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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:	)	
	)	
BRENT MCMINN	)	Docket No. CWA-07-2014-0071
	)	
	)	
	)	CONSENT AGREEMENT/
Respondent	)	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 Brent McMinn ("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 Brent McMinn has a mailing address of Highway 72, Patton, Missouri 63662.

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 tributaries to, waters of the United States.

9. 40 C.F.R. § 232.2 defines "Discharge of fill material" to include the "placement of fill that is necessary for the construction of any structure in a water of the United States," including "dams and dikes."

10. 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."

11. 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.

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Factual Background

12. Respondent is a "person" within the meaning of 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 property located in Patton, Missouri in Section 28, Township 33 North, Range 9 East, in Bollinger County, Missouri (hereinafter "the Site").

14. In 2011, Respondent and/or persons acting on his behalf and using earth moving equipment, authorized and/or initiated the discharge of fill material into two tributaries to Baltimore Creek through grading and filling operations associated with the construction of a dam and dam roadway. Respondent's discharges of fill material into the tributaries impacted approximately 3,660 linear feet of stream.

15. On December 14, 2011, the Corps inspected the Site and documented the discharges of fill material described herein.

16. The fill material discharged by Respondent into tributaries of Baltimore Creek are "pollutants" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

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

18. The discharge of the dredged and/or fill material into tributaries to Baltimore Creek constitutes the "discharge of a pollutant" within the meaning of Section 501(12) of the CWA, 33 U.S.C. § 1362(12).

19. The tributaries to Baltimore Creek 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.

20. Respondent's discharge of pollutants from a point source into waters of the United States was performed 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.

21. 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.

A. FINDINGS OF VIOLATION

22. The facts stated in Paragraphs 12 through 21 above are herein incorporated.

23. 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

24. 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.

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

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

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

28. 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.

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

30. Respondent certifies by the signing of this CA/FO that, to the best of his knowledge, Respondent is in compliance with all requirements of Sections 301 and 404 of the CWA, and is scheduled to be in compliance with EPA's November 19, 2013, Administrative Order for Compliance on Consent, Docket No. CWA-07-2013-0014.

31. The effect of settlement is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 30 above, of this CA/FO.

32. Respondent consents to the issuance of the Final Order and consents to the payment of a civil penalty in the amount of $20,000.

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

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Reservation of Rights

34. 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.

35. With respect to matters not addressed in this CA/FO or the Administrative Compliance Order on Consent 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.

FINAL ORDER

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:

1. Respondent shall pay a civil penalty of Twenty Thousand dollars ($20,000). 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.

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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.

2. 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

3. 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

4. This Final Order shall become effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this Final Order.

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COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Karen A. Flournoy

Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division

Date 6/20/14

Chris Muehlberger
Assistant Regional Counsel

Date

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RESPONDENT:
BRENT McMINN

Brent McMinn

6/12/14
Date

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IT IS SO ORDERED.

Date	Karina Borromeo Regional Judicial Officer

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