

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

KIRK WILSON, an individual,

Glennallen, Alaska,

Respondent.

DOCKET NO. CWA-10-2021-0181

CONSENT AGREEMENT

Proceedings Under Section 309(g) of the Clean
Water Act, 33 U.S.C. § 1319(g)

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g).

1.2. Pursuant to CWA Section 309(g)(1)(A), 33 U.S.C. § 1319(g)(1)(A), the EPA is authorized to assess a civil penalty against any person that has violated CWA Section 301, 33 U.S.C. § 1311.

1.3. CWA Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), authorizes the administrative assessment of Class II civil penalties in an amount not to exceed \$10,000 per day for each day during which the violation continues, up to a maximum penalty of \$125,000. Pursuant to 40 C.F.R. Part 19, the administrative assessment of Class II civil penalties may not exceed \$22,584 per day for each day during which the violation continues, up to a maximum penalty of \$282,293. *See also* 85 Fed. Reg. 83820 (December 23, 2020) (2021 Civil Monetary Penalty Inflation Adjustment Rule).

In the Matter of: Kirk Wilson
Docket Number: CWA-10-2021-0181
Consent Agreement
Page 1 of 6

U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 155, 11-C07
Seattle, Washington 98101

1.4. Pursuant to CWA Sections 309(g)(1)(A) and 309(g)(2)(B), 33 U.S.C. §§ 1319(g)(1)(A) and (g)(2)(B), and in accordance with Section 22.18 of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Kirk Wilson (Respondent) agrees to issuance of, the Final Order attached to this Consent Agreement.

II. PRELIMINARY STATEMENT

2.1. EPA initiated this proceeding for the assessment of a civil penalty pursuant to Section 309(g) of the CWA by issuing a Complaint against Respondent on September 30, 2020.

2.2. In its Complaint, EPA alleged that Respondent, an individual, violated Section 301(a) of the CWA by discharging and directing others to discharge dredged and/or fill material, which constitutes a pollutant, from point sources into waters of the United States without authorization issued pursuant to Section 404 of the CWA.

2.3. The complete factual and jurisdictional basis for proposing the assessment of a civil penalty is set forth in the Complaint and is incorporated herein by reference.

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

III. TERMS OF SETTLEMENT

3.1 Respondent admits the jurisdictional allegations contained in this Consent Agreement.

3.2 Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

3.3 As required by CWA Section 309(g)(3), 33 U.S.C. § 1319(g)(3), the EPA has taken into account “the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.” After considering all of these factors as they apply to this case, EPA has determined that an appropriate penalty to settle this action is \$8,500.

3.4 Respondent consents to the assessment of the civil penalty set forth in Paragraph 3.3 and agrees to pay the total civil penalty within thirty (30) days of the effective date of the Final Order.

3.5 Payment under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier’s check or certified check must be 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

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

3.6 Respondent must serve photocopies of the check, or proof of other payment method described in Paragraph 3.5, on the Regional Hearing Clerk and EPA Region 10 Case Officer at the following addresses:

Teresa Young
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 900
Seattle, WA 98101
R10_RHC@epa.gov

Mark Jen
Case Officer
U.S. Environmental Protection Agency
Region 10, Alaska Operations Office
222 West Seventh Avenue, Suite 19
Anchorage, AK 99513-7588
jen.mark@epa.gov

3.7 If Respondent fails to pay the penalty assessed by this Consent Agreement 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 Respondent 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.

a. Interest. Pursuant to CWA Section 309(g)(9), 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, 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.

b. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 3.3, Respondent 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 Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

3.8 The penalty described in Paragraph 3.3, including any additional costs incurred under Paragraph 3.7, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

3.9 The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

3.10 Except as described in Subparagraph 3.7.b., above, each party shall bear its own costs in bringing or defending this action.

3.11 For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in the Consent Agreement and to appeal the Final Order.

3.12 The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

3.13 The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

FOR RESPONDENT:

KIRK WILSON

DATED:

FOR COMPLAINANT:

EDWARD J. KOWALSKI
Director
Enforcement and Compliance Assurance Division
EPA Region 10