

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101**

In the Matter of:

**William C. Nelson, Jr. and
The Estate of Barbara Nelson,
Redmond, Washington**

Respondents.

DOCKET NO. CWA-10-2016-0088

**CONSENT AGREEMENT
AND FINAL ORDER**

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 309(g)(2)(B) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(B).

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 309(g)(1) and (2)(B) of the CWA, 33 U.S.C. § 1319(g)(1) and (2)(B), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA issues, and William C. Nelson, Jr. and The Estate of Barbara Nelson ("Respondents") agree to issuance of, the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this CAFO

commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Administrator has delegated the authority to sign consent agreements between EPA and the party against whom a Class II penalty is proposed to be assessed pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Office of Compliance and Enforcement, EPA Region 10 ("Complainant").

2.3. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of the CWA together with the specific provisions of the CWA and the implementing regulations that Respondents are alleged to have violated.

III. ALLEGATIONS

3.1. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into waters of the United States by any person, except as authorized by a permit issued pursuant to Section 402 or 404 of the Act, 33 U.S.C. § 1342 or 1344. Each discharge of pollutants from a point source that is not authorized by such a permit constitutes a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

3.2. Respondents are "persons" within the meaning of Sections 301(a) and 502(5) of the Act, 33 U.S.C. §§ 1311(a) and 1362(5).

3.3. Respondents own, possesses, and/or control approximately 124 acres of real property in Redmond, Washington, known as Gunshy Manor Farm (hereafter "the Farm"). The Farm is located near 7240 196th Avenue, Redmond, Washington, 98053, Latitude 47.669589°, Longitude -122.076217°. On February 18, 2015, Agency staff from the EPA, the Army Corps of Engineers, the National Oceanic and Atmospheric Administration, and the Washington State Department of Ecology conducted a site visit and collected soil samples at the Farm.

3.4. At the time of the unauthorized activities described below, the Farm contained wetlands within the meaning of 33 C.F.R. § 328.3(b) and 40 C.F.R. § 232.2. The wetlands impacted by the alleged unauthorized discharges described in paragraph 3.6 below meet the criteria for jurisdictional wetlands in the 1987 "Federal Manual for Identifying and Delineating Jurisdictional Wetlands."

3.5. The wetland areas impacted by the alleged unauthorized discharges described in paragraph 3.6 below are adjacent and hydrologically connected to ditches and streams that eventually flow into Evans Creek, which flows into Bear Creek, which flows into the Sammamish River. The Sammamish River is a Rivers and Harbors Act Section 10, 33 U.S.C. § 403, water and is a "water of the United States" as defined in 33 C.F.R. § 328.3(a)(1), and 40 C.F.R. § 232.2, and is therefore is a "navigable water" as defined in CWA Section 502(7), 33 U.S.C. § 1362(7). Consequently, the ditches and streams and adjacent wetlands impacted by the alleged unauthorized discharges described in paragraph 3.6 below are "waters of the United States" within the meaning of 33 C.F.R. §§ 328.3(5)&(7) and 40 C.F.R. § 232.2, and therefore "navigable waters" as defined in CWA Section 502(7), 33 U.S.C. § 1362(7).

3.6. On or before January 2010 to the effective date of this agreement, at times more fully known to Respondents, Respondents and/or persons acting on their behalf, used heavy earth-moving equipment to place dredged and/or fill material into wetlands and other waters of the United States at the Farm. This activity occurred when Respondents spread fill material in areas known as the Spur Farm Road and the Loop Farm Road and in a portion of the South Farm Ditch located in the Summer Pasture, which areas are generally depicted in the Site Aerial Photograph, attached as Exhibit A, hereafter referred to as "the Site".

3.7. The construction equipment referenced in Paragraph 3.6 is a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

3.8. The dredged and/or fill materials that Respondents and/or persons acting on their behalf caused to be discharged, as referenced in Paragraph 3.6, included dirt and gravel, among

other things, each of which constitutes "dredged material" and/or "fill material" within the meaning of 40 C.F.R. § 232.2, and each of which constitutes a "pollutant" within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6).

3.9. By causing such dredged and/or fill materials to enter waters of the United States, Respondents engaged in the "discharge of pollutants" from a point source within the meaning of Sections 301(a) and 502(12) of the Act, 33 U.S.C. §§ 1311(a) and 1362(12).

3.10. Respondents' discharges of dredged and/or fill materials described in Paragraph 3.6 above were not authorized by any permit issued pursuant to Section 404 of the Act, 33 U.S.C. § 1344. Respondents are therefore in violation of section 301(a) of the Act, 33 U.S.C. § 1311(a).

3.11. Each day the dredged and/or fill material remains in place without the required permit constitutes an additional day of violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

3.12. In accordance with Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, Respondents are liable for the administrative assessment of civil penalties for violations at the Site in an amount not to exceed \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500.

IV. CONSENT AGREEMENT

4.1. For purposes of this Consent Agreement and Final Order, or any action to enforce it, Respondents admit the jurisdictional allegations of this CAFO.

4.2. Respondents neither admit nor deny the specific factual allegations contained in this CAFO.

4.3. As required by Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA has taken into account the nature, circumstances, extent, and gravity of the alleged violations as well

as Respondents' degree of culpability, economic benefit of noncompliance, ability to pay, and other relevant factors. After considering all of these factors, EPA has determined and Respondents agree that an appropriate penalty to settle this action is \$10,000.

4.4. Respondents agree to pay the total civil penalty set forth in Paragraph 4.3 within 30 days of the effective date of the Final Order contained in Part V of this CAFO.

4.5. Payment under this CAFO must be made by a cashier's check or certified check payable to the order of "Treasurer, United States of America" and delivered to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondents must note on the check the title and docket number of this action.

4.6. Respondents must serve photocopies of the check described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Krista Rave-Perkins
U.S. Environmental Protection Agency,
Region 10, Mail Stop – OCE-101
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

4.7. If Respondents fail to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondents to a civil action to collect the assessed penalty under the CWA, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.7.1. Interest. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C.

§ 1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order set forth in Part V, provided however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

4.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if Respondents fail to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondents shall pay (in addition to any assessed penalty and interest) attorneys fees and 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 20% of the aggregate amount of Respondents' penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.8. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. Except as described in Subparagraph 4.7.2, above, each party shall bear its own costs in bringing or defending this action.

4.10. For purposes of this Consent Agreement and Final Order, Respondents expressly waive any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

4.11. The provisions of this CAFO shall bind Respondents and its agents, servants,

employees, successors, and assigns.

4.12. The above provisions are STIPULATED AND AGREED upon by Respondents and EPA Region 10.

DATED:

June 1, 2016

FOR RESPONDENTS:

W.C. Nelson

WILLIAM C. NELSON, JR.

DATED:

June 7, 2016

FOR COMPLAINANT:

Edward J. Kowalski

EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondents are ordered to comply with the terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondents' obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

5.3. In accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and

40 C.F.R. § 22.38(b), the Washington Department of Ecology has been given the opportunity to consult with EPA regarding the assessment of the administrative civil penalty against Respondent.

5.4. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA has issued public notice of and provided reasonable opportunity to comment on its intent to assess an administrative penalty against Respondents. More than 40 days have elapsed since issuance of this public notice and EPA has received no petition to set aside the Consent Agreement contained herein.

5.5. This Final Order shall become effective upon filing.

SO ORDERED this ____ day of _____, 2016.

M. SOCORRO RODRIGUEZ
Regional Judicial Officer
EPA Region 10

EXHIBIT A: FARM AND SITE AERIAL PHOTOGRAPH

**William C. Nelson, Jr. and
The Estate of Barbara Nelson
CAFO – Exhibit A
Docket Number CWA-10-2016-0088**

**U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
(206) 553-1073**

GUNSHY MANOR FARM, EXHIBIT A



LEGEND

- FARM DITCH
- STREAM
- DIRT FARM ROAD
- GRAVEL FARM ROAD
- PAVED FARM ROAD
- PROPERTY BOUNDARY

This diagram is for general orientation purposes and does not reflect an EPA approved wetland delineation or a determination of the geographic extent of Waters of the U.S.

COLOR AERIAL PHOTO: KING COUNTY, 2011

ESM CONSULTING ENGINEERS, LLC
 3500 1st Ave. S. Suite 200
 Federal Way, WA 98003
 (206) 835-1100
 www.esmllc.com

ESTATE OF BARBARA J. NESLON		GUNSHY MANOR FARM EXHIBIT		KING COUNTY	
DATE	11.02.2011	DATE	11.02.2011	DATE	11.02.2011
BY	ESM	BY	ESM	BY	ESM
FOR	BARBARA J. NESLON	FOR	BARBARA J. NESLON	FOR	BARBARA J. NESLON
3500 1st Ave. S. Suite 200 Federal Way, WA 98003 (206) 835-1100 www.esmllc.com		3500 1st Ave. S. Suite 200 Federal Way, WA 98003 (206) 835-1100 www.esmllc.com		3500 1st Ave. S. Suite 200 Federal Way, WA 98003 (206) 835-1100 www.esmllc.com	