

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
726 MINNESOTA AVENUE
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:) ADMINISTRATIVE
) ORDER ON CONSENT
REYNOLDS COUNTY ROAD COMMISSION)
AND ITS COMMISSIONERS)
)
Respondents) Docket No. CWA-07-2006-0242
)
Proceedings under)
Section 309(a)(3))
of the Clean Water Act,)
33 U.S.C. § 1319(a)(3))
_____)

A. INTRODUCTION

Preliminary Statement

1. This Administrative Order on Consent (Order) is entered into by the Respondents Reynolds County Road Commission and its Commissioners ("Respondents"), and the United States Environmental Protection Agency, Region VII (EPA), pursuant to Section 309(a)(3) of the Clean Water Act ("CWA"), as amended, 33 U.S.C. § 1319(a)(3). This authority has been delegated by the Administrator to the Regional Administrator, of the Environmental Protection Agency ("EPA"), Region VII, as redelegated to the Director of Region VII's Water, Wetlands, and Pesticides Division. Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), authorizes EPA to issue administrative orders to require persons to take those actions necessary to eliminate non-compliance with the terms of the CWA.
2. The Respondents in this Order are the Reynolds County Road Commission and its Commissioners. Reynolds County is a political subdivision of the state of Missouri, and is located in south central Missouri. Reynolds County Road Commission performs road maintenance within the county on county roads on behalf of Reynolds County.
3. This Order addresses discharges of pollutants by Respondents into the waters of the United States without the permit(s) required by law. Specifically, Section 301 of the CWA, 33 U.S.C. § 1311, provides that except as in compliance with certain specified provisions of the CWA, the unauthorized discharge of any pollutant into the waters of the United States by any person is unlawful. Pursuant to Section 502(6) of the CWA, pollutants include fill materials such as "dredged spoil..., rock, sand, [and] cellar dirt." Section 404 of the CWA, 33 U.S.C. § 1344, specifically requires a person to obtain a permit from the United States Army Corps of Engineers ("Corps") for any discharge of "dredged or fill material" into the "navigable waters" of

the United States. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters,” in part, as the “waters of the United States,” which are defined at 40 C.F.R. § 232.2 and 33 C.F.R. Part 328.

4. By entering into this Order, Respondents (1) consent to and agree not to contest EPA's authority or jurisdiction to issue or enforce this Order, (2) agree to undertake all actions required by the terms and conditions of this Order, and (3) consent to be bound by the requirements set forth herein.

Statement of Purpose

5. The objectives of the parties in entering into this Order are to perform the following, in accordance with the terms and conditions of this Order:

- a. To comply with the requirement of the Clean Water Act regarding the performance of gravel mining and/or discharges of dredge and or fill materials within waters of the United States; and
- b. To establish and perform Mitigation which will minimize the need for future maintenance of low flow/water crossings within Reynolds County.

Applicability

6. This Order shall apply to and be binding upon Respondents, their agents, successors, and assigns and upon all persons, contractors, and consultants acting under or on behalf of Respondents in matters related to compliance with this Order.

7. No change in the identity or makeup of the Respondent Reynolds County Road Commission shall change this Respondent's obligations under this Order. Specifically, this Order shall be binding on future Commissioners of the Respondent Reynolds County Road Commission.

8. Respondents shall provide a copy of this Order to all contractors, subcontractors, laboratories, and consultants retained to perform or monitor any portion of the work called for by this Order, on or before the date of such retention, and shall condition all such contracts on compliance with the terms of this Order.

9. Respondents shall give notice of this Order to any successor in interest (i.e., new Commissioners) and shall provide EPA with written notification of such transfer at least thirty (30) days prior to any such transfer.

B. FINDINGS OF FACT

Preliminary Statement

1. Respondent and its Commissioners, are each a "person," within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
2. As described below, on several occasions before April 2004, Respondent through its employees and/or contractors, and using earth moving equipment, channelized several separate stream locations, dozing river gravel out of the stream channels and piling the gravel on the stream banks within Sinking Creek, Bills Creek, Low Hollow, Little Brushy Creek, West Fork and Black Creek. Sinking Creek and Bills Creeks are tributaries of the Black River.
3. After receiving citizen complaints, in approximately April 27, 2004, the Missouri Department of Natural Resources performed an inspection of channelization work being performed in Sinking Creek and Bills Creek. During this inspection, the Corps confirmed that an unauthorized channelization for several hundred feet within Sinking and Bills Creek had occurred.
4. On April 28, 2004, the Army Corps of Engineers (Corps) wrote the Commission and informed the Commission that these channelizations required a permit issued pursuant to Section 404 of the CWA and directed the Commission to cease and desist "from further work below the ordinary high water mark of Sinking Creek, Bills Creek and other tributaries of the Black River."
5. On May 6, 2004, the MDNR wrote the Reynolds County Road Commission and informed the Commission that this type of activity was prohibited without a permit issued under Section 404 of the Clean Water Act and requested the Commission cease these types of activities..
6. On November 5, 2004, the Corps directed Respondent to remove the gravel pushed into piles on stream banks during the channelization. To date, the County has not removed the gravel pushed into piles on Sinking Creek and Bills Creek.
7. On February 7, 2005, the unauthorized channelization in Sinking Creek and Bills Creek were referred to EPA for enforcement and resolution.
8. On January 13, 2006, a representative of the Corps inspected the Sinking Creek road crossing and found that a recent channelization had occurred.
9. The areas of excavation and channelization and resulting discharge of fill and/or dredged material described above ("discharge/disposal sites") occurred in locations below the ordinary high water mark of the impacted streams and thus occurred in locations characterized as "waters of the United States."

10. The areas of excavation and channelization and resulting discharge of fill and/or dredged material described above ("discharge/disposal sites") has altered the natural drainage pattern and hydrology of the discharge/disposal sites.

11. The earth moving equipment used to perform the activities referenced in Paragraph A.2 to A.8, above, constitutes a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

12. The fill and/or dredged materials excavated and discharged and disposed of below the ordinary high water mark of Sinking Creek and Bills Creek are "pollutants" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

13. The discharge and disposal of the fill and/or dredged material into the waters of the United States, as described in Paragraphs A.2 to A.8, above, constitutes the "discharge of a pollutant" within the meaning of Section 501(12) of the CWA, 33 U.S.C. § 1362(12).

14. At the time of the excavation and discharge and disposal of the pollutants, the discharge/disposal sites were within the "waters of the United States," within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), 40 C.F.R. § 232.2 and 33 C.F.R. Part 328.

15. The discharge and disposal of pollutants from a point source into waters of the United States by Respondents, as described above, occurred without a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, and therefore these discharges and disposals violated Section 301 of the CWA, 33 U.S.C. § 1311.

C. ORDER FOR COMPLIANCE

Based on the Findings of Violation set forth above and, pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), Respondents are hereby ORDERED as follows:

1. Within sixty (60) days of the effective date of this Order, Respondent shall submit to the EPA and Corps contacts described in Paragraph C.7, below, a Low water Crossing Maintenance Report and Plan, which shall contain the following information:

- a. The locations of all low water crossings within Reynolds County which regularly require entry into waters of the United States for the performance of maintenance of such structures by the removal of gravel from in-stream;
- b. Copies of all maintenance logs and/or other records which document the performance of such maintenance activities within the last five (5) years; and
- c. The anticipated schedule for the performance of any future maintenance for each identified low water crossing for a period of two (2) years after the effective date of this Order.

Compliance with the Clean Water Act

2. Except as required to comply with the mitigation provisions below, Respondents shall hereafter not discharge dredged or fill material in waters of the United States, as defined in 33 C.F.R. §§ 323.2(c) and (e) (and any successor provision of current Corps regulations), except in conformity with CWA Section 404.
3. The use of earth-moving equipment or other heavy machinery in streambeds, below the ordinary high water mark as defined in 33C.F.R. § 328.4(c)(1), for the purpose of gravel mining or bank stabilization, will be deemed a discharge of dredged or fill material requiring a Corps permit, as will any bank stabilization activity below the ordinary high water mark. If in doubt as to whether an act is prohibited by the CWA, Respondents shall consult the Corps before undertaking the act.
4. For the purpose of this Order, a “bank stabilization activity” is any placement, replacement or supplementation of dredged or fill material, or the construction or placement of any structure, on a channel bank, between the bed of the channel and the edge of the high bank, for the purpose of controlling erosion or preventing channel migration.
5. Respondents will cooperate with the Corps to arrange a meeting, to occur as promptly possible following the entry of this Order, and then annually thereafter until a total of five (5) annual meetings have been held at a time and place reasonably suitable to Respondents and the Corps, at which a representative or representatives of the Corps may address the employees of Respondent Reynolds County Road Commission and its Commissioners concerning the requirements of the CWA, and answer questions. Respondents and the Corps will each bear their own expenses of holding these meetings.
6. Beginning within sixty (60) days following entry of this Order, and continuously thereafter, Respondent Reynolds County Road Commission will clearly display a notice or notices, in a place or places reasonably calculated to be seen by the employees of the Respondent, and future Commissioners, that informs such employees and Commissioners of the applicability of the CWA to in-stream gravel mining and bank stabilization activities, and of the Corps permit requirements for such activities. Within sixty days of, and for a period of five years following, the entry of this Decree, Respondent Reynolds County Road Commission will similarly post notices of the requirements of paragraphs C.2 to C.5 of this Order. Respondents may consult with the Corps concerning the content of these notices.

Mitigation

7. Respondent shall perform mitigation of the impact of the unpermitted discharges by the expenditure of at least \$15,275 on work designed to minimize the need for future entry into waters of the United States to perform maintenance on low water crossings. Within thirty (30) days of Respondent's receipt of this Order, Respondents shall submit a proposed Mitigation Workplan to the following EPA and Corps contacts:

Ms. Dianne Huffman
U.S. Environmental Protection Agency - Region VII
901 N. 5th Street
Kansas City, Kansas 66101

Mr. Louis Clarke
U.S. Army Corps of Engineers, Little Rock District
P. O. Box 865
Walnut Ridge, Arkansas 72476-0865

8. The proposed Mitigation Workplan referenced in Paragraph C.7, above, shall identify the approximate location of the required mitigation site(s), and shall propose all actions necessary to perform work that will minimize the need for future entry into waters of the United States to perform maintenance on low water crossings. The proposed Mitigation Workplan shall propose a schedule for completion of all such work no later than September 1, 2008. EPA will review Respondent's submission of the Mitigation Workplan and will notify Respondents in writing of EPA's approval or disapproval of the Workplan, or any part thereof. If the Mitigation Workplan is disapproved in whole or in part by EPA, EPA will provide written comments to Respondent explaining the basis for its decision. Within thirty (30) days of receipt of EPA's comments, Respondents shall amend the Workplan by addressing all of EPA's comments, and resubmit the Workplan to EPA. If EPA disapproves the revised Workplan, EPA may modify and approve the same. In the event of such modification and approval, EPA will notify Respondent of the modification/approval. The approved Mitigation Workplan shall be deemed incorporated into and an enforceable part of this Order.

10. Upon receipt of EPA's approval, Respondents shall commence work and implement the Mitigation Workplan in accordance with the schedule and provisions contained therein. Within fifteen days (15) of completion of the work required by the approved Mitigation Plan, a notice of completion of work and a description of the location of the mitigation site(s) shall be provided to EPA and Corps contacts described in Paragraph C. 7, above.

11. In the event that Respondents fail to submit a Mitigation Workplan that EPA, at its sole discretion, determines that it is able to approve, Respondents shall make a payment of \$15,275 to finance the performance of the required mitigation of the impact of the unpermitted discharges. This payment shall be made to the Missouri Conservation Heritage Foundation Stream Stewardship Trust Fund for the purpose of restoring, preserving, and enhancing stream systems

within Missouri. Respondents agree that they would have been required to perform such mitigation if Respondents had properly applied for and obtained individual Section 404 permits, before the alleged violations had occurred. In lieu of performance of such mitigation, Respondents hereby agree to finance performance of the mitigation by payment of \$15,275, which shall be made in full within thirty (30) days following receipt by Respondents of notice of a demand for payment by EPA. Respondents shall finance the required mitigation by issuance of certified or cashier's check made payable to "Missouri Conservation Heritage Foundation - Stream Stewardship Trust Fund" and shall deliver the check, with a transmittal letter that identifies the captioned case name and docket number to:

Missouri Conservation Heritage Foundation
c/o Stream Stewardship Trust Fund
P.O. Box 366
Jefferson City, Missouri 65102-0366

A copy of the transmittal letter and check shall be mailed to:

Howard C. Bunch
Sr. Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency - Region VII
901 N. 5th Street
Kansas City, Kansas 66101.

Monitoring and Access

12. For a period of five (5) years from the date of entry of this Order, Respondent Reynolds County Road Commission shall provide the EPA and Corps advance notice of the time and place of any low water crossing maintenance, streambed gravel mining or bank stabilization activity that it undertakes. The notice will be given at least three (3) days before the date by which the Corps must give the landowner notice in order to gain access by the time the project begins. This does not apply to any bank stabilization activity that must be undertaken under an emergency (i.e., necessary to protect public safety) that does not permit such advanced notice, but in such event notice will be given as soon as possible. The purpose of this provision is to permit the EPA and/or Corps to observe such maintenance, streambed gravel mining and bank stabilization activities while in process and/or immediately after completion. To this end, Respondent Reynolds County shall cooperate in good faith with the EPA and the Corps, and will provide times and places with sufficient specificity to permit the EPA and/or Corps to undertake such inspections efficiently and without multiple trips to the sites involved.

13. All authorizations secured by Respondents for entry on private land by which Respondents conducts crossing maintenance, in-stream gravel mining or undertakes any bank stabilization activity, shall include a provision authorizing the same entry by the EPA and the Corps, upon no more than five (5) days notice to the landowner and Respondents, for the purpose

of determining the compliance of Respondents with the CWA. The authorization for entry by the EPA and the Corps shall extend at least three (3) months beyond the time that the gravel mining or bank stabilization activity is to be completed. Respondents shall make such authorization available to the EPA and the Corps upon request.

14. If Respondent Reynolds County Road Commission uses access on its own property to conduct low water crossing maintenance, in-stream gravel mining or undertake any bank stabilization activity, it will allow the EPA and Corps access over the same property for the purpose of inspection.

Reservation of Rights

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

16. With respect to matters not addressed in this Order, EPA reserves the right to take any enforcement action pursuant to the CWA, or any other available legal authority, including without limitation, the right to seek injunctive relief, monetary penalties and/or other legal remedies allowed by law.

Effective Date

17. This Order shall be effective with respect to Respondents upon receipt of a fully executed copy hereof. All time periods herein shall be calculated from the date of Respondents receipt of the Order.

Signatories

18. The undersigned for each party have the authority to bind each respective party to the terms and conditions of this Order. Specifically, the undersigned representative of Respondents Reynolds County Road Commission and its Commissioners has the legal authority to bind these Respondents to the terms and conditions of this Order.

FOR RESPONDENT REYNOLDS COUNTY ROAD COMMISSION:


Title

8/29/06
DATE

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:


Betty Berry William A. Spratt
Acting Director
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency - Region VII

09/07/06
DATE


HOWARD C. BUNCH
Sr. Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency - Region VII

9/5/2006,
DATE

CERTIFICATE OF SERVICE

I certify that on the date noted below that the foregoing Administrative Order on Consent were mailed by Federal Express, to:

The Honorable Donald Barnes
Presiding Commissioner
Reynolds County
PO Box 10
Centerville, Missouri 63633

9/15

Date


