

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:)
)
)
GARY MALLETT)
)
Respondent)
)
)
Proceedings under Section 309(a)(3) of the)
Clean Water Act, 33 U.S.C. § 1319(a)(3))
_____)

Docket No. CWA-07-2009-0037

ADMINISTRATIVE COMPLIANCE ORDER ON CONSENT

Preliminary Statement

1. The following Administrative Compliance Order on Consent (“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 Mr. Gary Mallett (“Respondent”). Mr. Mallett’s mailing address is 16788 Dogwood Street, New Cambria, Missouri 63558. Mr. Mallett owns property located along the Old Channel of the Chariton River near Section 8, Township 58 north, Range 16 west, Macon County, Missouri.

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," which are defined at 40 C.F.R. § 232.2 and 33 C.F.R. Part 328, and which include wetlands adjacent to waters of the United States.

7. 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

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

9. At all times relevant to this action, Respondent owned, operated, or otherwise controlled the property located along the Old Channel of the Chariton River in Macon County, Missouri, near Section 8, Township 58 north, Range 16 west.

10. At some time in November 2007, Respondent and/or persons acting on his behalf and using earth moving equipment, discharged dredged or fill material including dirt, spoil, rock, and sand, into an area in and adjacent to the Old Channel of the Chariton River in New Cambria, Missouri. Respondent placed dredged or fill material in and around wetlands and waters of the U.S. while trying to improve drainage by removing willow trees for agricultural purposes.

11. On April 18, 2008, the Corps inspected the Property and documented the discharges of fill material described in Paragraph 10.

12. The discharge and disposal of dredged and/or fill material within the river has impacted approximately three acres of wetlands adjacent to the Old Channel of the Chariton River.

13. The dredged and/or fill materials discharged by Respondent into the Old Channel of the Chariton 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).

14. The earth moving equipment referenced in Paragraph 10 above, constitutes a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

15. The discharge of the dredged and/or fill material into the Old Channel of the Chariton River, described in Paragraph 10 above, constitutes the "discharge of a pollutant" within the meaning of Section 501(12) of the CWA, 33 U.S.C. § 1362(12).

16. The Old Channel of the Chariton River and adjacent wetlands are all “waters of the United States” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), 40 C.F.R. § 232.2 and 33 C.F.R. Part 328.

17. Respondent’s discharge of pollutants from a point source into waters of the United States was performed 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.

A. FINDINGS OF VIOLATION

18. The facts stated in Paragraphs 8 through 17 above are herein incorporated.

19. 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 was the Respondent performing the work described herein under any prior permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344.

20. 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 ON CONSENT

Based on the authority of Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), Respondent CONSENTS and is hereby ORDERED as follows:

21. Within thirty (30) days after receipt of this Order, Respondent shall submit a Work Plan to EPA for review and approval that shall describe Respondent’s proposed mitigation actions, including: (1) a proposal of the work required to restore the three acres of impacted wetlands as described in Paragraph 10; (2) a proposal to provide compensatory mitigation for the three acres of wetlands impacted by Respondent as described in Paragraph 10; and (3) a proposal to provide for the legal protection of the restored and mitigated wetlands described in this paragraph.

22. Once approved by EPA, the Work Plan identified in Paragraph 21 shall be incorporated by reference and fully enforceable under the terms of this Order and shall be completed within twelve (12) months in accordance with the specifications set forth in the Work Plan.

23. Once the work identified in Paragraph 21 has been completed, the Respondent shall submit photographic evidence, copies of relevant documents, and a signed statement indicating that the work is complete.

24. Respondent shall submit annual 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 description of the status of the site, and any corrective actions, if any, that will be taken to correct the deficiencies, to maintain the original conditions of the site.

25. The submission of documents by Respondent, as identified in Paragraphs 21, 23, and 24, shall include the following written statement, followed by the Respondent's signature:

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.

26. All documents to be submitted to EPA under this Order shall be submitted by mail to the following individuals:

Raju Kakarlapudi
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency, Region 7
901 North Fifth Street
Kansas City, Kansas 66101

and

Chris Muehlberger
Assistant Regional Counsel
United States Environmental Protection Agency, Region 7
901 North Fifth Street
Kansas City, Kansas 66101.

27. In the event Respondent fails to comply with the terms of the Order, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, EPA may seek judicial enforcement of the terms of the Order against the Respondent and/or seek additional penalties against the Respondent for such noncompliance with the terms of the Order.

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 his responsibility to obtain any required local, state, and/or federal permits.

29. 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

30. 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

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. 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 him with respect to matters included herein comply with the terms of this Order.

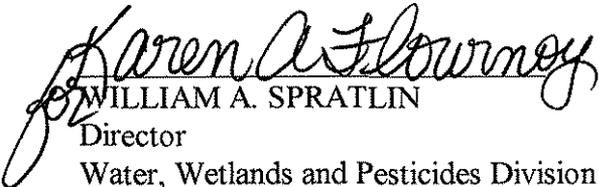
Effective Date

33. The terms of this Order shall be effective and enforceable against Respondent upon the date of his 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 EPA. Such notice shall not be given until all of the requirements of this Order have been met.

FOR COMPLAINANT:


WILLIAM A. SPRATLIN

Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency - Region 7

3-25-09
DATE


CHRIS MUEHLBERGER
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 7

3.25.09
DATE

FOR RESPONDENT:


GARY MALLETT

3-11-09
DATE

CERTIFICATE OF SERVICE

I certify that on the date noted below I mailed the foregoing Administrative Compliance Order on Consnt by certified mail, return receipt requested, to:

Mr. Gary Mallett
16788 Dogwood Street
New Cambria, Missouri 63558-2507

Date