



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1201 Elm Street, Suite 500  
Dallas, Texas 75270

MAR 16 2020

**Via Electronic Mail:**

*phillip.guzzino@utecinc.onmicrosoft.com*

Phillip Guzzino  
1432 Broad St.  
Lake Charles, Louisiana 70601

Re: Administrative Order for Compliance on Consent  
In the Matter of Phillip Guzzino  
EPA Docket No. CWA-06-2020-2702

Dear Mr. Guzzino:

Enclosed is a copy of the fully executed Administrative Order for Compliance that has been filed with the Regional Judicial Officer. As provided in the Order, the compliance actions listed in paragraph 27 are to be initiated and completed as soon as possible, but in no later than the time periods specified.

If you have any questions, please contact Clarissa Howley Mills, with the Office of Regional Counsel at (214) 665-6782, or [mills.clarissa@epa.gov](mailto:mills.clarissa@epa.gov), or Stephanie Meyers of my staff at (214) 665-6496, or [meyers.stephanie@epa.gov](mailto:meyers.stephanie@epa.gov).

Sincerely,

A handwritten signature in blue ink that reads "Cheryl".

Cheryl T. Seager, Director  
Enforcement and  
Compliance Assurance Division

Enclosure

FILED

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
Dallas, Texas

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REGIONAL HEARING CLERK  
EPA REGION VI

In the Matter of

Phillip Guzzino

Respondent

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Docket No. CWA-06-2020-2702

**ADMINISTRATIVE COMPLIANCE ORDER ON CONSENT**

**Preliminary Statement**

1. The U.S. Environmental Protection Agency, Region 6 (EPA), and Phillip Guzzino (Respondent) have agreed to voluntarily enter into this Administrative Compliance Order on Consent (Order) for the purpose of carrying out the goals of the Clean Water Act (CWA or the Act), 33 U.S.C. § 1251 et seq., to “restore and maintain the chemical, physical and biological integrity of the Nation’s waters.”

2. The following Findings of Violation are made and Order entered into pursuant to the authority of Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), which provides that whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of Section 301 of the CWA, 33 U.S.C. § 1311, the Administrator may issue an order requiring compliance.

**Parties**

3. Complainant, by delegation from the Administrator of the EPA and the Regional Administrator, EPA, Region 6, is the Director of the Enforcement and Compliance Division, EPA, Region 6.

4. Respondent is Phillip Guzzino, doing business as Utility Truck and Equipment Co.

**Statutory and Regulatory Authority**

5. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person except in compliance with, among other Sections, a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344.

6. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines “discharge of a pollutant” and “discharge of pollutants” as, among other things, any addition of any pollutant to navigable waters from any point source.

7. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” as dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.

8. Section 502(7) of the CWA, 33 U.S.C. § 1362(7) defines “navigable waters” as waters of the United States, including the territorial seas.

9. The regulation at 40 C.F.R. § 232.2 defines “waters of the United States” as, among other things, waters which are subject to the ebb and flow of the tide, interstate wetlands, and wetlands adjacent to waters.

10. Pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, the Secretary of the Army, acting through the Chief of Engineers, commonly referred to as the United States Army Corps of Engineers (COE), may issue permits for the discharge of dredged or fill material into the navigable waters at specified disposal sites.

11. The regulation at 40 C.F.R. § 232.2 defines “discharge of fill material” as the addition of fill material into waters of the United States.
12. The regulation at 40 C.F.R. § 232.2 defines “fill material” as material placed in waters of the United States where the material has the effect of replacing any portion of a water of the United States with dry land or changing the bottom elevation of any portion of a water of the United States.
13. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines “person” as an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.
14. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” as any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.

**EPA’s Findings of Fact and Conclusions of Law**

15. Respondent owns a forty (40) acre tract located at: Section 14, Township 11S, Range 10W, Calcasieu Parish, Louisiana, with a latitude/longitude of approximately 30.105274, -93.361141, that joins the Choupique Bayou (the Property).
16. Respondent is, and at all times referred to herein was, a “person” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
17. On or about September 2, 2019, the COE received complaints of the unauthorized discharge of fill material activity on the Property.

18. On or about October 23, 2019, representatives of the COE conducted a site inspection of the Property to evaluate Respondent's compliance with the CWA (the COE Inspection).

19. At the time of the COE Inspection, Respondent did not have a permit for the discharge of fill material pursuant to Section 404 of the CWA, 33 U.S.C. § 1344.

20. Observations made during the inspection revealed that Respondent and/or other persons acting at Respondent's direction, used heavy equipment to move fill material, including rock, sand, and dirt, to build up the level of the Property and construct a road, causing the discharge of the fill material into the Choupique Bayou, tidal waters, and surrounding coastal prairie wetlands, and tidal marsh wetlands.

21. The heavy equipment used by Respondent to move fill material is a "point source", as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

22. The fill material discharged by Respondent is a "pollutant", as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

23. The Choupique Bayou, tidal waters, and surrounding coastal prairie wetlands, and tidal marsh wetlands are "waters of the United States", as defined by 40 C.F.R. § 232.2, and navigable waters, as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

#### **EPA's Findings of Violation**

24. The facts stated in Paragraphs 15 through 23 above are herein incorporated.

25. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person except in compliance with, *inter alia*, a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344.

26. Respondent's discharge of fill material without a permit issued pursuant to 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).

**Order for Compliance**

27. Based on the EPA Findings of Violation set forth above, and pursuant to the authority of Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), the EPA ORDERS, and Respondent agrees to immediately cease any discharge of pollutants, including dredged or fill material to waters of the United States, except as provided herein in accordance with a permit issued pursuant to Section 404(a) of the CWA, 33 U.S.C. § 1344(a), and to take the following compliance actions. The following compliance actions shall be initiated and completed as expeditiously as possible, but in no event later than the maximum time periods specified and agreed by the EPA and Respondent:

- a. Within thirty (30) days of the Effective Date, Respondent shall complete and submit a good faith jurisdictional delineation of the Property to the COE. The delineation shall include for all portions of the proposed project area, at minimum, flagging, data sheet(s), and maps consistent with those required by the New Orleans District, COE permit program. Upon submittal of the delineation, Respondent shall submit any additional documentation or revisions to the COE, as requested by the COE, for generating a complete delineation, within fourteen (14) calendar days of receipt of notice from the COE.
- b. Within ninety (90) days of the Effective Date, Respondent shall apply for a permit from the COE to obtain authorization for any portion of the impacted Property that Respondent intends to maintain and not restore. Within fourteen (14) calendar

days of receipt of notice from the COE, Respondent shall submit any additional documentation or revisions as requested by the COE, for generating a complete permit application. Beginning on the effective date of the permit, Respondent shall comply with all terms of the permit, including adequately and timely performing any required mitigation.

- c. Within sixty (60) days of the effective date of the permit, Respondent shall restore any remaining portion of the impacted Property that Respondent does not intend to or is unable to obtain a permit from the COE for authorization to maintain the impacted Property, including but not limited to all portions of the Property that are impacted tidal wetlands. Specifically, Respondent shall restore the impacted Property to pre-impacted topography, by taking actions that include but are not limited to: removing any foreign off-site fill material, leveling out any top soil piles, and allowing natural revegetation. All restoration action shall be taken in accordance with wetland restoration requirements and project design coordinated and approved by the COE.

#### **Submissions**

28. Within ninety (90) days of the effective date of the permit, Respondent shall provide the EPA with documentation, demonstrating completion of the compliance actions described above, including a final summary and photographs of the topography of the permitted work and restored wetlands post-construction.

29. All submissions required by this Order shall contain the following certification signed by an authorized representative of Respondent:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those

individuals immediately responsible for obtaining the information, the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

30. All submissions to the EPA required by this Order shall be sent to:

Stephanie Meyers  
Enforcement and Compliance Assurance Division  
Water Enforcement Branch  
U.S. Environmental Protection Agency, Region 6  
1201 Elm Street, Suite 500 (ECDWR)  
Dallas, Texas 75270-2101  
meyers.stephanie@epa.gov

31. All documents submitted by Respondent to EPA in the course of implementing this Order shall be available to the public unless identified and determined to be confidential pursuant to 40 C.F.R. Part 2, Subpart B.

#### **Other Terms and Conditions**

32. By entering into this Order, Respondent: (a) consents to and agrees not to contest EPA's authority or jurisdiction to issue or enforce this Order; and (b) agrees to undertake all actions required by this Order.

33. Respondent neither admits nor denies the EPA's Findings of Fact and Conclusions of Law and the EPA's Findings of Violation.

34. Respondent and the EPA agree to bear their respective costs and attorney's fees. Respondent waives its right to seek reimbursement of its costs and attorney's fees under the Equal Access to Justice Act (5 U.S.C. § 504), as amended by the Small Business Regulatory Enforcement Fairness Act (P.L. 04-121), and any regulations promulgated thereunder.



**General Provisions**

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

36. Any violation of this Order may result in an enforcement action for civil penalties under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19.

37. This order does not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondent of its responsibility to obtain any required local, state, and/or federal permits.

38. This Order does not resolve any civil or criminal claims for violations alleged in this Order, nor does the Order preclude the EPA from initiating an administrative or civil judicial enforcement action to recover penalties or seek additional injunctive relief pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

39. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to public health, welfare, or the environment.

40. Nothing in this Order shall limit the EPA's right to obtain access to, and/or inspect the Property, and/or to request additional information from Respondent in accordance with the CWA or other legal authority.

41. By signing this Order, the undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Order and to execute and legally bind Respondent to this Order.

42. The provisions of this Order shall apply and be binding upon Respondent and its agents, officers, directors, employees, trustees, authorized representatives, successors, and assigns. Respondent shall ensure that any agents, officers, directors, employees, contractors, consultants, firms or other persons or entities acting under or for Respondent with respect to matters included herein comply with the terms of this Order. From the Effective Date until termination of this Order, Respondent must give written notice and a copy of this Order to any successors in interest prior to any transfer of ownership or control of any portion or interest in the Property. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to the EPA. In the event of such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this Order unless the EPA has provided written approval of the release of said obligations or liabilities.

43. The terms of this Order shall be effective immediately upon signature of the latter of Respondents or the EPA (Effective Date).

44. The terms of this Order shall not be modified except by subsequent written agreement by the EPA and Respondent.

45. This Order shall remain in effect until the earlier of the following, at which point Respondent shall operate in compliance with the CWA:

- a. The effective date of any determination by the EPA that Respondents have achieved compliance with all terms of this Order; or
- b. Immediately upon receipt by Respondents of notice from the EPA finding that an imminent and substantial endangerment to public health, welfare, or the environment has occurred.

46. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

**RESPONDENT:  
PHILLIP GUZZINO**

Date: 3-6-20

  
Signature

Phillip Guzzino  
Name

Owner  
Title

**COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 3-11-2020



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Cheryl T. Seager, Director  
Enforcement and  
Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 6

**CERTIFICATE OF SERVICE**

I certify that on the date noted below I hand delivered the original and one true copy of this Administrative Order for Compliance on Consent to the Regional Hearing Clerk, United States Environmental Protection Agency, 1201 Elm Street, Suite 500, Dallas, Texas 75270.

I further certify that on the date noted below I sent a true and correct copy of the original Administrative Order for Compliance on Consent to:

Phillip Guzzino  
4319 Edgewater Drive  
Lake Charles, Louisiana  
70605  
*phillip.guzzino@utecinc.onmicrosoft.com*

3/16/2020  
Date

CHMills  
Clarissa Howley Mills