

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BLVD
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

In the Matter of

Cramer and Associates, Inc.

Respondent

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

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) Docket No. CWA-07-2024-0049
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) COMPLAINT AND
) CONSENT AGREEMENT /
) FINAL ORDER
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1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as 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 and the Revocation, Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. Part 22.

2. Complainant, the U.S. Environmental Protection Agency Region 7 (“EPA”) and 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 Rules 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

3. This Complaint and Consent Agreement/Final Order serves as notice that the EPA has reason to believe that the Respondent has violated Sections 301 and 404 of the CWA, 33 U.S.C. §§ 1311, 1344.

4. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of the EPA. The Administrator has delegated this authority to the Regional Administrator, EPA Region 7, who in turn has delegated the authority under Section 309(g) to the Director of the Enforcement and Compliance Assurance Division of EPA Region 7 (collectively referred to as the “Complainant”) with concurrence of the Regional Counsel.

5. The Respondent in this case is Cramer and Associates, Inc. (“Respondent”).

Statutory and Regulatory Framework

6. 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.

7. The CWA prohibits the discharge of “pollutants” from a “point source” into a “navigable water” of the United States, as those terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

8. 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.

9. 40 C.F.R. § 232.2 defines “discharge of fill material” as “the addition of fill material into waters of the United States.”

10. 40 C.F.R. § 232.2 defines “fill material” as material that “replaces any portion of the waters of the United States with dry land” or which “changes the bottom elevation of a water of the United States.”

Allegations of Fact and Conclusions of Law

11. Respondent, Cramer and Associates, Inc., is a corporation organized under the laws of, and authorized to conduct business in, the state of Iowa.

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

13. At all times relevant to this action, Respondent owned, operated, or otherwise controlled a 380-acre residential development property located in Section 6, Township 78 North, Range 28 West, in Dallas County, Iowa (hereinafter “the Site”).

14. At all times relevant to this action, Respondent did not possess a permit pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, from the Corps to discharge dredge or fill material into the navigable waters of the United States on the Site.

15. Respondent’s fill activities impacted sections of four perennial streams that flow into a perennial unnamed tributary of the North Raccoon River.

16. Respondent’s fill activities impacted two wetlands (the “Wetlands”) that abut one of the perennial streams referenced in the previous paragraph.

17. The North Raccoon River is a traditionally navigable river.

18. The unnamed tributary of the North Raccoon River is a relatively permanent water that connects to a traditionally navigable water.

19. The streams connected to the unnamed tributary of the North Raccoon River are relatively permanent waters.

20. The Wetlands have a continuous surface connection to relatively permanent waters that are connected to a traditional navigable water.

21. The streams and connected Wetlands are waters of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

22. On January 7, 2019, Respondent submitted an application to the U.S. Army Corps of Engineers, Rock Island, Iowa District (“Rock Island District”), for a permit under Section 404 of the CWA, 33 U.S.C. §1334, for a proposed residential and commercial development project on the Site.

23. On January 8, 2019, the Rock Island District notified Respondent that the application was incomplete and required a wetland delineation of the Site.

24. On June 24, 2019, Respondent’s consultant completed a wetland and waters of the United States delineation for the Site which was submitted to the Rock Island District.

25. On August 14, 2019, the Rock Island District notified Respondent that the application was incomplete because it was missing information documenting impacts to tributaries and wetlands, impacts to habitats for listed species, stream mitigation plans, an alternatives analysis, and other necessary information relevant to the Site.

26. On October 11, 2019, Respondent’s consultant completed a threatened and endangered species habitat assessment of the Site which was submitted to the Rock Island District. The report indicated that the proposed project area on the Site contained habitat for endangered and threatened species.

27. In November of 2019, Respondent’s consultant completed a cultural resources investigation to document any cultural resources located within the project area which was submitted to the Rock Island District. This report noted some disturbances of waters on the Site from ongoing earthmoving activities.

28. Respondent did not communicate with the Rock Island District again until January 26, 2022, when Respondent sent an email with questions regarding a proposed detention basin and attempts to limit the impacts to wetlands and streams. The Rock Island District responded that day stating that they had knowledge of work being done in the waters on the Site.

29. On May 5, 2022, Respondent applied again for a permit under Section 404 of the CWA, 33 U.S.C. §1334, for the same proposed residential and commercial development project

as its January 7, 2019, application. This application contained proposed plans for work in the waters but did not state that any work had already been completed on the Site.

30. On July 25, 2022, Respondent's consultant completed an alternatives analysis report, and a mitigation plan which was submitted to the Rock Island District.

31. On December 7, 2022, the Rock Island District put Respondent's May 5, 2022, permit application on Public Notice.

32. On January 31, 2023, a representative of the Rock Island District and Respondent's consultant conducted a site visit. This site visit revealed that multiple wetlands had been filled, culverts and crossings had been constructed over streams in the project area, and a stream within the project area had been straightened.

33. On February 10, 2023, the Rock Island District sent a Notice of Violation to the Respondent stating that, to their knowledge, at least four wetlands, and over 1,000 linear feet of stream had been impacted by Respondent without permits.

34. On February 20, 2023, Respondent sent a response to the Rock Island District admitting that they had filled wetlands and streams located within the project area without a permit. Specifically, this response admitted that:

- a. Respondent had placed fill material in the Wetlands; and
- b. Respondent had placed fill material in the perennial streams connected to the unnamed tributary of the North Raccoon River.

35. On March 20, 2023, the Rock Island District referred this case to EPA Region 7 for potential enforcement.

36. The fill material discharged by Respondent into the navigable waters of the United States is a "pollutant" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

37. The heavy equipment used to place the fill material into the navigable waters of the United States located on the Site constitutes a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

38. The discharge of the fill material into the waters of the United States located on the Site on constitutes a "discharge of a pollutant" within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

39. Respondent's fill activities have impacted approximately 0.90 acres of the Wetlands, and approximately 1,460 linear feet of jurisdictional streams located on the Site.

Allegations of Violation

40. The factual allegations stated above are herein incorporated.
41. 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 fill placement described herein, nor did Respondent perform the work described herein under any prior permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344.
42. Respondent's discharge of pollutants from a point source into waters of the United States occurred 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.

Consent Agreement

General Provisions

43. Respondent and EPA agree to the terms of this Consent Agreement/Final Order.
44. Respondent certifies by the signing of this Consent Agreement/Final Order that they shall be in compliance with Section 404 of the CWA, 33 U.S.C. § 1344, upon completion of the permitting process with the Rock Island District.
45. Respondent waives its right to contest any issue of fact or law set forth above, and their rights to appeal this Consent Agreement/Final Order.
46. Respondents and Complainant agree to bear their own costs and attorney's fees incurred as a result of this action.
47. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a civil penalty of \$62,508.00, as set forth in the Penalty section below.
48. The state of Iowa has been provided an opportunity to consult with Complainant regarding this matter in accordance with the requirements of 40 C.F.R. § 22.38(b) and Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1).
49. Respondent admits the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement/Final Order.
50. Respondent neither admits nor denies the factual allegations asserted by the EPA in this Consent Agreement/Final Order.
51. The effect of settlement is conditional upon the accuracy of Respondent's representations to the EPA in this CAFO.

52. The Effective Date of this CAFO is the date on which a copy of the fully signed and executed CAFO is filed with the Regional Hearing Clerk.

53. The Parties acknowledge that this Consent Agreement/Final Order is subject to the public notice and comment required pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45.

54. The headings in this Consent Agreement/Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement/Final Order.

Reservation of Rights

55. This CAFO addresses all civil and administrative claims for the CWA violations alleged above. With respect to matters not addressed in this CAFO, the EPA reserves the right to take any enforcement action pursuant to the CWA and its implementing regulations, or any other available legal authority, including without limitation, the right to seek injunctive relief, penalties and damages.

56. Nothing contained in this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

57. Notwithstanding any other provision of this CAFO, the EPA reserves the right to enforce the terms of this CAFO by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, and to seek penalties against Respondents or to seek any other remedy allowed by law.

58. Respondents consent to receive service of the filed Consent Agreement and Final Order electronically at the following email addresses:

For Respondent Cramer and Associates, Inc.
ATTN: Robert Cramer, Vice President, Land Development
rcramer@cramerbridges.com

Penalty

59. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement/Final Order, Respondent shall pay a civil penalty of **Sixty-two Thousand, Five Hundred and Eight Dollars (\$62,508.00)** to be paid in full no later than 30 days after the effective date of this Consent Agreement/Final Order pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

60. The penalty payment shall identify Respondent by name and docket number “CWA-07-2024-0049,” and shall be by certified or cashier’s check made payable to “Treasurer, United States of America,” and sent to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979078
St. Louis, Missouri 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

61. A copy of the check or other information confirming payment shall simultaneously be emailed to the following:

Regional Hearing Clerk
R7_Hearing_Clerk_Filings@epa.gov; and

Samantha Pappas, Attorney
pappas.samantha@epa.gov

62. Respondent agrees that no portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement/Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

63. Interest on any late payment will be assessed at the annual interest rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on any overdue amount from the due date stated in Paragraph 35 above through the date of payment. Failure to pay the civil penalty when due may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs or interest.

Signatories

64. The undersigned for each part has the authority to bind each respective party to the terms and conditions of this CAFO. The CAFO may be signed in part and counterpart by each party.

Parties Bound

65. This CAFO shall apply to and be binding upon Respondent and Respondent’s agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this CAFO.

66. Respondent understands and agrees that this Consent Agreement/Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondents with respect to matters included herein comply with the terms of this Consent Agreement/Final Order.

Definitions

67. Terms used in this order that are defined in the CWA or EPA regulations promulgated under the CWA have the meanings assigned to them in the CWA or those regulations, unless otherwise provided in this Order.

Executed Agreement Filed

68. This executed Complaint and Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

Electronic Service

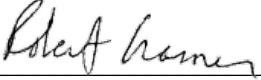
69. Respondent consents to receiving the filed Consent Agreement/Final Order electronically at the following email address: *rcramer@cramerbridges.com*

For the Complainant, United States Environmental Protection Agency Region 7:

David Cozad
Director
Enforcement and Compliance Assurance Division

Samantha Pappas
Office of Regional Counsel

For Respondent Cramer and Associates, Inc.



SIGNATURE

4/1/24

DATE

Robert Cramer, VP Land Development

NAME/TITLE

FINAL ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

The Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Date

Karina Borromeo
Regional Judicial Officer

Certificate of Service

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

Copy by email to representatives for Respondent:

Cramer and Associates, Inc.
ATTN: Robert Cramer, Vice President, Land Development
rcramer@cramerbridges.com

For Complainant, U.S. Environmental Protection Agency Region 7:

garcia.delia@epa.gov
Delia Garcia, PhD, Enforcement and Compliance Assurance Division

pappas.samantha@epa.gov
Samantha Pappas, Office of Regional Counsel

Date

Signature