

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION**

	)	
UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. _____
	)	
TRAGER LIMESTONE LLC,	)	
	)	
Defendant.	)	
	)	

COMPLAINT

The United States of America (“Plaintiff”), through its undersigned attorneys, by authority of the Attorney General, and at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), alleges, upon its best information and belief, as follows:

NATURE OF THE ACTION

1. This is a civil action commenced under sections 309(b) and (d) and 311(b)(7) of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1319(b) and (d) and 1321(b)(7). The United States is seeking injunctive relief and civil penalties against Trager Limestone LLC (“Trager Limestone” or “Defendant”) for the discharge of pollutants into the waters of the United States in connection with the Nettleton Quarry in Gomer Township, Caldwell County, Missouri, without authorization by the United States Department of Army Corps of Engineers, in violation of CWA section 301(a), 33 U.S.C. § 1311(a). The United States is also seeking civil penalties against Trager Limestone for failing to prepare and implement a Spill Prevention Control and Countermeasures (“SPCC”) Plan for its operations at the Nettleton Quarry, in accordance with

the Oil Pollution Prevention regulations set forth at 40 C.F.R. Part 112, promulgated under the authority of section 311(j) of the CWA, 33 U.S.C. § 1321(j).

2. In this action Plaintiff seeks to: (1) enjoin the discharge of pollutants into waters of the United States without a permit in violation of CWA section 301(a), 33 U.S.C. § 1311(a); (2) require Trager Limestone, at its own expense and with oversight from EPA, to restore and/or mitigate the damages caused by its unlawful activities; and (3) require Trager Limestone to pay civil penalties as provided in 33 U.S.C. §§ 1319(d) and 1321(b)(7)(C).

JURISDICTION, VENUE, NOTICE AND AUTHORITY

3. This Court has jurisdiction over the subject matter of this action pursuant to CWA sections 309(b) and 311(b)(7), 33 U.S.C. §§ 1319(b) and 1321(b)(7), and 28 U.S.C. §§ 1331, 1345 and 1355.

4. Venue is proper in the United States District Court for the Western District of Missouri pursuant to CWA sections 309(b) and 311(b)(7)(E), 33 U.S.C. §§ 1319(b), 1321(b)(7)(E), and 28 U.S.C. § 1391(b) and (c), because the Defendant conducts business in this District, the Defendant resides in this District, the subject property is located in this District, and the cause of the action and violations alleged herein arose in this District. Further, this matter is properly brought in the St. Joseph Division of the Western District of Missouri because the Defendant resides in this Division.

5. Notice of the commencement of this action has been provided to the State of Missouri pursuant to CWA section 309(b), 33 U.S.C. § 1319(b).

THE PARTIES

6. The Plaintiff in this action is the United States of America. Authority to bring this action is vested in the United States Department of Justice pursuant to CWA section 506, 33 U.S.C. § 1366, and 28 U.S.C. §§ 516 and 519.

7. Defendant Trager Limestone is a limited liability company organized and existing under the laws of the State of Missouri, whose principal place of business is located at: 6468 State Highway Y, Chillicothe, Missouri 64601.

8. Trager Limestone operates a quarry to mine limestone, known as the Nettleton Quarry (or the “Site”). The Nettleton Quarry is located in Sections 1 and 12, Township 57 North, Range 27 West, and Sections 6 and 7, Township 57 North, Range 26 West, in Gomer Township, Caldwell County, Missouri.

9. Trager Limestone is a person within the meaning of CWA section 502(5), 33 U.S.C. § 1362(5), and CWA section 311(a)(7), 33 U.S.C. § 1321(a)(7).

STATUTORY AND REGULATORY AUTHORITY

10. The Clean Water Act is designed to “restore and maintain the chemical, physical and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a).

Unlawful Discharges

11. CWA section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters except in compliance with, inter alia, a permit issued pursuant to CWA section 404, 33 U.S.C. § 1344.

12. CWA section 404(a), 33 U.S.C. § 1344(a), authorizes the Secretary of the Army, acting through the Chief of Engineers, to issue permits for the discharge of dredged or fill

material to navigable waters at specified disposal sites, after notice and opportunity for public comment.

13. CWA section 502(12), 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

14. CWA section 502(6), 33 U.S.C. § 1362(6), defines “pollutant” to include, inter alia, solid waste, chemical wastes, wrecked or discarded equipment, dredged spoil, rock, sand and cellar dirt.

15. CWA section 502(7), 33 U.S.C. 1362(7), defines “navigable waters” as “waters of the United States.” In turn, “waters of the United States” has been further defined to include: (i) all waters which are currently used, were used in the past or may be susceptible to use in interstate or foreign commerce; (ii) all inter-state waters; and (iii) tributaries to such waters. 33 C.F.R. § 328.3(a)(1), (2), and (5) and 40 C.F.R. § 232.2 (1993).

16. 33 C.F.R. § 328.4(c) (1993) states that the United States’ regulatory jurisdiction over “waters of the United States” for non-tidal waters, which would include rivers, “extends to the ordinary high water mark [(‘OHWM’)].”

17. CWA section 502(14), 33 U.S.C. § 1362(14), defines “point source” to include “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container . . . from which pollutants are or may be discharged.”

18. CWA sections 311(a)(7) and 502(5), 33 U.S.C. §§ 1321(a)(7) and 1362(5), define “person” to include “an individual, corporation, partnership, [or] association.”

Spill Prevention Control and Countermeasure Plan

19. CWA section 311(j)(1), 33 U.S.C. § 1321(j)(1), provides that the President shall issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances . . . from onshore and offshore facilities, and to contain discharges” The authority to promulgate these regulations for non-transportation-related onshore facilities has been delegated to EPA by Executive Order No. 12777 (Oct. 18, 1991).

20. Pursuant to the authority of CWA section 311(j)(1), the Oil Pollution Prevention regulations, found at 40 C.F.R. Part 112, establish specific procedures, methods and requirements for preventing and containing discharges of oil. These requirements apply to owners or operators of non-transportation related facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products which, due to their location, could reasonably be expected to discharge oil in harmful quantities (as defined in 40 C.F.R. Part 110) to navigable waters of the United States or adjoining shorelines. 40 C.F.R. § 112.1(b).

21. Pursuant to 40 C.F.R. § 112.3(a)(1), an owner or operator of an onshore facility that became operational after August 16, 2002, through November 10, 2011, and that could reasonably be expected to have a discharge described in § 112.1(b) was required to prepare and fully implement an SPCC Plan in accordance with 40 C.F.R. § 112.7 and any other applicable provision of 40 C.F.R. Part 112 on or before November 10, 2011.

Enforcement Authorities

22. CWA section 309(b), 33 U.S.C. § 1319(b), authorizes the commencement of a civil action for appropriate relief, including a permanent or temporary injunction, against any person who violates CWA section 301(a), 33 U.S.C. § 1311(a).

23. CWA section 309(d), 33 U.S.C. § 1319(d), authorizes the commencement of an action for civil penalties against any person who violates CWA section 301(a), 33 U.S.C. § 1311(a).

24. CWA section 311(b)(7)(C), 33 U.S.C. § 1321(b)(7)(C), authorizes the commencement of an action for civil penalties against any person who fails or refuses to comply with any regulation issued under CWA section 311(j), 33 U.S.C. § 1321(j).

GENERAL ALLEGATIONS

25. Defendant is engaged in the mining of limestone at the Nettleton Quarry. In furtherance of their mining operations, Trager Limestone and/or persons acting on its behalf generated and/or moved limestone rock, earthen fill, and woody debris at the Site.

Unlawful Discharges

26. Trager Limestone has operated the Site from year 2005 to the present.

27. Beginning in approximately April 2013 through the present, Trager Limestone's operations at the Site discharged "pollutants" as that term is defined in section 502(6) of the CWA, 33 U.S.C. 1362(6), including dredged and/or fill material, such as limestone rock, earthen fill, and woody debris, into rivers, streams, tributaries and/or impoundments of tributaries at the Site, including Kettle Creek . Trager Limestone did not apply for nor obtain any permit from the Corps for any discharges of dredged and/or fill material into waters of the United States, as

required by CWA sections 301(a) and 404, 33 U.S.C. §§ 1311(a), 1344, for its activities at the Site.

28. Trager Limestone's activities in Caldwell County have impacted and continue to impact and approximately 935 linear feet of Kettle Creek.

Waters of the United States

29. Kettle Creek is a third-order natural stream approximately 6 miles long that flows through the Site. Kettle Creek is a perennial tributary whose waters flow into Grand River, a traditional navigable water, indirectly through two other perennial tributaries, Lick Fork and Old Channel Grand River.

30. Kettle Creek has a significant nexus to and/or is a relatively permanent water that flows, through other tributaries, to the Grand River.

31. Kettle Creek constitutes a "water[]" of the United States" under CWA section 502(7), 33 U.S.C. 1362(7).

SPCC: CWA Section 311 Allegations

32. Trager Limestone owned and operated, and owns and operates, one or more "facilities," as that term is defined in 40 C.F.R. § 112.1(b) and Appendix A, §II, ¶ (1)(F), in the form of oil storage tanks and other containers located near or in the vicinity of Kettle Creek.

33. The facilities referenced in Paragraph 32 (hereinafter "the Oil Storage Facilities") had an aggregate above ground oil storage capacity greater than 1,320 gallons.

34. Each of the Oil Storage Facilities was and is an onshore facility within the meaning of CWA section 311(a)(10), 33 U.S.C. § 1321(a)(10) and 40 C.F.R. § 112.2.

35. Each of the Oil Storage Facilities became operational after August 16, 2002, through November 10, 2011.

36. Each of the Oil Storage Facilities is a non-transportation-related facility within the meaning of Appendix A to 40 C.F.R. Part 112, § II, ¶ (1)(F), as incorporated by reference in the definition of “Facility” in 40 C.F.R. § 112.2.

37. Each of the Oil Storage Facilities was and is a non-transportation related on-shore facility engaged in the storing of oil and oil products that, due to its location, could reasonably be expected to discharge oil in quantities that may be harmful, as described in 40 C.F.R. Part 110, into or upon navigable waters of the United States or adjoining shorelines.

38. Trager Limestone was therefore required by 40 C.F.R. § 112.3(a)(1) to prepare and implement an SPCC Plan for the Oil Storage Facilities on or before November 10, 2011.

39. The regulation at 40 C.F.R. § 112.3 required Trager Limestone to prepare and implement an SPCC Plan for the Oil Storage Facilities that complies with the requirements of 40 C.F.R. §§ 112.7 and 112.8(b), and any other applicable section of 40 C.F.R. Part 112.

40. As early as March 28, 2018, and until at least August 2, 2018, Trager Limestone had not prepared and implemented an SPCC Plan for the Oil Storage Facilities.

41. The Oil Storage Facilities do not meet, and have never met, the following requirements: (A) the requirement to prepare in writing and implement an SPCC Plan meeting the requirements of 40 C.F.R. § 112.7(a) and (c), including but not limited to various discharge controls and secondary containment; and (B) the requirement in 40 C.F.R. §§ 112.8(b)(1) and (2) to have secondary containment with adequate drainage, including valves to prevent discharges into the facilities’ drainage systems and to prevent the accumulation of rain and storm water or other design to control such discharges.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

CWA Section 301 and 404: Unauthorized Fill in Waters of the United States

42. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 31.

43. Through the activities described above, Trager Limestone and/or persons acting on its behalf discharged dredged or fill material into waters of the United States.

44. The dredged or fill material discharged includes, among other things, dirt, rock and sand, all of which constitute “pollutants” as defined in CWA section 502(6), 33 U.S.C. § 1362(6).

45. Trager Limestone and/or persons acting on its behalf used mechanized land-clearing and earth-moving equipment that resulted in the discharges. This equipment constitutes “point source[s]” as defined in section 502(14) of the CWA, 33 U.S.C. § 1362(14).

46. Trager Limestone has discharged pollutants from various point sources into waters of the United States, within the meaning of section 502(7) of the CWA, 33 U.S.C. § 1362(7), and within the meaning of the federal regulations implementing the CWA at 40 C.F.R. §§ 122.2, 232.2 and 33 C.F.R. § 328.3.

47. Trager Limestone did not obtain a permit from the Secretary of the Army, acting through the Chief of Engineers, for the discharges of dredged and/or fill material into waters of the United States, as required by CWA sections 301(a) and 404, 33 U.S.C. §§ 1311(a), 1344.

48. Trager Limestone has violated and continues to violate CWA section 301(a), 33 U.S.C. § 1311(a), by its unauthorized discharges of pollutants, specifically dredged and/or fill material, into waters of the United States.

49. Under CWA sections 309(d), 33 U.S.C. § 1319(d), and the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, 84 Fed. Reg. 2056-01 (Feb. 6, 2019), 40 C.F.R. Part 19, Trager Limestone is liable for a civil penalty of up to \$54,833 per day for each violation of CWA section 301(a), 33 U.S.C. § 1311(a).

50. Unless enjoined, Trager Limestone's discharges are likely to continue to remain in waters of the United States, in violation of CWA section 301, 33 U.S.C. § 1311.

SECOND CLAIM FOR RELIEF

CWA Section 311 and 40 C.F.R. § 112.3(b): Failure to Prepare and Implement SPCC Plan in Accordance with 40 C.F.R. Part 112

51. Plaintiff repeats and realleges the allegations set forth in Paragraphs 29 through 41.

52. For the reasons alleged herein, Trager Limestone is subject to the Oil Pollution Prevention regulations at 40 C.F.R. Part 112 and was required to prepare and implement an SPCC Plan for the Oil Storage Facilities in accordance with the requirements of 40 C.F.R. Part 112, including the requirements of 40 C.F.R. §§ 122.7 and 122.8(b), on or before November 10, 2010.

53. As early as March 28, 2018, and until at least August 2, 2018, Trager Limestone did not prepare or implement a SPCC Plan for the Oil Storage Facilities meeting the requirements of 40 C.F.R. Part 112, including the requirements of 40 C.F.R. §§ 122.7 and 122.8(b).

54. Trager Limestone's failure to prepare and implement an SPCC Plan for the Oil Storage Facilities meeting the requirements of 40 C.F.R. Part 112, including the requirements of

40 C.F.R. §§ 112.7 and 112.8(b), on or before November 10, 2011, constitute violations of 40 C.F.R. §§ 112.3, 112.7, and 112.8.

55. Under CWA sections 311(b)(7)(C), 33 U.S.C. § 1321(b)(7)(C), and the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, 84 Fed. Reg. 2056-01 (Feb. 6, 2019), 40 C.F.R. Part 19, Trager Limestone is liable for a civil penalty of up to \$47,375 per day for each violation of 40 C.F.R. §§ 112.3, 112.7 and 112.8.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, the United States of America, respectfully requests that this Court order the following relief:

1. That Trager Limestone be permanently enjoined from discharging or causing the discharge of dredged and/or fill material or other pollutants into any waters of the United States except in compliance with the CWA;

2. That Trager Limestone be ordered to undertake measures, at its own expense and with oversight from the Environmental Protection Agency, to effect complete restoration of the waters of the United States at issue herein and/or to conduct off-site mitigation for irreversible environmental damage, as appropriate;

3. That Trager Limestone be assessed a civil penalty pursuant to CWA section 309(d), 33 U.S.C. § 1319(d), in an amount up to \$54,833 for each day of each violation of CWA section 301(a), 33 U.S.C. § 1311(a);

4. That Trager Limestone be assessed a civil penalty pursuant to CWA section 311(b)(7)(C) and (b)(8), 33 U.S.C. § 1321(b)(7)(C) and (b)(8) in an amount up to \$47,375 per

day for each violation of the regulations promulgated pursuant to CWA section 311(j), 33 U.S.C. § 1321(j);

5. That the United States be awarded costs and disbursements in this action; and

6. That this Court grant Plaintiff, the United States of America, such other relief as the Court may deem just and proper.

Dated: April 13, 2020

Respectfully submitted,

Timothy A. Garrison
United States Attorney

Jeffrey Bossert Clark
Assistant Attorney General
Environment & Natural Resources Division

s/ Charles M. Thomas

Charles M. Thomas, Missouri Bar #28522
Assistant United States Attorney
United States Attorney's Office
Charles Evans Whittaker Courthouse
400 East Ninth Street, Room 5510
Kansas City, MO 64106
Phone: (816) 426-3130
Fax: (816) 426-3165
Email: charles.thomas@usdoj.gov

s/ Phillip R. Dupré

Phillip R. Dupré, D.C. Bar # 1004746
Attorney, Environmental Defense Section
Rachel Hankey, California Bar # 226325
Attorney, Environmental Enforcement
Section
P.O. Box 7611
Washington, D.C. 20044
Phone: (202) 616-7501
Email: phillip.r.dupre@usdoj.gov
Email: rachel.hankey@usdoj.gov

ATTORNEYS FOR PLAINTIFF

OF COUNSEL:

KASEY BARTON
Assistant Regional Counsel, U.S. EPA,
Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
(913) 551-7874
barton.kasey@epa.gov