

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CWA-05-2021-0003
)	
Dillenberger Farms, Inc.)	Proceeding to Assess a Class II Civil
The Estate of James Dillenberger)	Penalty under Section 309(g) of the Clean
Dillenberger Revocable Trust)	Water Act, 33 U.S.C. § 1319(g)
Valmeyer, Illinois)	
)	
Respondents.)	

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 & Compliance Assurance Division, EPA Region 5, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondents are Dillenberger Farms, Inc., the Estate of James Dillenberger and the Dillenberger Revocable Trust operating in the State of Illinois.

4. 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). *See* 40 C.F.R. § 22.13(b).

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. Respondents consent to the terms of this CAFO, including the assessment of the civil penalty specified below.

Jurisdiction and Waiver of Right to Hearing

7. Respondents admit the jurisdictional allegations in this CAFO and neither admit nor deny the factual allegations in this CAFO.

8. Respondents waive any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondents may have with respect to any issue of fact or law set forth in this CAFO including, but not limited to, its right to request a hearing under 40 C.F.R. § 22.15(c) and Sections 309(g)(2)(B) and (4)(C) of the CWA, 33 U.S.C. § 1319(g)(2)(B) and (4)(C); its right to appellate review under Section 309(g)(8)(B) of the CWA, 33 U.S.C. § 1319(g)(8)(B); its right to seek federal judicial review of the CAFO pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06; any right to contest the allegations in this CAFO; and its right to appeal this CAFO. Respondents also consent to the issuance of this CAFO without further adjudication.

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 502(12) of the CWA defines “discharge of a pollutant,” as, *inter alia*, “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12).

12. Section 502(6) of the CWA defines “pollutant,” as “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.” 33 U.S.C. § 1362(6).

13. Section 502(14) of the CWA defines “point source” as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

14. Section 502(7) of the CWA defines “navigable waters” as “the waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7).

15. Section 502(5) of the CWA defines a “person” as “an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.” 33 U.S.C. § 1362(5).

16. The regulation at 40 C.F.R. § 232.2 defines “Wetlands” as “those areas that are inundated or saturated by surface or ground water 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 soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.”

17. 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), 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 includes discharges not in compliance with a permit 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 and Alleged Violations

18. Respondents are “persons” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

19. At all times relevant to this order, Respondents owned or operated, at least in part, or in equity, the property referred to as Dillenberger Farms located in the SW ¼ of Section 26 and SE ¼ of Section 27 of T25, R11W, in Monroe County, Illinois, PI 06-27-400-001. The property immediately abuts Moredock Lake.

20. Complainant alleges that Respondents violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), by discharging a pollutant or pollutants, including but not limited to dredged or fill material, into the navigable waters at the Site, including but not limited to wetlands, from a point source without a permit to do so.

21. The Site property contained a forested wetland which immediately abutted Moredock Lake. Moredock Lake is a perennial waterbody that drains south via an unnamed perennial tributary to Monroe City Creek, Maeystown Creek and then finally to the Mississippi River. The Mississippi River is a navigable water of the United States.

22. Accordingly, Moredock Lake and the immediately abutting wetlands on the property are navigable waters as defined at Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

Unlawful Discharge of Pollutants into Moredock Lake

23. The statements in Paragraphs 1 through 22 are hereby incorporated by reference as if set forth in full.

24. Beginning in November 2012, Respondents, acting directly or through their agents, used mechanized land-moving equipment to clear approximately 2 acres of forested wetlands from their property and adjacent property owned by the Moredock Lake Gun Club. They pushed tree debris 150-200 feet into Moredock Lake.

25. At no time relevant to these discharges did Respondents have or apply for a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, to discharge dredged or fill material into Moredock Lake as described in paragraph 24.

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

27. Respondents used equipment, including but not limited to a bulldozer to clear the forested wetland adjacent to Moredock Lake and push the tree debris into Moredock Lake.

28. The equipment used by the Respondents, including but not limited to mechanized land-moving equipment is a discernible, confined and discrete conveyance, and constitutes a “point source” as defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

29. Respondents’ addition of dredged or fill material from a point source into Moredock Lake constitutes a “discharge of a pollutant” as defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

30. Because Respondents owned or operated a point source for the discharge of pollutants to navigable waters, Respondents were 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 applicable state and federal regulations.

31. Therefore, Respondents are persons who discharged pollutants from a point source into navigable waters without a permit in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

32. Each day the pollutants remained in the navigable waters constituted 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

33. 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 of up to \$16,000 per day of violation up to a total of \$177,500 for violations of Section 301 of the CWA at the time the violations occurred in 2012.

34. Based upon the facts alleged in this CAFO, and upon the nature, circumstances, extent and gravity of the violations alleged, as well as Respondents' 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 \$20,857.00.

35. Within 30 days after the effective date of this CAFO, Respondents must pay the \$20,857 civil penalty by any of the following methods. At this time the Respondent anticipates that it will pay via electronic funds transfer.

[For checks sent by regular U.S. Postal Service mail] 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

[For checks sent by express mail (non-U.S. Postal Service which won't deliver mail to P.O. Boxes)] sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

[The check must note Respondents' name and the docket number of this CAFO.]

[For electronic funds transfer] electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045

[In the comment or description field of the electronic funds transfer, state Respondents' name and the docket number of this CAFO.]

[For Automated Clearinghouse (ACH) also known as REX or remittance express] ACH electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22-checking

[In the comment area of the electronic funds transfer, state Respondents' name and the docket number of this CAFO.]

[For on-line payment]an on-line payment. To pay on-line, go to www.pay.gov. Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

36. A transmittal letter, stating Respondents' name, complete address, and the case docket number must accompany the payment. Respondents 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 (email is preferred) to:

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

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

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

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

38. If Respondents do 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. Respondents acknowledge that the validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

39. Respondents 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, Respondents must pay the United States' attorneys' fees and costs for collection proceedings, and Respondents 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

40. Pursuant to 40 C.F.R. § 22.5, the parties consent to service of this CAFO by email at the following email addresses: Clarizio.richard@epa.gov (for Complainant) and for Respondent to chad.dillenberger@gmail.com, chilly802@gmail.com and attorney.friess@gmail.com. *See* 40 C.F.R. §§ 22.5-6. A courtesy copy, not a service copy, shall be provided, to the extent possible due to COVID19, via regular mail to:

Chad Dillenberger
3322 Rose Lane
Waterloo, Illinois 62298
chad.dillenberger@gmail.com

Jason Siburt
3079 State Route 156
Waterloo, Illinois 62298
chilly802@gmail.com

41. Full payment of the penalty as described in paragraphs 34 and 35 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.

42. Full payment of the penalty as described in paragraphs 34 and 35 and full compliance with this CAFO shall only resolve Respondents' liability for federal civil penalties for the violations and facts alleged in this CAFO.

43. This CAFO does not affect Respondents' responsibility to comply with the CWA and other applicable federal, state, or local laws and permits.

44. Respondents certify that they are complying with Sections 301(a) and 404 of the CWA, 33 U.S.C. §§ 1311(a), 1344.

45. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31 and the EPA's Clean Water Act Section 404 Settlement Penalty Policy (Dec. 2001).

46. The terms of this CAFO bind Respondents and their successors and assigns.

47. 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.

48. Each party agrees to bear its own costs and attorneys' fees in this action.

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

50. The effective date for this CAFO is the date it is filed with the Regional Hearing Clerk, which is after completion of the notice and comment requirements of Sections 309(g)(4)(C) and 309(g)(5) of the CWA, 33 U.S.C. §§ 1319(g)(4)(C), (5) and 40 C.F.R. §§ 22.38, 22.45, and which shall be at least 30 days after the CAFO has been signed by the Regional Judicial Officer or Regional Administrator.

In the Matter of:

In the Matter of: Dillenberger Farms, Inc. *et alia*
Valmeyer, Illinois
Docket No. CWA-05-2021-0003

Dillenberger Farms, Inc.,



Name: *Chad Dillenberger*
Title: *President*

11/17/20

Date

Estate of James Dillenberger



Name: *Susan Dillenberger*
Title: *Executor*

11-17-20

Date

United States Environmental Protection Agency, Complainant

MICHAEL
HARRIS

Digitally signed by
MICHAEL HARRIS
Date: 2020.12.07
13:07:57 -06'00'

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

Date

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Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

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