



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

MAY 7 2009

CERTIFIED MAIL 70082810000043168662
RETURN RECEIPT REQUESTED

Ms. Marya Wilkerson
Federal Bureau of Investigation
200 North Royal Street
Mobile, Alabama 36602

RE: Administrative Complaint dated March 6, 2009
Louise Jones
Docket No. CWA-04-2009-5503

Dear Ms. Wilkerson:

The purpose of this letter is to advise you that the U.S. Environmental Protection Agency (EPA) failed to properly file the Administrative Complaint in the above referenced case in accordance with EPA's filing procedures. Enclosed is a copy of the Administrative Complaint that has been properly filed with the Regional Hearing Clerk.

Please note the following: The allegations as set forth in the Administrative Complaint (CWA-04-2009-5503) dated March 6, 2009, have not been altered in any way.

We apologize for any inconvenience that this may have caused. If you have any questions, please contact Mr. Chris Parker at (404) 562-9838.

Sincerely,

A handwritten signature in black ink that reads "Molly Davis".

Molly Davis, Chief
Wetlands Enforcement Section
Water Protection Division

Enclosure

Internet Address (URL) • <http://www.epa.gov>

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RETURN RECEIPT REQUESTED

Mr. Onis "Trey" Glenn III
Director, Alabama Department
of Environmental Management
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2059

Re: Notice of Proposed Administrative Complaint for Class II Penalty
Louise Jones
Docket No. CWA-04-2009-5503

Dear Mr. Glenn:

The purpose of this letter is to advise you that the U.S. Environmental Protection Agency (EPA) failed to properly file the Administrative Complaint in the above referenced case in accordance with EPA's filing procedures. Enclosed is a copy of the Administrative Complaint that has been properly filed with the Regional Hearing Clerk.

Please note the following: The allegations as set forth in the Administrative Complaint (CWA-04-2009-5503) dated March 6, 2009, have not been altered in any way.

We apologize for any inconvenience that this may have caused. If you have any questions, please contact Mr. Chris Parker of my staff at (404) 562-9838.

Sincerely,

A handwritten signature in black ink that reads "Molly Davis".

Molly Davis, Chief
Wetlands Enforcement Section
Water Protection Division

Enclosure

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ATLANTA, GEORGIA 30303-8960

MAY 7 2009

VIA HAND DELIVERY

Ms. Louise Jones
1401 Holmes Avenue
Foley, Alabama 36535

**Re: Administrative Complaint
Docket No. CWA-04-2009-5503**

Dear Ms. Jones:

Enclosed please find a copy of the Administrative Complaint, Docket No. CWA-04-2009-5503, which the U.S. Environmental Agency (EPA) has filed with the Regional Hearing Clerk. This Administrative Complaint was issued under the authority vested in the Administrator of the EPA as set forth in Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g).

The regulations that set out the administrative enforcement procedures—the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits”—are located at 40 C.F.R. Part 22. Please note that under 40 CFR Part 22 an Answer is due within 30 days of receipt of the Administrative Complaint.

If you have any comments or questions regarding this matter, please contact Mr. Chris Parker of my staff at (404) 562-9838, or your attorney may contact Mr. Philip Mancusi-Ungaro, Associate Regional Counsel, at (404) 562-9519.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas F. Mundrick".

Douglas F. Mundrick, P.E., Chief
Clean Water Enforcement Branch
Water Protection Division

Enclosure

cc: U.S. Army Corps of Engineers, Mobile District
Alabama Department of Environmental Management

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:

Louise Jones
Foley, Alabama

RESPONDENT

)
) ADMINISTRATIVE COMPLAINT
) FOR CLASS II PENALTY
) UNDER SECTION 309(g)
) OF THE CLEAN WATER ACT,
) 33 U.S.C. § 1319(g)
) Docket No. CWA-04-2009-5503
)

HEARING CLERK

2009 MAY -7 PM 2:11

RECEIVED
EPA REGION IV

ADMINISTRATIVE COMPLAINT

I. Statutory Authority

1. This is an Administrative Complaint issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) under section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g), and 40 C.F.R. Part 22, the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits." The Administrator has delegated this authority to the Regional Administrator of EPA, Region 4, who has duly redelegated this authority to the Director of the Water Management Division, Region 4, who hereby issues this Complaint and Notice.

II. Statutory and Regulatory Background

2. Section 309(g)(1)(A) of the CWA, 33 U.S.C. § 1319(g)(1)(A), states "w]henever, on the basis of any information available - the Administrator finds that any person has violated [section 301 of the CWA, 33 U.S.C. § 1311], . . . the Administrator . . . may, after consultation with the State in which the violation occurs, assess a class I civil penalty or a class II civil penalty under [33 U.S.C. § 1319(g)(2)(B)]."

3. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), states "[e]xcept as in compliance with . . . [Section 404 of the CWA, 33 U.S.C. § 1314], the discharge of any [dredged or fill material] by any person shall be unlawful." Section 404 of the CWA, 33 U.S.C. § 1344, authorizes the Secretary of the Army, acting through the Chief of Engineers, U.S. Army Corps of Engineers (COE), to issue permits for the discharge of dredged or fill material into navigable waters.

4. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines a "discharge of pollutants" as "[a]ny addition of any pollutant to navigable waters from any point source"

7. Federal regulations under 40 C.F.R. § 232.2 define the term “waters of the United States” to include “wetlands.”

8. Federal regulations under 40 C.F.R. Part 232.2 and 33 C.F.R. Part 328.3(b) define “wetlands” as “[t]hose areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.”

III. Allegations

9. Respondent, Louise Jones, at all times relevant to this Complaint, was the owner of a tract of land located adjacent to Wolf Bay, on lots 37 and 38, Bay Harbour Road, in Elberta, Baldwin County, Alabama, near latitude 30° 20' 44" north and longitude 87° 35' 58" west (the Site) (Exhibits A and B).

10. Louise Jones is a “person” within the definition set forth under section 502(5) of the CWA, 33 U.S.C. § 1362(5).

11. Commencing on or about October 15, 2005, to August 8, 2006, Respondent, or those acting on behalf of the Respondent, discharged dredged and/or fill material into wetlands on the Site using earth moving machinery, during unauthorized activities associated with the clearing and filling of wetlands for a residential structure.

12. Respondent impacted approximately 0.74 acres of wetlands that are adjacent to Wolf Bay, a navigable water of the United States.

13. The discharged dredged and/or fill material, including earthen material deposited at the Site, are “pollutants” as defined under the CWA § 502(6).

14. The earth moving machinery employed by the Respondent to deposit the dredged and/or fill material at the Site are “point sources” as defined under the CWA § 502(14).

15. Respondent’s placement of the dredged and/or fill material at the Site constitutes a “discharge of pollutants” as defined under the CWA § 502(12).

16. At no time during the discharge of dredged and/or fill material at the Site from October 14, 2005 to August 8, 2006, did the Respondent possess a permit under Section 404 of the CWA, 33 U.S.C. § 1344, authorizing the activities performed by Respondent. 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).

17. Each day the material discharged by the Respondent remains in waters of the United States without 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.

IV. Notice

18. As required under the CWA § 309(g), EPA has consulted with the Alabama Department of Environmental Management regarding this proposed action by mailing a copy of this document to the appropriate official of the State of Alabama and offering an opportunity for the State to consult with EPA on the proposed penalty assessment. EPA, contemporaneously with the issuance of this proposed action, published a public notice in our website regarding this proposed action.

V. Penalty

19. Consistent with the 2004 Civil Monetary Penalty Inflation Adjustment Rule, 69 Fed. Reg. 7121 (Feb. 13, 2004), based on the above Findings of Violation and under Section 309(g)(2) of the CWA, 33 U.S.C. § 1319(g)(2), the Administrator may assess a civil penalty of up to \$11,000 per violation per day, not to exceed a maximum of \$157,500, for violations of Section 301(a) and 404 of the CWA, 33 U.S.C. § 1311(a) and 1344 that occurred after March 15, 2004 through January 12, 2009. For violations occurring after January 12, 2009 under the 2008 Civil Monetary Penalty Adjustment Rule 73 Fed. Reg. 75340 (Dec. 11, 2008), the penalties are \$16,500 per day up to a maximum of \$177,500. Based upon the facts alleged in this Complaint, and based upon the nature, circumstances, extent and gravity of the violations alleged, as well as the Respondent's ability to pay, prior history of such violations, and such other matters as justice may require, EPA Region 4 hereby proposes to issue a Final Order Assessing Administrative Penalties to the Respondent for violations alleged in this Complaint. This Complainant proposes that Respondent pay a penalty in an amount of up to \$177,500 for the violations stated in this Complaint.

VI. Hearing

20. As provided under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), the Respondent has the right to request a hearing to contest any material fact contained in this Complaint, or to contest the appropriateness of the amount of the proposed penalty. If the Respondent wishes to avoid being found in default, Respondent must file a written Answer to this Complaint and a Request for Hearing within thirty (30) days of service of this Complaint with the:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta Federal Center
Atlanta, Georgia 30303-8960

21. The Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint with respect to which the Respondent has any knowledge, or clearly state that the Respondent has no knowledge as to particular factual allegations in the Complaint. The Answer also must state:

- a. the circumstances or arguments that are alleged to constitute grounds of defense, and
- b. the facts which the Respondent intends to place at issue.

22. Failure to deny any of the factual allegations in this Complaint constitutes admission of the undenied allegations. A copy of this Answer and any subsequent documents that the Respondent files in this action should be sent to Mr. Philip Mancusi-Ungaro Attorney, OEA, U.S. Environmental Protection Agency, 61 Forsyth Street S.W., Atlanta, Georgia 30303. Mr. Philip Mancusi-Ungaro represents EPA in this matter and is authorized to receive service for EPA in this proceeding. He may be telephoned at (404) 562-9519.

23. Any hearing that Respondent requests regarding this Complaint will be held and conducted in accordance with the provisions of 40 C.F.R. Part 22. If Respondent fails to file a written Answer within thirty (30) calendar days of receipt of this Complaint, a Default Order may be issued against Respondent by the Regional Administrator. Issuance of a Default Order will constitute a binding admission of all allegations made in the Complaint and a waiver of Respondent's right in this case to a hearing under the CWA. 40 C.F.R. § 22.17. The civil penalty proposed in this Complaint will then become due and payable without further proceedings sixty (60) days after the Default Order becomes the Final Order of the Administrator. 40 C.F.R. § 22.31. Respondent's failure to fully pay the proposed penalty, as assessed by the Final Order, by its due date will result in a civil action to collect the assessed

penalty, plus interest, attorney's fees, costs, and an additional quarterly nonpayment penalty under section 309(g)(9)(B) of the CWA, 33 U.S.C. § 1319(g)(9)(B).

24. Should Respondent request a hearing on the proposed penalty amount, members of the public who have exercised their right to comment, and to whom EPA is obligated to give notice of this proposed action, will have a right under section 309(g)(4)(B), 33 U.S.C. § 1319(g)(4)(B), to present evidence on the appropriateness of the penalty assessment. If Respondent does not request a hearing, EPA will issue a Final Order Assessing Administrative Penalties, and only members of the public who commented on this proposal during the thirty (30) day period following Respondent's receipt of this document will have an additional thirty (30) days to petition EPA to set aside the Final Order Assessing Administrative Penalties and to hold a hearing thereon. EPA will grant the petition and hold the hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order Assessing Administrative Penalties.

VII. Settlement Conference

25. Whether or not Respondent requests a hearing, an informal conference may be requested in order to discuss the facts of this case and to arrive at a settlement. To request a settlement conference, please contact:

Christopher Parker
Wetlands Enforcement Officer
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9838

26. Respondent's request for an informal settlement conference does not extend the thirty (30) day period during which a written Answer and Request for Hearing must be submitted. Respondent may pursue the informal conference procedure, however, simultaneously with the adjudicatory hearing procedure. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. EPA, however, will not reduce the penalty simply because such a conference is held. Any settlement that may be reached as a result of such conference will be embodied in a Final Order. Respondent's consent to a Final Order will constitute a waiver of the right to request a hearing on any matter stipulated to therein.

27. Neither assessment nor payment of an administrative civil penalty under this section of the CWA will affect Respondent's continuing obligation to comply with the CWA, or any other Federal, State or local law or regulation.

28. The following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Philip Mancusi-Ungaro
Associate Regional Counsel
EPA Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303
(404) 562-9519

29. Any settlement reached as a result of the informal conference will be finalized by the issuance of a written Consent Agreement and Final Order approved by U.S. EPA, Region 4.



James D. Giattina, Director
Water Protection Division
U.S. Environmental Protection Agency
Region 4

Date: MAR 06 2009

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
 LOUISE JONES) ADMINISTRATIVE COMPLAINT
 FOLEY, ALABAMA) FOR CLASS II PENALTY
) UNDER SECTION 309(g)
) OF THE CLEAN WATER ACT,
 RESPONDENT.) 33 U.S.C. § 1319(g)
) Docket No.: CWA-04-2009-5503
)

CERTIFICATE OF SERVICE

I certify that on May 7, 2009, I served a true and correct copy of the attached **ADMINISTRATIVE COMPLAINT** in the matter of Louise Jones, Docket No. CWA-04-2009-5503, to each of the persons listed below.

By hand-delivery: Philip Mancusi-Ungaro
Associate Regional Counsel
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, GA 30303

By certified mail,
return receipt requested: Mayra Wilkerson
FBI
200 North Royal Street
Mobile, Alabama 36535

By certified mail,
return receipt requested: Mr. Onis "Trey" Glen, III
Alabama Department of Environmental Management
1400 Coliseum Boulevard
Montgomery, Alabama 36110-5503

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HEARING CLERK

Mary E. Halback

Mary E. Halback
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, GA 30303
(404) 562-9778