

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY 09 MAY -5 PM 3:30
REGION 7

901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)

GARY MALLET)
16788 Dogwood Street)
New Cambria, Missouri 63558-2507)

Respondent)

Proceedings under Section 309(g) of the)
Clean Water Act, 33 U.S.C. § 1319(g))

) Docket No. CWA-07-2009-0027

) CONSENT AGREEMENT/
) FINAL ORDER

_____)
The United States Environmental Protection Agency, Region 7 (EPA) and Mr. Gary Mallett ("Respondent") have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Subpart I of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22 Subpart I.

COMPLAINT

Jurisdiction

1. This Consent Agreement/Final Order (CA/FO) is being filed under the authority vested in the Administrator of EPA, pursuant to Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g) and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22 Subpart I (Administrative Proceedings Not Governed by Section 554 of the Administrative Procedure Act).

2. This CA/FO alleges that the Respondent discharged pollutants into the waters of the United States in violation of Sections 301 and 404 of the CWA, 33 U.S.C. §§ 1311 and 1344.

Parties

3. Complainant, by delegation from the Administrator of EPA to the Regional Administrator, EPA, Region 7, and re-delegation is the Director of Region 7's Water, Wetlands and Pesticides Division.

4. Respondent, Gary Mallett, is the owner of property located along the Old Channel of the Chariton River in Macon County, Missouri, near Section 8, Township 58 north, Range 16 west. Mr. Mallett has a mailing address of 16788 Dogwood Street, New Cambria, Missouri 63558-2507.

Statutory and Regulatory Background

5. 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. Section 404 of the CWA provides that pollutants may be discharged only in accordance with the terms of a permit for the discharge of dredged or fill material.

6. 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.

Factual Background

7. At some time in November 2007, Respondent and/or persons acting on his behalf, 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. These actions impacted approximately three acres of wetlands adjacent to the river.

8. Respondent, and/or persons acting on his behalf, used mechanized land-clearing and/or earth moving equipment to accomplish the discharges described in Paragraph 7.

9. Respondent did not have a CWA Section 404 permit for the discharge of fill material into waters of the United States.

Finding of Violations

10. The dirt, spoil, rock, and sand discharged by the Respondent into the areas in and adjacent to the Old Channel of the Chariton River constitute "pollutants" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

11. Respondent's work within the Old Channel of the Chariton River area described above constitutes a "discharge of a pollutant" within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

12. The equipment used by Respondent in performing the work described above constitutes a "point source" as defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

13. The affected areas of the Old Channel of the Chariton River are "navigable waters" of the United States, as defined by CWA Section 502(7), 33 U.S.C. § 1362(7).

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

15. 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 this discharge violated Section 301 of the CWA, 33 U.S.C. § 1311.

CONSENT AGREEMENT

16. Respondent admits the jurisdictional allegations of this CA/FO and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.

17. Respondent neither admits nor denies the factual allegations contained in this CA/FO.

18. Respondent waives any right to contest the allegations and his right to appeal the proposed Final Order accompanying this Consent Agreement.

19. Respondent and Complainant each agree to bear their own costs and attorney's fees.

20. Nothing contained in the Final Order shall alter or otherwise affect Respondent's obligations to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

21. The undersigned representative of Respondent certifies that he is fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondent to it.

22. Respondent certifies by the signing of this CA/FO that, to the best of his knowledge, Respondent's facility is scheduled to be in compliance with all requirements of Sections 301 and 404 of the CWA, and all regulations promulgated thereunder, pursuant to the terms of EPA's Administrative Compliance Order, docket number CWA-07-2009-0037.

23. The effect of settlement is conditional upon the accuracy of the Respondent's

representations to EPA, as memorialized in paragraph 22 above, of this CA/FO.

24. Respondent consents to the issuance of the Final Order and consents to the payment of a civil penalty in the amount of \$3,000.

Reservation of Rights

25. EPA reserves the right to enforce the terms of this CA/FO by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

26. With respect to matters not addressed in this CA/FO, EPA reserves the right to take any enforcement action pursuant to the CWA, or any other available legal authority, including without limitation, the right to seek injunctive relief, monetary penalties and punitive damages.

FINAL ORDER

IT IS HEREBY AGREED BY THE PARTIES, and pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), it is ORDERED that:

1. Respondent shall pay a civil penalty of Three Thousand Dollars (\$3,000). Said penalty shall be paid in full within thirty (30) days following receipt by Respondent of a fully executed copy of this CA/FO. Respondent shall pay the penalty by certified or cashier's check payable to "Treasurer, United States of America" and shall deliver it, with a transmittal that identifies the case name and docket number to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

The check must also be annotated with the docket number and with the name of the case. Copies of the transmittal letter and the check shall be simultaneously sent to:

Kathy Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
901 North 5th Street
Kansas City, Kansas 66101

and

Chris Muehlberger
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 7
901 North 5th Street

Kansas City, Kansas 66101.

Should the civil penalty not be paid as provided above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

2. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CA/FO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.


Parties Bound

3. This Final Order shall apply to and be binding upon the Respondent, its 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 CA/FO.

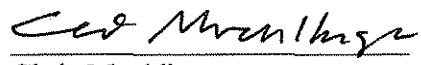
Effective Date

4. This Final Order shall become effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this Final Order.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY


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
U.S. Environmental Protection Agency
Region 7

3.25.09
Date

RESPONDENT:
GARY MALLETT

Gary Mallett
Gary Mallett

3-17-09
Date

IT IS SO ORDERED.

May 5, 2009
Date

Robert L. Patrick
Robert L. Patrick
Regional Judicial Officer

IN THE MATTER OF Gary Mallett, Respondent
Docket No. CWA-07-2009-0027

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to
Attorney for Complainant:

Chris Muehlberger
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

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

Dated: 5/5/09


Kathy Robinson
Hearing Clerk, Region 7