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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	Docket No. CWA-07-2008-0028
North Shore Marina, LLC	)	
601 North Shore Drive	)	
St. Charles, Missouri 63301	)	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 is vested in the Administrator of the U.S. Environmental Protection Agency ("EPA"). This authority has been delegated by the Administrator to the Regional Administrator, EPA Region 7 and further delegated to the Director of the Water, Wetlands and Pesticides Division of EPA Region 7.

2. The Respondent in this case is North Shore Marina, LLC, a limited liability company organized and authorized to conduct business in the State of Missouri.

Statutory and Regulatory Framework

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

4. Section 404 of the CWA, 33 U.S.C. § 1344, provides that pollutants may be discharged only in accordance with the terms of 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 ("Army Corps"), for any discharge of dredged or fill material into the navigable waters of the United States.

5. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines "pollutant" to include, *inter alia*, dredged spoil, rock, sand and agricultural waste.

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," which are defined at 40 C.F.R. § 232.2 and 33 C.F.R. Part 328, and which include adjacent "wetlands."

7. "Wetlands" are defined at 40 C.F.R. § 232.2 as those areas that are inundated or saturated by surface or groundwater at a frequency and duration to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

8. 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.

General Allegations

9. Respondent is a "person" as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

10. At all times relevant to this action, Respondent owned, operated or otherwise controlled the property located on the right descending bank of the Mississippi River mile 221.5, in the Northwest ¼ of Section 17, Township 48 North, Range 5 East, near Portage Des Sioux, St. Charles County, Missouri. The property includes wetland areas.

11. At various times during the summer of 2007, Respondent and/or persons acting on its behalf, discharged dredged or fill material including dirt, spoil, rock and sand, into the Mississippi River. The Respondent used earth-moving equipment to remove and place dredged or fill material in and around the wetland areas.

12. The Corps conducted a Site Visit on May 1, 2007 and referred the matter to EPA by correspondence dated August 28, 2007.

13. Representatives of EPA Region 7 and the Corps conducted an on-site inspection on December 13, 2007, which documented the discharges of fill material described in paragraph 11.

14. The discharge and disposal of dredged and/or fill material within the wetlands has altered the natural drainage pattern and hydrology of the area, resulting in changes to the wetland characteristics of approximately 6.33 acres of wetlands at the property.

15. The areas of the discharge and disposal of fill and/or dredged material and the area of filling along the Mississippi River by the Respondent is characterized as "wetlands," as defined at 40 C.F.R. § 232.2.

16. The dredged and/or fill materials discharged by Respondent into the wetlands and the Mississippi River includes spoil, rock, sand and dirt and are "pollutants" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

17. The earth moving equipment referenced in paragraph 11 above constitutes a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

18. The discharge and disposal of the dredged and/or fill material into the wetlands and the Mississippi River constitutes the "discharge of a pollutant" within the meaning of Section 501(12) of the CWA, 33 U.S.C. § 1362(12).

19. The Mississippi River, and the wetlands adjacent thereto located on Respondent's property, are "waters of the United States" within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 13672(7), 40 C.F.R. § 232.2 and 33 C.F.R. Part 328.

A. Findings of Violation

20. The facts stated in paragraphs 9 through 19 above are herein incorporated.

21. Respondent did not obtain a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, to perform the work described in paragraph 11 above, nor was Respondent performing the work described in paragraph 11 above under any prior permit issued pursuant to Section 404 of the CWA.

22. Respondent's discharge and disposal of pollutants from a point source into waters of the United States, as described above, occurred without a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, and therefore, these discharges and disposals violated Section 301 of the CWA, 33 U.S.C. § 1311.

B. Order For Compliance

Based on the 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), Respondent is hereby ORDERED as follows:

23. Within sixty (60) days of the effective date of this Order, Respondent shall submit to EPA and the Corps for approval, a Mitigation Work Plan (MWP) for removing the fill material from the wetland and restoring the wetland to its conditions prior to the violations referenced in

paragraph 11 above. The MWP shall include measures Respondent will implement to prevent future erosion of debris into the Mississippi River, including but not limited to setback protections and structural controls.

24. Within thirty (30) days of receipt of the MWP, EPA will review the MWP and will notify Respondent in writing of EPA's approval or disapproval of the MWP, or any part thereof. If the MWP is disapproved in whole or in part by EPA, EPA will provide written comments to the Respondents explaining the basis for its decision. Within thirty (30) days of receipt of EPA's comments, Respondent shall amend the MWP by addressing all of EPA's comments, and resubmit the MWP. The approved MWP shall be deemed incorporated into, and an enforceable part of, this Order.

25. Within 90 days of EPA approval of the MWP, Respondents shall implement the measures in the MWP.

26. No later than September 1, 2008, or within thirty (30) days after completion of the work required by the MWP, whichever is sooner, Respondent shall submit to EPA a Mitigation Completion Report that shall include but not be limited a physical description, including dates and location(s), of all work performed pursuant to the MWP, and photographs of the completed projects.

27. Respondent shall submit all reports and deliverables required by this Order, by mail, to the following individuals:

Delia Garcia, PhD
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency, Region 7
901 North 5th Street
Kansas City, Kansas

Linda Werdebaugh
U.S. Army Corps of Engineers
St. Louis District
1222 Spruce Street
St. Louis, Missouri 63103-2833.

and

Mr. Kevin Mohammadi, Chief
Enforcement Section
Water Pollution Control Program
Missouri Dept. of Natural Resources

P.O. Box 176
Jefferson City, Missouri 65102.

General Provisions

Effect of Compliance with the Terms of this Order

28. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondent of responsibility to obtain any required local, state and/or federal permits. Specifically, Respondent shall consult with the United States Army Corps of Engineers, and shall obtain all permits that the Corps determines are necessary to address the discharges and/or to implement the approved MWP.

29. This Order does not constitute a waiver or a modification of any requirements of the Clean Water Act, 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 Act, 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 Act for any violation whatsoever.

Access and Requests for Information

30. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect Property owned or 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

31. 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

32. The 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, firm or other person or entities acting under or for him with respect to matters included herein comply with the terms of this Order.

Effective Date

33. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of an executed copy of the Order.

Termination

34. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the U.S. Environmental Protection Agency. Such notice shall not be given until all of the requirements of this Order have been met.

for Betty J. Berry
WILLIAM A. SPRATLIN
Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency Region 7

01/17/08
DATE

Alex Chen
ALEX CHEN
Assistant Regional Counsel
U.S. Environmental Protection Agency Region 7

January 17, 2008
DATE

CERTIFICATE OF SERVICE

I certify that on the date noted below I mailed the foregoing Findings of Violation and Order for Compliance by first class certified mail, return receipt requested, to:

James P. Devereux
Registered Agent for
North Shore Marina, LLC
330 N. Main Street
St. Charles, Missouri 63301

1/17/08
Date

Kimberly Kessler