

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)
) Docket No. CWA-07-2014-0089
)
GAREN GOEBEL)
)
) CONSENT AGREEMENT AND
) FINAL ORDER
Respondent,)
)
Proceedings under Section 1319(g) of the)
Clean Water Act, 33 U.S.C. § 1319(g))
_____)

The United States Environmental Protection Agency, Region 7 (“EPA”) and Garen Goebel (“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 (“Consolidated Rules”), 40 C.F.R. Part 22, and pursuant to Subpart I of the 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)(B), and in accordance with the Consolidated Rules.

2. This CA/FO alleges that Respondent discharged pollutants into a water of the United States in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

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 Garen Goebel.

Statutory and Regulatory Framework

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.

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.

7. 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.

8. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters,” in part, as the “waters of the United States,” which are defined at 40 C.F.R. § 232.2 and 33 C.F.R. Part 328, and which include wetlands adjacent to waters of the United States.

9. 40 C.F.R. § 232.2 defines the term “dredged material” to mean material that is excavated or dredged from waters of the United States.

10. 40 C.F.R. § 232.2 defines the term “discharge of dredged material” to mean, with specified exceptions, any addition of dredged material into, including redeposit of dredged material other than incidental fallback within, the waters of the United States. The term includes, but is not limited to, *inter alia*, the addition of dredged material to a specified discharge site located in waters of the United States; and any addition, including redeposit other than incidental fallback, of dredged material, including excavated material, into waters of the United States which is incidental to any activity, including mechanized land clearing, ditching, channelization, or other excavation.

11. 40 C.F.R. § 232.2 defines the term “fill material” to include material placed in waters of the United States where the material has the effect of changing the bottom elevation of any portion of a water of the United States. The definition provides examples including, *inter alia*, rock, sand, soil, clay, overburden, and materials used to create any structure or infrastructure in the waters of the United States.

12. 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.

13. Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), authorizes the issuance of a penalty against any person who violates Section 301 of the CWA, 33 U.S.C. § 1311.

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 property located in the Southwest ¼ of Section 29, Township 2 South, Range 2 East, Washington County, Kansas (hereinafter the “Site”).

16. Sometime in October 2012, Respondent and/or persons acting on his behalf and using earth moving equipment, authorized and/or directed the grading, excavation, and placement of fill material impacting approximately 704 linear feet of Iowa Creek, Stub Creek and a tributary of Stub creek, resulting in the discharge of dredged and fill material including, but not limited to, dirt, spoil, rock, and sand.

17. On December 6, 2012, representatives from the Corps inspected the Site and documented the discharges of fill material and channeling activity described in Paragraph 16.

18. On March 26, 2014, representatives from the EPA confirmed that the fill material and channel activity described in Paragraph 16 remained in place.

19. The dredged and/or fill materials discharged by Respondent into Iowa Creek, Stub Creek and a tributary of Stub Creek are “pollutants” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

20. The discharge of the dredged and/or fill material into Iowa Creek, Stub Creek and a tributary of Stub Creek referenced in Paragraph 16 constitutes the “discharge of a pollutant” within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

21. The earth moving equipment referenced in Paragraph 16 constitutes a “point source” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

22. Iowa Creek, Stub Creek and a tributary of Stub Creek, referenced in Paragraph 16, are “waters of the United States” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), 40 C.F.R. § 232.2, and 33 C.F.R. Part 328. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines the term “navigable waters” as “waters of the United States, including the territorial seas.” “Waters of the United States” have been further defined to include, inter alia, waters which are currently used, were used in the past, or may be susceptible to use in

interstate or foreign commerce (hereinafter “traditional navigable waters”) and tributaries of such waters. 40 C.F.R. § 122.2.

23. On November 6, 2013 and March 26, 2014, EPA personnel conducted site visits. During the visit, EPA observed that the tributary to Stub Creek, Stub Creek, and Iowa Creek, flow into Mill Creek which flows to the Big Blue River. The Big Blue River is classified as a traditional navigable water.

24. Iowa Creek, Stub Creek and a tributary of Stub Creek, each have a bed, banks, and an ordinary high water mark and have been identified as an intermittent stream by the U.S. Geological Survey, are tributaries of the traditionally navigable Big Blue River, and are a water of the United States, as defined in 40 C.F.R. § 122.2.

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 in Paragraph 16, nor did Respondent perform the work described in Paragraph 16 under any prior permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344.

FINDINGS OF VIOLATION

26. The facts stated in Paragraphs 14 through 25 above are herein incorporated.

27. Respondent’s discharges of pollutants from a point source into a water of the United States occurred without a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344. Therefore, these discharges violated Section 301 of the CWA, 33 U.S.C. § 1311.

CONSENT AGREEMENT

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

29. Respondent neither admits nor denies the factual allegations set forth in this CA/FO.

30. Respondent waives his right to contest the allegations set forth in this CA/FO and his right to appeal the Final Order portion of this CA/FO.

31. Respondent and Complainant each agree to bear their respective costs and attorney’s fees incurred as a result of this action.

32. 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.

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

34. Respondent certifies by the signing of this CA/FO that, to the best of his knowledge, Respondent is in compliance with EPA's May 28, 2014 Administrative Compliance Order, Docket No. CWA-07-2014-0064.

35. The effect of settlement is conditional upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 34 above, of this CA/FO.

36. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty in the amount of \$25,000.

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

38. Respondent shall pay a civil penalty of Twenty-five Thousand dollars (\$25,000), due thirty calendar days from the effective date of the CA/FO. Respondent shall pay the penalty by cashier's or certified check made payable to "Treasurer, United States of America," and shall deliver the check with a transmittal that identifies the case name and docket number CWA-07-2014-0089 to:

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

Copies of the transmittal letter and the check shall be simultaneously sent to:

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

and to:

Melissa A.C. Bagley
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.

Reservation of Rights

40. 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.

41. 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.

Parties Bound

42. This Final Order shall apply to and be binding upon Respondent, his agents, successors, and assigns. Respondent shall ensure that any directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for him with respect to matters included herein, comply with the terms of this CA/FO.

Effective Date

43. This Consent Agreement and Final Order shall be effective upon filing of the Final Order. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division

Date

Melissa A.C. Bagley
Assistant Regional Counsel

Date

RESPONDENT:
GAREN GOEBEL

Date 9-2-15

Garen Goebel

Name

Garen Goebel

Signature

Owner

Title

FINAL ORDER

Pursuant to 40 C.F.R. 22.18(b)-(c) of EPA's Consolidated Rules of Practice, the foregoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement effective immediately.

IT IS SO ORDERED.

Date

Karina Borromeo
Regional Judicial Officer