

404/Wetlands Enforcement: United States Department of Justice and Wayne County, New York Agricultural Operation Enter into Consent Decree



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The United States Department of Justice (“DOJ”) and Wafler Farms, Inc., doing business as Wafler Nursery & Orchards (“WFI”) entered into a July 23rd Consent Decree (“CD”) addressing alleged violations of the Clean Water Act. See 20-CV-6363-EAW.

WFI is a corporation incorporated in the state of New York with its principal place of business in Wayne County, New York.

DOJ had previously filed a Complaint in the United States District Court for the Western District of New York seeking:

1. To enjoin the discharge of pollutants into Waters of the United States without a permit.
2. To require WFI at its own expense and at the direction of the United States Corps of Engineers to restore Waters of the United States and/or mitigate the damages caused by the unlawful activities.
3. To require WFI to pay civil penalties.

The Complaint had alleged that WFI and/or other persons acting on their behalf used mechanized land-clearing and earth-moving equipment to clear and grade portions of property located in Wayne County. The United States Corps of Engineers is stated to have issued a letter indicating that the discharge of dredged or fill material into federal jurisdictional waters had taken place without obtaining a required permit.

The CD provides that neither WFI or others admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint.

The CD injunctive relief includes:

- Enjoined from discharging any pollutants into Water of the United States (unless such discharge complies with the provisions of the Clean Water Act and promulgated regulations).
- Mitigation (as mitigation for impacts to approximately 4.68 acres of federal wetlands and approximately 1,437 linear feet of federally jurisdictional unnamed tributary, 7.02 credits from Ducks Unlimited, Inc. must be purchased plus additional credits that must be purchased in subsequent years.)

A copy of the CD can be downloaded [here](#).