

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219

IN THE MATTER OF: )  
)  
) Docket No. CWA-07-2018-0225  
Mark Severson )  
)  
and )  
)  
Bruening Rock Products, Inc. ) FINDINGS OF VIOLATION AND  
) ORDER FOR COMPLIANCE  
Respondents. )  
)  
)  
Proceedings under Section 309(a)(3) of the )  
Clean Water Act, 33 U.S.C. § 1319(a)(3) )  
\_\_\_\_\_ )

**Preliminary Statement**

1. The following Findings of Violation and Administrative Order for Compliance (“Order”) are made and issued pursuant to Section 309(a)(3) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(a)(3). The authority to take action under Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), is vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”). The Administrator has delegated this authority to the Regional Administrator, EPA Region 7, who in turn has delegated it to the Director of the Water, Wetlands and Pesticides Division of EPA Region 7.

2. Respondents are Mr. Mark Severson, an individual, and Bruening Rock Products, Inc., a corporation doing business in the state of Iowa (“Respondents”).

**Statutory and Regulatory Framework**

3. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, *inter alia*, Section 404 of the CWA, 33 U.S.C. § 1344.

4. The CWA prohibits the discharge of “pollutants” from a “point source” into a “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

5. Section 404 of the CWA, 33 U.S.C. § 1344, specifically requires a person to obtain a permit from the Secretary of the Army acting through the Chief of Engineers, commonly referred to as the U.S. Army Corps of Engineers (hereinafter “Corps”), for any discharge of “dredged or fill material” into the “navigable waters” of the United States.

6. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters,” in part, as the “waters of the United States.”

7. 40 C.F.R. § 232.2 and 33 C.F.R. § 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 conditions.”

8. 40 C.F.R. § 232.2 defines “discharge of fill material” as “the addition of fill material into waters of the United States.”

9. 40 C.F.R. § 232.2 defines “fill material” as material that 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.”

10. Section 309(a) of the CWA, 33 U.S.C. § 1319(a), authorizes the issuance of an order against any person who violates Section 301 of the CWA, 33 U.S.C. § 1311, requiring such person to comply.

### **Factual Background**

11. Each Respondent is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

12. At all times relevant to this action, Respondent Mark Severson owned, operated, or otherwise controlled property located at 1795 Main Street in Lansing, Allamakee County, Iowa (hereinafter “the Site”).

13. At all times relevant to this action, Respondent Bruening Rock Products, Inc. operated an aggregate construction and production company located at 900 Montgomery Street in Decorah, Winneshiek County, Iowa.

14. Beginning on or around August 2015, Respondents and/or persons acting on their behalf, using land-moving equipment, authorized, directed the placement of, and/or placed fill material into approximately one acre of wetland abutting Clear Creek, a tributary to the Mississippi River, located on the Site.

15. In October 2015, the Rock Island District of the Corps received an anonymous complaint regarding the fill activities at the Site.

16. On October 14, 2015, representatives from the Corps conducted a site investigation on the Site and confirmed the above-referenced placement of fill material.

17. The earth-moving equipment used to fill in the wetland abutting Clear Creek is a “point source” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

18. The fill material discharged by Respondents into the wetland abutting Clear Creek is a “pollutant” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

19. Respondents’ actions constitute the “discharge of fill material” as defined by 40 C.F.R. § 232.2 and the “discharge of a pollutant” within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

20. Clear Creek, the Mississippi River, and adjacent wetlands are “waters of the United States” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

21. Respondents did not obtain a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, prior to the performance of the work described herein, nor did Respondents perform the work described herein under any prior permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344.

#### **A. Findings of Violation**

22. The facts stated in Paragraphs 11 through 21 above are herein incorporated.

23. Respondents’ discharge of pollutants from a point source into waters of the United States occurred without a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, and, therefore, these discharges violated Section 301 of the CWA, 33 U.S.C. § 1311.

#### **B. Order for Compliance**

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

24. Respondents shall comply with the CWA by immediately ceasing the discharge of fill material into the wetlands adjacent to Clear Creek and by taking appropriate steps to ensure that such discharges do not occur in the future.

25. Respondents shall submit a Work Plan to EPA for review and approval that shall describe Respondents’ proposed restoration for impacts to the wetlands described herein. If Respondents determine that restoration is not feasible, Respondents shall submit a Work Plan to EPA for review and approval that shall describe Respondents’ proposed mitigation for impacts to

wetlands described herein. The Restoration or Mitigation Work Plan shall be submitted within thirty (30) days of the effective date of this Order.

- a. If EPA approves the Work Plan, it shall be implemented according to the schedule for implementation in the approved Plan.
- b. If EPA does not approve the Work Plan, EPA will provide comments explaining why. Respondents shall address the comments and resubmit the Work Plan for review within thirty (30) days of receipt of EPA's disapproval.
- c. Upon resubmission, EPA, in its sole discretion, may either approve the Work Plan, or if EPA determines that the Work Plan does not adequately address EPA's comments, EPA may unilaterally modify the Work Plan and will provide Respondents with a copy of the Work Plan as modified. Respondents shall implement the modified Work Plan according to the schedule contained therein.

26. Once approved by EPA, the Work Plan identified above shall be incorporated by reference and fully enforceable under the terms of this Order.

27. Respondents shall identify and apply for all local, state, and federal permits required to implement the Work Plan within fifteen (15) days of EPA's approval of the Plan, and shall diligently work towards acquiring all required permits in a timely manner. The mitigation work shall be completed within ten (10) months of the issuance of all required permits and in accordance with the specifications set forth in the Work Plan. In addition, if EPA approves a Mitigation Work Plan for Respondents, Respondents shall provide for the long-term legal protection of the mitigation site described in the Work Plan through an environmental covenant or other appropriate legal protection within thirty (30) days of EPA's approval of the Mitigation Work Plan.

28. Once the work identified in the Work Plan has been completed, Respondents shall submit a Completion Report, which shall include photographic evidence, copies of relevant documents, and a signed statement indicating that the work is complete. The Completion Report must be submitted within thirty (30) days after the work has been completed.

29. Respondents shall submit monitoring reports to EPA, beginning on the first anniversary of the completion of the Work Plan, and then on the third and fifth anniversary of the completion of the Work Plan. These reports shall include photos of the site of the work, a narrative description of the status of the site, and the corrective actions, if any, that will be taken to correct identified deficiencies to maintain proper wetland and/or stream functions.

30. The submission of documents by Respondents, as identified above, shall include the following written statement, followed by signature of a duly authorized representative of Respondent or Respondents:

*I certify under penalty of law that the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

31. All documents to be submitted to EPA under this Order shall be submitted by email to:

kleffner.erin@epa.gov

or by mail to:

Erin Kleffner, or her successor  
Water, Wetlands, and Pesticides Division  
U.S. Environmental Protection Agency Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

### **General Provisions**

#### **Effect of Compliance with the Terms of this Order**

32. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondents of their responsibility to obtain any required local, state, and/or federal permits.

33. This Order does not constitute a waiver or a modification of any requirements of the CWA, 33 U.S.C. § 1251 *et seq.*, all of which remain in full force and effect. EPA retains the right to seek any and all remedies available under Section 309 of the CWA, 33 U.S.C. § 1319, for any violation cited in this Order. Issuance of this Order shall not be deemed an election by EPA to forgo any civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA for any violation whatsoever.

#### **Access and Requests for Information**

32. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect property owned or operated by Respondents and/or to request additional information from Respondents, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318 and/or any other authority.

#### **Severability**

33. If any provision or authority of this Order, or the application of this Order to Respondents, is held by federal judicial authority to be invalid, the application to Respondents of

the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

### **Parties Bound**

34. This Order shall apply to and be binding upon Respondents, their agents, successors, and assigns. Respondents shall ensure that any directors, officers, employees, contractors, consultants, firms, or other persons or entities acting under or for it with respect to matters included herein comply with the terms of this Order.

### **Failure to Comply**

35. Failure to comply with the terms of this Compliance Order may result in Respondents' liability for statutory civil penalties under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Should EPA commence an action seeking penalties for violations of this Compliance Order, a United States District Court may impose civil penalties if the court determines that Respondents have violated the CWA and failed to comply with the terms of the Order. In determining the amount of any penalty, the court will consider the seriousness of the violations, the economic benefit resulting from the violations, any history of similar violations, any good faith efforts Respondents have made to comply with the legal requirements, the economic impact a penalty may have on Respondents, and such other matters as justice may require. The district court has the authority to impose separate civil penalties for any violations of the CWA and for any violations of this Order.

### **Judicial Review**

36. Respondents have the right to seek immediate federal judicial review of this Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706 provides the grounds for such review.

### **Opportunity to Confer**

37. Respondents have the opportunity to confer with, and/or submit information to, EPA concerning the validity of this Order, including the basis for the Order, the terms of the Order, and the applicability of this Order to Respondents. Within ten (10) days of receipt of this Order, Respondents may request a conference regarding the Order or may submit information to EPA. If either Respondent requests a conference or wishes to submit information, the conference or submission of information shall take place within thirty (30) days of receipt of this Order. EPA shall deem a failure to request a conference or to submit information by a Respondent as a waiver by that Respondent of the opportunity to confer.

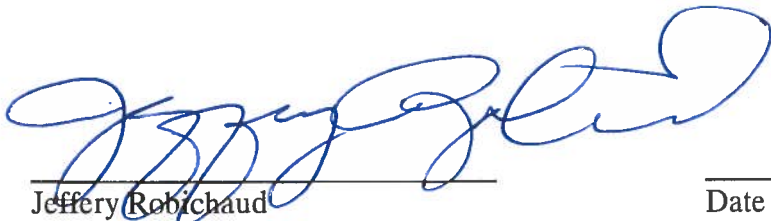
**Effective Date**

38. The terms of this Order shall be effective and enforceable against Respondents thirty (30) days after the date this Order is signed by EPA. All time periods herein shall be calculated therefrom unless otherwise provided in this Order.

**Termination**

39. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of EPA.

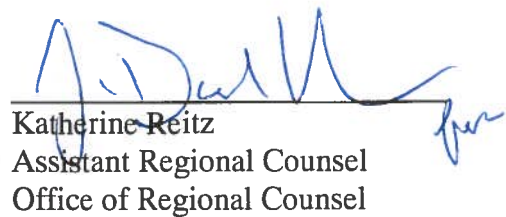
**For the Complainant, U.S. Environmental Protection Agency, Region 7:**



Jeffery Robichaud  
Director  
Water, Wetlands, and Pesticides Division

Date

9/27/18



Katherine Reitz  
Assistant Regional Counsel  
Office of Regional Counsel

Date

9/27/18

**CERTIFICATE OF SERVICE**

I certify that on the date noted below I hand delivered the original and one true copy of this Findings of Violation and Administrative Order for Compliance to the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

I further certify that on the date noted below a true and correct copy of the foregoing Order for Compliance was sent in the following manner to the addressees:

Copy via Email to Attorney for Complainant:

reitz.katherine@epa.gov

Copy via Email to Attorney for Respondent Mark Severson:

Ted Warpinski  
TWarpinski@dkattorneys.com

Copy via Email to Attorney for Respondent Bruening Rock Products, Inc.:

Ron Fadness  
rdf@brueningrock.com

and

Copy via Certified Mail, Return Receipt Requested to Respondents Mark Severson and Bruening Rock Products, Inc.

Mr. Mark Severson  
Severson Service, Inc.  
1795 Main Street  
P. O. Box 122  
Lansing, Iowa 52151

Mr. Greg Bruening, President and Registered Agent  
Bruening Rock Products, Inc.  
900 Montgomery Street  
P. O. Box 127  
Decorah, Iowa 52101

Date

9/27/18

Signature

