

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, California 94105**

IN THE MATTER OF:)	DOCKET NO. CWA-09-2018-0014
)	
Los Angeles Department of)	
Water and Power)	COMPLAINT, CONSENT AGREEMENT
Van Norman Complex)	AND FINAL ORDER
Granada Hills, California)	
)	<i>Class II Administrative Penalty Proceeding</i>
Respondent)	<i>under Section 309(g) of the Clean Water Act,</i>
)	<i>33 U.S.C. § 1319(g), and 40 C.F.R. §§</i>
)	<i>22.13(b) and 22.18</i>

CONSENT AGREEMENT AND FINAL ORDER

I. AUTHORITY AND PARTIES

1. This is a Class II civil administrative penalty proceeding under Section 309(g)(1)(A) and (2)(B) the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(1)(A) and 2(B), and 40 C.F.R. Part 22 (*Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*).
2. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency (EPA) is authorized to assess administrative penalties against persons who violate Section 301(a) of the Act, 33 U.S.C. § 1311 (a). The Administrator has delegated this authority to the Regional Administrator of the EPA Region IX, who in turn has delegated this authority to the Director of the Enforcement Division, hereinafter “Complainant.”
3. Respondent is the Los Angeles Department of Water and Power.
4. This Consent Agreement and Final Order (CA/FO), which contains the elements of a complaint required by 40 C.F.R. § 22.14(a), simultaneously commences and concludes this penalty proceeding, as authorized by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
5. Respondent consents to and will not contest the EPA’s jurisdiction to issue this CA/FO or enforce its terms. EPA and Respondent recognize that this CA/FO has been negotiated in good faith and agree that Respondent’s consent to this CA/FO and agreement to pay a civil administrative penalty in accordance with the CA/FO do not constitute an admission

of any liability by Respondent. Respondent does not admit, and retains the right to contest in any proceedings other than proceedings to implement or enforce this CA/FO, the validity of the factual allegations and legal conclusions set forth in the CA/FO.

NOW THEREFORE, before the taking of any testimony, without adjudication of any issue of fact or law, and upon consent by the EPA and Respondent, it is hereby STIPULATED, AGREED, AND ORDERED:

II. STATUTORY AND REGULATORY FRAMEWORK

6. CWA Section 301(a), 33 U.S.C. § 1311(a), makes it unlawful for a person to discharge pollutants, including dredged and fill material, from a point source into navigable waters of the United States, except as authorized by a CWA permit. Under Section 404 of the CWA, 33 U.S.C. § 1344, the U.S. Army Corps of Engineers (“Corps”) issues permits for the discharge of dredged or fill material into navigable waters of the United States.
7. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines “person” to include a “municipality, commission, or political subdivision of a State, or any interstate body.”
8. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, *inter alia*, “dredged spoil,” “biological materials,” “rock,” “sand” and “cellar dirt.”
9. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” to include any discernable, confined and discrete conveyance... from which pollutants are or may be discharged.”
10. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “waters of the United States, including the territorial seas.”
11. Under 40 C.F.R. § 323.2(c) “dredged material” means “material that is excavated or dredged from waters of the United States.”
12. Under 40 C.F.R. § 323.2(e)(1) “fill material” means “material placed in waters of the United States where the material has the effect of: (i) replacing any portion of water of the United States with dry land, or (ii) changing the bottom elevation of any portion of a water of the United States.”
13. Pursuant to CWA Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19.4, EPA may assess a Class II civil administrative penalty of up to \$16,000 per day of violation, not to exceed \$177,500 in total, against a person for CWA Section 301(a) violations that occurred after January 12, 2009. For violations that occurred after December 6, 2013, EPA may assess a penalty up to \$16,000 per day of violation, not to exceed \$187,500 in total. For violations that occurred after November 2, 2015, EPA may assess a penalty up to \$21,393 per day of violation, not to exceed \$267,415 in total.

III. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS, AND CONCLUSIONS OF LAW

14. Respondent is a proprietary department of the City of Los Angeles and a municipal utility, and thus is a “person” within the meaning of CWA § 502(5), 33 U.S.C. § 1362(5).
15. At all times relevant to this action, Respondent owned and/or operated the Lower San Fernando Detention Basin (“the Site”) in the Van Norman Complex, in Granada Hills, California.
16. EPA conducted an inspection of the Site on March 10, 2016 with representatives from the Corps and the California Department of Fish and Wildlife (“CDFW”). The purpose of the inspection was to investigate potential CWA violations at the Site.
17. EPA observed water pooled at the Site flowing into a drain at the south end of the Site, which emptied on the opposite side of the San Fernando Dam, into the San Fernando Creek, and then further downstream into Bull Creek, which enters the Los Angeles River approximately 7.75 miles south of the drain.
18. During the inspection, EPA’s inspectors observed extensive soil disturbance, including vegetation clearing, grading, and filling work covering many acres. Respondent’s representatives stated during the inspection that this work was part of maintenance operations to prevent the drain from getting clogged.
19. Based on the inspection observations, and a review of aerial photographs of the Site between 2013 and 2015, EPA alleges that a significant area of waters, including adjacent wetlands, has been graded, filled, and/or channelized.
20. On April 11, 2016, Respondent sent to EPA documents concerning past, current, and future activities and plans for the Site in response to EPA’s questions about the Site during the March inspection. EPA reviewed the technical documents and coordinated with other regulatory agencies as part of its investigation between April and November 2016.
21. On November 28, 2016, EPA sent Respondent an Information Request pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, requesting additional information regarding earthmoving activity at the Site, including the duration and purpose of any such activity.
22. Respondent provided a timely response to the Section 308 information request on February 17, 2017, including additional documents and photographs relating to the Site. In its response, Respondent stated that it began conducting earthmoving activity at the Site on or about October 2, 2013 and that this activity ended no later than February 2016.
23. Respondent also stated in its response that the earthmoving activity at the Site was conducted using mechanized equipment such as a 938K CAT Loader and three or four 3KL dump trucks. The response also included photographs of bulldozers and other earthmoving equipment at the Site.

24. EPA alleges that, because of the earthmoving activity at the Site, earthen and biological materials, such as dirt, rocks, sand and vegetative matter, were placed in the waters of the U.S., including adjacent wetlands.
25. EPA alleges that the on-site tributaries, open waters, and adjacent wetlands contribute flow to San Fernando Creek, Bull Creek, and Los Angeles River, which are all waters of the U.S.
26. Based on aerial photography and other documents reviewed by EPA, EPA alleges that approximately 7.95 acres of waters of the U.S., including adjacent wetlands, were filled by Respondent's earthmoving activity at the Site.
27. Respondent did not apply for or obtain a CWA Section 404 permit from the Corps for the discharges of fill and dredged material at the Site.

IV. ALLEGED VIOLATIONS

28. EPA alleges that, by discharging fill and dredged material into waters of the U.S. without a Section 404 permit, Respondent violated CWA Sections 301(a) and 404, 33 U.S.C. §§ 1311(a) and 1344, between October 2013 and February 2016.

V. ADMINISTRATIVE PENALTY

29. In consideration of the penalty factors of CWA Section 309(g), 33 U.S.C. § 1319(g), Respondent shall pay to the United States a civil administrative penalty in the amount of \$94,000 within sixty (60) calendar days of the Effective Date of this CA/FO.
30. Respondent shall make penalty payment by one of the options listed below:
 - a. Check Payment. Payment by a cashier's or certified check shall be made payable to "Treasurer, United States of America" and be mailed as follows:

- i. *If by regular U.S. Postal Service Mail:*

U.S. Environmental Protection Agency
Fines and Penalties
PO BOX 979077
St. Louis, MO 63197-9000

- ii. *If by overnight mail:*

U.S. Environmental Protection Agency
Government Lockbox 979077
USEPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

- b. Automated Clearinghouse Payment: Payment by Automated Clearinghouse (ACH) via Vendor Express shall be made through the U.S. Treasury as follows:

U.S. Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

- c. Fedwire: Payment by wire transfer to the EPA shall be made through the Federal Reserve Bank of New York as follows:

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

- d. Online Payment: This payment option can be accessed from the information below

Go to www.pay.gov
Enter “SFO Form Number 1.1.” in the search field
Open “EPA Miscellaneous Payments – Cincinnati Finance Center” form
and complete required fields

Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. If clarification regarding a particular method of payment remittance is needed, contact the EPA Cincinnati Finance Center at (513) 487-2091.

31. To ensure proper credit, Respondent shall include the following transmittal information with the penalty payment: (i) Respondent’s name (as appeared on the CA/FO), complete address, contact person, and phone number; (ii) the EPA case docket number; (iii) the EPA contact person; and (iv) the reason for payment.
32. Concurrent with the payment, Respondent shall send a true and correct copy of the payment and accompanying transmittal information to the following addresses:

Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Marcela von Vacano
Office of Regional Counsel (ORC-2)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

33. Respondent shall not, and shall not allow any other person to, deduct any penalties and interest paid under this CA/FO from federal, state, or local taxes.
34. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), if Respondent fails to pay the assessed penalty on time, the EPA may request the U.S. Department of Justice to bring a civil action to recover the overdue amount, plus interest at currently prevailing rates from the Effective Date of this CA/FO. In such an action, the validity, amount, or appropriateness of the assessed penalty shall not be subject to review. In addition to any assessed penalty and interest, Respondent shall pay attorney fees, costs for collection proceedings, and a quarterly nonpayment penalty, which shall equal 20% of the aggregate amount of Respondent's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter, for each quarter during which such failure to pay persists. The EPA may also take other debt collection actions as authorized by law, including, but not limited to, the Debt Collection Act, 33 U.S.C. § 3711, and 33 C.F.R. Part 13.

VI. APPLICABILITY

35. This CA/FO shall apply to and be binding on Respondent, Respondent's officers, directors, partners, agents, employees, contractors, successors and assigns. Action or inaction of any persons, firms, contractors, employees, agents, or corporations acting under, through, or for Respondent shall not excuse any failure of Respondent to fully perform its obligations under this CA/FO. Changes in ownership, real property interest, or transfer of personal assets shall not alter Respondent's obligations under this CA/FO.
36. Nothing in this AOC shall be construed as an admission by Respondent as to any liability, fact, finding, issue of law, or alleged violation of law, nor shall compliance with this AOC constitute or be construed as an admission by Respondent of any liability, fact, finding, conclusion, issue of law, or alleged violation of law. In accordance with Federal Rule of Evidence 408 and to the fullest extent otherwise authorized by federal or state law, this CA/FO shall not be introduced into evidence in any court proceeding, except as necessary to implement or enforce this CA/FO, or in accordance with 33 U.S.C. section 1319(g)(6)(A) in response to any civil penalty action.

VII. RESPONDENT'S ADMISSIONS AND WAIVERS

37. In accordance with 40 C.F.R. § 22.18(b), for the purpose of this proceeding, Respondent:
 - a. admits the jurisdictional allegations of the complaint;
 - b. neither admits nor denies specific factual allegations contained in the complaint;

- c. consents to all conditions specified in this CA/FO and to the assessment of the civil administrative penalty set forth in Section V above;
- d. waives any right to contest the allegations set forth in this CA/FO; and
- e. waives its right to appeal this proposed Final Order.

VIII. RESERVATION OF RIGHTS

38. In accordance with 40 C.F.R. § 22.18(c), full payment of the penalty set forth in this CA/FO only resolves Respondent's CWA civil penalty liabilities for the violations specifically alleged herein and does not in any case affect the right of the EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
39. This CA/FO is not a permit or modification of any existing permit issued pursuant to any federal, state, or local laws or regulations, and shall in no way relieve or affect Respondent's obligations under any applicable federal, state or local laws, regulations, or permits.

IX. ATTORNEY FEES AND COSTS

40. Unless otherwise specified, each party shall bear its own attorney fees and costs.

X. EFFECTIVE DATE AND TERMINATION

41. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), the Effective Date of this CA/FO is the date that the Final Order, having been signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk. This CA/FO shall terminate when Respondent has complied with the requirements of this CA/FO in full.

XI. PUBLIC NOTICE

42. Pursuant to CWA Section 309(g)(4), 33 U.S.C. §1319(g)(4), and 40 C.F.R. § 22.45(b), this Consent Agreement is subject to public notice and comment prior to issuance of the proposed Final Order. Complainant reserves the right to withhold or withdraw consent to this Consent Agreement if public comments disclose relevant and material information that was not considered by Complainant in entering into this Consent Agreement. Respondent may withdraw from this Consent Agreement only upon receipt of written notice from the EPA that it no longer supports entry of this Consent Agreement.
43. Pursuant to CWA Section 309(g)(1), 33 U.S.C. § 1319(g)(1), the EPA has consulted with the State of California regarding this penalty action.

For Complainant the U.S. Environmental Protection Agency, Region 9

/s/

Aug. 29, 2018

Kathleen Johnson
Director
Enforcement Division

Date

For Respondent Los Angeles Department of Water and Power

DEPARTMENT OF WATER AND POWER
OF THE CITY OF LOS ANGELES BY
BOARD OF WATER AND POWER COMMISSIONERS

/s/
By: _____
DAVID H. WRIGHT
General Manager

8/16/18
Date: _____

/s/
And: _____
BARBARA E. MOSCHOS
Board Secretary

FINAL ORDER

It is Hereby Ordered that this Consent Agreement and Final Order (U.S. EPA Docket No. CWA-09-20XX-XXXX) be entered and that Respondent shall pay a civil penalty in the amount of \$94,000 in accordance with the terms of this Consent Agreement and Final Order.

Date

Steven L. Jawgiel
Regional Judicial Officer
U.S. EPA, Region IX