

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF: )  
)  
)  
)  
GOODRUM FARM CR314, LLC )  
)  
Respondent ) Docket No. CWA-07-2016-0060  
)  
)  
) CONSENT AGREEMENT/  
) FINAL ORDER  
)  
Proceedings under Section 309(g) of the )  
Clean Water Act, 33 U.S.C. § 1319(g) )  
\_\_\_\_\_ )

The United States Environmental Protection Agency, Region 7 (“EPA”) and Goodrum Farm CR314, LLC (“Respondent”) have agreed to a settlement of the alleged violations set forth in this Consent Agreement and Final Order (“CA/FO”). Thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) 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, 40 C.F.R. Part 22 (“Consolidated Rules”).

**COMPLAINT**

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g)(2)(B) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g)(2)(A), and in accordance with the Consolidated Rules.

2. This CA/FO alleges that the Respondent discharged pollutants into 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 is Goodrum Farm CR314, LLC ("Respondent").

### Statutory and Regulatory Framework

5. 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."

7. At the time of the violations alleged herein, 40 C.F.R. § 232.2 and 33 C.F.R. § 328.3 defined "waters of the United States" to include *inter alia*: (i) all waters which are currently, used, were used in the past, or may be susceptible to use in interstate or foreign commerce; (ii) all interstate waters; (iii) tributaries to such waters; and (iv) wetlands adjacent to such waters or their tributaries.

8. 40 C.F.R. § 232.2 and 33 C.F.R. § 328.3(b) define "wetlands" as "[t]hose areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated conditions."

9. 40 C.F.R. § 232.2 defines "discharge of fill material" to include the "placement of fill, including site-development fills for commercial and other uses."

10. 40 C.F.R. § 232.2 defines "discharge of dredged material" to include "any addition, including redeposit other than incidental feedback, of dredged material, including excavated material, into waters of the United States, which is incidental to any activity, including mechanized land clearing ... or other excavation."

11. 40 C.F.R. § 232.2 defines "fill material" as any pollutant that "replaces portions of the 'waters of the United States' with dry land or which changes the bottom elevation of a water body for any purpose."

12. 40 C.F.R. § 232.2 defines "dredged material" as "material that is excavated or dredged from waters of the United States."

13. 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

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

15. At all times relevant to this action, Respondent owned, operated, or otherwise controlled a 75 acre parcel of property located in Section 20, Township 24 North, Range 6 East, in Butler County, Missouri (hereinafter "the Site").

16. On July 3, 2014, the Corps, Little Rock District, received an anonymous complaint informing of wetlands being cleared with a bulldozer.

17. On July 16, 2014, the Corps inspected the Site and confirmed that Respondent and/or persons acting on their behalf, authorized and/or initiated the mechanized land clearing and grading of wooded wetlands that resulted in the discharge of dredged and/or fill material into approximately 9.46 acres of wooded wetlands (hereinafter "impacted wetlands") adjacent to Craven Ditch.

18. Craven Ditch, a perennial tributary, flows into Main Ditch, an interstate water, which then flows into the Black River, a traditional navigable water.

19. The impacted wetlands provided important functions, including, *inter alia*, nutrient recycling, retention and attenuation of flood waters, sediment trapping, export of organic matter, and export of food resources. These wetlands had and continue to have a significant nexus to, and significantly affect, the chemical, physical and/or biological integrity of downstream traditional navigable waters, including the Black River.

20. On September 8, 2014, the Corps issued a Cease and Desist order to Respondent.

21. The dredged and/or fill material deposited or discharged by Respondent's activities into wetlands adjacent to Craven Ditch are "pollutants" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

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

23. The discharge or deposition of dredged and/or fill material into wetlands adjacent to Craven Ditch constitutes the "discharge of a pollutant" within the meaning of Section 501(12) of the CWA, 33 U.S.C. § 1362(12).

24. Craven Ditch and its adjacent wetlands are "waters of the United States" within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and the regulations promulgated thereunder.

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

#### **CONSENT AGREEMENT**

26. 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.

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

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

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

30. 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.

31. Respondent certifies that it is fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondent to it.

32. Respondent certifies by the signing of this CA/FO that, to the best of its knowledge, Respondent is in compliance with all requirements of Sections 301 and 404 of the CWA.

33. The effect of settlement is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 32 above, of this CA/FO.

34. Respondent consents to the issuance of the Final Order and consents to the payment of a civil penalty in the amount of \$15,000.

35. Payment of the entire civil penalty shall resolve all civil and administrative claims of the United States alleged in the Findings of Violations.

Reservation of Rights

36. 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.

37. With respect to matters not addressed in this CA/FO, described in paragraph 30 above, 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.

PENALTY

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:

38. Respondent shall pay a civil penalty of Fifteen Thousand dollars (\$15,000). The 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, Missouri 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  
11201 Renner Boulevard  
Lenexa, Kansas 66219

and

Chris Muehlberger  
Office of Regional Counsel

U.S. Environmental Protection Agency - Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

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.

39. 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

40. 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

41. This Final Order shall become effective upon filing pursuant to 40 C.F.R. § 22.31(b). All time periods herein shall be calculated therefrom unless otherwise provided in this Final Order.

COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY

\_\_\_\_\_  
Karen A. Flournoy  
Director  
Water, Wetlands and Pesticides Division

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chris Muehlberger  
Assistant Regional Counsel

\_\_\_\_\_  
Date

RESPONDENT:

TERRY M. GOODRUM  
Printed Name

Terry M. Goodrum  
Signature

MEMBER  
Title

5-15-16  
Date

**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.

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Date