



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

MAR 27 2018

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Charles Curling
2421 Shillelagh Road
Chesapeake, VA 23323-6533

Re: EPA Docket No. CWA-03-2018-0070DW

ADMINISTRATIVE ORDER FOR COMPLIANCE

Dear Mr. Curling:

Enclosed is an Order for Compliance that requires you to mitigate or restore for the unauthorized work on and around the properties which you own or control identified as A, B, and C on Exhibit A, along Shillelagh Road in Chesapeake, Virginia. The Order requires restoration of the environmental harm which was caused by the unlawful discharge through clearing of stumps, grading, and leveling of waters of the United States.

Section 301(a) of the Clean Water Act (CWA), 33 U.S.C. § 1311(a), prohibits discharges to waters of the United States, including dredge or fill material, without a permit from the U.S. Army Corps of Engineers (Corps). Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), authorizes the U.S. Environmental Protection Agency (EPA) to issue an Administrative Compliance Order whenever any person is in violation of any condition or limitation which implements, *inter alia*, Section 301(a) of the CWA. Activities you have performed have resulted in discharges to jurisdictional waters of the United States without a permit. These activities constitute a violation of Section 404 of the CWA. These activities include discharges and encroachments to approximately 4.67 acres of forested wetland associated with the conversion of forested wetlands to a new agricultural field.

You are entitled to assert a claim of business confidentiality covering any part or all of the information submitted in response to the Order, in a manner described at 40 C.F.R. § 2.203(b). Information subject to a claim of business confidentiality will be made available to the public only in accordance with 40 C.F.R. Part 2, Subpart B. Unless a claim of business confidentiality is asserted at the time the requested information is submitted, EPA may make this information available to the public without further notice to you.

If you have any questions regarding the Order, or wish to submit any written material you believe to be relevant to the agency's findings, please contact Mr. Timothy Witman, Office of Environmental Programs, at (215) 814-2775, or your counsel may contact Pamela J. Lazos, the attorney assigned to this matter, at (215) 814-2658.

Sincerely,

A handwritten signature in black ink, appearing to read "John R. Pomponio". The signature is fluid and cursive, with a large initial "J" and "P".

John R. Pomponio, Director
Environmental Assessment and Innovation Division

Enclosure

cc: Mr. Tom Walker – U.S. Army Corps of Engineers, Norfolk District
Mr. Robert Berg – U.S. Army Corps of Engineers, Norfolk District
Mr. Jefferson Reynolds – VA Dept of Environmental Quality
Mr. John Brandt – VA Dept of Environmental Quality

BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

_____)	
Mr. Charles Curling)	Proceeding Under Section
)	309(a) of the Clean Water
)	Act, 33 U.S.C. § 1319(a)
Property Located At:)	
)	
Approximately 1000 feet north from)	
the intersection of Shillelagh Road and)	
Benefit Road)	
Chesapeake, Virginia 23323-6533)	
)	ORDER FOR COMPLIANCE
)	
Respondent _____)	Docket No. CWA-03-2018-0070DW

RECEIVED
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 REGIONAL HEARING CENTER
 EPA REGION III PHILADELPHIA

I. STATUTORY AUTHORITY

1. This Order for Compliance (“Order”) is issued under the authority vested in the United States Environmental Protection Agency (EPA) by Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a) (“CWA” or “Act”). The Administrator has delegated this authority to the Regional Administrator of EPA Region III who in turn has re-delegated it to the Director of the Environmental Assessment and Innovation Division.

II. ALLEGATIONS

2. Respondent is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
3. Respondent, Mr. Charles Curling, is an operator at the properties located approximately 1000 feet north of the intersection of Shillelagh Road and Benefit Road, Chesapeake County Chesapeake, Virginia (36.631596° N, -76.290728° W) identified as A, B, and C (Site) on the attached map labeled Exhibit A.
4. The Site contains unnamed tributaries to Weston Ditch, which drains to The Northwest River (a traditional navigable water), and into the North Landing River part of the Intracoastal Waterway. Therefore, the area is "waters of the United States" within the

meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7); 40 C.F.R. § 232.2; 40 C.F.R. § 122.2.

5. Commencing on or about December 1, 2005 thru November 7, 2017. Respondent, or persons acting on behalf of Respondent, operated equipment which discharged dredged and/or fill material to waters of the United States located on the Site described in Paragraph 3, above, and further depicted on Exhibit A, attached hereto. Respondent's activities include the discharge of fill material into wetlands associated with Weston Ditch. The forested wetland area was cleared, grubbed, graded, plowed, and ditched in order to convert forested wetland to an agricultural field without authorization from the Secretary of the Army. The work resulted in direct impacts to approximately 4.67 acres of wetlands (Exhibit B).
6. The term "fill material" within the meaning of 40 C.F.R. § 232.2, includes any pollutant which replaces portions of "waters of the United States" with dry land or which changes the bottom elevation of a water body for any purpose. The term "discharge of fill material" includes "[p]lacement of fill that is necessary for the construction of any structure or infrastructure in a water of the United States."
7. The equipment referenced in Paragraph 5, above, which has discharged dredged and/or fill material to "waters of the United States", constitutes a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).
8. Section 301(a) of the Act, 33 U.S.C. §1311(a), prohibits any person from discharging dredged and/or fill material from point sources to "waters of the United States" except in compliance with a permit issued by the Secretary of the Army under Section 404 of the Act, 33 U.S.C. § 1344.
9. At no time during the discharge of dredged and/or fill material to the waters of the United States located on the Site did the Respondent have a permit from the Secretary of the Army as required by Section 404 of the Act, 33 U.S.C. § 1344.
10. Respondent, by discharging dredged and/or fill material to the "waters of the United States" without authorization, has violated Section 301(a) of the Act, 33 U.S.C. § 1311(a).

III. ORDER FOR COMPLIANCE

Therefore, this 27 day of March, 2018, the Respondent is hereby ORDERED, pursuant to Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a), to do the following:

11. Cease and desist all discharges including the grading, plowing, leveling and ditching without a permit to waters of the United States at the Site.

12. Within thirty (30) days of the effective date of this Order, the Respondent shall prepare and submit a restoration plan to return the Site to conditions which existed prior to disturbance. The plan must address restoration for the unauthorized discharge of fill material to regulated waters. The restoration plan must include removing/blocking new drainage ditches, creating small topographic features consistent with adjacent wetlands located to the west of the Site, ceasing any activities consisting of plowing or planting of crops in wetland areas, and applying an appropriate wetland seed mix. All applicable erosion and sediment control measures, in compliance with City, County and/or Virginia Department of Environmental Quality regulations, must be included in the plan. Please keep in mind the best efforts should be taken to commence restoration during summer or at a time when the groundwater level is at or preferably below normal.
13. EPA has estimated the approximate limits of Federal Jurisdiction (see Exhibit B). If the Respondent disagrees with the limits of wetlands identified in Exhibit B, then the Respondent shall utilize a methodology for delineating wetlands and streams in disturbed and undisturbed areas consistent with methods generally accepted by EPA and the U.S. Army Corps of Engineers. If EPA disapproves of all or part of the delineation report, Respondent shall, within thirty (30) days of receipt of EPA's disapproval, correct the deficiencies and resubmit the delineation for approval.
14. After review of the restoration plan, EPA will: a) approve the plan, in whole or in part; b) approve the plan upon specified conditions; c) modify the plan to cure any deficiencies; d) disapprove the plan, in whole or in part, or e) any combination of the above.
15. If EPA disapproves of all or part of the restoration plan, Respondent shall, within thirty (30) days of receipt of EPA's disapproval, correct the deficiencies and resubmit the plan for approval. EPA retains the right, if the plan is not approved as provided in this Order, to order mitigation in accordance with a plan developed by EPA. Upon approval of the plan (either with or without conditions or modifications by EPA), Respondent shall implement the plan as approved or modified by EPA. All mitigation work shall be completed within ninety (90) days of EPA's approval of the plan.
16. Respondent's failure to complete the work in a manner consistent with this Order shall be deemed a violation of this Order.
17. The restoration plan and all other correspondence should be sent to:

Timothy Witman
Office of Environmental Programs
United States Environmental Protection Agency
1650 Arch Street (3EA30)
Philadelphia, PA 19103-2029

IV. GENERAL PROVISIONS

18. The following certification must accompany each submission by Respondent pursuant to this Information Requirement and must be signed by a Representative of Respondent authorized to sign on behalf of Respondent:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, 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.”

19. Respondent’s compliance with the terms of this Order shall not relieve Respondent of its obligation to comply with all applicable provisions of the Clean Water Act or any other Federal, State or local law or regulation. Issuance of this Order is not an election by EPA to forego any civil or criminal action otherwise authorized by the Clean Water Act. EPA reserves the right to seek any remedy available under the law that it deems appropriate to the violations described herein. Compliance with this Order shall not be a defense to any action commenced pursuant to such authorities.
20. Violation of the terms of this Order may result in further EPA enforcement action including, but not limited to, imposition of administrative penalties, pursuant to 33 U.S.C. § 1319(g) as modified by the Debt Collection Procedures Act of 1996 and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, and/or initiation of judicial proceedings that allow for civil penalties of up to \$53,484 per day for each day of violation that occurs, and/or for the criminal sanctions of imprisonment and fines of up to \$25,000 per day, 33 U.S.C. § 1319(c).

V. OPPORTUNITY TO CONFER

21. Respondent is invited to confer with the Agency about the findings and conclusions reflected in this Order including the terms and conditions contained herein. Any such conference can be in person or by telephone or by other electronic means. Respondent may also submit any written material he believes to be relevant to the Agency’s determinations. If such a conference is desired, Respondent should contact Timothy Witman at (215) 814-2775.

VI. JUDICIAL REVIEW

22. Respondent may seek federal judicial review of this Compliance Order, issued under Section 309 of the CWA, 33 U.S.C. § 1319, pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706, which is set forth at <http://uscode.house.gov/download/pls/05C7.txt>, states the scope of such review.

VII. EFFECTIVE DATE

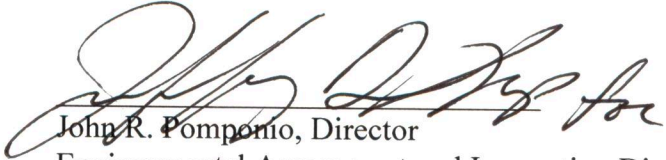
23. The effective date of this Order shall be the date of receipt of the executed document.

VIII. NOTICE OF INTENT TO COMPLY

24. Within ten (10) days of the effective date of this Order, Respondents shall submit to EPA a Notice of Intent to Comply with the Order. The Notice shall be submitted to:

Timothy Witman
Office of Environmental Programs
United States Environmental Protection Agency
1650 Arch Street (3EA30)
Philadelphia, PA 19103 2029

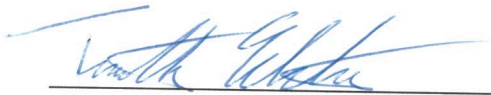
Date: 3-27-2018


John R. Pomponio, Director
Environmental Assessment and Innovation Division
EPA, Region III

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of this Administrative Order for Compliance on Consent, the original of which has been filed with the Regional Hearing Clerk, U.S. EPA Region III, has been sent to the following via certified mail, return receipt requested:

Mr. Charles Curling
2421 Shillelagh Road
Chesapeake, Virginia 23323



Timothy Witman
US EPA Region III

3-27-2018

Date:

Exhibit A - Location Map

Charles Curling
Shillelagh Road, Chesapeake, VA
1000 feet north of the intersection of
Benefit Road and Shillelagh Road

- A = Parcel 0830000000390
- B = Parcel 0830000000380
- C = Parcel 0830000000370

A

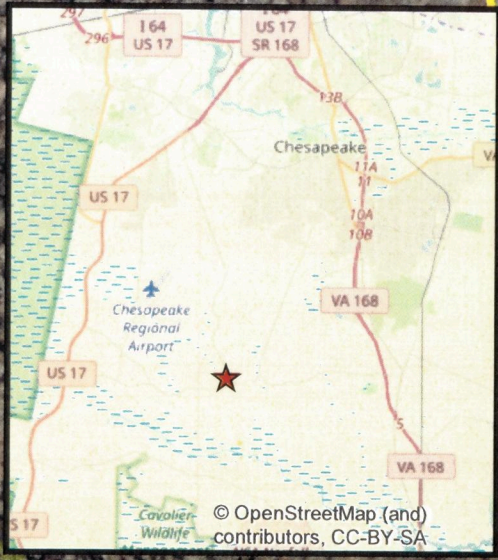
B

C

Text

Shillelagh Road

Benefit Road



Legend

 Parcels

Exhibit B - Shillelagh Road, Chesapeake, VA

EPA estimate of wetland limits based on U.S. Fish and Wildlife Service National Wetland Inventory Map, NRCS Soil Survey, LiDAR data provided by the Corps of Engineers, and aerial photos 2014 and 2016. The estimated area is not a Corps of Engineers jurisdictional determination. A preliminary or approved JD should be obtained from the Corps of Engineers Norfolk District.

A = Parcel 0830000000390
B = Parcel 0830000000380
C = Parcel 0830000000370

USFWS NWI Mapping
PFO4Bd

EPA Estimated
Wetland Impacts 4.67 ac

Tomotley-Nimmo complex
Hydric

Dragston-Tomotley Complex
Non-Hydric

Legend

- EPA Estimated Wetland
- NRCS Soil Types
- NWI_VA_Wetlands
- Parcels

