

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:) Docket No. CWA-05-2022-0008
Marquis, Inc.,) Proceeding to Assess a Class II Civil
Hennepin, Illinois,) Penalty under Section 309(g) of the Clean
Respondent.) Water Act, 33 U.S.C. § 1319(g)
)
)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 309(g) of the Clean Water Act (“CWA” or “the Act”), 33 U.S.C. § 1319(g), and Sections 22.13(b) and 22.18(b)(2)-(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2)-(3).

2. The Complainant is, by lawful delegation, the Director of the Enforcement and Compliance Assurance Division, EPA Region 5, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Marquis, Inc., an Illinois corporation located in Hennepin, Illinois.

4. According to 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the terms of this CAFO, including the assessment of the civil penalty specified below.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives any right to contest the allegations and its right to appeal the proposed final order accompanying the consent agreement.

Statutory and Regulatory Background

9. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters except in compliance with, *inter alia*, a permit for the discharge of dredged or fill material into navigable waters pursuant to Section 404 of the CWA, 33 U.S.C. § 1344.

10. Section 404 of the CWA, 33 U.S.C. § 1344, authorizes the Secretary of the Army, acting through the Chief of Engineers, U.S. Army Corps of Engineers (Corps), to issue permits for the discharge of dredged or fill material into navigable waters.

11. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the Administrator to assess a Class II civil penalty under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), after consultation with the State in which the violation occurs, when the Administrator finds, on the basis of any information available, that a person has violated Section 301 of the CWA, 33 U.S.C. § 1311, which prohibits unpermitted discharges of any pollutant to navigable waters and discharges of any pollutant to navigable waters not in compliance with a permit issued under Section 404 of the CWA, 33 U.S.C. § 1344. EPA may conduct such enforcement consistent with the January 1989 Memorandum Between the Department of the

Army and The Environmental Protection Agency, Federal Enforcement for the Section 404 Program of the Clean Water Act.

Factual Allegations

12. Respondent is a corporation doing business at 11953 Prairie Industrial Parkway in Hennepin, Illinois, and therefore a “person” under Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

13. At all times relevant to this Order, Respondent owned a parcel located at the intersection of Prairie Industrial Parkway and State Highway 71, in Section 11, Township 32 North. Range 2 West, Putnam County, Illinois. This parcel (“Site”), on which Respondent operates an agricultural concern, is the subject of this CAFO. Coffee Creek is a stream that flows through the Site.

14. Coffee Creek is a perennial stream and a “navigable water” within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362.

Unlawful Discharge of Pollutants into Coffee Creek

15. The statement in paragraphs 1 through 14 are incorporated by reference as if set forth in full.

16. Beginning on or about April 17, 2017, Respondent used bulldozers, excavators, backhoes, and other equipment operating on the Site to fill the bed of Coffee Creek and otherwise reorder the contours of the Site. Respondent filled approximately 2,480 linear feet of Coffee Creek between Prairie Industrial Boulevard and State Highway 71. Respondent also excavated 1,610 linear feet of a new channel in place of the original stream and removed all of the forested riparian corridor.

17. At no time relevant to this discharge did Respondent possess a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, to discharge dredged or fill material into Coffee Creek for the discharge described in paragraph 16.

18. The dredged or fill material discharged into Coffee Creek is a “pollutant” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

19. Respondent used mechanized land-moving equipment, including but not limited to bulldozers, excavators, backhoes, and other equipment, to place the dredged or fill material into Coffee Creek.

20. The bulldozers, excavators, backhoes, and other equipment described in the previous paragraph contain discernible, confined and discrete conveyances and constitute “point sources” as defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

21. Respondent’s addition of dredged or fill material, beginning on or about April 17, 2017, from the equipment described in the previous paragraph into Coffee Creek constitutes a “discharge of a pollutant” as defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

22. Because Respondent owned or operated mechanized land-moving equipment that acted as point sources for the discharge of pollutants to navigable waters, Respondent and the Site have been subject to the CWA and the 404 program at all times relevant to this Order. Thus, any such discharge has been and is subject to the CWA and its implementing regulations.

23. Therefore, Respondent is a person who discharged dredged or fill material from a point source into navigable waters without a permit in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

24. Each day the pollutant remains in the navigable waters and each day a pollutant is discharged to the navigable waters constitutes a continuing violation of the CWA and an additional day in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

Civil Penalty

25. Under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. part 19, the Administrator may assess a Class II civil penalty up to \$23,989 per day of violation up to a total of \$299,857, for violations of the CWA that occurred after November 2, 2015, and for which penalties are assessed on or after January 12, 2022, or other amounts as penalty levels may be later adjusted at 40 C.F.R. part 19.

26. Based upon the facts alleged in this CAFO, and upon the nature, circumstances, extent and gravity of the violation alleged, as well as Respondent's ability to pay, prior history of such violations, degree of culpability, economic benefit or savings (if any) resulting from the violations, and such other matters as justice may require, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$60,000.

27. Within 30 days after the effective date of this CAFO, Respondent must pay the \$60,000 civil penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

The check must note Respondent's name and the docket number of this CAFO.

28. A transmittal letter, stating Respondent's name, complete address, and the case docket number must accompany the payment. Respondent must write the case docket number on the face of the check and send copies of the check and transmittal letter via mail or email to:

Juliane Grange
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (E-19J)
Chicago, Illinois 60604-3590
grange.juliane@epa.gov

Yone Yu
Water Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency
77 West Jackson Boulevard (ECW-15J)
Chicago, Illinois 60604-3590
yu.yone@epa.gov

Robert S. Guenther
Associate Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
77 West Jackson Boulevard (C-14J)
Chicago, Illinois 60604-3590
guenther.robert@epa.gov

29. This civil penalty is not deductible for federal tax purposes.

30. If Respondent does not timely pay the civil penalty, Complainant may request the United States Department of Justice bring a civil action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States' enforcement expenses for the collection action. Respondent acknowledges that the validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

31. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established pursuant to 26 U.S.C. § 6621(a)(2); 31 U.S.C. § 3717. In addition to the assessed penalty and

interest, Respondent must pay the United States' attorneys fees and costs for collection proceedings, and Respondent must pay a nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 20 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. *See 33 U.S.C. § 1319(g)(9).*

General Provisions

32. The parties consent to service of this CAFO by email at the following valid email addresses: guenther.robert@epa.gov (for Complainant) and donrayfield@marquisenergy.com (for Respondent). Respondent understands that the CAFO will become publicly available upon proposal for public comment and upon filing.

33. Full payment of the penalty as described in paragraphs 27 and 28 and full compliance with this CAFO shall not in any case affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

34. As provided under 40 C.F.R. § 22.18(c), full payment of the penalty as described in paragraphs 27 and 28 and full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for the particular violations alleged in this CAFO.

35. This CAFO does not affect Respondent's responsibility to comply with the CWA and other applicable laws, regulations, or permits.

36. Respondent certifies that it is complying with Sections 301(a) and 404 of the CWA, 33 U.S.C. § 1311(a) and 1344.

37. The terms of this CAFO bind Respondent and its successors and assigns.

38. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to the terms of this CAFO.

39. Each party agrees to bear its own costs and attorney's fees in this action.

40. This CAFO constitutes the entire agreement between the parties.

41. Pursuant to 40 C.F.R. § 22.18(b)(3), this Consent Agreement does not dispose of this proceeding without execution of the Final Order. The Final Order will not be issued until after completion of the requirements of Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45(b), which require, among other things, public notice and a reasonable opportunity to comment on any proposed penalty order. Further, under Section 309(g), 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.45, this Consent Agreement may be withdrawn before execution of the Final Order. Please refer to Section 309(g) of the CWA, 33 U.S.C. 1319(g), 40 C.F.R. § 22.45, and 40 C.F.R. part 22 (the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties) for detailed information on the procedures regarding Consent Agreement and Final Order as a penalty order under the CWA and settlement under part 22.

42. When final and effective, this CAFO is a "final order" for purposes of 40 C.F.R. §§ 22.13, 22.18, 22.31, 22.45 and the EPA's Clean Water Act Section 404 Settlement Penalty Policy (Dec. 2001).

43. In accordance with Section 309(g)(5) of the CWA, 33 U.S.C. § 1319(g)(5), and 40 C.F.R. § 22.45, this CAFO shall become effective 30 days after the date of issuance unless, if applicable, a commenter files a petition for judicial review pursuant to 33 U.S.C. § 1319(g)(8) or a request for hearing pursuant to 33 U.S.C. § 1319(g)(4)(C), or, if applicable, 30 days after the request or petition is denied. The date of issuance is the date the Final Order is signed by the Regional Judicial Officer or Regional Administrator.

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Marquis, Inc.
Docket No. CWA-05-2022-0008

Marquis, Inc.
Respondent

Signature



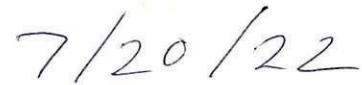
Name



Title



Date



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United States Environmental Protection Agency, Complainant

**MICHAEL
HARRIS**

 Digitally signed by
MICHAEL HARRIS
Date: 2022.08.08
10:14:52 -05'00'

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division
U.S. EPA Region 5

Date

In the Matter of:
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Final Order

In accordance with Section 309(g)(5) of the CWA, 33 U.S.C. § 1319(g)(5), and 40 C.F.R. § 22.45, this CAFO shall become effective 30 days after the date of issuance unless, if applicable, a commenter files a petition for judicial review pursuant to 33 U.S.C. § 1319(g)(8) or a request for hearing pursuant to 33 U.S.C. § 1319(g)(4)(C), or, if applicable, 30 days after the request or petition is denied. The date of issuance is the date the undersigned signed this Final Order. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18, 22.31, and 22.45. IT IS SO ORDERED.

By: _____ Date: _____
Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5