UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

IN THE MATTER OF Pleasant Acre Farms, LLC 194 Country Road Swanton, VT 05488 Respondent	**DOCKET NO. CWA-01-2012-0048** **CONSENT AGREEMENT AND FINAL ORDER** Proceeding Under Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g)

INTRODUCTION

1. This Consent Agreement and Final Order by the U.S. Environmental Protection Agency ("EPA") is issued to Pleasant Acre Farms, LLC ("Respondent") under the authority granted by Section 309(g)(2)(B) of the Clean Water Act (the "Act"), 33 U.S.C. § 1319(g)(2)(B), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," at 40 C.F.R. Part 22 (the "Consolidated Rules").

2. Pursuant to 40 C.F.R. § 22.13(b) of the Consolidated Rules, the parties agree to simultaneously commence and conclude this action for civil penalties by the issuance of this Consent Agreement and Final Order.

3. The Complainant is the Director of the Office of Environmental Stewardship, EPA Region 1. Complainant alleges that Respondent discharged pollutants into waters of the United States without authorization by a permit from the Army Corps of Engineers as required by Section 404 of the Clean Water Act, 33 U.S.C. § 1344, or other authorization, in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

STATUTORY AND REGULATORY AUTHORITY

4. EPA takes this action under the authority of Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), for violations of Section 301(a) of the Act, 33 U.S.C. § 1311(a) and Section 404 of the Act, 33 U.S.C. § 1344. Pursuant to Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1), and in accordance with 40 C.F.R. § 22.38(b), the State of Vermont has been given an opportunity to consult with EPA regarding the assessment of the administrative penalty against Respondent.

DESCRIPTION OF VIOLATIONS

5. Pleasant Acre Farms, LLC, is a limited liability company registered in the State of Vermont, with a principal street address of 194 County Road, Swanton, Vermont, and is a "person" as defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5).

6. Pleasant Acre Farms, LLC consists of a number of different farms and tracts of land. The wetlands that are the subject of this

Consent Agreement and Final Order are located within Farm number 2439, Tract 153 and are located off of County Road, Swanton, VT. The portion of the wetlands within Tract 153 that were affected by the activities described below is located in Field UN2 (the "Site") (see Attachment 1A).

7. Prior to the alterations described below, the wetlands in Field UN2 were forested and were part of a large undisturbed forested wetland complex (the "Wetlands") that extends throughout much of Tract 153 and beyond.

8. Sometime between Spring and Fall of 2006, Pleasant Acre Farms, LLC, or persons operating under its control, supervision, or authorization, undertook mechanized land clearing, grubbing, grading, and ditching/sidecasting activities to clear the woody hydrophytic vegetation and drain the wetlands at the Site, thereby discharging soil and rocks (the "Dredged and Fill Materials") into approximately 3.0 acres of wetlands (the "Affected Wetlands").

9. The Wetlands, including the Affected Wetlands were, before the activities described above, and remain, "wetlands" as defined at 40 C.F.R. §§ 232.2 and 122.2.

10. The Wetlands are adjacent to an unnamed stream, which flows north into the Missisquoi River, which in turn flows to Lake Champlain. The Wetlands, the unnamed stream, the Missisquoi River and Lake Champlain are all "waters of the United States" under the definitions

set forth in 40 C.F.R. §§ 122.2 and 232.2, and therefore are "navigable waters" under Section 502(7) of the Act, 33 U.S.C. § 1362(7).

11. The Dredged and Fill Materials discharged into the Affected Wetlands, as described in paragraph 8 above, are "pollutants" under Section 502(6) of the Act, 33 U.S.C. § 1362(6).

12. Pleasant Acre Farms, LLC, and/or persons working under its control, supervision, or authorization, used farm equipment such as excavators and bulldozers (collectively "heavy equipment") to perform the activities that resulted in the discharge of Dredged and Fill Materials into the Affected Wetlands.

12. The heavy equipment used to discharge the Dredged and Fill Materials into the Affected Wetlands constitute "point sources" under Section 502(14) of the Act, 33 U.S.C. § 1362(14).

13. The placement of the Dredged and Fill Materials into the Affected Wetlands by use of the heavy equipment constitutes the "discharge of pollutants" under Section 502(12) of the Act, 33 U.S.C. § 1362(12).

14. Section 301(a) of the Act, 33 U.S.C. § 1311(a), makes it unlawful for any person to discharge pollutants from a point source into waters of the United States, except in compliance with, among other things, the terms and conditions of a permit issued by the Secretary of the Army pursuant to Section 404 of the Act, 33 U.S.C. § 1344.

15. At the time that the discharges into the Affected Wetlands occurred, Pleasant Acre Farms, LLC had not applied for nor received a permit authorizing such discharge under Section 404 of the Act. Moreover, no other provision of the Act authorized the discharge of pollutants into the Affected Wetlands at the Site.

16. As set forth in paragraphs 5-15 above, discharges of pollutants (Dredged and Fill Materials) from point sources (excavator, bulldozer, and other heavy equipment) to waters of the U.S. (the Affected Wetlands) occurred without a permit or other authorization under the Clean Water Act in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

17. Each day that the Dredged and Fill Materials remain in the Affected Wetlands without authorization from a permit issued under Section 404 of the Act, 33 U.S.C. § 1344, constitutes an additional day of violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

18. On November 5, 2010, EPA issued a Finding of Violation and Order for Compliance ("Order") under Section 309(a) of the Act, 33 U.S.C. § 1311(a), requiring Respondent to restore the Affected Wetlands.

19. On March 11, 2011, EPA issued a revised Order ("Revised Order"), which required either complete restoration of the Affected Wetlands or restoration of 2.1 acres of the Affected Wetlands so long as Respondent timely applied for and obtained an After-the-Fact

("ATF") permit from the Corps allowing fill to remain in 0.9 acres of the Affected Wetlands, and implemented any required compensatory mitigation.

20. Respondent has completed the 2.1 acre wetland restoration in compliance with the terms of the Revised Order. Respondent has also obtained an ATF permit from the Corps to allow 0.9 acres of fill to remain and has complied with the permit requirement to implement compensatory mitigation.

CONSENT AGREEMENT

21. Paragraphs 1-20 are incorporated by reference as if fully set forth herein.

22. EPA and Respondent agree that the above matter constitutes a disputed claim and that settlement of the above matter is in the public interest, and that entry of this Consent Agreement and Final Order is the most appropriate means of resolving this matter.

Terms of Settlement

23. The provisions of this Consent Agreement and Final Order shall be binding upon EPA and upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns.

24. For purposes of this Consent Agreement, Respondent admits the jurisdictional allegations contained in this agreement, neither admits nor denies the specific factual allegations herein, and

consents to the assessment of the administrative penalty set forth herein.

25. For purposes of this Consent Agreement, Respondent waives its right to a judicial or administrative hearing or appeal on any issue of law or alleged fact set forth in this Consent Agreement and Final Order.

26. The civil penalty agreed upon herein has been determined in accordance with Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3). In developing the settlement penalty in this Consent Agreement and Final Order, Complainant has considered the nature, circumstances, extent and gravity of the violations, the Respondent's prior compliance history, the degree of culpability, the economic benefit or savings accruing to the Respondent by virtue of the violations, Respondent's ability to pay the settlement penalty, and such other matters as justice may require.

27. Respondent consents to the issuance of this Consent Agreement and Final Order and agrees to the payment of the civil penalty described below.

28. Based upon the nature of the violations, and other relevant factors identified in paragraph 30 below, EPA has determined that an appropriate civil penalty to settle this action is in the amount of **TEN THOUSAND DOLLARS($10,000)**.

29. Not more than ten (10) days after the date this Consent Agreement and Final Order becomes final, as set forth in paragraph 42 herein, Respondent shall submit a cashier's or certified check, payable to the order of the "Treasurer, United States of America," in the amount of **$10,000** to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Respondent shall simultaneously submit copies of the penalty payment check to:

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region I
5 Post Office Square, Suite 100
Mail code ORA 18-1
Boston, MA 02109-3912

and

Jeffrey Kopf
Office of Environmental Stewardship
U.S. Environmental Protection Agency
5 Post Office Square, Suite 100
Mail code OES 04-4
Boston, MA 02109-3912

30. The check shall bear the case name and docket number (CWA-01-2012-0048).

31. The penalty provided for herein is a penalty within the meaning of 26 U.S.C. § 162(f) and is not tax deductible for purposes of federal, state, or local law.

32. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), a failure by the Respondent to pay the penalty assessed by this Consent Agreement and Final Order in full by its due date shall subject Respondent to a civil action to collect the assessed penalty, plus interest at current prevailing rates, from the effective date of this Consent Agreement and Final Order. The rate of interest assessed shall be at the rate set forth in 31 C.F.R. § 901.9(b), promulgated under 31 U.S.C. § 3717. Any person who fails to pay on a timely basis the amount of an assessed penalty shall be required to pay, in addition to such amount and interest, attorney's fees, costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent of the aggregate amount of such person's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

33. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

REQUIRED NOTICE

34. Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), provides that, prior to issuing an order assessing a penalty under Section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA must provide public notice of, and reasonable opportunity to comment on, the proposed issuance of such order. EPA will satisfy this requirement for notice by providing public notice of, and reasonable opportunity to comment on, this Consent Agreement prior to the issuance of the Final Order.

ADDITIONAL PROVISIONS

35. Issuance of this Consent Agreement and Final Order constitutes a final settlement by EPA of all claims for judicial and administrative civil penalties pursuant to Sections 309(d) and (g) of the Act, 33 U.S.C. §§ 1319(d) and (g), for all past violations of the Act specifically alleged herein. This Consent Agreement and Final Order is not intended to nor shall it be construed to operate in any way to resolve any criminal liability of the Respondent.

36. Issuance of this Consent Agreement and Final Order does not constitute a settlement by EPA of its right to enforce the substantive legal requirements underlying this administrative penalty assessment, whether administratively or judicially pursuant to Sections 309(a), (b) and (c) of the Act, 33 U.S.C. §§ 1319(a), (b) and (c), or Section 504 of the Act, 33 U.S.C. § 1364.

37. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319, shall affect Respondent's continuing obligation to comply with the Act, or with other applicable federal, state or local laws, regulations or requirements, including any separate compliance order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), concerning the violations alleged herein. Full payment of the penalty required in this Consent Agreement and Final Order shall not affect the right of the United States to pursue appropriate injunctive or other relief for any violations of law.

38. This Consent Agreement and Final Order does not constitute a waiver, suspension or modification of the requirements of the Clean Water Act, 33 U.S.C. §§ 1251 et seq., or any regulations promulgated thereunder.

39. This Consent Agreement and Final Order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

40. Except as provided in paragraph 32, each party shall bear its own costs and attorneys' fees in connection with this action resolved by this Consent Agreement and Final Order.

EXECUTION

42. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.

FOR PLEASANT ACRE FARMS, LLC

Rene Bourdeau
Rene Bourdeau

Dated: 5/1/12

FOR U.S. EPA REGION 1

Susan Studlien
Susan Studlien, Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency
New England

Dated: 05/18/12

FINAL ORDER

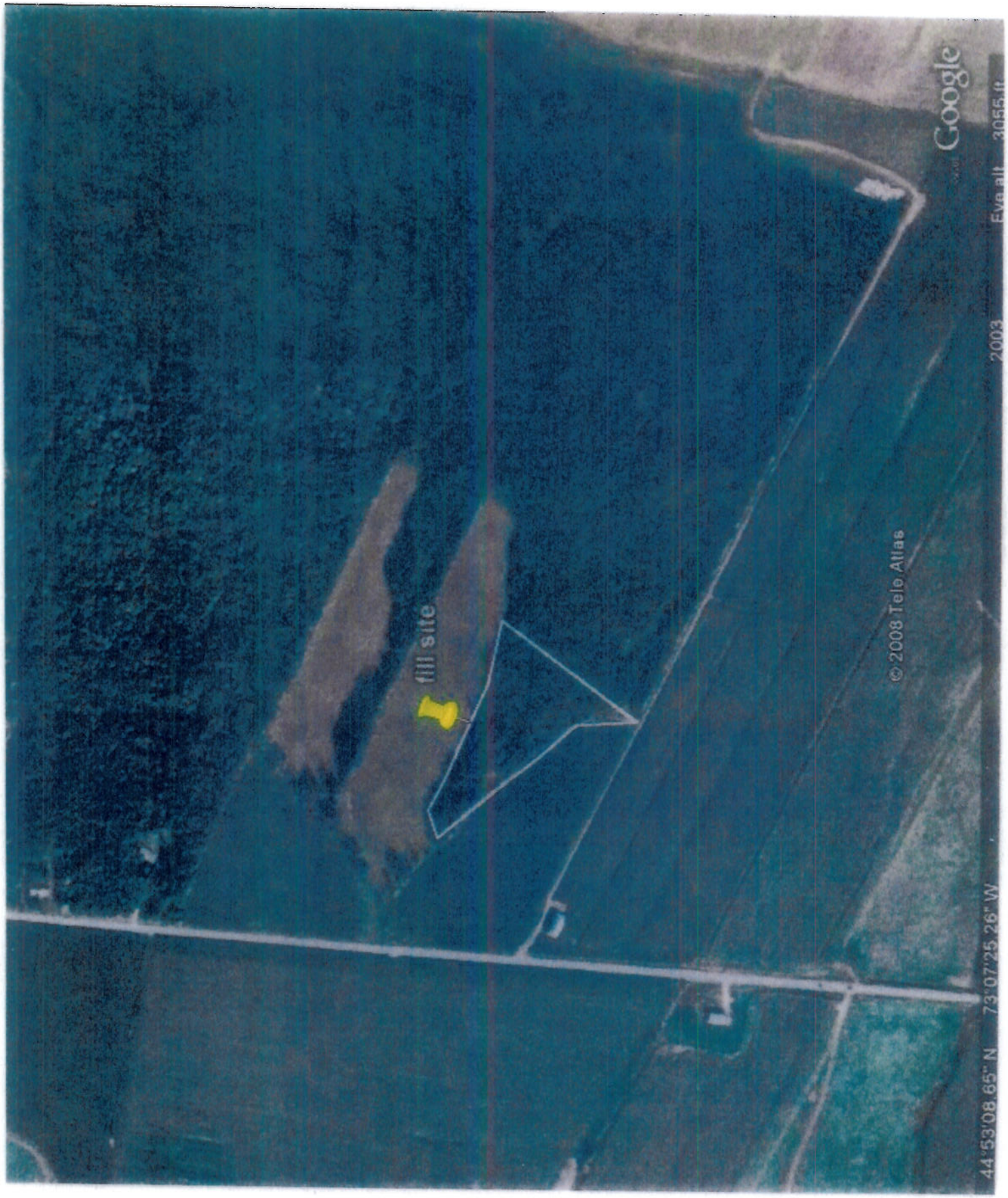
42. The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondent is hereby ordered to comply with the terms of the above Consent Agreement, which will become final thirty (30) days from the date it is signed by the Regional Judicial Officer unless a petition to set aside the order is filed by a commenter pursuant to Section 309(g)(4)(C) of the CWA, 33 U.S.C. 1319(g)(4)(C). If the petition is denied, this Consent Agreement and Final Order shall become final thirty (30) days after such denial. If the petition is granted, the Consent Order will be set aside and a hearing in accordance with Section 309(g)(2)(B) of the Act shall be held.

U.S. ENVIRONMENTAL PROTECTION AGENCY
Region I

LeAnn Jensen
Acting Regional Judicial Officer
U.S. EPA, Region I

Dated: June 20, 2012

Attachment 1A



In the Matter of: Pleasant Acre Farms, LLC
Docket No. CWA-01-2012-0048

CERTIFICATE OF SERVICE

I certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER was sent to the following persons, in the manner specified, on the date below:

Original and one copy hand delivered:

Regional Hearing Clerk
U.S. EPA, Region I
5 Post Office Sq., Suite 100
Mail Code: ORA18-1
Boston, MA 02109-3912

Copy and a copy of the Part 22 Rules by certified mail, return receipt requested:

Mr. Rene Bourdeau
Pleasant Acre Farm, LLC
194 County Road
Swanton, VT 05488

And to:

Copy and a copy of the Part 22 Rules by certified mail, return receipt requested:

William Brooks
Registered Agent (Pleasant Acre Farms, LLC)
92 Fairfield St.
St. Albans, VT 05478

Date: June 21, 2012

Jeffrey Kopf, Senior Enforcement Counsel
Office of Environmental Stewardship (SEL)
U.S. Environmental Protection Agency
Region I
5 Post Office Sq., Suite 100
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