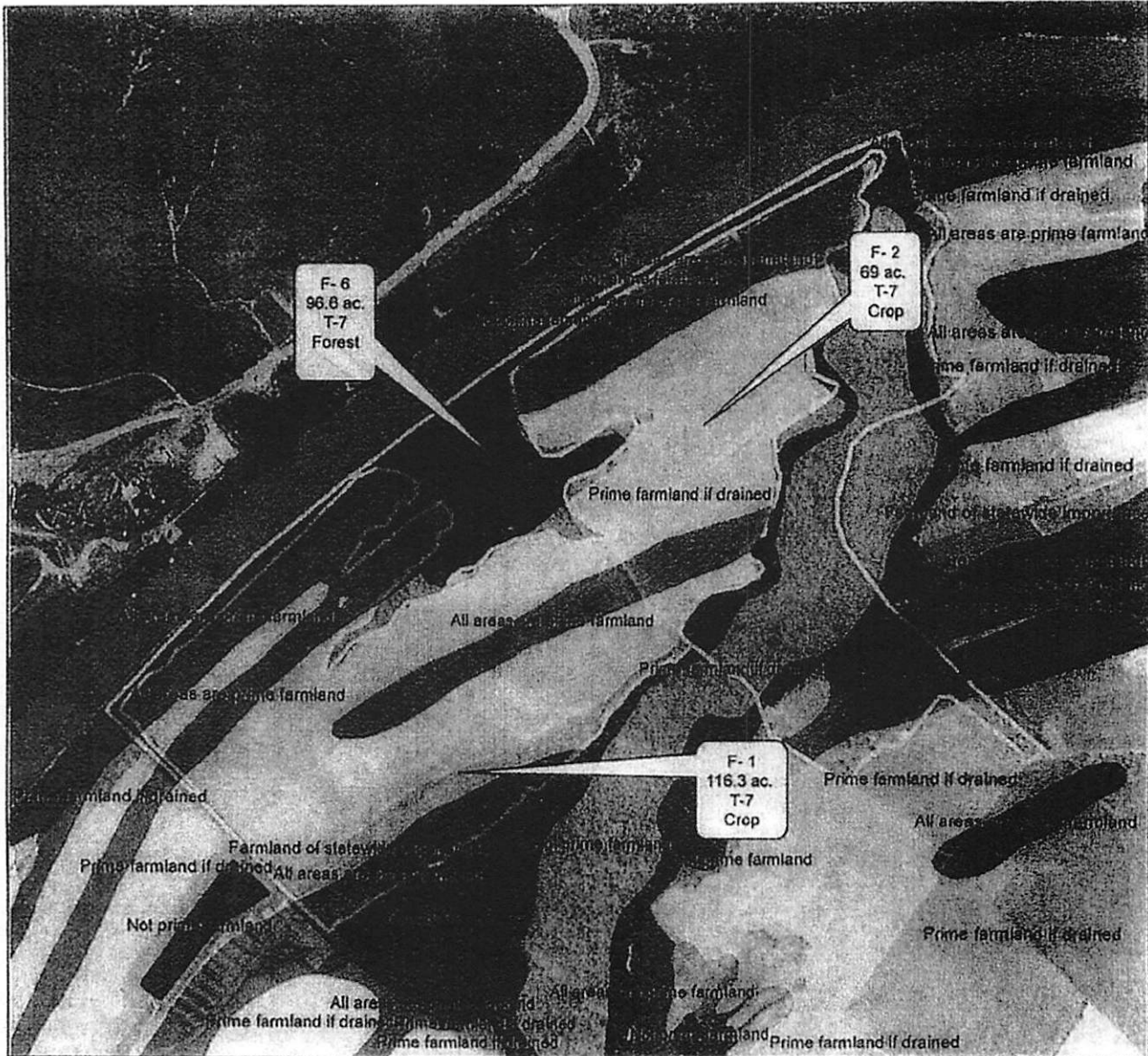


NEPA SEC MAP

Date: 10/11/2016

Customer(s): JERRY W OBRYAN
 Approximate Acres: 281.9
 Legal Description: F- 4844 T-7

Field Office: OWENSBORO SERVICE CENTER
 Agency: USDA-NRCS
 Assisted By: RACHEL Martin



Legend

Prepared with assistance from USDA-Natural Resources Conservation Service

- All areas are prime farmland
- Prime farmland if drained
- Prime farmland if drained and either protected from flooding or not frequently flooded during the growing season
- Prime farmland if protected from flooding or not frequently flooded during the growing season
- Farmland of statewide importance
- Not prime farmland



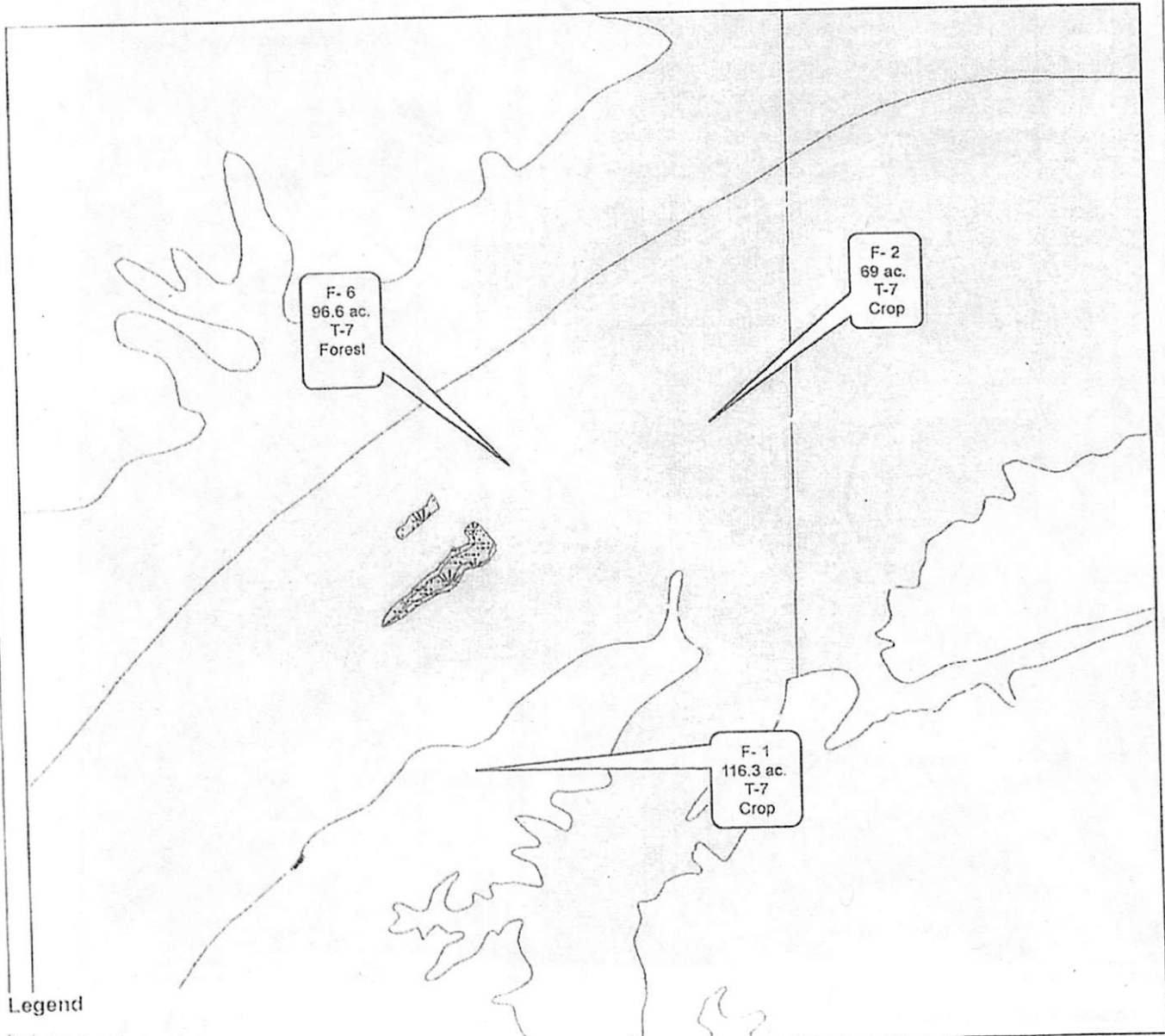
CTA-2016

NEPA SEC MAP

Date: 2/15/2017

Customer(s): JERRY WOBRYAN
Approximate Acres: 281.9
Legal Description: F- 4844 T-7

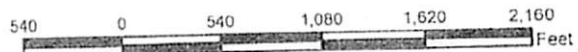
Field Office: OWENSBORO SERVICE CENTER
Agency: USDA-NRCS
Assisted By: RACHEL Martin



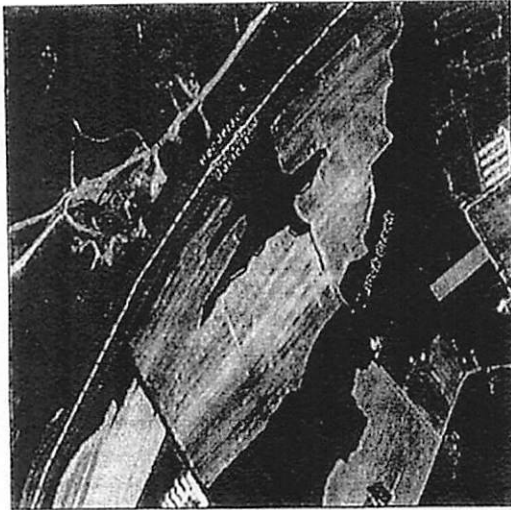
Legend

- Wetland
- CTA-2016
- DOW_Impaired_Waterways_I_ky_2017
- wetlands
- 100yr_femaq3_a_ky
- DOW_Impaired_Waterbodies_a_ky_2017
- DOW_Identified_Watersheds_a_ky_2017
- Daviss Creeks 24k
- Ditch Cleanout

Prepared with assistance from USDA-Natural Resources Conservation Service



KENTUCKY INTERAGENCY COORDINATION TOOL (KICT) -Threatened, Endangered, Candidate, Eagle and Rare Species Report



Inquiry Date: 2017-02-09
 Client: obryan
 County: Daviess
 Location: daviess co
 Acreage: 27.1104

Practices Submitted For Review	Amount	Unit
Cover Crop (340)	185	Ac.
Grade Stabilization Structure (410)	24	No.
Grassed Waterway (412)	0	Ac.
Heavy Use Area Protection (562)	0	Ac.
Subsurface Drain (606)	5250	Ft.
Terrace (600)	3100	Ft.
Water and Sediment Control Basin (638)	3	No.
Wetland Restoration (657)	2	Ac.

I. Potential Species And Impact Information

The area submitted for review may contain populations or critical habitat of Indiana bat, Northern long-eared bat. It has been determined that the following adverse impacts could potentially occur as a result of installation of one or more of the conservation practices listed above:

Potential Adverse Impact
There is a potential to adversely affect federally listed by the removal or establishment of trees or tree cover.
There is a potential to adversely affect federally listed species through a resulting change in landuse or land clearing activities.

II. Required Strategies & Effect Determination

Based on the information submitted, the following strategies are REQUIRED to be implemented to avoid adverse effects to the species listed above. The strategies listed below must be incorporated into the specifications, conservation plan, layout and/or specifications.

Practice	Required Additional Strategies For Practice Implementation
----------	--

KENTUCKY INTERAGENCY COORDINATION TOOL (KICT) -Threatened, Endangered, Candidate, Eagle and Rare Species Report

Water and Sediment Control Basin (638), Wetland Restoration (657)	Conduct any tree removal associated with this practice between November 15th and March 31st. Trees with a diameter at breast height (dbh) of less than 3 inches may be removed anytime during the year. No trees that exhibit exfoliating bark characteristics such as shell and shag bark hickories and white oak species; or dead and dying trees with exfoliating bark, broken tree tops, splintered or split areas; trees with cavities or hollowed areas shall be removed during this period.
Water and Sediment Control Basin (638)	Practice shall only be installed or applied to existing actively managed cropland, orchards and similar cropping systems.
Water and Sediment Control Basin (638)	Practice shall only be installed or applied in existing actively managed pasture, hayland or other planted grassland system (this includes farm headquarters areas).
Wetland Restoration (657)	The removal or adverse impacts to existing trees, shrubs or other native vegetation shall be avoided to the extent possible.

It has been determined that if all the required additional strategies listed above are implemented, the activities described are considered Not Likely to Adversely Affect (NLAA) the species or its habitats. No further consultation under the Endangered Species Act is required with the U.S. Fish and Wildlife Service. Proceed with planning and implementation. Maintain a copy of this report as documentation of investigation according to NRCS policy. If practices are added, quantiles, locations or other significant changes occur prior to installation, conservation planners must revise and resubmit this data. NOTE: If any of the required strategies listed above cannot be implemented, or the strategy specifically requires coordination or consultation with USFWS the proposed practice is determined as May Adversely Affect (MAA) as a direct or indirect result of implementation and will then require consultation with U.S. Fish and Wildlife Service. Contact the NRCS state biologist for ANY practice that is discovered to require incidental tree removal between April 1 and November 14.

III. Management Recommendations

The following are considerations that may be used to support conservation, but are NOT REQUIRED to avoid adverse effects. When possible utilize these strategies during conservation planning of this area:

Subject	Management Recommendation
No Management Recommendations	

IV. Potential Benefits

If all avoidance and required measures are implemented as outlined in this report, the following practices may beneficially affect species or their habitats.

Practice	Potential Benefits Provided By This Activity
Wetland Restoration (657)	This practice is considered beneficial if it provides additional habitat in the form of cover (native woody vegetation) macroinvertebrates (native forbs), or restores natural, light, thermal or hydrologic regimes to resources utilized by the species.
Wetland Restoration (657)	May be beneficial if planned and conducted in coordination with USFWS for benefit of species.

KENTUCKY INTERAGENCY COORDINATION TOOL (KICT) -Threatened, Endangered, Candidate, Eagle and Rare Species Report

Intended Use: This document is to be utilized for planning and documenting compliance with NRCS policy, the Endangered Species Act, the Bald and Golden Eagle Protection Act and some components of the National Environmental Policy Act. It is specific to activities in which NRCS staff is providing individual conservation technical assistance and/or funding under various Farm Bill programs; or for purposes of ranking to enroll in USDA programs. Projects that are larger in scope are not to utilize this methodology and will continue to follow NRCS policy and procedures as stated in GM Title 190, Part 410 - Compliance with NEPA and 190-VI-National Environmental Compliance Handbook (NECH).

Disclaimer: The information provided in this report is based on the best current data available to the U.S. Fish and Wildlife Service and the Kentucky State Nature Preserves Commission. However, errors or gaps in information and data may occur. Therefore planners should always check the site to determine the exact locations or suitability of habitat through on-site analysis. Occurrences of species or habitats could be located within the identified area of interest that is not included in this report. Responses provided by the KICT indicating the absence of species of interest may indicate that the area has not been surveyed or unknown data exists, rather than confirmation that the area lacks critical habitat or species. Verification of this information should always be performed on site. Upon discovery of protected resources or modification to original designs, further coordination may be required. If nesting eagles, Endangered, Threatened or Candidate species or their habitats are identified during implementation or construction activities, immediately cease the activity and contact your agency representative responsible for activities under the Endangered Species Act or Bald and Golden Eagle Act activities. This information is relevant only for the practices/activities identified and does not constitute formal consultation with the USFWS. The information contained herein should not be distributed to third parties without the written consent of the landowner. If you feel the information contained in this report is erroneous please contact the KICT local or state administrator.

LAND USER Jerry D. Bryan	ADDRESS 6439 Cordswill Delaware Rd Cordsville, Ky 40201	ACREAGE 160+	LOCATION OF UNIT Cordsville S.W. 4844 N.W. 7
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CURRENT CONSERVATION OBJECTIVES To Reduce erosion on eroding farm by using Best Management Practices And to Clear possible trees for additional Farming Acreage.

LIST POSSIBLE ALTERNATIVE RESOURCE MANAGEMENT SYSTEMS THE NRCS CONSERVATIONISTS MIGHT CONSIDER WITH THE LAND USER (as objectives change record them in the notes)

NOTES OF SIGNIFICANT ASSISTANCE PROVIDED, ALTERNATIVES CONSIDERED, DECISIONS REACHED, RESOURCE MANAGEMENT SYSTEMS OR COMPONENT PRACTICES INSTALLED, AND FOLLOWUP PROVIDED MAY BE RECORDED CHRONOLOGICALLY BELOW AND ON ADDITIONAL PAGES TO PROVIDE A HISTORY OF RESOURCE CONSERVATION PLANNING AND IMPLEMENTATION ACTIVITIES WITH THE LAND USER. INCLUDE AND EVALUATION OF SIGNIFICANT AND SOCIAL, CULTURAL, ECONOMIC, AND ENVIRONMENTAL RESOURCES. (These included consideration of wetlands, flood plains, endangered species, archeological values, prime lands, etc.)

DATE	ASSISTED BY (Initials)	NOTES
4/14/16	CM	Received wetland determination from EPA.
11-20-16	CM	Computer map, location, size & type for David Gehring.
7-16-16	CM	Wetland determination completed by David Gehring. Computer wetland letter and CPA-Dir form for decision to sign. Gave EPA a copy & mailed certificate to Jerry D. Bryan.
7-26-16	CM	Received uncertified mail receipt in mail.
8-15-16	DS	Jerry called about a CORPS letter that he received and wondered if I got one also. They have given him a cease and desist order for clearing trees off of a "W" site. I have not received a letter, but got a E-mail from Coleman Guster about him receiving the letter. Appt. scheduled with Steve Blanford and David Gehring to meet with the CORPS on Wednesday 8-17-16. Letter stated EPA was wanting to see site.
8-17-16	DS	Steve, David, Rachel, and I met with the CORPS @ Jerry's farm. CORPS included - Mike Kickoffs, Sam Warner, and Ryan(?) younger gentleman. It was raining, but we discussed in detail about site and proposal to discuss with EPA. CORPS said EPA out of Atlanta was leaving regardless to view on site. Raining still so we did not get to see the actual site.

DATE	ASSISTED BY (Initials)	NOTES
8-24-16	DS/SB	Steve Blanford, David Gehring, Don Canary, Carlos Rbeda, and I met with CORPS - SAM Warner, Mike Rickets, DOW Joyce Fey, and EPA - Joel Strange to discuss Wetland Violation on Jerry O'Bryans McRay Farm. We discussed Restoration on 2.6 Acres from Culvert down to Existing Wetland Area with Stream Restoration and Planting trees around remaining 2.6 Acres. SE Tim Sandetur with Wetland Services was also present - This is a Wetland Consultant that Jerry has hired to Assist with this project.
8-31-16	DS/CR/SH	Carlos, Brad Haney and I went to McRay farm and surveyed Stream Restoration area and also looked at Erosion Control Sites on Rest of Adjacent fields - Diversion, Pipe Outlet, Terraces, Grassed Waterways, GSI and other BMP's were also discussed. These will all be part of our wetland Restoration Plan. 8-24-16 Cont. It was decided that NRCS of would write the restoration plan and maintenance and would deal directly with Joel Strange with EPA on this violation.
10/6/16	DS/SB	Steve Blanford and I went and met with Jerry to discuss Restoration Plan, Stream Restoration plan and BMP (Engineering Practices) with Jerry. We reviewed entire draft plan and what NRCS has/is preparing for the EPA. Jerry was excited and really liked the entire plan. We ^{NRCS} will make some small corrections and get a final draft ready for Jerry to review before forwarding on to Joel Strange with EPA.
10/13/16	DS/RM	Completed Plan Maps, Conservation Plan, Cost-Estimate and other maps for Steve to Review.
10/20/16	DS/RM	Completed NEPA and finishing paperwork for Steve.

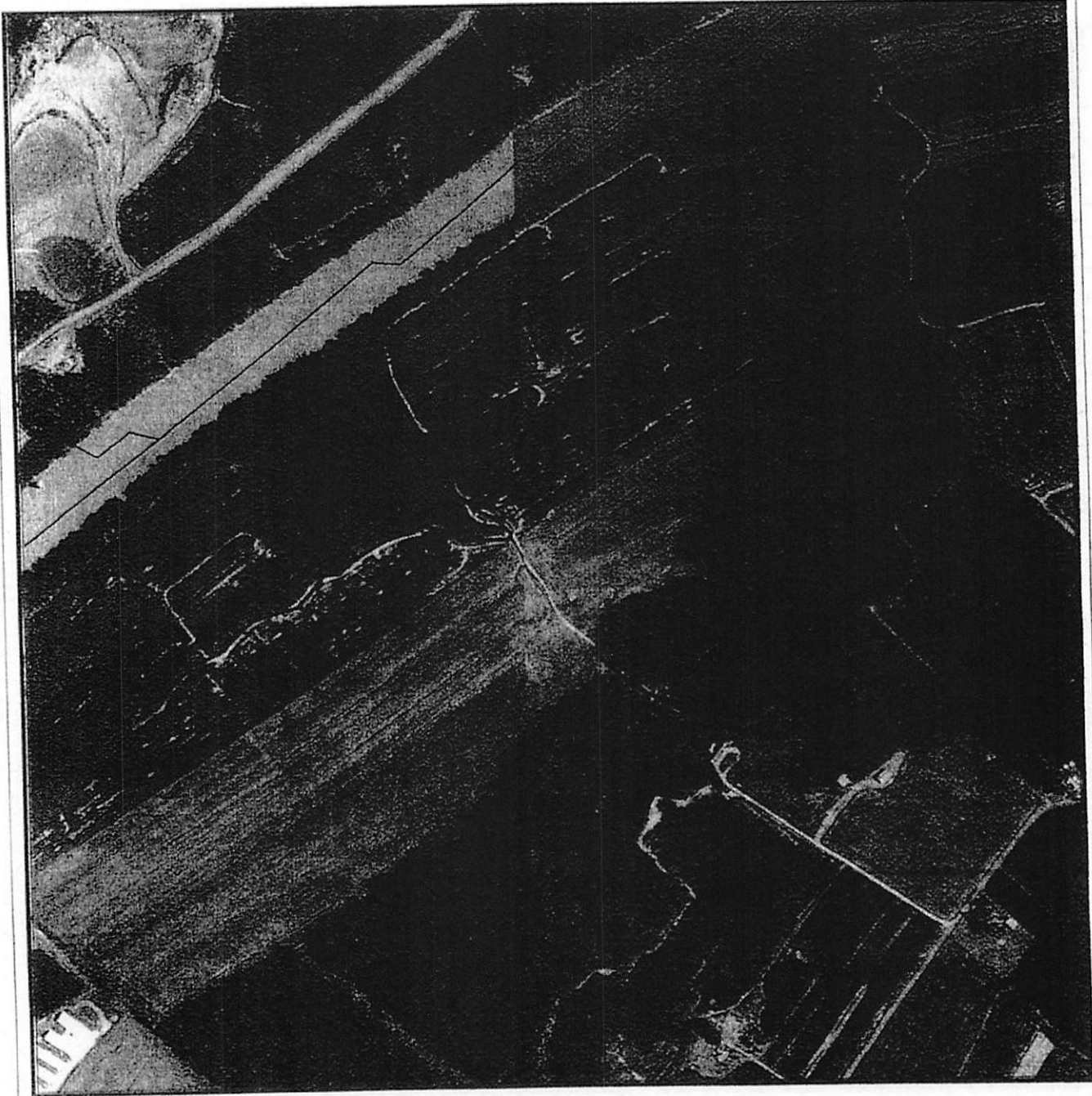
Certified Wetland Determination

Daviess County, KY

FSA Farm No. 4844

Owner: Jerry OBryan

FSA Tract No. 7



2004 Aerial Imagery

Scale
1:7,920
(1"=660 ft.)



United States Department of Agriculture
NRCS
3100 Avey Park Drive West
Owensboro, KY 42303
(270) 685-1707

Created - 7/18/2016 by David Gehring
Soil Survey of Daviess and Hancock Counties, Kentucky
Soil Survey Version 14 - 9/15/2015
USDA-NRCS-NCGC 2004 NAIP Ortho MrSid Mosaic

Certified Wetland Determination

Daviess County, KY

FSA Farm No. 4844

Owner: Jerry OBryan


FSA Tract No. 7



2008 Aerial Imagery

Scale
1:7,920
(1"=660 ft.)



United States Department of Agriculture
 NRCS
National
Headquarters
3100 Alvey Park Drive West
Owensboro, KY 42303
Phone: (270) 685-1707

Created - 7/18/2016 by David Gehring
Soil Survey of Daviess and Hancock Counties - Kentucky
Soil Survey Version 14 - 9/15/2015
USDA-NRCS-NCGC 2008 NAIP Ortho Mosaic

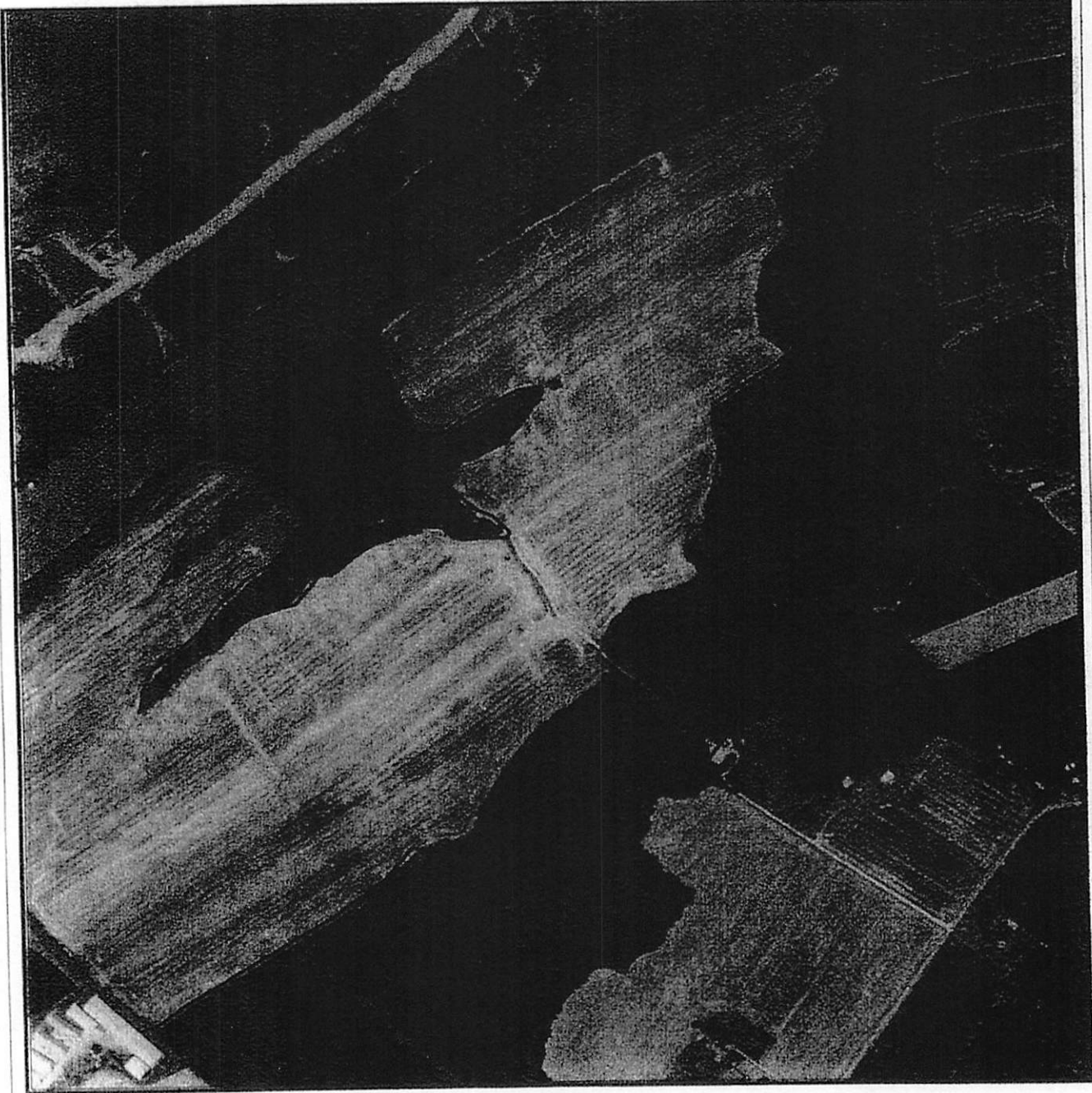
Certified Wetland Determination

Daviess County, KY

FSA Farm No. 4844

Owner: Jerry OBryan

FSA Tract No. 7



2014 Aerial Imagery

Scale
1:7,920
(1"=660 ft.)



United States Department of Agriculture
NRCS National Conservation
3100 Alvey Park Drive West
Owensboro, KY 42303
(270) 685-1707

Created - 7/19/2016 by David Gehring
Soil Survey of Daviess and Hancock Counties, Kentucky
Soil Survey Version 14 - 9/15/2015
USDA-NRCS-NCGC 2014 NAIP Ortho MrSid Mosaic

PUBLIC NOTICE
U. S. ENVIRONMENTAL PROTECTION AGENCY, REGION 4
WATER PROTECTION DIVISION
CLEAN WATER ENFORCEMENT BRANCH
ATLANTA FEDERAL CENTER
61 FORSYTH STREET, S.W.
ATLANTA, GEORGIA 30303

DATE: May 30, 2018

**Notice of Proposed Issuance of
Consent Agreement and Final Order**

The U.S. Environmental Protection Agency (EPA), Region 4, proposes to issue a Consent Agreement and Final Order (CAFO), Docket No. CWA-04-2018-5501(b), that assesses an administrative penalty of \$3,346 to Mr. Jerry O'Bryan (Respondent), under the authority of Section 309(g)(2)(A) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(2)(A). In addition, Mr. O'Bryan has proposed a Supplemental Environmental Project which entails the conversion of approximately 281.9 acres of farmland located adjacent to the Green River from conventional farming practices to a soil health management farming system that will significantly reduce the sediment, nutrient, and pesticide runoff from the farm to the Green River.

EPA alleges the Respondent has made unauthorized discharges of dredged and/or fill material into waters of the United States in violation of Section 301 of the Clean Water Act, 33 U.S.C. Section 1311. The Respondent's unauthorized activity impacted approximately 2.1 acres of forested wetlands adjacent to the Green River and approximately 800 linear feet of an unnamed tributary to the Green River. The Green River is a navigable water of the United States. The unauthorized activity is located near latitude 37.731169° N and longitude -87.382159° W, adjacent to the Green River near the town of Curdsville, Daviess County, Kentucky.

Any person wishing to comment on any aspect of the proposed CAFO Docket No. CWA-04-2016-5501(b) must submit such comments in writing to the Regional Hearing Clerk at U.S. EPA, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia, 30303. Comments must be submitted within 30 days of the date of this notice. Please include the Public Notice Number and the Docket Number with any submitted comments.

More information about this enforcement action can be found on the EPA Region 4 Website at: http://www.epa.gov/region4/water/wpeb/npdes_states.html.

Because this matters involves a CWA Section 309(g) proceeding that is proposed to be simultaneously commenced and settled under 40 C.F.R. § 22.13(b), this matter will not be resolved or settled until ten days after the close of the public comment period in accordance with 40 C.F.R. § 22.45 (b) and (c).

FOR FURTHER INFORMATION: Persons wishing to receive a copy of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22, which apply to this matter, or comment upon the proposed

penalty assessment, should contact the Regional Hearing Clerk identified above. Unless otherwise noted, the public record for this action is located in the EPA Regional Office at 61 Forsyth Street, S.W., Atlanta, Georgia, and the file will be open for public inspection between 9:00 a.m. and 4:00 p.m., Monday through Friday.

South Carolina, Tennessee and 6 Tribes

Key Issues

- [Hurricane Preparedness](#)
- [Hurricane Response](#)
- [Hurricane Irma Response](#)
- [Grenada Manufacturing, LLC, Facility Cleanup and Environmental Study in Eastern Heights Neighborhood, Grenada, MS](#)
- [EPA's Response to the Duke Energy Coal Ash Spill in Eden, NC](#)
- [Florida Everglades Restoration](#)
- [EJSCREEN: Environmental Justice Screening and Mapping Tool](#)
- [North Birmingham Environmental Collaboration Project](#)

Public Notices

- [Public Notice: Proposed Consent Agreement and Final Order \(CAFO\), Docket No.:CWA-04-2018-5501\(b\) - Comments due by June 29, 2018](#)
- [Public Notice: Federal Register – Final Permit Issuance for Offshore Oil & Gas Activities in the Eastern Gulf of Mexico](#)



[Alabama](#), [Florida](#), [Georgia](#),
[Kentucky](#), [Mississippi](#),
[North Carolina](#), [South Carolina](#),
[Tennessee](#) and [6 Tribes](#)

Related Information

- [Contact Region 4](#)
- 404-562-9900 or in the Region 4 states, 800-241-1754
- [Organization chart](#)
- [Regional Administrator](#)
- [Region 4 Laboratory](#)
- [FOIA Requests](#)
- [Recycling Program](#)
- [Topics A to Z](#)



Environmental Topics

Laws & Regulations

About EPA

Related Topics: [EPA in Kentucky](#) | [Public Notices at U.S. EPA](#)

CONTACT US SHARE

Public Notice: Proposed Consent Agreement and Final Order (CAFO), Docket No.:CWA-04-2018-5501(b)

Summary

Publish Date: 05/30/2018

The U. S. Environmental Protection, Region 4 proposes to issue a proposed CAFO that assesses an administrative penalty of \$3,346 to Mr. Jerry O'Bryan (Respondent), under the authority of Section 309(g)(2)(A) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(2)(A). In addition, Mr. O'Bryan has proposed a Supplemental Environmental Project which entails the conversion of approximately 281.9 acres of farmland located adjacent to the Green River from conventional farming practices to a soil health management farming system that will significantly reduce the sediment, nutrient, and pesticide runoff from the farm to the Green River. Any person wishing to comment on any aspect of the proposed action should do so within the comment period from May 30, 2018 to June 29, 2018.

Applicant or Respondent

How to Comment

Comments accepted through: 06/29/2018

How to Comment

Mr. Joel Strange
U.S. EPA, Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia, 30303
strange.joel@epa.gov

CAPPAD, INC.
P.O. Box 122
Maple Mount, KY 42356

June 15, 2018

Ms. Patricia Bullock
Regional Hearing Clerk
USEPA Region 4
Atlanta Federal Center
61 Forsyth Street SW
Atlanta, Georgia 30303

Public Notice No: KY180001
Docket No: CWA-04-2018-5501(b)

Dear Ms. Patricia Bullock:

This letter is written in response to the Public Notice referenced above and represents the views of the people making up "Community Against Pig Pollution and Disease, Inc." (CAPPAD), a Kentucky non-profit, tax exempt, educational and charitable corporation. CAPPAD has a direct interest in the outcome of this USEPA Consent Agreement and Final Order (USEPA CAFO), as it's membership has been harmed by the operations of the Owner of the Simpson Farm, as the property in question is known locally. US Army Corps of Engineers (USACE) communications refer to it as the McKay Farm.

We wish to first draw attention to the contents of the Cease and Desist Letter addressed to Mr. Jerry O'Bryan, the Owner, by the USACE and delivered to him by Certified Mail on July 15, 2016. In it, the following statement is made, "A search of our database shows that you have past knowledge of the Corps' regulatory program due to recent permitting at a nearby location in Daviess County, Kentucky within the past year. Also, Corps' representatives have visited the previously permitted site with you to discuss regulatory requirements and discuss permitting options. Additionally, a permit application for the work at this current site was received by my staff on June 29, 2016, indicating knowledge of the Corps' regulatory program. As a result of these previous encounters regarding our program, you are considered a willful and flagrant violator."

Unfortunately, both the Kentucky Energy and Environment Cabinet and its Division of Water (DOW), as well as the USEPA have not looked at the Owner's infractions as a continuum of activities, but instead have considered them as individual events, each to be settled and forgotten. This event, the destruction of Wetlands on the Simpson/McKay Farm, is the first time that the Owner's previous actions, in destroying Wetlands at the Mount St. Joseph Hog Truck Washing Facility (Truck Wash) have been referred to in adjudicating the subsequent event. As novel as this is, it really doesn't go far enough, because if one looks at the record of the Owner,

2018 JUN 19 PM 1:15
HEARING CLERK

Ms. Patricia Bullock:

June 15, 2018

Page 2

in disregarding both Federal and State environmental regulations, one would have to label him, not only a “willful and flagrant violator”, but a habitual violator, as well. For that reason, CAPPAD wishes to point out some of these infractions, which the State has both ignored and facilitated, and which may not have come to the proper attention of the relevant Federal Agencies, but which should be considered in remediating the Simpson/McKay Farm Wetlands event.

In identifying the Owner’s previous infractions, and the State’s response or non-response, as may have been the case, it is not my purpose to try to re-adjudicate these events, but instead to establish a pattern of behavior, which I believe should be considered in resolving the issues surrounding the purposeful destruction of the Wetlands on the Simpson/McKay Farm. Without considering this pattern of behavior, this USEPA CAFO may encourage further deleterious activities on the Owner’s part, rather than deterring them.

Listed below are a few of the Owner’s activities and the State’s response, which have been harmful to the environment and which have impacted our Community, and which I believe should be given consideration in finalizing this USEPA CAFO:

- 1. Point source discharges of E.Coli into the Green River from the Owner’s Doby/Bumblebee, Iron Maiden and Hardy Farms for a period of years, reading greater than 4,840 CFU/100ml per sample and in violation of the Ambient Water Rule. A matrix of data is attached identifying the samples taken and their locations, as well as a map showing those locations. The samples were taken by a Kentucky licensed Water Sampler and Microbiologist with 41 years experience and analyzed in a Kentucky licensed environmental laboratory, in accordance with CAPPAD’s QAPP, which follows the USEPA Guideline for QAPP’s. This same information was formally presented to Mr. Goodmann, Director of the DOW at a meeting in March of 2017, with Mr. Keith Scott, Chief of Staff to the Commissioner, Kentucky Department of Agriculture, and Mr. Biff Baker, Project Manager, Governor’s Committee on Agricultural Policy being present. It has subsequently been ignored by the DOW and it does not appear that any action has been taken by the DOW to eliminate these discharges. In fact, after CAPPAD requested the DOW rescind the KNDOP’s governing the management of the animal waste lagoons at these farms, and issue KPDES permits instead, the DOW compensated for its inaction by performing, what it called a “comprehensive” inspection of these farms, where it accepted the hog counts given it by the Owner without verifying the validity of the counts; it accepted soil sample data from the farms’ irrigated fields presented by the Owner without verifying the validity of the data, nor taking any samples itself; the DOW did not take any water or air quality samples itself, and thereafter declared it saw no evidence of effluent being discharged nor of the waters of the Commonwealth being polluted, in its final report. One has to ask, how, without the Owner discharging in front of the inspectors, one can make the statement that they saw no evidence of the waters of the Commonwealth being polluted without taking samples themselves and when they had the evidence in their possession in the form of the sample data presented to them by CAPPAD, several months earlier. The “comprehensive” inspection is little more than a sham inspection and a coverup of the Owner’s infractions and the DOW’s failure to act.**

Ms. Patricia Bullock:

June 15, 2018

Page 3

2. Much like Paragraph 1, above, the Owner has spray irrigated his cropland adjacent to the Main Feed Farm with a center pivot, that by its orientation has directly dumped effluent into a ditch that crosses under Curdsville-Delaware Road near Curdsville, and pollutes the land of an adjacent farm. The Owner has built bridges across the ditch on his property to facilitate the pivot crossing over the ditch and flooding it on a regular basis. The Owner sprays at night, and on weekends, when Kentucky Air Quality and/or DOW personnel cannot respond to calls requesting they observe the infractions. Sampling of the water flowing onto the adjacent farm's property is recorded in the above referenced matrix, and shows readings of greater than 4,840 CFU/100ml of sample taken for several months in a row. This information was also passed on to Mr. Goodmann at the March 2017 meeting noted above. He declared that this activity was trespass and should be stopped. Again, no remedial action appears to have been taken by the DOW to prevent this from occurring on a regular basis, not only when the State cannot respond, but when it is raining and when there is no crop in the field during the winter months.

It should be noted that the Owner has over the years added barns to his CAFO's and has more hogs than what he was originally permitted to have; he has not increased the volume of the lagoons that service the additional barns and is forced to spray and/or discharge more frequently than normal because of the excess effluent generated. The DOW was notified of this situation at the March meeting, but refused to address the issue during the "comprehensive" inspection, identified above.

3. This inspection revealed that the Owner had dammed a blue-line stream on the Hardy Farm near its lagoon. This backs water up over the Curdsville-Delaware Road during heavy rains and floods the land of an adjacent farm. The Owner claims that the obstruction was put in place to prevent erosion of the banks of the blue-line stream, as quoted from the commentary in the DOW "comprehensive" inspection report. This inspection report, suggests that the Owner obtain a Stream Construction Permit from the State to cover the damming activity, but says nothing about the Owner removing the dam, and nothing about how illogical it is to dam a stream in order to prevent erosion of its banks. CAPPAD reported this infraction to USACE and it is presently under review by the Newburgh, IN Office of the Corps.

These are just a few examples of the Owner's behavior - a behavior which suggests he will do anything he desires, and claim innocence when caught - totally ignoring Federal, and State laws and regulations. The list of events in which he has participated in this manner is long and has been sustained over a period of many years, hence, he can claim the title of not only being a "willful and flagrant violator", but a habitual violator, as well.

Section IV of the Consent Agreement states:

"IV. Stipulations and Findings

23. Complainant and Respondent have conferred for the purpose of settlement under 40C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without gathering any evidence or testimony, making of any

Ms. Patricia Bullock:

June 15, 2018

Page 4

argument, or adjudicating any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Administrative Consent Agreement and Final Penalty Order (CAFO) will simultaneously commence and conclude this matter.”

CAPPAD takes issue with the manner of settlement identified above. Though it may be less costly for USEPA to resolve the issue without a formal hearing, and it has taken two years to reach this point, it prompts the Owner to regard his settlement as merely the cost of doing business and will not deter him from further abuse. CAPPAD believes that, at some point, particularly when USEPA has substantive evidence of a violation, a formal hearing should be held to enforce the fact that this type of behavior is not acceptable. CAPPAD believes that this case should have been pursued with a formal hearing held to resolve it. This settlement does not serve as a deterrent.

CAPPAD wishes to present the following recommendations in order to finalize the USEPA CAFO and to deter the Owner from engaging in any further irresponsible activities, by making him consider the cost of this behavior. The State has not chosen to hold him responsible for his actions, and USEPA has the opportunity to curb this behavior by being firm in outlining what is expected of him in this case, and hopefully, in any of his future endeavors.

- A. Reference the Supplemental Environmental Project (SEP), the Conservation Plan Map should be updated to reflect the present Daviess County PVA Owner's land holdings, which for the Simpson/McKay Farm are presently 317 acres in total; 281.9 acres are to be devoted to the SEP. The present holdings represent the addition of a property adjacent to Curdsville-Delaware Road, and are included in Plot 002-00-00-008-00-000, titled under O'Bryan Land LLC in the Daviess County PVA database. This represents the property not as it existed in 2016, when the destruction of the Wetlands occurred, but the property as it probably will exist at the time the USEPA CAFO will be executed and of course, as it exists today. This is important, for if the Owner requests permits to build hog barns and a lagoon on the property not included in the SEP, it would most likely involve the land added to the Plot since 2016. He presently has built housing on this property for his farm employees.
- B. The USEPA CAFO should include verbage to exclude the possibility of the Owner constructing and operating center pivots and/or any other type of agricultural irrigation system on the lands included in the SEP. Even if he were not allowed to build a lagoon on the Simpson/McKay Farm, he could easily cross connect the irrigation system to the Iron Maiden Farm lagoon, and indiscriminately discharge effluent onto the SEP property and ultimately into the Green River. He has cross connected the lagoons on his other farms, so as to spray irrigate most of his own cropland and under contract the cropland of adjacent farms, Knott Farms for example. Water samples taken from the point source discharges at the Main/Grain Farm ditch (3,623 MPN/100ml) and the Hardy Farm ditch at the Green River (>4,840 MPN/100ml), as recently as June 12, 2018, shows the Owner's contempt for adhering to environmental regulations. Photos of the Hardy Farm Ditch point source discharging into the Green River on June 12, 2018, showing a continual flow of foam into the River, are attached. A recently made available Kentucky

Ms. Patricia Bullock:

June 15, 2018

Page 5

Watershed Watch laboratory report of a water sample taken at the Main/Grain Farm ditch on May 19, 2018, reads an amazing 24,196 MPN/100ml per sample - a reading which is almost off the bacterial pollution scale.

- C. As has been noted previously, the DOW has shown no interest in exercising oversight of the Owner's operations and has in fact, facilitated and covered up his ignoring of environmental regulations. For that reason, CAPPAD requests that USEPA exercise oversight of the SEP construction effort and operations thereafter, making periodic and unannounced inspections of the site to ensure compliance with the USEPA CAFO.
- D. For the same reason, USEPA CAFO should also stipulate that should the Owner request permits for the construction and operation of hog barns and a lagoon on the property not covered by the SEP, that such requests must be made to USEPA and such approval would only go forward under an NPDES permit.
- E. CAPPAD also requests, that as part of the USEPA CAFO, USEPA conduct an unannounced visit to the previously identified Owner's farms and verify the number of hogs he is maintaining at each, and check whether those numbers are no more than he is allowed to have according to his permits; if the number exceeds that permitted, CAPPAD requests that USEPA require the owner to apply for new NPDES permits for those farms and that he be required to reduce his herd to comply with the originally permitted number of hogs or enlarge the capacity of his lagoons to the design requirement for the number of hogs he has and add the appropriate acreage to allow land application of the effluent generated.

The permit applications for the Owner's CAFO's issued by the DOW, state the Owner will maintain no more than the following number of hogs at each of the CAFO's and has the stipulated acreage available to land apply the effluent generated:

• Doby/Bumblebee Farm -	4,000 hogs;	80 acres
• Iron Maiden Farm -	13,000 hogs	208 acres
• Hardy Farm -	7,470 hogs	256.3 acres
• Main/Feed Farm -	1,700 hogs	250 acres
• Lone Oak Farm -	18,000 hogs	366 acres

- F. The USEPA CAFO was preceded by a directive to restore the Wetlands, the 2.1 acres, that were destroyed by the Owner. A restoration plan was executed and the land restored. Trees that had been cut down were removed, the terrain was adjusted and new plantings were put in place. This was required before addressing the issue of penalties. Restoration to as close to the land's original state was not negotiable and was required to be completed before discussing the penalty phase. In August 2017, the DOW finished its "comprehensive" inspection report of the Owner's CAFO's. In its comments on the status of the Hardy Farm dam (Dow did not identify it as a dam, but the photos taken by the DOW plainly show that it is) the DOW recommended to the Owner that he apply for a Stream Construction Permit to remedy the situation. A paper work fix was offered and

Ms. Patricia Bullock:

June 15, 2018

Page 6

nothing was said about fixing the situation physically. After reading the DOW inspection report and noting the existence of the dam, CAPPAD notified USACE of the situation. Mr. Sam Werner, with the Newburgh, IN Office of the Corps, inspected the site and noted that it was a dam blocking the blue-line stream in question. In the year following, USACE has been negotiating with the Owner as to how best restore? the site. Transforming the dam into a weir has been proposed.

WHY is the illegally constructed dam on the Hardy Farm being treated differently than the destruction of the Wetlands on the Simpson/McKay Farm? It is a clear violation of the Clean Water Act. WHY hasn't the Owner been directed to remove the dam and restore the stream bed to its original condition? CAPPAD herein requests that the Hardy Farm dam restoration be included in the Simpson/McKay USEPA CAFO resolution.

Isn't it about time that each of these individual infractions be treated as one, and the magnitude of the Owner's indifference to environmental regulations be recognized? Isn't it about time that the indifference of the DOW toward exercising oversight in this arena and its lack of adhering to its own regulations be recognized, as well? Isn't it about time that the USEPA take steps to remedy this situation?

Sincerely,



Donald L. Peters
President
CAPPAD, INC.

Attachments

cc: Mr. Joel Strange
Mr. Scott Gordon
Mr. Humberto Guzman
Mr. Joe Don
Mr. Mike Ricketts
Mr. Sam Werner
File

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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JUL 15

Operations Division
Regulatory Branch (MCE)
ID No. LRL-2016-681-sew

Mr. Jerry O'Bryan
O'Bryan Grain Farms, Inc.
6939 Curdsville Delaware Road
Owensboro, Kentucky 42301

Sent To Mr. Jerry O'Bryan
Street and Apt. No., or PO Box No. 6939 Curdsville Delaware Road
City, State, ZIP+4® Owensboro KY 42301
PS Form 3800, April 2015 PSN 7530-02-000-9037 See Reverse for Instructions

CEASE AND DESIST ORDER

Dear Mr. O'Bryan:

During a recent inspection of your property in Daviess County, Kentucky, by Corps of Engineers' personnel, it was found that certain work had been performed in adjacent wetlands and tributaries flowing into the Green River, a Traditionally Navigable "water of the United States (U.S.)." A discharge of dredged and fill material had occurred within two unnamed tributaries and in wetlands on your property located at 37.729998° North Latitude/-87.382107° West Longitude. These discharges have occurred as a result of mechanized land clearing activities.

The Corps of Engineers exercises regulatory jurisdiction over "waters of the U.S." under the Clean Water Act (CWA). The Green River, its tributaries, and its abutting and adjacent wetlands are considered to be "waters of the U.S." as defined in 33 CFR Part 328. It is unlawful under Section 301 of this Act (33 USC 1311) to place dredged or fill material into "waters of the U.S.", without prior authorization. Normally, the authorization is in the form of a Department of the Army (DA) permit issued in accordance with the provisions of Section 404 of the CWA (33 USC 1344).

According to our records, no DA permit has been issued authorizing the work referenced above. Therefore, the work which has been done, constitutes a violation of Sections 301 and 404 of the CWA. This violation may subject you to civil action pursuant to Section 309(d) of the CWA (33 USC 1319(d)) with possible penalties not to exceed \$37,500.00 (as adjusted for inflation) per day for each violation; additionally, you may be subject to criminal action.

A search of our database shows that you have past knowledge of the Corps' regulatory program due to recent permitting at a nearby location in Daviess County, Kentucky within the past year. Also, Corps'

representatives have visited the previously permitted site with you to discuss regulatory requirements and discuss permitting options. Additionally, a permit application for the work at this current site was received by my staff on June 29, 2016, indicating knowledge of the Corps' regulatory program. As a result of these previous encounters regarding our program, you are considered a willful and flagrant violator.

This letter will serve as a formal Cease-and-Desist Order specifically prohibiting any further activity involving the placement of excavated or fill material below the Ordinary High Water (OHW) elevation of the tributaries to the Green River or within their abutting and adjacent wetlands or other "waters of the U.S." on the subject tract. Such activity may not resume unless and until the work is authorized in a DA permit.

In accordance with existing regulations, a report of this unauthorized activity will be prepared. This report will serve as a basis for determining the appropriate administrative and/or legal action to be taken in this matter. Any information, particularly prior approvals or disclaimers, which might bear on our evaluation and decision, should be submitted immediately. The preparation of the report and findings on this case will consider any information or comments received within 30 days from the date of this letter.

A copy of this letter this will be sent to the appropriate coordinating agencies (see enclosure for addresses). If any questions arise concerning this matter, please contact (b) (6) by writing to the above address, ATTN: CELRL-OPF-E or by calling (b) (6) at (b) (6). Any correspondence on this matter should refer to our ID No. LRL-2016-681-sew.

Sincerely,

Original Signed

(b) (6)
Chief, Regulatory Branch
Operations Division

JUL 19 2016

Enclosure

(b) (6) PF-W/rb/C&D Violator.docx (b) (6)
/OPF-W (b) (6)
PF (b) (6)

RECORD COPY

Simpson Farm



Overview



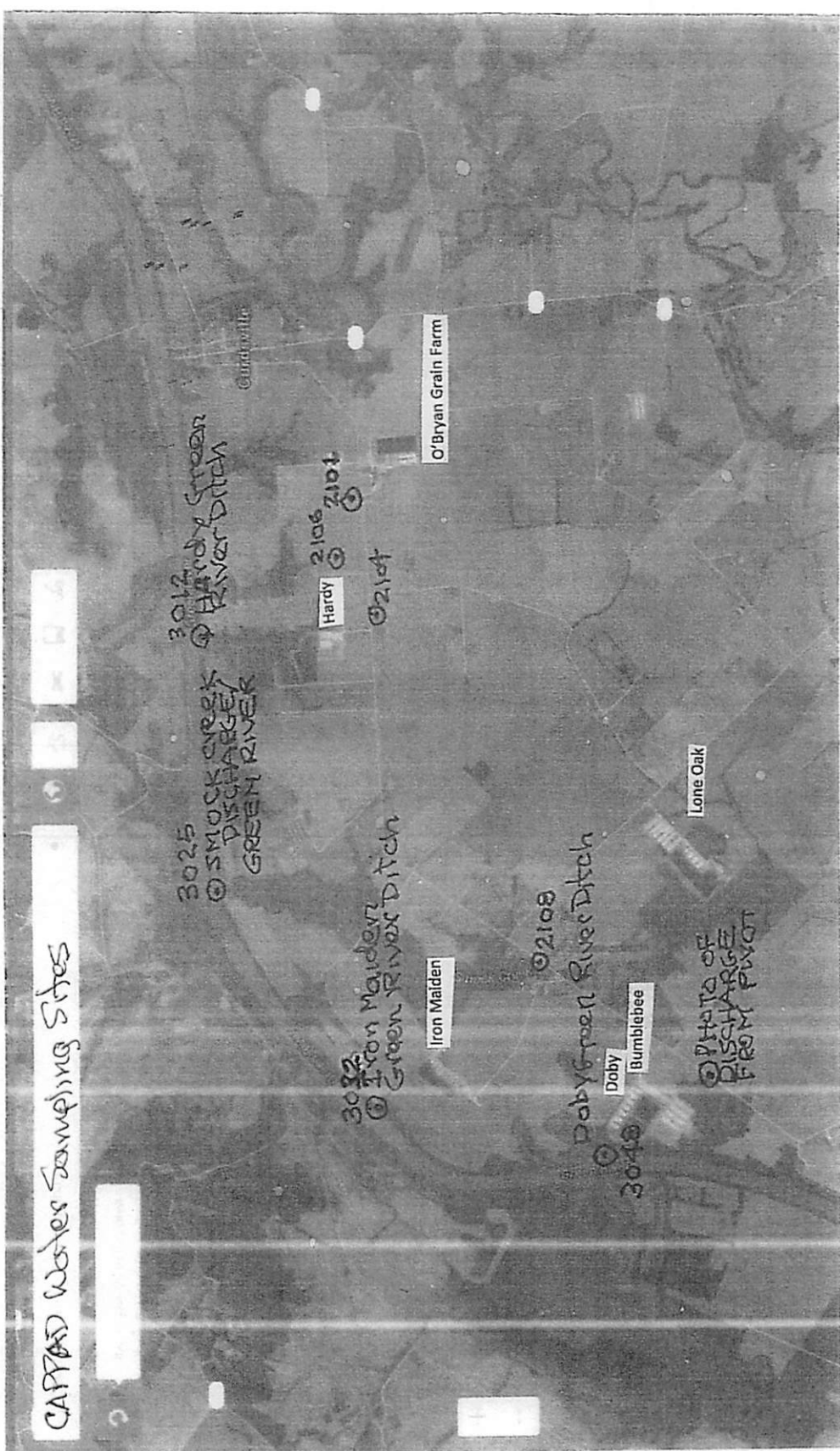
Legend

- Consolidation Line
- Parcel Numbers
- Parcel Labels
- Roads
 - <all other values>
 - ALLEY
 - BYPASS; HWY; PK USHY
 - CITY ST; CITY_ST
 - COUNTY RD; COUNTY ROAD
 - PRIVATE RD; PRIVATE ST
 - RAMP
- Parcels

Date created: 6/6/2018
 Last Data Uploaded: 6/1/2018 6:21:52 PM
 Developed by



CAPPAD Water Sampling Sites



3012
Hardy Green
River Ditch

3025
Smoek Creek
Discharge
Green River

Hardy
2106
2104

3022
Iron Maiden
Green River Ditch

O'Bryan Grain Farm

Iron Maiden

2108
Doby Green River Ditch

Doby
Bumblebee

Lone Oak

PHOTO OF
DISCHARGE
FROM PWT

CAPPAD WATER SAMPLING STATISTICS

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33				
A	B	C	D	E	F	G	H	I	J	DESCRIPTION	ID #	LATITUDE	LONGITUDE	DATE	CFU/ML	DATE	CFU/ML	DATE	CFU/ML	DATE	CFU/ML	DATE	CFU/ML	DATE	CFU/ML	DATE	CFU/ML	DATE	CFU/ML	DATE	CFU/ML					
										4	McIntyre Road Bridge-Upstream	37.415811°N	87.207091°W	9/30/15	512	344	434	1/27/16	12/30/15	1/27/16	2/24/16	3/23/16														
										5																										
										6																										
										7	Highway 258 Bridge-Downstream	37.415911°N	87.207211°W	9/30/15	1,204	286	<1	<1	1/27/16	12/30/15	1/27/16	2/24/16	3/23/16													
										8																										
										9																										
										10	Main Farm Ditch	37.436696°N	87.205976°W	6/22/16	>4,840	3,153	4,840	8/29/16	7/27/16	9/22/16	10/26/16	11/30/16														
										11																										
										12																										
										13	Schadler Driveway Ditch	37.436426°N	87.210856°W	6/22/16	>2,420	382	1	2/8/17	7/27/16	6/22/16	2/8/17															
										14																										
										15																										
										16	Payne Farm Culvert	37.437585°N	87.209275°W	6/22/16	687	3,654 MPN	5/19/18	6/22/16	5/19/18																	
										17																										
										18																										
										19	Smock Creek Bridge	37.429908°N	87.227386°W	6/22/16	488	2,851 MPN	5/19/18	6/22/16	5/19/18																	
										20																										
										21																										
										22	Highway 258/56 Hog Truck			9/29/15	>2,420	519	12	12/30/15	3/23/16																	
										23	Turnover																									
										24																										
										25																										
										26																										
										27																										
										28																										
										29																										
										30																										
										31	Hardy Green River Ditch	37.377667°N	87.354441°W	9/22/16	1,445	1,137	83MPN	10/21/16	11/25/16	7/7/17	6/12/18															
										32																										
										33																										

CAPPAD WATER SAMPLING STATISTICS

	K	L	M	N	O	P	Q	R	S	T	U	V	W
1	DATE	ID #	DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE
2	CFU/ML		CFU/ML	CFU/ML	CFU/ML	CFU/ML	CFU/ML	CFU/ML	CFU/ML	CFU/ML	CFU/ML	CFU/ML	CFU/ML
3													
4	5/11/16	001	6/22/16	7/27/16	8/29/16	9/22/16	10/26/16	6/14/17	5/19/18				
5	1700		687	882	126	440	671	261MPN	5,475 MPN				
6													
7	5/11/16	002	6/22/16	7/27/16	8/29/16	9/22/16	10/26/16	6/14/17	5/19/18				
8	4406		1,300	1,960	497	59	33	365MPN	6,488 MPN				
9													
10	2/8/17	2101	6/14/17	9/23/17	5/19/18	6/12/18							
11	>4,840		74MPN	>4,840	24,196MPN	3,623 MPN							
12													
13		2104											
14													
15													
16		2106											
17													
18													
19		2108											
20													
21													
22		004											
23													
24													
25													
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28													
29													
30													
31		3012											
32													
33													

CAPPAD WATER SAMPLING STATISTICS

	A	B	C	D	E	F	G	H	I	J
34										
35										
36	DESCRIPTION	ID #	LATITUDE	LONGITUDE	DATE	DATE	DATE	DATE	DATE	DATE
37					CFU/ML	CFU/ML	CFU/ML	CFU/ML	CFU/ML	CFU/ML
38										
39	Iron Maiden Green River Ditch	3032	37.726588°N	87.388820°W	9/22/16	10/21/16	11/25/16	7/7/17	6/12/18	
40					3,033	>4,840	>4,840MPN	>4840MPN	587 MPN	
41										
42	Smock Creek/ Green River	3025	37.736441°N	87.372737°W	9/22/16					
43					63					
44										
45	Doby Green River Ditch	3048	37.710221°N	87.393351°W	9/22/16	10/21/16	11/25/16	7/7/17	6/12/18	
46					1,340	1,438	126MPN	>4840MPN	299 MPN	
47										
48										
49										
50										
51	Green River Upstream of Doby	5105	37.708856°N	87.393522°W	11/25/16					
52					11MPN					
53										
54	Green River 100yds. Downstream	5200	37.377667°N	87.354441°W	11/25/16					
55	of Simpson Farm Ditch				18MPN					
56										
57	Green River Between Hardy and	5202	37.737831°N	87.353326°W	11/25/16					
58	Panther Creek				14MPN					
59										
60	Lattus/Truck Wash Boundry	7101	37.691690°N	87.349780°W	1/25/17					
61	Ditch				3					
62										
63	Trk Wash Entrance McIntrye Rd.	6101	37.415811°N	87.207091°W	3/18/2017					
64					>9680 MPN					

CAPPAD WATER SAMPLING STATISTICS

	K	L	M	N	O	P	Q	R	S	T	U	V	W
	DATE CFU/ML	ID #	DATE CFU/ML	DATE CFU/ML	DATE CFU/ML	DATE CFU/ML	DATE CFU/ML	DATE CFU/ML	DATE CFU/ML	DATE CFU/ML	DATE CFU/ML	DATE CFU/ML	DATE CFU/ML
34													
35													
36													
37													
38													
39		3032											
40													
41													
42		3025											
43													
44													
45		3048											
46													
47													
48													
49													
50													
51		5105											
52													
53													
54		5200											
55													
56													
57		5202											
58													
59													
60		7101											
61													
62													
63													
64													

ANALYSIS REPORT

Report Date: 06/13/2018

ATTN: Don Peters
CAPPAD
P.O. Box 122
Maple Mount, KY 42356

Sample ID: 42045-42048
Sample Date: 06/12/2018

Sample ID: 42045 Client ID: 3032 IRON MAIDEN GREEN RIVER DITCH

Test	Analysis Date/Time	By	Method	Result	Units
E.coli	06/12/2018 @ 13:20	DM	SM 9223B	587	MPN/100-mL

Sample ID: 42046 Client ID: 3048 DOBY GREEN RIVER DITCH

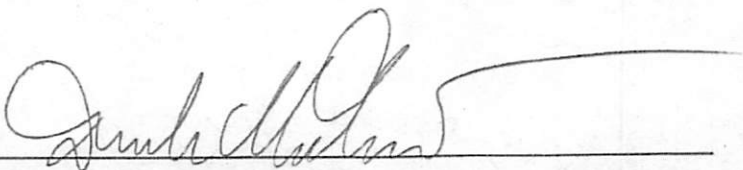
Test	Analysis Date/Time	By	Method	Result	Units
E.coli	06/12/2018 @ 13:20	DM	SM 9223B	299	MPN/100-mL

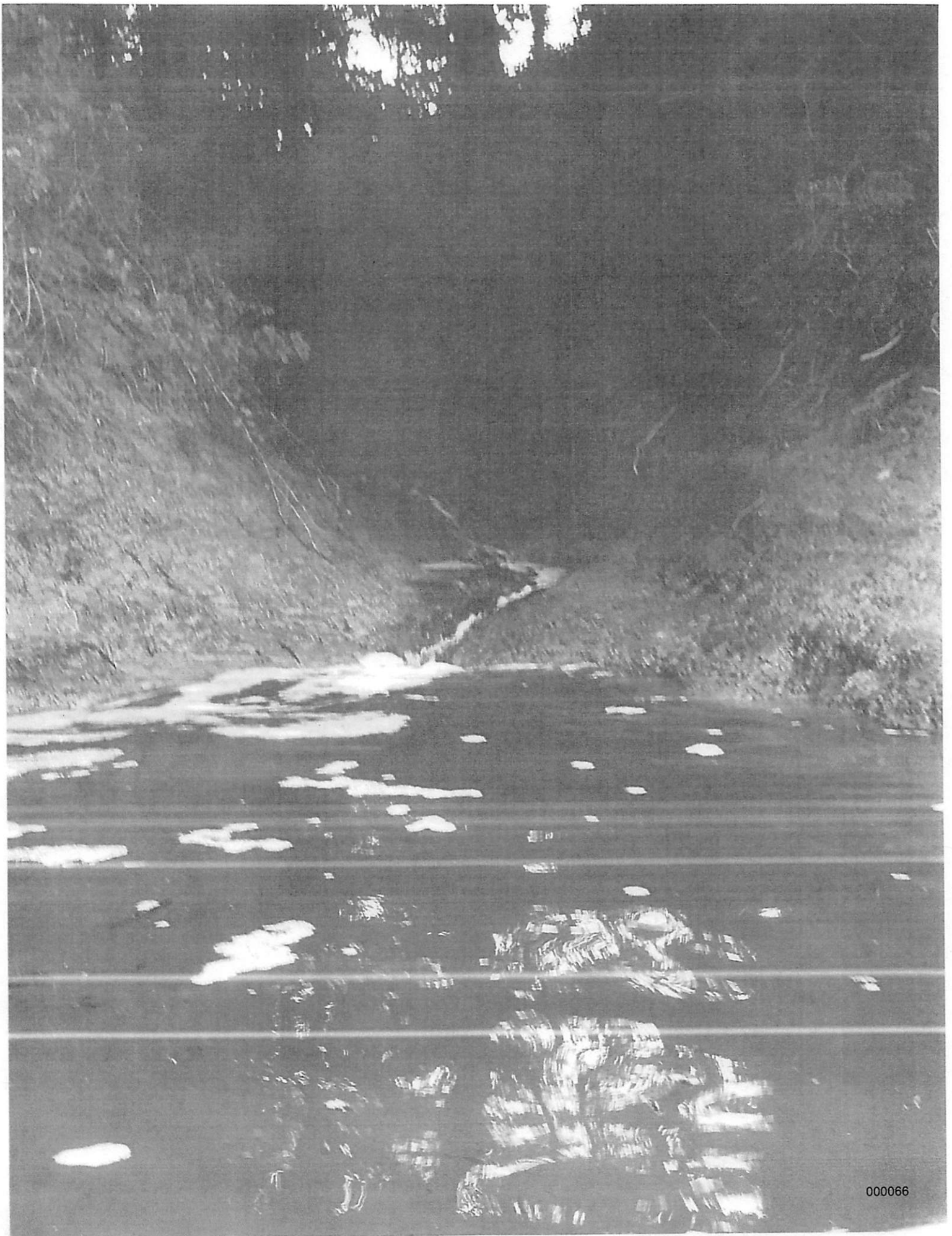
Sample ID: 42047 Client ID: 3012 HARDY GREEN RIVER DITCH

Test	Analysis Date/Time	By	Method	Result	Units
E.coli	06/12/2018 @ 13:20	DM	SM 9223B	>4,840	MPN/100-mL

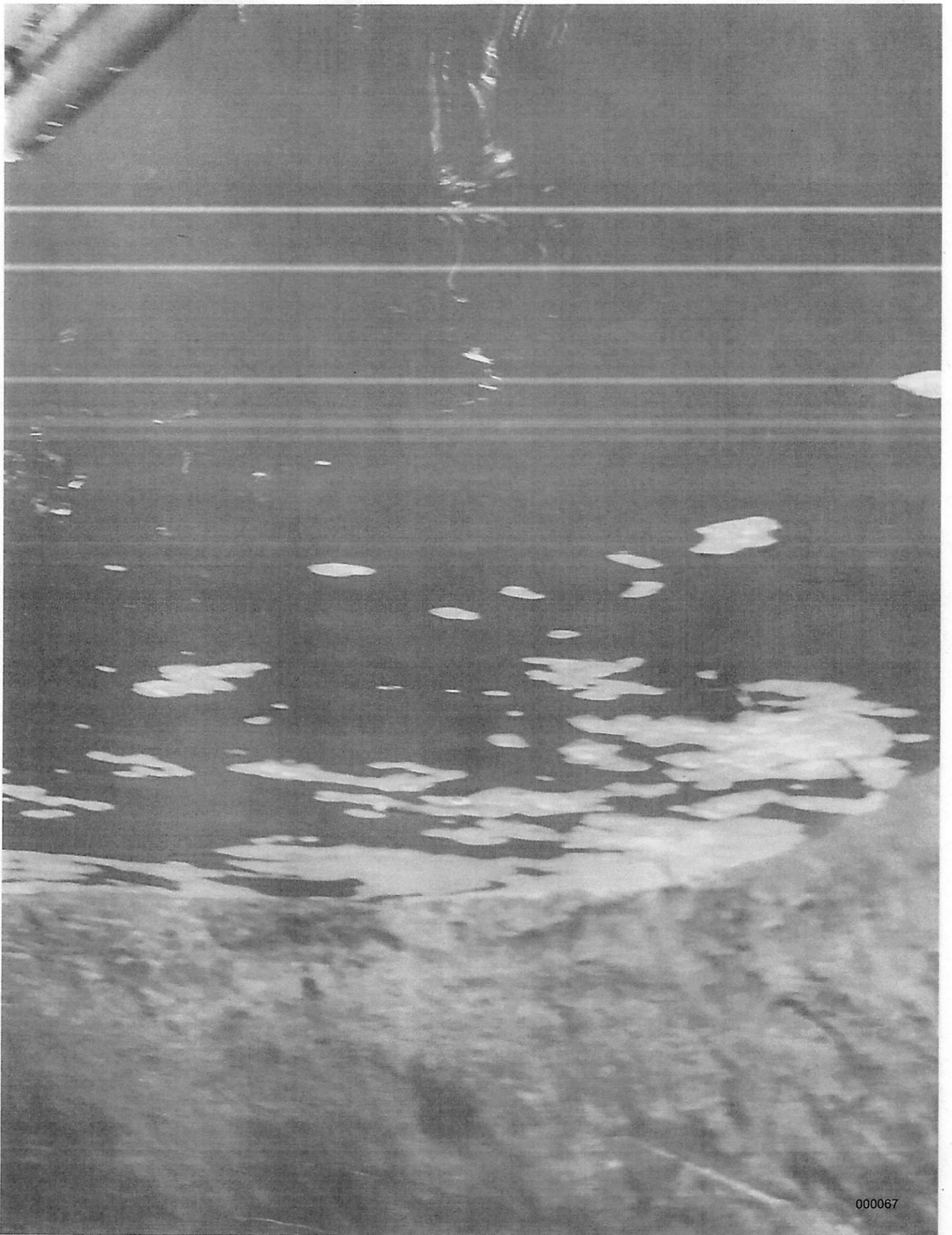
Sample ID: 42048 Client ID: 2101 MAIN FARM DITCH

Test	Analysis Date/Time	By	Method	Result	Units
E.coli	06/12/2018 @ 13:20	DM	SM 9223B	3.623	MPN/100-mL

Submitted By: 



000066



000067





000069

Concrete placed in unnamed blue line stream



ANALYSIS REPORT

Report Date: 09/04/2017

ATTN: Don Peters
CAPPAD
P.O. Box 122
Maple Mount, KY 42356

Sample ID: 38655
Sample Date: 08/23/2017

Sample ID: 38655 Client ID: 3055 *Water Sample From Just Below Dam - Henchy Crw*

Test	Analysis Date/Time	By	Method	Result	Units
E.coli	08/23/2017 @ 11:45	DM	SM 9223B	>4.840	MPN/100-ml

Submitted By: *Don Peters*

Donald

From: "Donald" <dlp0297@exede.net>
Date: Monday, September 18, 2017 10:36 AM
To: "Donald.Peters" <dlp0297@exede.net>
Subject: Fw: Receipt of Jerry O'Bryan Farms/Piggy Express LLC Inspection Reports

From: Gabbard, Tom (EEC)

Sent: Wednesday, September 13, 2017 1:29 PM
To: dlp0297@exede.net
Cc: Goodmann, Peter (EEC) ; Quarles, Jackie (EEC) ; Gaddis, Sarah (EEC) ; Baker, William (EEC) ; McLeary, Shannon (EEC)
Subject: **FW:** Receipt of Jerry O'Bryan Farms/Piggy Express LLC Inspection Reports

Mr. Peters:

We have reviewed your response regarding inspections conducted at the O'Bryan swine operations and truck wash facility. Please note our responses in blue font below.

Tom Gabbard, Assistant Director
Division of Water
300 Sower Blvd.
Frankfort, Kentucky 40601
Direct Phone (502) 782-6952
DOW Phone (502) 564-3410

From: Donald [mailto:dlp0297@exede.net]
Sent: Wednesday, August 23, 2017 4:14 PM
To: Gabbard, Tom (EEC) <Tom.Gabbard@ky.gov>
Subject: Fw: Receipt of Jerry O'Bryan Farms/Piggy Express LLC Inspection Reports

Subject: Receipt of Jerry O'Bryan Farms Inspection Reports

Dear Mr. Gabbard:

CAPPAD, INC. has received the subject Reports sent from the DOW Paducah Office and wishes to thank you for having them sent.

We are not certain that we have all the documents you intended to send. Though there are individual Reports written for all the Facilities, two, the Main Farm and Lone Oak Farm, do not

include Letters of Warning, though they have deficiencies. In addition, the Summary Letter identifies all but Lone Oak as having deficiencies, yet the individual Report for Lone Oak, does not appear on that letter. Is that of any significance? No

If, in fact, Letters of Warning were written for the Main Farm and Lone Oak Farm, we would appreciate obtaining copies of them. No LOW's were issued.

Do I understand correctly, that the type of inspection, i.e., identified in the individual Reports as "AgNonSample", means that the DOW did not do any sampling of water, soil, air, etc. for purposes of the Inspection? Yes, no sampling was performed.

The individual Reports identify actual hog counts at each of the Farms, as stated by Mr. O'Bryan. Did the DQW inspectors confirm those counts in any way themselves, i.e., sample counts, visual inspection of the number of hogs in each barn, etc.? The inspections were visual and no counts were performed.

The following appears on the individual Reports for all the Facilities, with the exception of the Piggy Express LLC, Hog Truck Washing Facility:

Requirement: Is there a point source discharge of wastewater from the facility? Does the facility hold the proper KPDES permit? [401 KAR 5:055 Section 2]

Compliance Status: C-No Violations observed

Comment: No evidence of point source discharge was noted during the inspection.

Requirement: Have pollutants entered the waters of the Commonwealth in excess of facility permit limits? [KRS 224.70-110]

Compliance Status: C-No Violations observed

Comment: [None].

It should be noted that in the absence of visually identifying a pipe or other conveyance of effluent discharging into the environment, that the manner of inspection, i.e., lacking any sampling methodology, does not allow the inspector to identify whether or not there is a point source discharge, or that there are pollutants entering waters of the Commonwealth. The inspection did not reveal any indication of a discharge or impacts to waters of the Commonwealth that warranted sampling.

The following appears on the individual Report for the Piggy Express LLC, Hog Truck Washing Facility:

Requirement: Is there evidence of stream degradation? If yes, were emergency reports made? Was the environment restored? Were BMP's properly implemented? 401 KAR 5:005 Section 25(2)

Compliance Status: C-No Violations observed

Comment: There was no evidence of stream degradation noted during the inspection. Upstream and downstream Knob Lick Creek was observed. Standing water was observed in the stream channel with no flow.

The stream, West Fork Knoblick Creek, was degraded during construction of the Remediation Area, when a spillway was cut through the bank of the Creek, so the Remediation Area could drain. It is about 30 feet wide and has continued to deteriorate, washing out the bank on either side of the spillway, as rain floods the Creek and then ebbs.

Requirement: Is the facility as described in the permit? If no, what alterations were observed?.401 KAR 5:005 Section 25(2).

Compliance Status: C-No Violations observed

Comment: The facility has recently added a stack pad for solids. After the solids chamber is full, accumulated solids are placed on the stack pad to dry. They are then hauled off site for disposal.

Has this stack pad been approved for construction in the last Revision to the Truck Wash Stream Construction Permit or was it constructed without DOW approval? This construction did not require a Stream Construction Permit since it was outside of the 100 year floodplain. Has the DOW specified a setback for its construction, as it is located approximately 350 feet from an occupied residence? and exposes raw sewage – a health hazard. This sewage has tested at >9,680 MPN/100ml for E.Coli. A wastewater system construction permit is not required and no setbacks were specified.

Requirement: Are adequate setbacks and buffer zones maintained? Was over application observed? Was stream degradation observed? If yes, were emergency reports made in a timely manner? If applicable is the facility required to have an Ag Water Quality Plan? If yes, are the BMP's being properly implemented?.401 KAR 5:005 Section 25(2)

Compliance Status: C-No Violations observed

Comment: Facility appears to meet the 20 foot setback outline in the permit for land application. Facility was not applying at the time of the inspection.

Whereas the 20 foot setback is adequate for "Gray Water", it is not adequate for animal waste effluent. Such a setback does not protect the Public's health. It should be revised and the Truck Wash spray field adjusted to conform to the new limits. In addition, though the KNDOP Permit identifies a setback for land application, the Stream Construction Permit, did not identify any setback for what the DOW accepted as a "Gray Water Basin" and now labels as a lagoon in this Inspection Report. The Kentucky Nutrient Management Planning Guidelines (KyNMP), published by the University of Kentucky, stipulate that, Kentucky No Discharge Operating Permit Holders must utilize setbacks and siting criteria as described by the DOW in Table B of these Guidelines as not less than 1500 feet for a dwelling not owned by the permit holder. The Truck Wash lagoon is located approximately 350 feet from such a dwelling. Piggy Express is not an Animal Feeding Operation (AFO) and therefore AFO setbacks do not apply.

Requirement: Were the conditions for spray irrigation met? (i.e. weather, slope, etc? If not, what concerns were noted?.401 KAR 5:005 Section 25(2)

Compliance Status: I-No Violations obs-but impending viol trends obs

Comment: The area where irrigation occurs is close to the 6% slope limit in the permit.

What does "impending viol trends obs" mean? "Impending viol trends obs" is a compliance rating that indicates that although no violation was documented or observed, conditions exist

that could lead to a violation in the future.

Why didn't the DOW measure the gradient of the sprayed field? DOW used an electronic tool provided by NRCS that uses existing mapping to estimate the gradient of selected areas.

According to this model, the gradient of the field in question was at approximately 6% which is permissible for spray irrigation. During the investigation, the area in question had been excavated, and the gradient of the slope has been further reduced (below 6%) at this location.

It either exceeds the allowed gradient for drainage or it doesn't and if it doesn't, it needs to be corrected? The area in question appears to have acceptable gradient for drainage and requires no further remediation at this time.

Requirement: Are records of monitoring maintained? Sampling and analysis data adequate and include the following: Dates, times, and location of sampling? Name of the individual performing the sampling? Analytical methods and techniques documented and in accordance AOl KAR 5:005 Section 25

Compliance Status: C-No Violations observed

Comment: Sample analysis was provided during the inspection. The permit does not specify which parameters to be analyzed.

Why doesn't the permit specify which parameters are to be analyzed? Why have there not been requirements identified for record keeping on the animal waste lagoon, including weekly lagoon inspections? Why isn't there a lagoon depth marker installed? Given that the truck wash is not an animal feeding operation, the requirements, as listed in 401 KAR 5:005, Section 25, do not apply.

The following appears on the individual Report for the O'Bryan Farms Hardy Hog Farm:

Requirement: Is the construction or placement of material within the 100 year floodplain without a Stream Construction Permit? [KRS 151.250]

Compliance Status: a-Out of Comp-LOW non-recurrent Adm. or O&M

Comment: Construction across or along a stream or in the flood way of any stream without obtaining a Stream Construction Permit. Concrete fill material had been placed in an unnamed blue line stream leading to Green River.

Requirement: Is the construction or placement of material within the flood way or stream channel without a Stream Construction Permit? [KRS 151.310]

Compliance Status: a-Out of Comp-LOW non-recurrent Adm. or O&M

Comment: Deposition of material in the flood way or in the channel that has resulted in restricting or disturbing the flow of water in the channel' or in the flood way without first obtaining a Stream Construction Permit. Concrete fill material had been placed in an unnamed blue line stream leading to Green River.

Requirement: Is the permittee complying with the conditions of the Stream Construction Permit? [KRS 151.280]

Compliance Status: N-Not Applicable

Comment: A permit has not been issued for this activity.

Requirement: Is the construction or placement of material within the floodplain/floodway or stream channel without a

Stream Construction Permit? [401 KAR 4:060 Section 2]

Compliance Status: a-Out of Comp-LOW non-recurrent Adm. or O&M

Comment: Construction across, along, or adjacent to a stream or in the flood way without first obtaining a Stream

Construction-Permit. Concrete fill material had been placed in an unnamed blue line stream leading to Green River.

The damming of a blue line stream discharging to a navigable waterway is a violation of the Federal Clean Water Act. In order to work along that stream the Owner must obtain a 401 Certification and a 404 Permit. The requirements that have been cited in the inspection, seem to overlook the damage that has been done by building this dam. The waters that have built up behind this dam have inundated the property of an adjacent land owner, when heavy rains occur. Has the DOW notified the US Army Corps of Engineers of this violation by the Owner? This violation is the same kind of activity that the Owner engaged in when he destroyed several acres of Wetlands on the Simpson Farm, i.e., filling in blue line streams leading to the Green River. He was cited for that violation and labeled a, "willful and flagrant violator". He is presently under enforcement action by the Federal EPA. The drainage area is 0.15 sq. miles and 404 Permitting rests with the US Army Corps.

The following [Does Not] appears on the individual Report for the Main Farm:

It should be noted that at the March 8th Meeting with representatives of the Department of Agriculture, the Governor's Agricultural Policy Committee, Mr. Goodmann of the DOW, and CAPPAD, INC.,

in the EEC Offices, attention was drawn to the fact that the Center Pivot for the Main Farm was constructed so as to utilize bridges specifically placed in the large Ditch emanating from the area of the Farm's lagoon and crossing under Curdsville-Delaware Road, to an adjacent farm, so as to allow the Pivot to spray directly into the Ditch and ultimately contaminate the neighboring property. Mr. Goodmann declared that this practice constituted trespass and had to be investigated and stopped. It appears that the inspection did not cover this aspect of the Farm's operations.

Thank you for your interest.

Sincerely,

Donald Peters
President
CAPPAD, INC.

Timothy Mulligan
10405 McIntyre Rd.
Owensboro, Ky. 42301

Ms. Patricia Bullock
Regional Hearing Clerk
USEPA Region 4
Atlanta Federal Center
61 Forsyth Street SW
Atlanta, Georgia 30303

2018 JUN 29 PM 12:11
HEARING CLERK

Public Notice No: KY180001
Docket No: CWA-04-2018-5501(b)

Ms. Bullock:

I am writing to you with regard to the Public Notice referenced above. As a two year employee of Jerry O'bryan, I had a front row seat, you might say, to how the man's mind works and operates. I think my perspective is worth strong consideration, in judging how to deal with him.

Allow me to share a brief history. As a teenager in high school, I learned that my closest buddy had an uncle named Jerry O'bryan. I met the man one time, but was not around him nearly long enough to form any strong opinion about him. However, I did find it interesting (and somewhat humorous), that my friend would good naturedly poke fun at his uncle. As

Robbie would say, "Jerry O'bryan is a different cat." He worked for his uncle off and on during high school, and said he was somewhat difficult to work for, he was hard to please, expected perfection, and paid his help very little. He was a young hog farmer who had a vision of producing hogs on a mass scale. Now, that he has accomplished, on the backs of migrant workers and a few local guys who are willing to work long hours for low wages.

I left home a couple years after high school. I served in the US. Navy, and resided in California and Kansas City for quite a few years. In 2012, at the age of 50, I moved back to my hometown of Owensboro, Ky. I bought a property that just happened to be a mile and a half from his hog operation. In looking for work, someone suggested I could go to work for Jerry O'bryan. So I did.

His nephew was right. To this day, he is "a different cat." He sees things his way, with very little room in his mind for compromise. He has a shrewd way of getting what he wants, and paying very little in the process. Equipment, labor... Now, I don't begrudge a man for being clever enough to acquire good used equipment at auctions, but it is fundamentally wrong to low ball an employee in wage negotiations, and watch that employee work his

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heart out, while the employee is required to use his personal truck in his duties, and never once making good on any kind of raise as he had promised. And I witnessed other employees having their wages lowered as a contingency for continued employment. O'bryan just has an air about him, an arrogant confidence that his way of thinking is 100% correct. I realize that to be successful, one must be confident and decisive, but you can tell an awful lot about a man by the way he treats people.

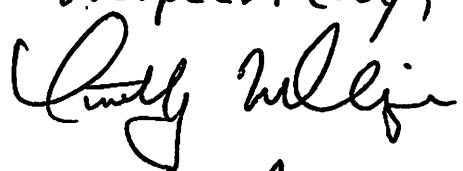
I left his operation in October 2014 for a better job opportunity. I visited him twice in 2016 in an attempt to persuade him to not build the semi hog truck washing station in our neighborhood, to no avail. His mind was already made up. He was determined to build it in the spot he had selected, and even lied in the process. When I asked, "Why here? Why not closer to your home?" he said, "I was advised it has to be a minimum of 2 miles from the nearest live hog operation." As it turns out, it is only 1.6 miles from Lone Oak, one of his largest hog operations, with giant piles of "compost", which include the carcasses of daily swine casualties. So he either lied to me, or he is breaking the law in a big way. The stench of the fecal matter/hog carcasses

From the "compost" is staggering. Each individual "farm" consists of several giant hog houses with concrete floors and giant fans. One summer night in 2014, power was lost to a couple of houses at his I.M. operation, and over 5,000 full grown hogs died from the heat. In one night. And it didn't phase him or his operation. He is always suggesting to people that he's a small time hog farmer on a "low budget", but he once said to me, "Tim, this isn't about money. I've got more money than I'll ever need! It's about the thrill of the chase."

You see ... he's not a hog "farmer." He's a hog producer on a massive, commercial scale. Former Kentucky Secretary of Agriculture and Kentucky State Senator David Boswell recently said, "O'bryan is the largest independent hog producer in the country," he's saying in the U.S.A. Mr. Boswell is probably right. I know O'bryan ships out approximately 1,000 hogs per week, or 250,000 a year. He has built this gargantuan operation on an obvious pattern of bending and breaking laws. He must be fined and curtailed accordingly. A single fine of \$3,346.00 is pocket change for the man.

I am asking the USEPA to see the big picture here. Over a period of 40 years, many environmental and ethical laws have been broken to accomplish his goals. Only the Good Lord knows for sure the extent to which the pollution of the Green River, and many streams and waterways around our community, as well as airborne effluent by way of irrigation type spraying, have affected people's health.

I am asking all who have the power to do so, to take appropriate and effective action to curtail this man's operation, and the bad habits he has already passed on to his son, who is the heir apparent to the corporation.

Thank you.
Respectfully,

Timothy Mulligan

June 26, 2018

Father Richard Powers
10500 McIntyre Road W
Owensboro, KY 42301

Ms. Patricia Bullock
Regional Hearing Clerk
USEPA Region 4
Atlanta Federal Center
61 Forsyth Street SW
Atlanta, Georgia 30303

Public Notice No: KY180001
Docket No: CWA-04-2018-5501(b)

Dear Ms. Patricia Bullock:

My name is Richard Powers, Father Richard Powers. I am a Roman Catholic Priest and have served the Curdsville-Mount St. Joseph, Kentucky Community for over thirty years. I feel I have a sense of what this Community is thinking and am greatly troubled by what has occurred here during the last several years – coming to a head in the last two.

I am responding to the Public Notice cited above, as the Respondent identified therein, is at the center of the problems this Community is facing. The Respondent, Mr. Jerry O'Bryan, constructed a 780,000 gallon hog waste lagoon and hog truck washing facility (Lagoon and Facility) only 350 feet from a private residence on an adjacent property in our Community, destroying the neighbor's property values and exposing them to health risks. He did this knowingly and with permits issued by the Kentucky Division of Water (DOW). The DOW did not do "due diligence" in issuing the permits, and authorizing the Lagoon and Facility to be built in the middle of Wetlands and a previously existing residential area. This incompetence on its part, led to the later destruction of Wetlands on the McKay Farm near Curdsville, which is cited in the Cease and Desist Letter (C&DL) written by the US Army Corps of Engineers (USACE) to Mr. O'Bryan and is herein attached. This letter identifies the Lagoon and Facility in the case brought against Mr. O'Bryan with reference to the McKay Farm. It also identifies Mr. O/Bryan as a, "willful and flagrant violator."

It is my opinion, the failure of both the Daviess County Fiscal Court and the DOW to effectively exercise any oversight of Mr. O'Bryan's activities and operations has facilitated his continued flouting of environmental laws and regulations and justifies labeling him a "habitual offender", as well as, a "willful and flagrant violator."

Among the offenses he has committed are his continual discharging of contaminated effluent from his hog lagoons into the Green River, spraying this same effluent from his Main Farm

lagoon into a ditch that pollutes his neighbor's property, and blocking a blue-line stream on the Hardy Farm with concrete fill, backing water up onto Curdsville-Delaware Road and neighboring properties, when it rains heavily.

I disagree with the actions taken by the US EPA in negotiating the subject Consent Agreement and Final Order (CAFO). This action substitutes an investment on Mr. O'Bryan's part for a fine, and increases the value of his property. It does not address his behavior and does not act as a deterrent. I request US EPA instead take this case to Court and through the process of discovery expose all of the infractions that he has perpetrated and damage that he has done.

If the US EPA declines this line of action, then I request that it include in the CAFO, the statement that US EPA will henceforth take responsibility for oversight of all of Mr. O'Bryan's activities and operations, including the issuance of any future permits and an in depth review of those permits previously issued him by the State. US EPA should pledge to take action to reissue those permits if the review establishes Mr. O'Bryan is in violation of the terms of those permits.

In any case, the State should not be allowed to oversee any portion of this CAFO.

Sincerely,



Father Richard Powers

cc: Mr. Scott Gordon, US EPA Region 4
Mr. Joel Strange, US EPA Region 4

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Operations Division
Regulatory Branch (MCE)
ID No. LRL-2016-681-sew

Mr. Jerry O'Bryan
O'Bryan Grain Farms, Inc.
6939 Curdsville Delaware Road
Owensboro, Kentucky 42301

JUL 15

51701 51251 0000 2000 1385 1375

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Sent To <u>Mr. Jerry O'Bryan</u>	
Street and Apt. No., or P.O. Box No. <u>6939 Curdsville Delaware Road</u>	
City, State, ZIP+4® <u>Owensboro KY 42301</u>	
PS Form 3800, April 2015 PSN 7530-02-000 9047 See Reverse for Instructions	

CEASE AND DESIST ORDER

Dear Mr. O'Bryan:

During a recent inspection of your property in Daviess County, Kentucky, by Corps of Engineers' personnel, it was found that certain work had been performed in adjacent wetlands and tributaries flowing into the Green River, a Traditionally Navigable "water of the United States (U.S.)." A discharge of dredged and fill material had occurred within two unnamed tributaries and in wetlands on your property located at 37.729998° North Latitude/-87.382107° West Longitude. These discharges have occurred as a result of mechanized land clearing activities.

The Corps of Engineers exercises regulatory jurisdiction over "waters of the U.S." under the Clean Water Act (CWA). The Green River, its tributaries, and its abutting and adjacent wetlands are considered to be "waters of the U.S." as defined in 33 CFR Part 328. It is unlawful under Section 301 of this Act (33 USC 1311) to place dredged or fill material into "waters of the U.S.", without prior authorization. Normally, the authorization is in the form of a Department of the Army (DA) permit issued in accordance with the provisions of Section 404 of the CWA (33 USC 1344).

According to our records, no DA permit has been issued authorizing the work referenced above. Therefore, the work which has been done, constitutes a violation of Sections 301 and 404 of the CWA. This violation may subject you to civil action pursuant to Section 309(d) of the CWA (33 USC 1319(d)) with possible penalties not to exceed \$37,500.00 (as adjusted for inflation) per day for each violation; additionally, you may be subject to criminal action.

A search of our database shows that you have past knowledge of the Corps' regulatory program due to recent permitting at a nearby location in Daviess County, Kentucky within the past year. Also, Corps'

representatives have visited the previously permitted site with you to discuss regulatory requirements and discuss permitting options. Additionally, a permit application for the work at this current site was received by my staff on June 29, 2016, indicating knowledge of the Corps' regulatory program. As a result of these previous encounters regarding our program, you are considered a willful and flagrant violator.

This letter will serve as a formal Cease-and-Desist Order specifically prohibiting any further activity involving the placement of excavated or fill material below the Ordinary High Water (OHW) elevation of the tributaries to the Green River or within their abutting and adjacent wetlands or other "waters of the U.S." on the subject tract. Such activity may not resume unless and until the work is authorized in a DA permit.

In accordance with existing regulations, a report of this unauthorized activity will be prepared. This report will serve as a basis for determining the appropriate administrative and/or legal action to be taken in this matter. Any information, particularly prior approvals or disclaimers, which might bear on our evaluation and decision, should be submitted immediately. The preparation of the report and findings on this case will consider any information or comments received within 30 days from the date of this letter.

A copy of this letter this will be sent to the appropriate coordinating agencies (see enclosure for addresses). If any questions arise concerning this matter, please contact (b) (6) by writing to the above address, ATTN: CELRL-OPF-E or by calling (b) (6) at (b) (6). Any correspondence on this matter should refer to our ID No. LRL-2016-681-sew.

Sincerely,

Original Signed

JUL 19 2016

(b) (6)
Chief, Regulatory Branch
Operations Division

Enclosure

(b) (6) PF-W/rb/C&D Violator.docx (b) (6)
(b) (6) /OPF-W (b) (6)
(b) (6) PF (b) (6)

RECORD COPY

June 26, 2018

Mr. & Mrs. Ben Lattus
10165 McIntyre Road W
Owensboro, KY 42301

Ms. Patricia Bullock
Regional Hearing Clerk
USEPA Region 4
Atlanta Federal Center
61 Forsyth Street SW
Atlanta, Georgia 30303

Reference: Public Notice No: KY180001
Docket No: CWA-04-2018-5501(b)

Dear Ms. Patricia Bullock:

We are writing to you in response to the Public Notice referenced above. Our home borders the property that Mr. Jerry O'Bryan, the Respondent in the subject Consent Agreement and Final Order (CAFO) owns, and upon which he has built a Hog Truck Wash and Lagoon (Truck Wash). We have already had the value of our home depreciated by the County Property Valuation Administrator, as a result of its being placed there. The State has permitted the Truck Wash to spray the hog waste that is in the lagoon to within 20 feet of our property line. That means that he can spray the crap that is in the lagoon only 208 feet from our front door. Mr. O'Bryan, at a Town Hall Meeting held at St. Alphonsus Church in August of 2015, stated that he intended to inject the hog effluent onto the adjacent field and not spray it. Yet, among the first things he did is install a spray irrigation system. After researching the Truck Wash permit applications made to the Kentucky Division of Water (DOW), we learned that in addition to lying about injecting the lagoon effluent, he also lied about what he was building. He called the Lagoon a Gray Water Pond and a Settling Tank, a Septic Tank, in his applications. Gray Water according to State regulations is water that comes from a shower or washing machine. It does not contain feces and urine. The DOW didn't question the application and according to regulations permitted him to apply the effluent up to 20 feet from our property line. The "so-called" Septic Tank, is open to the air and as such is not a Septic Tank. To this date, the DOW has not sampled the contents of the lagoon, nor questioned the claim that it is a Gray Water Pond.

The Truck Wash was built in the Wetlands. The DOW approved the permits without checking to see if the Project intruded into the Wetlands, though it knew it was in the Flood Plain. This is the Project that is referred to in the US Army Corps of Engineers (USACE) Cease and Desist Letter to Mr. O'Bryan, when it discovered that again, he was building in the Wetlands at the McKay Farm. The Corps in that letter, labeled Mr. O'Bryan a "willful and flagrant violator." It is important that the EPA recognize Mr. O'Bryan's pattern of behavior and take it into

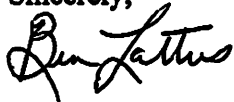
consideration, in deciding how to best handle the McKay Farm Wetland case. It is also important to recognize the DOW's pattern of behavior. It appears that the DOW does not have any interest in holding Mr. O'Bryan accountable, nor in exercising any oversight on what he does. It is for those reasons that what the EPA does in this case is so important.

We do not agree with the direction the EPA has taken in this CAFO. It neither punishes Mr. O'Bryan for his actions on the McKay Farm, nor deters him from continuing to disregard environmental laws and regulations. It enforces the theory that he can get away anything and the price he will pay can be considered the cost of doing business.

For the preceding reasons, we request that this CAFO be cancelled and that Mr. O'Bryan be taken to court, where all his infractions can be identified and addressed.

At the very least we request that the EPA relieve the DOW of any responsibility for oversight of Mr. O'Bryan's activities and operations and assume that responsibility itself. If the EPA goes forward with the present CAFO, this relief of responsibility needs to be written into the CAFO. The DOW has proven itself to be incompetent to carry out its responsibilities with reference to Mr. O'Bryan's activities and operations.

Sincerely,



Ben Lattus



Becky Lattus

**P.O. Box 122
Maple Mount, KY. 42356**

**Ms. Patricia Bullock
Regional Hearing Clerk
USEPA Region 4
Atlanta Federal Center
61 Forsyth Street SW
Atlanta, Georgia 30303**

Public Notice No; KY180001

Docket No: CWA-04-2018-5501(b)

Dear Ms. Patricia Bullock;

This is a letter in response to the reference to the public notice and we the members "Community Against Pig Pollution and Disease, Inc." (CAPPAD), a Kentucky non-profit, tax exempt, educational and charitable corporation. CAPPAD and the community have a direct interest in the outcome of this USEPA Consent Agreement and Final Order (USEPA CAFO), as its members have been placed in harm's way by the owner of the Simpson farm. This is a rural location in Western Daviess county, Kentucky known as the Curdsville-Delaware area. The US Army Corps of Engineering (USACE) communications refer to it as the McKay Farm.

In the cease and desist Letter addressed to the owner Mr. Jerry O'Bryan, by the USACE and delivered to him by certified mail on July 15, 2016 concerning his Simpson-McKay farm the USACE considers him a flagrant and willful violator of Environmental laws. Sad to say the Kentucky Division of water and the Kentucky Energy and Environment Cabinet have ignored the activities such as additional CAFO barns added, mislabeling of the definition of a Lagoon, no surface or ground

water sampling, Best management practices not adhered to. Allowing the owner to self-regulate the entire CAFO operations. The CAFO operations owned by Mr. O'Bryan are located at five different locations in a two-mile area with three of the hog CAFO's within a quarter of a mile from the Green River.

Mr. O'Bryan also owns a commercial hog truck wash built in 2015-2016 in the middle of our community. The commercial hog truck wash owner doesn't follow Kentucky Nutrient Management Planning Guidelines (KYMPG). His CAFO's do not follow the EPA's 'Managing Manure Nutrients at Concentrated Animal Feeding Operations.' His CAFO's are categorized as large which place's them in violation of 412:31(a). Also, 412:32(a), 412:33(a), 412.43(a) and 412:45(a). Adequate manure storage, litter, and processed wastewater 40 CFR 122:42€(1)(i) states CAFO's must ensure storage of manure, litter, and processed wastewater. Including procedures to ensure proper operation and maintenance of the storage facilities. In this regulation I will draw out the word 'processed.' Processed means the wastewater going to the black water lagoon has received treatment. The only treatment the commercial hog truck wash receives from the truck wash to the black water lagoon is in the storm water catch basin which is mislabeled by the design engineering company listing it a septic tank. We discovered this misrepresentation by the engineering firm from an elevated distance on a neighbor's property. This structure consists of physical treatment only. The black water lagoons at the CAFO's and the commercial hog truck wash did not apply 412:37(a)(2) to the building design. Two water wells were drilled at the commercial hog truck wash site. One of the wells is being utilized in the operation of the commercial hog truck wash which falls under 122.42(e)(1)(iii) which ensures that the clean water is diverted, as appropriate, from the production Area. The other drilled water well is in the spray field area and has been left uncapped since drilled. This violates section 9 KAR 6:310. This issue was called to the attention of Peter Goodman Director of the Kentucky Division of Water. He said it was OK uncapped because he wrote the regulations. Most of the CAFO's of the owner utilize drilled water wells. The air quality around the commercial hog truck wash and the CAFO operations is very poor due to Hydrogen Sulfide gas and Ammonia Gas being produced by the black water lagoons. Our local Daviess county air quality department does not have the proper air meters to detect the different gases emanating from these lagoons. Daviess County Air quality employee named Edward stated they use their nose for gas detection. There is a Federal PEL limit for Hydrogen sulfide and Ammonia gas. My home is located 1.5

miles from the nearest CAFO. If the wind is from the North West, we cannot go outside our homes. Other times the air is saturated with hydrogen Sulfide gas due to CAFO' spraying fields. Our community was established 30 years ago. The CAFO owner invaded our area. When we purchased our property in 2009 there was just 3 barns on the CAFO site. Now there are 14 barns on this location with an undersized lagoon. The hog truck wash is within 350 of a neighbor's home. The hog truck wash black water lagoon is 90 feet from a blue line stream. Both are serious setback violations. The wetlands were destroyed at two different locations in the building of the commercial hog truck wash. The bank of Knoblick Creek was dozed down to within two feet of the bottom of Knoblick creek draining the remediation area. Thirty feet of Knoblick creek bank was dozed to within two feet of the creek bed bottom to drain the remediation area. The USACE allowed this practice.

CAPPAD has developed an extensive QAPP Program. From our sampling team to our President we have extensive training in the environmental field. CAPPAD president graduated Annapolis Naval Academy, studied at MIT, design engineer in the construction of Nuclear power plants, retired as design and startup field engineer with Exxon Mobile. Our members consist of Accountant, Licensed Water Microbiologist, Kentucky Class 4 water and wastewater plant operator, Master builders, Farmers, Master mechanic, Licensed Kentucky water samplers. We are also licensed water samplers for the Kentucky Water Watch program. The following are a few of the owner's activities and the states response, which impacted our community, harmful to the environment and the health of our community. These should be given consideration in finalizing this USEPA CAFO;

The Ambient Water rule (40 CFR part 136) has been broken by the CAFO owner by point source discharges of E-coli into the Green River from the owner's Doby/Bumblebee, Iron Maiden and Hardy Farms for a period of years, readings greater than 4,840 C.F.U./100 ML sample and in violation of the ambient water rule. In the EPA manual, "Managing Manure Nutrients at concentrated Animal Feeding Operations," Chapter 4 of the CAFO rule requires that samples of manure be collected and analyzed for nitrogen and phosphorus a minimum of once per year (412.4(c)(3)). CAPPAD has not received any information from the State that these activities have been applied. We have asked the State of Kentucky Division of Water to resend the KNDOP at all CAFO locations and commercial hog truck wash owned by Mr. Jerry O'Bryan and issue NPDES instead. These are point

source discharges as defined by Title 33 -navigation and navigable waters page 498. The KDOW preformed a "Comprehensive" inspection of these farm operations better known as a, "sham inspection." The Dow did not even preform a hog count. One inspector did report a single row of cedar trees around one CAFO lagoon and that it solved all the problems. A short time after the same inspector was no longer employed by the DOW. I have operated both water and wastewater plants for several cities in Kentucky for over 41 years. I have had inspections from EPA Region 4, The USACE, The KDOW and never have I witnessed such an inspection. Some of the water and wastewater plants I operated were designed with new innovation technology. The CAFO's in America are primitive in design. Simply run pipes from the barns to unlined dirt pits dug in the ground.

A dam was created in a Blue line stream by the CAFO owner at the Hardy CAFO farm location. Normally the builder of such a dam would be hauled into court by the USACE. The KDOW could not decide if it was a dam. The DOW told the CAFO owner to apply for a stream construction permit. The USACE has been studying the dam for over a year and even proposed the CAFO owner convert it to a weir. In the meantime, the dam is backing water up onto another farmer's property placing his crop in danger. An excavator and 30 minutes would solve the problem. I would not be surprised if a single row of cedar trees would suffice.

In addressing the many infractions reflective of the commercial hog truck wash, the CAFO operations one must draw a conclusion that CAFO operations in Kentucky are self-regulated. We urge the USEPA to take control of these operations and issue NPDES permits. The land around these type of operations lay in destitute and moans in trivial. Our neighbor took a \$130,000.00 loss on the sale of his home due to the hog truck wash. We have to share a 17 ft. wide state highway with semi-trucks hauling hogs to slaughter. Numerous hog truck wrecks plague our county. When Americans are pushed from their homes due to these type of operations, their constitutional rights trampled on, their health at risk and now China has proved that hog hotels can be built almost anywhere I again pose the question. Could the USEPA take control of such activities. Second question: Does America need any more CAFO's built? Over 50% of produce American farmers raise is exported.

Dr. Fauci team has listed an antibody MED18852 airborne transmission of the H1N1pdm09 virus. Respiratory syncytial virus is a serious risk for infants. Dr. Fauci is the director of the National Institute of Allergy and Infectious Diseases (NAID). He has defined H1N1 strain that can pass from (Birds, pigs), to humans. Don't forget the excitotoxins list such as MSG, Aspartate, Domoic acid, L-Boaa, Cysteine, and Casein posing a threat to our waterways. Aspartame is already in 6,000 consumer foods. Want Proof of contamination sample the Chesapeake Bay or most any area where CAFO's are built.

Sincerely,

Rick Murphy

Vice president

CAPPAD. INC.

Attachments

Cc: File/CAPPAD.Doc

2. Article Number (Transfer from envelope, if any)

9590 9403 0414 5163 1733 45



OWENSBORO, KY 42301
10361 MCINTYRE RD.
R. I. MURPHY

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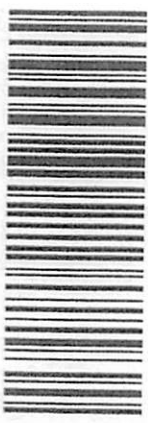
SENDER: COMPLETE THIS SECTION

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 - Collect on Delivery
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 - Registered Mail Restricted Delivery
 - Return Receipt for Merchandise

D. Is delivery address different from item 1? Yes No
If YES, enter delivery address below:

B. Received by (Printed Name) R. I. Murphy
C. Date of Delivery 5-28-14

COMPLETE THIS SECTION ON DELIVERY



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R. Murphy
10361 MCINTYRE RD.
OWENSBORO, KY 42031



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MS. PATRICIA BULLOCK
Regional Heavy Clerk
US EPA Region 4
Atlanta Federal Center
61 Forsyth Street SW





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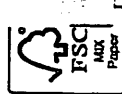
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George Schadler
6335 Ky 500
Owensboro, Ky 42301

6/22/18

Ms Patricia Bullock
Regional Hearing Clerk
USEPA Region 4
Atlanta Federal Center
61 Forsyth Street SW
Atlanta, Georgia 30303

Public Notice No: KY180001
Docket No. CWA-04-2018-5501(b)

Dear Ms Patricia Bullock:

This letter is written in response to the Public Notice referenced above and represents the past history of Jerry O'Bryan.

First Jerry O'Bryan will do anything he wants until someone makes him do differently. He has made that comment before and he still practices it. He will continue to violate until someone keeps enforcement on him. Jerry O'Bryan had bought the McKay farm and Joe Bill McKay was the tenant of the McKay farm. Joe Bill ask Jerry, "Why do you want this Farm." Jerry responded, "With the trees in the front nobody can see what is going on and I can do what I want." It has been noticed and recognized that Jerry does not follow protocol to permits or procedures to do a job correctly or stay in compliance.

I own a farm that surrounds Jerry O'Bryan and he has polluted my ditch from runoff of his center Pivot that does reach the Green River. If you go to Ky Watershed Watch Site # 3536, you will see that the E-Coli count is 583 and should not exceed 126. The DOW has been notified but nothing has been done. Also downstream from me on the Hardy Farm in which is own by Jerry O'Bryan the ditch is considered a Blue Line Stream. Jerry O'Bryan has created a damn in the ditch. Now I have flood issues on my farm. The Core of Engineers have been notify and it is still under investigation and litigation to my understanding. It has been stated in several documents that Jerry O'Bryan is a "Willful and Flagrant Violator." He does this on purposed to try to flood me out so I go broke and sell out.

The Simpson/McKay Farm is a good example of what could happen if the USEPA does not crack down. The USEPA needs to think through and use corrective measures to keep this from happening.

Here are some items to consider. Will a Center Pivot coming from a Lagoon of any of his farms be allowed? What will happened to the runoff? Will there be catch basins installed

and pumped back to the Lagoon to keep it out of the River. Will Jerry O'Bryan be allowed to knife in Hog Manure from the lagoons on no-till ground? What about the runoff from that? Will he be allowed to build another Lagoon on the Simpson/McKay Farm and add more hogs to his complex? Under the Supplemental Environmental Project (SEP), who will monitor and see that Jerry is held accountable in completing the said SEP task correctly and to continue to stay in compliance with the SEP? Can it be noted that under the SEP that absolutely no liquid or slurry hog waste to be put on the property.

I am a Farmer and very concerned with the polluting of the Rivers from the existing Confined Animal Feeding Operations that are all owned by Jerry O'Bryan . And there is nothing being done about it . It is time for USEPA to take action and make sure that this does not happened on the Simpson/McKay Farm that is now owned by Jerry O'Bryan.

Sincerely, George Schadler

Ms
Bullock.

6-20-18

Regional Hearing clerk, USEPA Region 4
Atlanta Federal center.
61 forsyth st SW, Atlanta, Georgia 30303

Public Notice no ; ky180001
Docket no; CWA-04-2018-5501(b)

2018 JUL -3 PM 12:11
HEARING CLERK

Ms Bullock.

I am writing in response to the above mentioned public notice that pertains to the "McKay farm located in curdsville ky. I have lived in the area my entire 51 years of life and would like to share/express my opinion of these circumstances and how we feel they affect not only our everyday lively hood but also that of our children. We are also farm owners as well as contractors and have worked construction since we left the family farm and thus have knowledge of both practices. We also live a short distance from where Mr O'Bryan constructed his truck wash station. I feel it was important to present my background and family history as it relates to the mentioned matter.

As farm owners and contractors, we take exception to the final order and consent agreement. As contractors we have never been allowed to dictate to the EPA or any other governing body for means and methods of remediation work. Contractors are bound to tight rules and regulations as it relates to wet lands disturbance and water run off. We hire qualified vendors to solicit updated regulations and then to produce documentation to meet these requirements. Once we have documents we proceed to get permits and, in many cases, hire third party inspectors to ensure the work is performed per the approved documents. In many cases this is a long-term deal with frequent testing and monitoring. As farmers, we acknowledge and realize the value of the land and surrounding rivers, where are families swim and fish and we raise crops or livestock to feed not only our families but many others as well.

Most all of the local farmers in the area have a genuine care and concern for the land, the rivers and the environment and go to extremes to ensure that their farms meet most all rules and regs as set in place by the governing bodies.

We have discovered over the years that Mr O'Bryan does not feel as though he needs to operate by or under the same rules, many of us have heard him say "let them catch me" or "who is going to know". All of the surrounding neighbors know that O'Bryan does not play by the rules and that is why he has increased the size of his farming operation over the years. He has become too big to oppose and will go to extreme limits to put the small farmers in their place if he can. Many of us have placed call after call to the EPA, to our country government and then to the city over the years complaining of his ways or complaining of the odor that exist or even the heavy truck traffic and overturned loads of pigs on the roads. We have seen O'Bryan disregard many rules and regulations just to advance his farming operations or pork production. What you guys caught him doing at the McKay farm was a repeat of what he has done at several other of his local farms in this area. We always made the comment about these such as "well, Bill could not make that work but O'Bryan will drain it off, irrigate it with hog feces and grow nice crops. He has eluded many governing bodies throughout

his years and has gained his operations from this. He always said, "sue me" or take me to court or any means of bullying the family farm owners.

Is it not coincidental that most of his farms back up to the river, we have seen him purchase these farms, remove all trees and vegetation and then drain it to the river. Then he comes in and starts building and grading to his wants and needs with no oversight, permits or plans.

Many of us have long complained of his ways to any of the governing bodies that can, we have no luck with any of them. We have complained to the D.O.W, no results, to the city, no results, to the county with no results but typically he is able to continue as his attorneys will get involved and somehow things get cleared and he continues, or in many ways he will plead ignorance and has the ability to remove himself from any consequences.

Having said all of that my point to this letter relates to the consent agreement per the notice.

We believe he is once again escaping consequences brought on by his normal procedures. He has stated his intentions were not to convert wet lands, however if you check your records you will find that this is how he operates. He has done the exact same thing time and time again, we know he violated wetlands when constructing his truck wash facility less than one year apart from this infraction. This guy is a willful and repeat violator and will not stop until someone of higher authority forces him to. There have been water samples of the rivers and streams with extremely high E.Coli bacteria counts discharging from his farms and truck wash, these have been submitted to the DOW and the EPA with the first comments as "this is really bad or extremely high" and then five weeks later it becomes a non-issue and that everything is ok. Your consent states that Mr O'Bryan will be implementing conservative practices with control basin, terraces and sub-surface drains. We know this as "field drainage tiling" and many local farmers use this practice but, in this case, it seems that O'Bryan is once again getting the better part of the deal. He will be using the infraction fine money to increase the value of this farm. The cost estimates given by him would reflect the cost of anyone having subsurface work done. If the EPA were to visit any of his existing farms with lagoons and his revised procedures, they would find that what he says and what he does are two totally separate things. Some of his lagoon are not even permitted and thus when we place a call about him irrigating during a rain there are no records and no governing bodies even know these exist. I have had feces sprayed on my vehicle many times when passing by his irrigation systems.

One final concern, what happens if he decides to sell this farm and dump his problems? Who is going to verify, test and report the agreed upon practices are being kept in place for this farm

This guy needs to have unannounced visits and needs to be forced to abide by the same rules that every other person, farmer, developer and contractor must abide by in the U.S. it is my opinion that people who use the system and are repeat and willful violators have to be stopped

If the EPA does not stop this rogue farmer/developer and contractor, then no one else will and this will set the example of others to follow.

The evidence is clearly there, he does not even try to conceal it. This man is destroying our wetland, streams, rivers and our way of living.

I beg of you to re-visit the consent agreement and make an example of this situation so that it does not continue, and we will have clean water ways and clean air for us and our children.

Respectfully,
Al McCarthy



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

AUG 20 2019

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Rick Murphy
Vice President
CAPPAD, Inc.
P.O. Box 122
Maple Mount, Kentucky 42356

Re: In the Matter of Jerry O'Bryan
Consent Agreement and Final Order
Docket No. CWA-04-2018-5501(b)

Dear Mr. Murphy:

The U.S. Environmental Protection Agency, Region 4 is in receipt of your comments regarding the above-referenced proposed Consent Agreement and Final Order for Mr. Jerry O'Bryan. The terms of the Consent Agreement and Final Order (CA/FO) were negotiated between the EPA and Mr. O'Bryan in settlement of alleged violations of the Clean Water Act. An enclosure, which provides information on common comments received during the public notice period, is attached for your reference.

Pursuant to regulations outlined in 40 C.F.R. § 22.45(c)(4), the EPA is also providing you a copy of the CA/FO. Should you wish to petition the Regional Administrator to set aside the CA/FO on the basis of the EPA's failure to consider material evidence in the case, you may do so by filing a petition within 30 days of receipt of this letter and the enclosed CA/FO. Please note that you are to send the petition directly to the EPA Regional Administrator, Mary S. Walker, and not to the Regional Hearing Clerk. You must also send copies of your petition to the parties, i.e., the EPA and Mr. O'Bryan. The addresses for each such recipient of the petition are:

Mary S. Walker
Regional Administrator
US EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

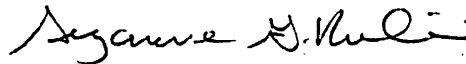
With copies to:

Jerry O'Bryan
6939 Curdsville Delaware Road
Owensboro, Kentucky 42301

Suzanne K. Armor
Office of Regional Counsel
US EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

If you do not timely file a petition to set aside the CA/FO, the EPA intends to issue the proposed CA/FO. Please contact Suzanne K. Armor, Associate Regional Counsel, at (404) 562-9701 if you have any questions.

Sincerely,



Suzanne G. Rubini
Acting Director
Enforcement and Compliance Assurance Division

Enclosures (2)

cc: Mr. Jerry O'Bryan

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
 Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

7019 0700 0000 6131 5181

Certified Mail Fee \$ _____

Extra Services & Fees (check box, add fee as appropriate)

Return Receipt (hardcopy) \$ _____

Return Receipt (electronic) \$ _____

Certified Mail Restricted Delivery \$ _____

Adult Signature Required \$ _____

Adult Signature Restricted Delivery \$ _____

Postmark
Here

Postage

Mr. Rick Murphy
 VP, CAPPAD, Inc.
 P.O. Box 122
 Maple Mount, Kentucky 42356

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Rick Murphy
 VP, CAPPAD, Inc.
 P.O. Box 122
 Maple Mount, Kentucky 42356

2. Article Number (Transfer from carrier label)

7019 0700 0000 6131 5181

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee
Cecelia Olinger

B. Received by (Printed Name) *Cecelia Olinger*

C. Date of Delivery

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
- Adult Signature
 - Adult Signature Restricted Delivery
 - Certified Mail®
 - Certified Mail Restricted Delivery
 - Collect on Delivery
 - Collect on Delivery Restricted Delivery
 - Insured Mail
 - Insured Mail Restricted Delivery (over \$500)
 - Priority Mail Express®
 - Registered Mail™
 - Registered Mail Restricted Delivery
 - Return Receipt for Merchandise
 - Signature Confirmation™
 - Signature Confirmation Restricted Delivery

Domestic Return Receipt