



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

2009 NOV 17 AM 11:04

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CWA-08-2009-0028

IN THE MATTER OF:)	
)	
BUCKLEN EQUIPMENT CO., INC.)	FINAL ORDER
804 N. 25th Avenue)	
Greeley, CO 80631)	
)	
RESPONDENT)	

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 17th DAY OF November, 2009.

Elyana R. Sutin
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)
)
Bucklen Equipment Company, Inc.) Docket No. CWA-08-2009-0028
804 N. 25th Avenue)
Greeley, CO 80631)
)
)
)
Respondent.)
_____)

Complainant, United States Environmental Protection Agency, Region 8 (EPA), and Respondent, Bucklen Equipment Company, Inc., by their undersigned representatives, hereby consent and agree as follows:

I. BACKGROUND

1. On September 17, 2009, Complainant issued a Complaint against Respondent alleging certain violations of the Clean Water Act, 33 U.S.C. § 1251 *et seq.* (Act). The Complaint proposed a civil penalty for the violations alleged therein.

2. Respondent has not yet filed its answer to the Complaint.

II. JURISDICTION

3. Respondent admits the jurisdictional allegations of the Complaint and neither admits nor denies the specific factual allegations of the Complaint.

4. Respondent waives its right to a hearing before any tribunal to contest any issue of law or fact set forth in the Complaint or in this Consent Agreement (Agreement).

III. PARTIES BOUND

5. This Agreement, upon incorporation into a final order, applies to and is binding upon EPA and upon Respondent and Respondent's successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this Agreement. This Agreement contains all terms of the settlement agreed to by the parties.

IV. CIVIL PENALTY

6. Respondent consents and agrees to pay a civil penalty in the amount of SIXTEEN THOUSAND DOLLARS (\$16,000), in the manner described below in this paragraph.

a. Payment is due within 30 calendar days from the date written on the Final Order, issued by the Regional Judicial Officer, that adopts this Consent Agreement. If the due date falls on a weekend or legal federal holiday, the due date is the next business day. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.

b. The payment shall be made by any of the methods set forth in Appendix 1 to this Agreement.

c. Notice that payment has been made shall be provided, at the same time that payment has been made, to:

Monica Heimdal
Enforcement Officer
Technical Enforcement Program (8ENF-W)
U.S. EPA Region 8
1595 Wynkoop
Denver, CO 80202-1129

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

If payment is made by cashier's or certified check, the notice shall include a copy of the check. If payment is made in any other manner, the notice shall include documentation demonstrating that the payment was made.

d. In the event 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 (i.e., on the 1st late day, 30 days of interest accrues).

e. In addition, a handling charge of fifteen dollars (\$15) shall be assessed on the 31st day from the date of the final order, and each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (i.e., the 121st day from the date the final order is signed). Payments are first applied to handling charges, 6% penalty interest, late interest, and any balance is then applied to the outstanding principal amount.

f. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

V. COMPLIANCE WITH CLEAN WATER ACT

7. Nothing in this Agreement shall relieve Respondent of the duty to comply with the Clean Water Act and its implementing regulations.

8. Respondent consents and agrees that within thirty (30) calendar days of the date written on the Final Order, issued by the Regional Judicial Officer, that adopts this Consent Agreement, Respondent will remove, to an upland location, the remaining piles of fill located along the banks of the Cache la Poudre River where the violations alleged in the Complaint took place. In order to ensure that the piles of fill are properly removed, Respondent consents and agrees to submit photographs and/or video to EPA documenting that the work was completed. The photographs and/or video shall be sent to Monica Heimdal at the address set forth in Paragraph 6.c of this Agreement. If EPA determines that the work was not completed satisfactorily, it will advise Respondent accordingly, and Respondent shall undertake any additional work directed by EPA.

9. During July or August 2010, EPA will inspect the area where the violations alleged in the Complaint took place to determine if the area has properly revegetated itself. If it appears to EPA that additional work needs to be done, including recontouring and/or planting additional vegetation in the area where the violations alleged in the Complaint took place, EPA will so advise Respondent. Respondent may be directed at that time to submit a restoration plan to EPA detailing the work that will be done. Respondent shall then undertake the work directed by EPA, which work may be set forth in a restoration plan submitted by Respondent and approved by EPA. Respondent consents and agrees that such work will be completed within thirty (30) calendar days after Respondent's receipt of correspondence from EPA directing the

work or approving any required restoration plan, or within such other time period approved by EPA.

VI. NONCOMPLIANCE WITH AGREEMENT

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

11. 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 Respondent's failure to perform pursuant to the terms of this Agreement.

VII. MISCELLANEOUS

12. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions of this Agreement and to bind Respondent to the terms and conditions of this Agreement.

13. The parties agree to submit this Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.

14. Each party shall bear its own costs and attorneys' fees in connection with this matter.

15. This Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the Complaint.

In the Matter of Bucklen Equipment Company, Inc., Docket No. CWA-08-2009-

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

Complainant.

Date: 11/9/09

By: Michael T. Risner
Michael T. Risner, Director
Legal Enforcement Program

Date: 11/10/09

By: Diane Sipe for
Diane Sipe, Director
Technical Enforcement Program

In the Matter of Bucklen Equipment Company, Inc., Docket No. CWA-08-2009-

BUCKLEN EQUIPMENT COMPANY, INC.,

Respondent.

Date: 9-22-09 By: Michael A. Bucklen
Michael A. Bucklen
President

CERTIFICATE OF SERVICE

I certify that on the date noted below, I sent by certified mail, return receipt requested, a copy of the foregoing CONSENT AGREEMENT to:

Randal K. Bucklen, Vice President
Bucklen Equipment Company, Inc.
804 N. 25th Ave.
Greeley, Colorado 80631

Certified Return Receipt No. 7004 1350 0001 5669 7219

I further certify that on the same date below I sent by certified mail, return receipt requested, a copy of this document to:

Steven H. Gunderson, Director
Water Quality Control Division
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, CO 80246-1530

Certified Return Receipt No. 7004 1350 0001 5669 7226

I further certify that on the same date below the original and one copy were hand-delivered to:

Tina Artemis
Regional Hearing Clerk
U.S. Environmental Protection Agency (8RC)
1595 Wynkoop Street
Denver, CO 80202-1129

Date: 11/13/09

Sandra Reed

CERTIFICATE OF SERVICE

In the matter of **BUCKLEN EQUIPMENT CO., INC.; DOCKET NO.: CWA-08-2009-0028** the undersigned certifies that the original of the attached **CONSENT AGREEMENT** was filed with the Regional Hearing Clerk on November 13, 2009. The **FINAL ORDER** was filed on November 17, 2009.

Further, the undersigned certifies that a true and correct copy of the documents were delivered Sheldon Muller, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on November 17, 2009, to:

Randal K. Bucklen, Vice President
Bucklen Equipment Co., Inc.
804 N. 25th Avenue
Greeley, CO 80631

Steven H. Gunderson, Director
Water Quality Control Division
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, CO 80246-1530

And e-mailed to:

Michelle Angel
U. S. EPA – Cincinnati Finance Office

November 17, 2009



Tina Artemis
Paralegal/Regional Hearing Clerk

