

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,)	
)	
	Plaintiff,)	
)	
	v.)	Civil Action No.
)	
WAFLER FARMS, INC., d/b/a WAFLER)	
NURSERY & ORCHARDS,)	
HURON ENTERPRISES, LLC,)	
PAUL E. WAFLER, and)	
SUSAN WAFLER,)	
)	
	Defendants.)	
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COMPLAINT

The United States of America, through its undersigned counsel, by the authority of the Attorney General, and at the request of the Secretary of the Army, alleges as follows:

NATURE OF THE ACTION

1. This is a civil action commenced under Section 309(b) and (d) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(b) and (d), to obtain injunctive relief and civil penalties against Wafler Farms, Inc., d/b/a Wafler Nursery & Orchards, Huron Enterprises, LLC, Paul E. Wafler, and Susan Wafler (“Defendants”), for the discharge of pollutants into waters of the United States located at 10748 and 10817 Slight Road in the Town of Wolcott, Wayne County, New York, without authorization by the Department of the Army, U.S. Army Corps of Engineers (“Corps”), in violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

2. In this action, the United States seeks: (i) to enjoin the discharge of pollutants into waters of the United States without a permit in violation of the CWA Section 301(a), 33 U.S.C. § 1311(a); (ii) to require Defendants, at their own expense and at the direction of the Corps, to restore the waters of the United States and/or mitigate the damages caused by Defendants' unlawful activities; and (iii) to require Defendants to pay civil penalties as provided in 33 U.S.C. § 1319(d).

JURISDICTION AND VENUE

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

4. Venue is proper in the Western District of New York pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. § 1391(b) and (c), because the subject property is in this District, the cause of action alleged herein arose in this District, and the principal place of business for Defendant Wafler Farms, Inc. and for Defendant Huron Enterprises, LLC. is in this District.

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

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 28 U.S.C. §§ 516 and 519, and 33 U.S.C. § 1366.

7. Defendant Wafler Farms, Inc., d/b/a Wafler Nursery & Orchards, is a domestic business corporation incorporated in the State of New York with its principal place of business located at 10748 Slaght Road, Wayne County, Wolcott, New York 14590.

8. Defendant Huron Enterprises, LLC is a limited liability corporation active in the State of New York which owns property located at 10748 Slaght Road, Wayne County, Wolcott, New York 14590.

9. Defendant Paul E. Wafler is the President and owner of Wafler Farms, Inc., and co-owner of the property at 10817 Slaght Road, Wayne County, Wolcott, New York 14590.

10. Defendant Susan Wafler is the co-owner of the property at 10817 Slaght Road, Wayne County, Wolcott, New York 14590.

11. At all times relevant to the Complaint, Defendants owned, leased, or otherwise controlled the real property that is the subject of this Complaint and/or otherwise controlled the activities relevant to this Complaint that occurred on such property.

STATUTORY BACKGROUND

12. 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.

13. 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 into navigable waters at specified disposal sites, after notice and opportunity for public comment.

14. 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.”

15. CWA Section 502(6), 33 U.S.C. § 1362(6), defines “pollutant” to include dredged spoil, rock, sand, and cellar dirt.

16. CWA Section 502(7), 33 U.S.C. § 1362(7), defines “navigable waters” as “the waters of the United States, including the territorial seas.”

17. 33 C.F.R. § 328.3(a)(1), (2), (5) and (7), and 40 C.F.R. § 232.2, define “waters of the United States” 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; (iii) tributaries to such waters; and (iv) wetlands adjacent to such waters or their tributaries.

18. 33 C.F.R. § 328.3(b) and 40 C.F.R. §§ 122.2 and 232.2 define “wetlands” as “those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.”

19. CWA Section 502(14), 33 U.S.C. § 1362(14), defines “point source” to include “any discernible, confined and discrete conveyance...from which pollutants are or may be discharged.”

20. CWA Section 502(5), 33 U.S.C. 1362(5), defines “person” to include “an individual, corporation, partnership, [or] association.”

21. 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. § 1319(a).

22. 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).

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