

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

BEFORE THE ADMINISTRATOR

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| IN THE MATTER OF: |) | |
| |) | |
| CCMS ASSOCIATES, INC., |) | Docket Nos. CWA-05-2003-0005 |
| and WILLIAM E. MONTGOMERY, |) | CWA-05-2003-0006 |
| |) | |
| Respondents |) | |

ORDER CONSOLIDATING RELATED ACTIONS

These proceedings were commenced by the filing of two Complaints on December 12, 2002, Docket Nos. CWA-05-2003-0005 and CWA-05-2003-0006, pursuant to Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g), by the United States Environmental Protection Agency, Region 5, against the Respondents, CCMS Associates, Inc., and William E. Montgomery. An Answer to each Complaint was submitted by the same counsels for both Respondents, on January 15, 2003.

The Complaint in Docket No. CWA-05-2003-0005 ("Complaint 0005") alleges one count of failure to comply with a Request for Information issued by EPA under Section 308(b) of the CWA on November 13, 2001. The Complaint in Docket No. CWA-05-2003-0006 ("Complaint 0006") alleges two counts of violation, one of which charges Respondents with discharging dredged or fill material into wetlands, which are waters of the United States, without a National Pollutant Discharge Elimination System (NPDES) permit. The other count charges Respondents with failure to comply with a Compliance Order issued by EPA, requiring Respondents to cease discharge of dredged or fill material and other pollutants without an NPDES permit and to submit a permit application or a wetland restoration plan. Although Complaint 0005 does not include allegations concerning wetlands, the Answers to both Complaints assert as a defense that EPA does not have jurisdiction over the wetlands at issue in the Complaint.

From the parties' prehearing exchange documents, it is readily apparent that many issues are identical in the two cases. Complainant submitted exhibits numbered 1 through 47 for Complaint 0005, and exhibits numbered 1 through 52 for Complaint 0006, weighing a total of at least 30 pounds for each case. However, the documents in each prehearing exchange appear to be identical, except for a few additional exhibits for Complaint 0006, numbered 17B, 33, 34, 36, 37, 39, 48 through 52, and oversized exhibits in 9B. The exhibits in each case even include copies of both Complaints 0005 and 0006 and Answers thereto. The Complainant's list of witnesses for Complaint 0006 includes all the witnesses listed for Complaint 0005. Respondents' witnesses and exhibits for both cases are identical, and Respondents resourcefully submitted only one set of exhibits for both cases, stating in their prehearing exchange statement

for Complaint 0005, “Respondents rely upon the list of exhibits contained in Respondents’ Prehearing Exchange submitted pursuant to Docket No. CWA-05–2003-0006.”

The Consolidated Rules of Practice, 40 C.F.R. §22.1 et seq., provide as follows at 40 C.F.R. § 22.12(a), in pertinent part:

The Presiding Officer ... may consolidate any or all matters at issue in two or more proceedings subject to these Consolidated Rules of Practice where: there exist common parties or common issues of fact or law; consolidation would expedite and simplify consideration of the issues; and consolidation would not adversely affect the rights of parties engaged in otherwise separate proceedings.

In these circumstances, it is concluded that consolidation is appropriate. There are common parties and common issues of fact and law. Consolidation will expedite and simplify consideration of the issues, and it does not appear that consolidation would result in prejudice to any of the parties.

Accordingly, the proceedings listed above are hereby consolidated pursuant to 40 C.F.R. § 22.12(a).

Susan L. Biro
Chief Administrative Law Judge

Dated: May 9, 2003
Washington, D.C.