



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

FEB 6 2015

REPLY TO THE ATTENTION OF:

WW-16J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Jerry Wray
Director
Ohio Department of Transportation
1980 West Broad Street
Columbus, Ohio 43223



Re: In the Matter of Ohio Department of Transportation
Consent Agreement and Final Order: Docket No. CWA-05-2015-0004

Dear Mr. Wray:

Enclosed please find a copy of the signed fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. An original of the CAFO was filed with the Regional Hearing Clerk on February 6, 2015.

Please ensure you pay the civil penalty in the amount of \$35,000 in the manner prescribed in paragraphs 29-31 of the CAFO and reference the check with the docket number. Your payment is due within 30 days of the filing date.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Swenson".

Peter Swenson, Chief
Watersheds and Wetlands Branch

Enclosures

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. Respondent consents to the terms of this CAFO, including the assessment of the civil penalty specified below.

JURISDICTION AND WAIVER OF RIGHT TO HEARING

7. Respondent stipulates that U.S. EPA has jurisdiction over the subject matter of this CAFO and waives any jurisdictional objections it may have.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

9. By executing this CAFO, Respondent does not admit liability or admit Complainant's factual allegations set forth in this CAFO. Respondent's execution of this CAFO does not constitute a waiver or admission of any kind, including without limitation a waiver of any defense, legal or equitable, which Respondent may have in this or any other administrative or judicial proceeding, other than a proceeding to enforce this CAFO.

STATUTORY AND REGULATORY BACKGROUND

10. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), states that: "Whenever, on the basis of any information available the Administrator finds that any person has violated [Section 301 of the CWA, 33 U.S.C. § 1311], ... the Administrator ... may, after consultation with the State in which the violation occurs, assess a ... class II civil penalty under [Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B)]."

11. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), states that "Except as in compliance with [Section 404 of the CWA] the discharge of any pollutant by any person shall be unlawful."

North, Range 19 West along State Route 327, mile marker 7.45 in Vinton County, Ohio (the Site). The Site is within the Ohio State Route 327 right-of-way, which is under the ownership of the Respondent.

20. Respondent, using a dump truck, discharged approximately 15-20 dump truck loads of ditch spoil into Salt Creek from April 7 -- 10, 2014. The purpose of the activity was to dispose of ditch spoil excavated during ditch clearing operations along State Route 327 and United States Route 50 in Ross County, Ohio.

21. Respondent's activities at the Site using a dump truck resulted in the discharge of ditch spoil consisting of sediment and dirt that impacted approximately 50 linear feet of Salt Creek, including 30 feet into the stream channel. Respondent's dump truck constituted a "point source" within the meaning of the definition set forth in Section 502(14) of the CWA, 33 U.S.C. § 1362(14). The sediment and dirt constituted "pollutants" within the meaning of the definition set forth in Section 502(6) of the CWA, 33 U.S.C. § 1362(6). The addition of sediment and dirt into the stream on the Site constituted a "discharge of pollutants" within the meaning of the definition set forth in Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

22. Salt Creek flows to the Scioto River, a traditional navigable water.

23. Salt Creek is a "waters of the United States" pursuant to 40 C.F.R. § 232.2.

24. At no time during the activities referenced in paragraph 20 did the Respondent possess a permit from the Secretary of the Army, through the Army Corps of Engineers, under Section 404(a) of the CWA, 33 U.S.C. § 1341(a), authorizing the fill activities in the streambed at the Site.

25. Respondent's deposition of sediment and dirt into the streambed at the Site constitutes

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Kerryann Weaver (WW-16J)
Wetlands Enforcement Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Susan Tennenbaum (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

32. This civil penalty is not deductible for federal tax purposes.
33. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States' enforcement expenses for the collection action. Respondent acknowledges that the validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.
34. Respondent 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 by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States' enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue.

GENERAL PROVISIONS

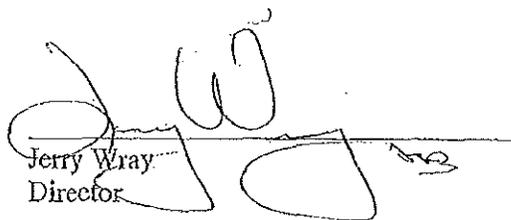
35. This CAFO resolves Respondent's liability, and any liability of Respondent's owners,

In the Matter of: Ohio Department of Transportation, Columbus, Ohio

Docket No:

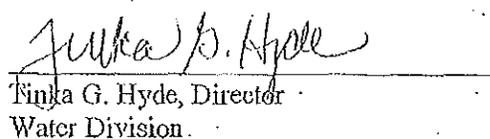
Ohio Department of Transportation, Respondent

11-7-2014
Date

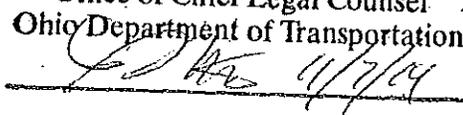

Jerry Wray
Director

U.S. Environmental Protection Agency, Complainant

11-24-14
Date


Finla G. Hyde, Director
Water Division

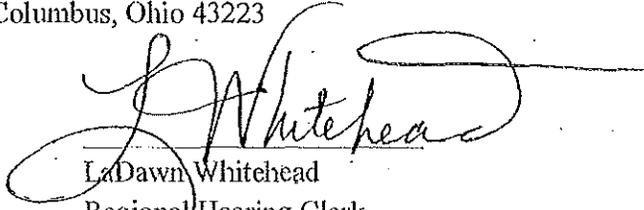
Reviewed as to Form
Office of Chief Legal Counsel
Ohio Department of Transportation


4/7/14

CERTIFICATE OF SERVICE

I, LaDawn Whitehead, hereby certify that an original of the Consent Agreement and Final Order Docket No. CWA-05-2014-0004 was filed with the Regional Hearing Clerk on February 6, 2015 and that a copy was served by United States Mail, Certified and Postage Prepaid, on the February 6, 2015 upon the following:

Ohio Department of Transportation
1980 West Broad Street
Columbus, Ohio 43223



LaDawn Whitehead
Regional Hearing Clerk