



REGION 6
DALLAS, TX 75270

August 1, 2024

TRANSMITTED VIA E-MAIL

Mr. Rick Ferguson
11324 Arcade Drive #12
Little Rock, AR 72212
rickferguson777@gmail.com

Re: Administrative Order on Consent; Docket Number: CWA-06-2024-2720

Dear Mr. Ferguson:

Enclosed is an Administrative Order on Consent (AOC) issued by the United States Environmental Protection Agency, Region 6 (EPA) concerning the site on the unnamed tributary to Mill Bayou located in Pulaski County, Roland, Arkansas. This Order requires Rick Ferguson (Respondent) to comply with the provisions set forth in the attached Order. The EPA requests that you immediately confirm receipt of this e-mail and the attached Order by a response via e-mail.

If you need assistance, or have questions regarding this Order on Consent, please contact Chelsey Sherwood of my staff at (214) 665-6452 or via email at sherwood.chelsey@epa.gov.

Sincerely,

Digitally signed by CHERYL
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Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division

Enclosure

cc: Little Rock District, U.S. Army Corps of Engineer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
Dallas, Texas 75270

In the Matter of	§	
	§	
	§	Docket No. CWA-06-2024-2720
Paradise Valley, LLC		
Rick Ferguson		
	§	
Respondent	§	
	§	

ADMINISTRATIVE ORDER ON CONSENT

STATUTORY AUTHORITY

The following Findings of Fact and Conclusions of Law are made, and Administrative Order on Consent (Order) issued, under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by Section 309(a) of the Clean Water Act (Act), 33 U.S.C. § 1319(a). The Administrator delegated this authority to the Regional Administrator of EPA Region 6, who further delegated such authority to the Director of the Enforcement and Compliance Assurance Division, EPA Region 6.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. EPA makes the following Findings of Fact and Conclusions of Law in support of its authority to issue this Order.
2. Paradise Valley, LLC – Rick Ferguson (Respondent) is an individual, and as such, Respondent is a “person” as defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5).
3. At all times relevant to the violation alleged herein (relevant time period), Respondent owned, controlled and/or operated a project on real property located at coordinates 34.8993, -92.52672 in Roland, Pulaski County, Arkansas. Mr. Ferguson has a mailing address of 11324 Arcade Drive #12, Little Rock, Arkansas 72212.

4. On multiple dates from 2021-2023, Respondent and/or Respondent's contractors discharged, directed the discharge, and/or agreed with other persons or business entities to discharge "dredged material" and/or "fill material," as those terms are defined by Section 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 232.2, from point sources, including heavy equipment, such as an excavator and grading equipment, in, on and into an unnamed tributary to Mill Bayou within the Subject Property. The unnamed tributary to Mill Bayou is a relatively permanent water connected to Mill Bayou and thence to the Arkansas River, a traditional navigable water of the United States.
5. Each piece of heavy equipment used during the excavation or construction activities that resulted in a discharge acted as a "point source" as that term is defined in Section 502(14) of the Act, 33 U.S.C. § 1362(14).
6. The dredged and fill material referred to in paragraph 4 was a "pollutant" as defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6).
7. The impacted portion of the unnamed tributary to Mill Bayou referred to in paragraph 4 has a continuous surface connection to the Arkansas River, a traditional navigable water, and as such, is a "water of the United States" under Section 502(7) of the Act, 33 U.S.C. § 1362(7), and as defined by 40 C.F.R. § 232.2.
8. Under Section 301(a) of the Act, 33 U.S.C. § 1311(a), it is unlawful for any person to discharge a pollutant from a point source to navigable waters, except with the authorization of, and in compliance with, a permit issued under the Act. Section 404 of the Act, 33 U.S.C. § 1344, provides that the Secretary of the Army, acting through the Chief of Engineers for the U.S. Army Corps of Engineers (COE), may issue permits for the discharge of dredged or fill material into navigable waters.
9. At no time during the relevant time period did Respondent have a permit issued by the COE that authorized the discharges alleged in paragraph 4 above.

10. On January 31, 2024, EPA conducted an inspection of the Subject Property with the COE. On June 18, 2024, EPA and the Arkansas Game and Fish Commission conducted another site visit and met with Mr. Ferguson and his consultants to determine resolution strategies for stream restoration.
11. Each day of unauthorized discharge was a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

II. CONSENT AGREEMENT

12. EPA and Respondent agree that settlement of this matter will save time and resources and is in the public interest and that issuance of this Administrative Order on Consent is the most appropriate means of resolving this matter with respect to Respondent's restoration of certain impacted waters and mitigation of other impacted waters referenced herein and described in Section III below. Respondent concurs in the issuance of this Administrative Order on Consent and agrees to comply with the Order. Respondent neither admits nor denies the Findings of Fact and Conclusions of Law set forth above. Respondent waives any right to contest the allegations and its right to appeal the proposed final order accompanying the consent agreement.

III. SECTION 309(a)(3) COMPLIANCE ORDER

13. Based on the foregoing Findings of Fact and Conclusions of Law and pursuant to the authority of Section 309(a) of the Act, 33 U.S.C. § 1319(a), EPA ORDERS, and Respondent agrees to, the following:
 - a. Respondent shall cease and desist from any further discharges of dredge and/or fill material into jurisdictional waters on the subject property without authorization from the COE.
 - b. Respondent will restore the 1,193 linear feet of impacted stream in accordance with the restoration plan provided by the Arkansas Game and Fish Commission within 6 months of the effective date of this Order. EPA may conduct an inspection upon completion of the stream restoration.

- c. Respondent will seek and obtain an after the fact Clean Water Act, Section 404 permit from the Little Rock District, COE. Respondent shall submit a request for a permit, following the procedures detailed on the COE website:
<https://www.swg.usace.army.mil/Missions/Regulatory/Permits/>. The application shall be submitted within 60 days of the completion date of the stream restoration.
- d. EPA reserves the right to take further enforcement action if no permit is obtained by Respondent for any of the following reasons: permit denied by the COE, permit application withdrawn, permit process terminated due to lack of information submittal, failure to complete the permit process, or failure to provide mitigation if such is required by an issued permit.

IV. GENERAL PROVISIONS

- 14. Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review that Respondent may have with respect to any issue or fact or law set forth in this Order on Consent, including, but not limited to, any right of judicial review of this Order on Consent under Sections 701 through 706 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
- 15. For the purposes of entering into this agreement on consent, Respondent does not contest that EPA has jurisdiction to issue this AOC. Notwithstanding the waiver set forth in paragraph 14 above, Respondent reserves all rights, defenses, and remedies it may have in any subsequent action related to the allegations covered by the AOC.
- 16. Issuance of this Order on Consent shall not be deemed an election by EPA to forego any administrative or judicial, civil or criminal action to seek penalties, fines or any other relief appropriate under the Act for the violations cited herein or other violations that become known to EPA.

17. If EPA issues an administrative complaint or a civil judicial action is initiated by the U.S. Department of Justice, Respondent may be subject to a monetary penalty. The failure to comply with this Order or the Act can result in civil penalties of up to \$56,460 per day of violation. If a criminal action is initiated by the U.S. Department of Justice, Respondent may be subject to a fine and/or imprisonment and may also become ineligible for certain government contracts, grants or loans under Section 508 of the Act, 33 U.S.C. § 1368.
18. Compliance with the terms and conditions of this Order on Consent does not relieve Respondent of the obligation to comply with any applicable federal, state or local law or regulation.
19. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2), performance of Paragraph 13 is restitution, remediation, or required to come into compliance with the law.
20. EPA and Respondent agree to the use of electronic signatures for this matter. EPA and Respondent further agree to electronic service of this Order on Consent by email to the following addresses:

To EPA: henson.tucker@epa.gov and sherwood.chelsey@epa.gov
To Respondent: rickferguson777@gmail.com
21. The parties shall bear their own costs and fees in this action, including attorneys' fees.
22. The effective date of this Order is the date it is signed by all parties.
23. Each undersigned representative of the parties to this agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this agreement and to execute and legally bind that party to it.

In recognition and acceptance of the foregoing:

Date 7-31-24



Rick Ferguson

Date August 1, 2024

 Digitally signed by CHERYL
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Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division