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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10  
1200 Sixth Avenue  
Seattle, Washington 98101

In the matter of: )  
Bruce Willis )  
Blaine County, Idaho )  
Respondent. )  
\_\_\_\_\_ )

Docket No. CWA-10-2004-0060  
COMPLIANCE ORDER

The following FINDINGS AND CONCLUSIONS are made and ORDER issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by sections 308 and 309 of the Clean Water Act (“the Act”), 33 U.S.C. §§ 1318 and 1319. This authority has been delegated to the Regional Administrator, Region 10, and has been duly redelegated to the undersigned Director of the Office of Ecosystems and Communities.

**I. FINDINGS AND CONCLUSIONS**

1.1. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into waters of the United States by any person, except as authorized by a permit issued pursuant to section 402 or 404 of the Act, 33 U.S.C. § 1342 or 1344. Each discharge of pollutants from a point source that is not authorized by such a permit constitutes a violation of section 301(a) of the Act, 33 U.S.C. § 1311(a).

1           1.2.    Bruce Willis (“Respondent”) is a “person” within the meaning of section 502(5) of  
2 the Act, 33 U.S.C. § 1362(5).

3           1.3.    Upon information and belief, in Fall 2003, and at times more fully known to  
4 Respondent, Respondent and/or persons acting on his behalf, discharged dredged and/or fill material  
5 into wetlands and below the ordinary high water mark of a tributary to the Big Wood River located  
6 in S.05, T.2N., R.18E. near Hailey, Blaine County, Idaho. The unauthorized activity occurred while  
7 constructing a crossing to an island within the tributary and while leveling and sodding the island.  
8 During this time period, Respondent placed dredged and/or fill material into approximately 0.5 acres  
9 of wetlands and below the ordinary high water mark of the tributary.

10          1.4.    The property described in paragraph 1.3 above contains wetlands and an unnamed  
11 spring-fed stream that is a tributary to the Big Wood River. These wetlands and the stream are  
12 “navigable waters” and “waters of the United States” within the meaning of section 502(7) of the  
13 Act, 33 U.S.C. § 1362(7), and 40 C.F.R. §§ 122.2 and 232.2.

14          1.5.    Upon information and belief, Respondent and/or persons acting on his behalf used  
15 heavy equipment to place the dredged and/or fill material into wetlands and the stream. The heavy  
16 equipment used to fill these waters is a “point source” within the meaning of section 502(14) of the  
17 Act, 33 U.S.C. § 1362(14).

18          1.6.    The dredged spoils and/or fill material that Respondent and/or persons acting on his  
19 behalf caused to be discharged includes, among other things, dirt, spoil, rock, sand and sod, each of  
20 which constitutes a “pollutant” within the meaning of section 502(6) of the Act, 33 U.S.C.  
21 § 1362(6).

22          1.7.    By causing such dredged spoils and/or fill material to enter waters of the United  
23 States, Respondent has engaged, and is continuing to engage, in the “discharge of pollutants” from a  
24 point source within the meaning of sections 301 and 502(12) of the Act, 33 U.S.C. §§ 1311 and  
25 1362(12).

1 1.8. Respondent's discharge(s) of fill material described in paragraph 1.3 above was not  
2 authorized by any permit issued pursuant to section 402 or 404 of the Act, 33 U.S.C. § 1312 or 1314,  
3 and Respondent is therefore in violation of section 301 of the Act, 33 U.S.C. § 1311.

4 1.9. Taking into account the seriousness of this violation and all other relevant factors, the  
5 schedule for compliance contained in the following Order is reasonable and appropriate.

6 **II. ORDER**

7 Based upon the foregoing FINDINGS AND CONCLUSIONS, and pursuant to sections 308  
8 and 309(a) of the Clean Water Act, 33 U.S.C. §§ 1318 and 1319(a), it is hereby ORDERED as  
9 follows:

10 2.1. Respondent shall complete all work pursuant to a Restoration Work Plan for the  
11 Wetland Island and Unnamed Stream Located on Lot 39A within the Flying Heart Subdivision in  
12 Blaine County near Hailey, Idaho ("Work Plan") to be submitted to EPA by July 9, 2004. Upon  
13 approval by EPA the Work Plan shall be incorporated into this Order. Respondent shall complete all  
14 work in accordance with the following schedule.

| Action  | Deadline           |
|---|--------------------|
| As described in the EPA approved Work Plan, install erosion control measures, remove all unauthorized fill material, and grade site for planting. | July 31, 2004      |
| Notify EPA upon completion of removal of unauthorized fill material.  | prior to plantings |
| As described in the EPA approved Work Plan, prepare site for vegetation applications and plant herbaceous vegetation.                             | July 31, 2004      |
| As described in the EPA approved Work Plan, plant tree and shrub species.   | October 31, 2004   |
| Submit First Year Monitoring Report   | October 31, 2004   |
| Submit Second Year Monitoring Report  | October 31, 2005   |
| Submit Third Year Monitoring Report   | October 31, 2006   |
| Submit Fifth Year Monitoring Report   | October 31, 2008   |
| Submit Seventh Year Monitoring Report   | October 31, 2010   |
| Submit Ninth Year Monitoring Report   | October 31, 2012   |
| Submit Final (Eleventh Year) Monitoring Report*   | October 31, 2014   |

1           \*Final report requirement is contingent upon Respondent's ability to meet the required performance standards.

2           2.2.     Respondent shall provide a report of the planting success after the first, second, and  
3 third growing seasons, no later than October 31 of 2004, 2005, and 2006, and then provide a  
4 monitoring report to EPA every other year, no later than October 31 of 2008, 2010, 2012, and 2014.  
5 Each two-year report shall document success of plant growth after two growing seasons.

6           2.3.     Respondent shall provide and/or obtain access to the site and any off-site areas to  
7 which access is necessary to implement this Order and shall provide access to all records and  
8 documentation related to the conditions at the site and the monitoring and restoration activities  
9 conducted pursuant to this Order. Such access shall be provided to EPA employees and/or their  
10 designated representatives. These individuals shall be permitted to move freely at the site and  
11 appropriate off-site areas in order to conduct actions which EPA determines to be necessary.

12          2.4.     Failure to timely and appropriately implement to EPA's satisfaction any element of  
13 the EPA approved Work Plan shall be deemed a violation of this Order.

14          2.5.     EPA encourages Respondent to engage in informal discussion of the terms and  
15 requirements of this Order upon receipt. Such discussions should address any allegations herein  
16 which Respondent believes to be inaccurate or requirements which may not be attainable and the  
17 reasons therefore. Alternative methods to attain the objectives of this Order may be proposed. If  
18 acceptable to EPA, such proposals may be incorporated into amendments to this Order, at the  
19 discretion of EPA.

20          2.6.     All submissions required by this Order shall be sent to:

21                   Carla Fromm  
22                   U.S. EPA, Idaho Operations Office  
23                   1435 North Orchard Street  
24                   Boise, ID 83706  
25                   Phone: (208) 378-5755  
26                   Fax: (208) 378-5744.

27          2.7.     This Order shall become effective on the date it is signed.

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### **III. SANCTIONS**

3.1. Notice is hereby given that violation of, or failure to comply with, the foregoing Order may subject Respondent to (1) civil penalties of up to \$32,500 per day of violation pursuant to section 309(d) of the Act, 33 U.S.C. § 1319(d), and 40 C.F.R. Part 19; or (2) administrative penalties of up to \$11,000 per day for each violation, pursuant to section 309(g) of the Act, 33 U.S.C. § 1319(g), and 40 C.F.R. Part 19.

3.2. Nothing in this Order shall be construed to relieve Respondent of any applicable requirements of federal, state, or local law. EPA reserves the right to take enforcement action as authorized by law for any violation of this Order, and for any future or past violation of any permit issued pursuant to the Act or of any other applicable legal requirements, including, but not limited to, the violations identified in Part I of this Order.

Dated this \_\_\_\_ day of July, 2004

\_\_\_\_\_  
MICHELLE PIRZADEH, Director  
Office of Ecosystems and Communities