

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2013 SEP -4 PM 2:44

IN THE MATTER OF)

William Alexander,)

Respondent)

FILED
EPA REGION VIII
HEARING CLERK
**COMBINED COMPLAINT AND
CONSENT AGREEMENT**

Docket No. CWA-08-2013-0026

Complainant, Region 8 of the United States Environmental Protection Agency (EPA), by its undersigned representatives, and Respondent William Alexander (Respondent) hereby agree as follows:

I. PRELIMINARY MATTERS

1. This Combined Complaint and Consent Agreement (Agreement) is entered into by the EPA and Respondent to settle alleged violations of section 301(a) of the federal Clean Water Act (CWA), 33 U.S.C. § 1311(a).

2. This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits at 40 C.F.R. part 22.

3. Upon issuance of a final order, this Agreement will simultaneously commence and conclude this matter, as authorized by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

4. The EPA has jurisdiction over this matter pursuant to section 309 of the CWA, 33 U.S.C. § 1319. This is a Class I penalty proceeding subject to section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A).

5. Respondent admits the jurisdictional allegations of this Agreement and neither admits nor denies the factual allegations in section II of this Agreement.

6. Respondent waives any rights to a hearing to contest the allegations in this Agreement and to appeal any final order incorporating this Agreement.

II. THE EPA'S LEGAL AND FACTUAL ALLEGATIONS

7. Respondent is an individual. His address is ~~21957 Uncompahgre Road, Montrose,~~ Colorado, ~~81401.~~ ⁸¹²³⁰ *788 COVE RD GUNNISON*

8. In September of 2009, Respondent discharged approximately 1,700 cubic yards of cobble and sand fill material into approximately 0.34 acres of wetlands adjacent to the south bank of the Uncompahgre River, south of the town of Montrose, Colorado. The location of the discharges was within the S ½ of the N ½ of Section 36, Township 48 N, Range 9 W, Latitude 38.3712 degrees, Longitude 107.8059 degrees, in Montrose County, Colorado.

9. The discharges described in the preceding paragraph were accomplished with earthmoving equipment.

10. The Uncompahgre River is a navigable-in-fact water.

11. Respondent is a "person" as defined in section 502(5) of the CWA, 33 U.S.C. § 1362(5).

12. The cobble and sand referenced in paragraph 8, above, are "dredged material" or "fill material" as defined in 33 C.F.R. § 323.2(c) and 33 C.F.R. § 323.2(e), respectively, and "pollutants" as defined in section 502(6) of the CWA, 33 U.S.C. § 1362(6).

13. The earthmoving equipment referenced in paragraph 9, above, constitute a "point source" as that term is defined in section 502(14) of the CWA, 33 U.S.C. § 1362(14).

14. The Uncompahgre River and the adjacent wetlands mentioned in paragraph 8, above, are "waters of the United States" as defined in 33 C.F.R. § 328.3(a) and "navigable waters" as defined in section 502(7) of the CWA, 33 U.S.C. § 1362(7). The term "navigable waters" is defined in section 502(7) of the CWA, 33 U.S.C. § 1362(7), as "waters of the United States."

15. The discharges described in paragraph 8, above, constitute the "discharge of pollutants" as defined in section 502(12) of the CWA, 33 U.S.C. § 1362(12).

16. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into navigable waters except as in compliance with, among other things, section 404 of the CWA, 33 U.S.C. § 1344.

17. Section 404 of the CWA, 33 U.S.C. § 1344, sets forth a permitting system authorizing the Secretary of the Army, acting through the Chief of Engineers of the U.S. Army Corps of Engineers (Corps), to issue permits for the discharge of dredged or fill material into navigable waters.

18. According to 33 C.F.R. § 323.3(a), a permit issued by the Corps is required for any discharge of dredged or fill material into waters of the United States, unless the discharge is exempt under 33 C.F.R. § 323.4.

19. The discharges described in paragraph 8, above, were not authorized by any CWA permit.

20. The discharges described in paragraph 8, above, were never exempt from permitting pursuant to section 404(f) of the CWA, 33 U.S.C. § 1344(f), or 33 C.F.R. § 323.4.

21. The discharges described in paragraph 8, above, violate section 301(a) of the CWA, 33 U.S.C. § 1311(a). Each discharge of dredged or fill material from a point source by Respondent into waters of the United States without authorization by a permit issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344, constitutes a violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a). Each day the discharged dredged or fill material remains in place without the required permit(s) constitutes an additional day of violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).

22. The discharges described in paragraph 8, above, resulted in the localized destruction of aquatic habitat and degradation of water quality of the wetlands mentioned above and the Uncompahgre River.

23. For at least one other activity prior to the discharges described in paragraph 8, above, Respondent obtained a Corps permit for discharges of dredged and/or fill material to waters of the United States. For example, Respondent was named as a permittee in Department of the Army Permit

199775089. In a letter to Respondent dated June 20, 2002, the Corps stated that Respondent and three other permittees were in violation of that permit.

24. Prior to the discharges described in paragraph 8, above, Respondent had actual knowledge of the requirement to obtain a Corps permit for all non-exempt discharges of dredged and/or fill material to waters of the United States.

25. As required by section 309(g) of the CWA, 33 U.S.C. § 1319(g), before a final order approving this Agreement is issued, the EPA will (a) by furnishing the Colorado Department of Public Health and Environment (CDPHE) a copy of this Agreement, provide the CDPHE the opportunity to consult with the EPA, and (b) provide the public an opportunity to comment on this Agreement.

III. CIVIL PENALTY

26. Respondent consents for the purposes of settlement, and without any admission of liability or wrongdoing, to the payment of an administrative civil penalty in the amount of \$5,000, to be paid as described below:

- a. Payment is due within 30 calendar days from the time the Regional Judicial Officer for the EPA signs a final order approving this Agreement. If the due date falls on a weekend or legal federal holiday, then the due date becomes the next business day. The date the payment is made is considered to be the date processed by the bank described below. Payments received by 11:00 AM EST are processed on the same day; those received after 11:00 AM are processed on the next business day.
- b. The payment shall be made by wire transfer or by remitting a cashier's or certified check, including the name and docket number of this case for the amount stated above, payable to "Treasurer, United States of America," to be sent as follows:

CHECK PAYMENT

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

IF SENT BY OVERNIGHT MAIL:

US Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

Contact: Natalie Pearson 314-418-4087

WIRE TRANSFER:

Any wire transfer should be directed to the Federal Reserve Bank of New York

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

ACH (also known as REX or remittance express)

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 – checking
Environmental Protection Agency
Account 310006
CTX Format

ON-LINE PAYMENT

There is now an on-line payment option, available through the United States Department of the Treasury. This payment option can be accessed from www.pay.gov, by entering sfo 1.1 in the search field, opening the form, and completing required fields.

At the time of payment, a copy of the check or wire transfer shall be sent to:

Kenneth Champagne (8ENF-W)
Technical Enforcement Program
U.S. EPA Region 8
1595 Wynkoop St.
Denver, Colorado 80202-1129

and

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA Region 8
1595 Wynkoop St.
Denver, Colorado 80202-1129

- c. If the payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received (e.g., on the first late day, 30 days of interest will have accrued).
- d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 31st day from the date of the Final Order, and for each subsequent 30-day period that the debt, or any portion thereof, remains unpaid. In addition, a 6% per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 30 days of the due date. Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.
- e. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

IV. OTHER TERMS AND CONDITIONS

27. Any failure by Respondent to comply with any of the terms of this Agreement shall constitute a breach of this Agreement and may result in referral of the matter to the United States Department of Justice for enforcement of this Agreement and for such other relief as may be appropriate.

28. Nothing in this Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of any failure by Respondent to perform pursuant to the terms of this Agreement.

29. The parties agree to submit this Agreement to the Regional Judicial Officer for EPA Region 8, with a request that it be incorporated into a final order.

30. This Agreement, upon incorporation into a final order, will apply to and be binding upon the EPA, upon Respondent, and upon Respondent's employees, heirs, and assigns. Any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Agreement.

31. This Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete, full and final settlement of Respondent's liability for federal civil penalties for violations alleged in this Agreement.

32. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of the parties and approval of the Regional Judicial Officer.

33. Each party shall bear its or his own costs and attorneys' fees in connection with all issues associated with this Agreement.

34. Respondent remains obligated to comply with all requirements of the CWA and its implementing regulations.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY REGION 8,
Complainant**

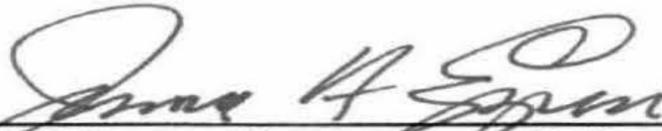
Date:

9/4/2013

By: 

Arturo Palomares, Director
Water Technical Enforcement Program
Office of Enforcement,
Compliance and Environmental Justice
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

Date: 9/4/2013

By: 
James H. Eppers, Supervisory Enforcement Attorney
Legal Enforcement Program
Office of Enforcement,
Compliance and Environmental Justice
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

Date: 8-20-13


WILLIAM ALEXANDER,
Respondent