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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:	)	
	)	
	)	
	)	
KENNETH C. WILLIAMS	)	
	)	
and	)	
	)	
ROGER WILLIAMS,	)	Docket No. CWA-07-2015-0083
	)	
	)	
	)	CONSENT AGREEMENT/
Respondents	)	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 Kenneth C. Williams and Roger Williams ("Respondents") 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 Respondents 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. Respondents are Roger Williams and Kenneth C. Williams ("Respondents").

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.

Factual Background

12. Respondents are "persons" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

13. At all times relevant to this action, Respondents owned, operated, or otherwise controlled property, recorded in Wayne county under the name "Williams Family Limited Partnership," located in Sections 28 and 29, Township 30 North, Range 7 East, in Wayne County, Missouri (hereinafter "the Site")

14. The property on which the Site is located lies in a rural, heavily forested area of northern Wayne County and is comprised of 1,921 acres of non-industrial, private forestland.

15. In 2007, Respondents directed their consultant, Clearwater Forest Consultants, LLC ("Clearwater"), to investigate and research potential sites to build a lake on the Site. Clearwater contacted the NRCS for assistance with this project. Due to the scope of the project, the NRCS directed Clearwater to the Corps for further assistance.

16. On February 19, 2008, Respondent Kenneth C. Williams, on behalf of the Williams Family Limited Partnership, submitted a permit application to the St. Louis District of the Corps to construct an impoundment of unnamed tributaries to Turkey Creek for the purpose of creating a lake ("lake project"). The Corps provided Respondent with information concerning mitigation for the lake project. The application was withdrawn and the project file was closed by the Corps on November 24, 2008 after learning the lake project was no longer being pursued.

17. In December 2011, Clearwater, on behalf of Respondents, contacted the Corps with inquiries about the lake project. At that time, the Corps reopened the case file and additional information concerning mitigation for the lake project was submitted to the consultant. The Corps also directed Clearwater to the NRCS for assistance in the planning of the lake project whose assistance was sought by Clearwater. Then, in April 2012, the Corps again closed the file having received no further contact from Clearwater.

18. In 2013, the NRCS presented Clearwater with new potential lake sites as well as a new impoundment structure design all of which had the effect of reducing the scope of the project relative to the project previously proposed to the Corps. This new project both relocated the site of the lake and reduced the footprint of the same. Based upon representations from the NRCS, Clearwater's understanding was that the scope of the new project did not require permits of any type. With this understanding, the new lake project commenced during the spring of 2013.

19. On February 24, 2014, the Corps received a complaint from a property owner downstream from the Site that an unnamed tributary to Turkey Creek was impounded.

20. On April 1, 2014, the Corps contacted Respondents. Respondents acknowledged that the new lake project was completed in the spring and summer of 2013.

21. On April 9, 2014, the Corps inspected the Site and confirmed that Respondents and/or persons acting on their behalf, authorized and/or initiated the discharge of fill material into three unnamed tributaries to Turkey Creek using earth moving equipment through grading and filling operations associated with the construction of a lake, impacting approximately 2,200 linear feet of stream channel as estimated by the Corp.

22. On May 19, 2014, the Corps issued a Cease and Desist order to Respondents pursuant to Notice of Violation No. MVS-2008-115 and simultaneously referred the matter to the EPA for enforcement.

23. The fill material and sediment discharged by Respondents' activities into tributaries of Turkey Creek are "pollutants" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

24. 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).

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

26. The tributaries to Turkey 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.

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

FINDING OF VIOLATION

28. The facts stated in Paragraphs 12 through 27 above are herein incorporated.

29. Respondents' 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

30. Respondents admit the jurisdictional allegations of this CA/FO and agree not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.

31. Respondents neither admit nor deny the factual allegations contained in this CA/FO.

32. Respondents waive any right to contest the allegations and their right to appeal the proposed Final Order accompanying this Consent Agreement.

33. Respondents and Complainant each agree to bear their own costs and attorney's fees.

34. Nothing contained in the Final Order shall alter or otherwise affect Respondents' obligations to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

35. Respondents certify that they are fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondents to it.

36. Respondents certify by the signing of this CA/FO that, to the best of their knowledge, Respondents are in compliance with all requirements of Sections 301 and 404 of the CWA, and are scheduled to be in compliance with EPA's Administrative Order for Compliance on Consent, Docket No. CWA-07-2014-0105, pursuant to the timeframe for completion of the Mitigation Plan provided therein or as otherwise modified by written agreement of the parties.

37. The effect of this settlement is conditional upon the accuracy of the Respondents' representations to EPA, as memorialized in paragraph 36 above, of this CA/FO.

38. Respondents consent to the issuance of the Final Order, as stated herein, and consent to the payment of a civil penalty in the amount of $35,000 (Thirty-Five Thousand USD).

39. Payment of the entire civil penalty shall resolve all claims of the United States against Respondents, both individually and as general partners for the Williams Family Limited Partnership alleged in the Finding of Violations.

40. Within ninety (90) days of EPA's receipt of the entire civil penalty, EPA shall notify the Corps that payment of the civil penalty has been completed.

Reservation of Rights

41. 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.

42. With respect to matters not addressed in this CA/FO or the Administrative Compliance Order on Consent described 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. Respondents shall pay a civil penalty of Thirty-Five Thousand Dollars ($35,000). The penalty shall be paid in full within thirty (30) days following receipt by Respondents of a fully executed copy of this CA/FO. Respondents 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.

2. No portion of the civil penalty or interest paid by Respondents pursuant to the requirements of this CA/FO shall be claimed by Respondents 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 Respondents, both individually and as general partners for the Williams Family Limited Partnership, their agents, successors, and assigns. Respondents 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 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.

Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division

Date 9-30-15

Chris Muehlberger
Assistant Regional Counsel

Date 9.30.15

CA-FO

RESPONDENTS:

KENNETH C. WILLIAMS

Kenneth C. Williams

9/24/15
Date

CA-FO

ROGER WILLIAMS

Roger Williams

9/21/2015
Date

IT IS SO ORDERED.

11-16-2015
Date

Karina Borromeo
Karina Borromeo
Regional Judicial Officer

IN THE MATTER OF Kenneth C. Williams and Roger Williams, Respondents
Docket No. CWA-07-2015-0083

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy by email to Attorney for Complainant:

muehlberger.christopher@epa.gov

Copy by email to:

smangelsdorf@foxgalvin.com

Dated: 11/17/15

Kathy Robinson

Kathy Robinson
Hearing Clerk, Region 7