



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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CERTIFIED MAIL
RETURN RECEIPT REQUESTED
#7004-1350-0001-5669-8612

Ref: 8ENF-W

Harriet M. Hageman, Esq.
Hageman & Brighton, P.C.
222 East 21st Street
Cheyenne, Wyoming 82001

Re: Notice of Violation of Administrative Order
for Compliance
Docket No. CWA-08-2009-0007

Dear Ms. Hageman:

On March 9, 2009, the United States Environmental Protection Agency (EPA) issued to your client, David Hamilton, a Findings of Violation and Order for Compliance (Order), which describes actions necessary for Mr. Hamilton to achieve compliance with the Clean Water Act (CWA). The Order was issued to address discharges of dredged or fill material into Slick Creek and its adjacent wetlands on Mr. Hamilton's property without authorization under the CWA. The CWA requires that a permit be obtained from the United States Army Corps of Engineers (Corps) prior to the discharge of pollutants (i.e., dredged or fill material) into waters of the United States.

In your letter dated April 27, 2009, you provided a response to the Order on behalf of Mr. Hamilton and requested that EPA dismiss these proceedings since you believe Slick Creek and its adjacent wetlands are not jurisdictional "waters of the United States." Accordingly, you stated that Mr. Hamilton is not willing to prepare and submit a restoration plan, which the Order required by May 12, 2009.

EPA adamantly disagrees with your assertion that Slick Creek is an "irrigation wasteway" and, therefore, not jurisdictional under the CWA. Slick Creek is a naturally occurring, meandering stream, which is part of a large drainage basin that flows directly to the Big Horn River, a traditional navigable water of the United States. Contrary to your assertion, Slick Creek does indeed qualify as a relatively permanent, non-navigable tributary of a traditional navigable water, the Big Horn River. Furthermore, Slick Creek has the ability to significantly affect the



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chemical, physical, and/or biological integrity of the Big Horn River. Accordingly, the Corps and EPA have determined that Slick Creek and its adjacent wetlands are jurisdictional waters of the United States.

As a result of Mr. Hamilton's failure to meet the requirements set forth in Section III of the Order, EPA has determined that Mr. Hamilton is in violation of the Order. As noted in our letter to Mr. Hamilton accompanying the Order, the CWA authorizes, among other things, civil judicial penalties for violation of an administrative order, and civil or criminal actions and administrative penalties for violations of the CWA. Specifically, § 309 of the CWA, 33 U.S.C. § 1319, authorizes civil penalties of up to \$32,500 per day for each violation which occurred before January 12, 2009, and \$37,500 per day for each violation thereafter, of § 301 of the CWA, 33 U.S.C. § 1311, and for each violation of an order issued by the Administrator of EPA under § 309(a) of the CWA, 33 U.S.C. § 1319(a). Unfortunately, Mr. Hamilton's refusal to comply with the Order leaves EPA with increasingly limited options. Please be advised that EPA intends to pursue additional enforcement for Mr. Hamilton's non-compliance with the terms of the Order and the CWA, which may include referring this matter to the Department of Justice, unless Mr. Hamilton takes immediate actions to comply the Order, including submittal of the required restoration plan to EPA.

If you have any questions concerning this letter, please contact Wendy Silver, Senior Attorney, at 303-312-6637.

Sincerely,


Eddie A. Sierra

Acting Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

cc: John Wagner, Administrator, WYDEQ,
David LaGrone, U.S. Army Corps of Engineers
Matthew Bilodeau, U.S. Army Corps of Engineers
Tina Artemis, EPA, 8RC