

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

IN THE MATTER OF:)
)
) Docket No. CWA-07-2015-0103
GOODRUM FARM CR314, LLC)
)
)
Respondent)
)
) FINDINGS OF VIOLATION,
) ORDER FOR COMPLIANCE
)
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 are made and Order for Compliance (“Order”) is issued pursuant to the authority of 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. The Respondent in this case is Goodrum Farm CR314, LLC (“Respondent”).

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 United States 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. At the time of the violations alleged herein, 40 C.F.R. § 232.2 and 33 C.F.R. § 328.3 defined “waters of the United States” to include *inter alia*: (i) all waters which are currently, used, were used in the past, or may be susceptible to use in interstate or foreign commerce; (ii) all interstate waters; (iii) tributaries to such waters; and (iv) wetlands adjacent to such waters or their tributaries.

8. 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.”

9. 40 C.F.R. § 232.2 defines “discharge of fill material” to include the “placement of fill, including site-development fills for commercial and other uses.”

10. 40 C.F.R. § 232.2 defines “discharge of dredged material” to include “any addition, including redeposit other than incidental feedback, of dredged material, including excavated material, into waters of the United States, which is incidental to any activity, including mechanized land clearing ... or other excavation.”

11. 40 C.F.R. § 232.2 defines “fill material” as any pollutant that “replaces portions of the ‘waters of the United States’ with dry land or which changes the bottom elevation of a water body for any purpose.”

12. 40 C.F.R. § 232.2 defines “dredged material” as “material that is excavated or dredged from waters of the United States.”

13. 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

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

15. At all times relevant to this action, Respondent owned, operated, or otherwise controlled a 75 acre parcel of property located in Section 20, Township 24 North, Range 6 East, in Butler County, Missouri (hereinafter “the Site”).

16. On July 3, 2014, the Corps, Little Rock District, received an anonymous complaint informing of wetlands being cleared with a bulldozer.

17. On July 16, 2014, the Corps inspected the Site and confirmed that Respondent and/or persons acting on their behalf, authorized and/or initiated the mechanized land clearing and grading of wooded wetlands that resulted in the discharge of dredged and/or fill material into approximately 9.46 acres of wooded wetlands (hereinafter “impacted wetlands”) adjacent to Craven Ditch. A map showing the locations of the areas where such discharges occurred is attached as Appendix A to this Order.

18. Craven Ditch, a perennial tributary, flows into Main Ditch, an interstate water, which then flows into the Black River, a traditional navigable water.

19. The impacted wetlands provided important functions, including, *inter alia*, nutrient recycling, retention and attenuation of flood waters, sediment trapping, export of organic matter, and export of food resources. These wetlands had and continue to have a significant nexus to, and significantly affect, the chemical, physical and/or biological integrity of downstream traditional navigable waters, including the Black River.

20. Appendix A shows the connections between Craven Ditch and the impacted wetlands: Areas A, B and D directly abut or are contiguous to wetlands that abut Craven Ditch and have a continuous surface connection to Craven Ditch. Areas C and E abut ditches that flow directly to Craven Ditch.

21. On September 8, 2014, the Corps issued a Cease and Desist order to Respondent.

22. The dredged and/or fill material deposited or discharged by Respondent’s activities into wetlands adjacent to Craven Ditch are “pollutants” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

23. The earth moving equipment referenced above constitutes a “point source” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

24. The discharge or deposition of dredged and/or fill material into wetlands adjacent to Craven Ditch constitutes the “discharge of a pollutant” within the meaning of Section 501(12) of the CWA, 33 U.S.C. § 1362(12).

25. Craven Ditch and its adjacent wetlands are “waters of the United States” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and the regulations promulgated thereunder.

26. Respondent 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 Respondent 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

27. The facts stated in Paragraphs 14 through 26 above are herein incorporated.

28. Respondent's 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 Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), Respondent is hereby ORDERED as follows:

29. Respondent shall comply with the CWA by immediately ceasing the discharge of fill material into the wetlands adjacent to Craven Ditch and by taking steps to ensure that such discharges do not occur in the future.

30. Respondent shall submit a Work Plan to EPA for review and approval that shall describe Respondent's proposed restoration for impacts to the wetlands described herein. If both parties determine that restoration is not feasible, Respondent shall submit a Work Plan to EPA for review and approval that shall describe Respondent's proposed mitigation for impacts to the wetlands described herein. The Restoration or Mitigation Work Plan shall be submitted to EPA within 30 days of the effective date of this Order. The Work Plan shall be implemented within six months of approval of the Plan and in accordance with the specifications set forth in the Plan.

- 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, Respondent shall address the comments and resubmit the Work Plan for review within 30 days of receipt of EPA's disapproval.
- c. Upon resubmission, the EPA, in its sole discretion, may either approve the Work Plan, or if the EPA determines that the Work Plan does not adequately address the comments provided by EPA, the EPA may unilaterally modify the Work Plan and will provide Respondents with a copy of the Work Plan as modified. Respondent shall implement the modified Work Plan according to the schedule contained therein.

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

32. Once the work identified in the Work Plan has been completed, Respondent shall submit photographic evidence, copies of relevant documents, and a signed statement confirming that the work is complete.

33. Respondent shall submit annual monitoring reports to EPA, beginning on the first anniversary of the completion of the Work Plan, for a period of five years. These reports shall include photos of the Site, a narrative description of the status of the Site, and the corrective

actions, if any, that will be taken to correct the deficiencies in order to maintain proper wetland functions.

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

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.

35. All documents to be submitted to EPA under this Order shall be submitted by mail to:

Lantz Tipton, or designate
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

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

37. 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

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

Severability

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

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

Parties Bound

40. This Order shall apply to and be binding upon the Respondent, his agents, successors and assigns. Respondent 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

41. Failure to comply with the terms of this Order may result in your liability for significant statutory civil penalties for each violation under Section 309(d) of the Act, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Upon suit by EPA, the United States District Court for the District of Missouri may impose such penalties if, after notice and opportunity for a hearing, the court determines that you have violated the Act as described above and failed to comply with the terms of this Order. In determining the amount of any penalty the court will consider the seriousness of your violations, your economic benefit resulting from the violations, any history you may have of such violations, any good faith efforts you have made to comply with legal requirements, the economic impact a penalty may have upon you, and such other matters as justice may require. The district court has the authority to impose separate civil penalties for any violations of the Act and for any violations of this Order.

Judicial Review

42. Respondent has the right to seek immediate federal judicial review of the Order 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>, provides the grounds for such review.

Opportunity to Confer

43. Respondent has 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 the Respondent. Within ten days of receipt of this Order, Respondent may request a conference regarding the Order or may submit information to EPA. If Respondent requests a conference or wishes to submit information, the conference or submission of information shall take place within 20 days of receipt of this Order. EPA shall deem a failure to request a conference or to submit information as a waiver of the opportunity to confer.

Effective Date

44. The terms of this Order shall be effective and enforceable against Respondent 30 days after receipt of an executed copy of the Order.

Termination

45. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of EPA. Such notice shall not be given until all of the requirements of this Order have been met.

For the Complainant, United States Environmental Protection Agency, Region 7:



KAREN A. FLOURNOY
Director
Water, Wetlands and Pesticides Division

9-18-15
DATE



CHRIS MUEHLBERGER
Assistant Regional Counsel
Office of Regional Counsel

9.18.15
DATE



