



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

April 18, 2013

Ref: 8ENF-L

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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

Re: Notice of Proposed Combined Complaint and
Consent Agreement
Docket No. **CWA-08-2013-0011**

Dear Mr. Gunderson:

Enclosed is a copy of an executed Combined Complaint and Consent Agreement (CCCA) in the matter of Public Service Company of Colorado (Respondent). The United States Environmental Protection Agency (EPA) is proposing to enter into the CCCA pursuant to section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g), and 40 C.F.R. section 22.13(b) to simultaneously commence and settle administratively a Class II civil penalty action against the Respondent. On September 21-22, 2011, the Respondent discharged dredged and/or fill material into South Clear Creek in Georgetown, Colorado, without a permit, in violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a), which prohibits the discharge of a pollutant unless authorized by a permit issued under section 404 of the CWA, 33 U.S.C. § 1344. While the section 404 program is not a CWA authorized program in Colorado, EPA is providing notice to you pursuant to CWA section 309(a), 33 U.S.C. § 1319(a), because the violations occurred in Colorado. You or your staff may request a conference within forty (40) days of receiving this letter. The conference may be in person or by telephone and may cover any matters relevant to the proposed assessment.


A copy of EPA procedures governing the administrative assessment of civil penalties under the CWA is enclosed for your reference. If you have any questions, the most knowledgeable person on my staff for legal issues is Wendy Silver, Senior Enforcement Attorney, who can be reached at 303-312-6637. The



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most knowledgeable person on my staff for technical issues is Kenneth Champagne, Section 404 Enforcement Officer, who can be reached at 303-312-6608.

Sincerely,

for 
Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

Enclosure:

Combined Complaint and Consent Agreement

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2013 APR 18 AM 11:03

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)
)
Public Service Company of Colorado)
1800 Larimer Street, Suite 1100)
Denver, Colorado 80202)
)
Respondent.)
_____)

**COMBINED COMPLAINT AND
CONSENT AGREEMENT**

Docket No. **CWA-08-2013-0011**

Complainant, the United States Environmental Protection Agency, Region 8 (EPA or Complainant) and Respondent, Public Service Company of Colorado (Respondent), by their undersigned representatives, hereby consent and agree as follows:

I. STATUTORY AUTHORITY

1. This matter is subject to 40 C.F.R. Part 22. This Combined Complaint and Consent Agreement (Consent Agreement) is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3).

2. The EPA has jurisdiction over this matter pursuant to section 309(g)(1)(A) and (2)(B) of the Clean Water Act (Act), 33 U.S.C. § 1319(g)(1)(A) and (2)(B).

II. PARTIES BOUND

3. The Consent Agreement, upon incorporation into a Final Order, applies to and is binding upon Complainant and upon Respondent, and Respondent's officers, directors, agents, successors and assigns. Any change in ownership of the Georgetown Hydro-Electric Generating Station or in corporate organization, structure or status of Respondent including, but not limited to, any transfer of assets or real

or personal property shall not alter any of Respondent's responsibilities under this Consent Agreement unless Complainant, Respondent and the transferee agree in writing to allow the transferee to assume such responsibilities. Additionally, thirty (30) days prior to such transfer, Respondent shall notify Complainant at the address specified in paragraph 35 of this Consent Agreement of the pending transfer.

III. STATEMENT OF THE PARTIES

4. For the purposes of this settlement only, Respondent admits the jurisdictional allegations; however, Respondent neither admits nor denies the specific factual allegations contained herein and makes no admission of any violation of law in entering into this Consent Agreement.
5. Respondent retains the right to controvert in any subsequent proceedings, other than proceedings to implement or enforce this Consent Agreement, the validity of any issue of law or fact set forth in this Consent Agreement. In any proceeding to enforce this Consent Agreement, Respondent waives its right to a hearing before any tribunal to contest any issue of law or fact set forth in this Consent Agreement. Respondent further waives its right to appeal the Final Order in this matter.
6. Complainant asserts that settlement of this matter is in the public interest, and Complainant and Respondent agree that entry of this Consent Agreement and its incorporation into a Final Order without further litigation and without adjudication of any issue of fact or law will avoid prolonged and complicated litigation between the parties.
7. This Consent Agreement contains all settlement terms agreed to by the parties.

IV. GENERAL ALLEGATIONS

8. Respondent is a corporation incorporated under the laws of the State of Colorado. The address of the registered office for Respondent is 1800 Larimer Street, Suite 1100, Denver, Colorado 80202.
9. Respondent is an electric and gas utility provider in Colorado.

10. Respondent is and was at all relevant times a “person” within the meaning of section 502(5) of the Act, 33 U.S.C. § 1362(5).

11. At all relevant times, Respondent owned, managed, operated and/or otherwise controlled property known as the Georgetown Hydro-Electric Generating Station, located in Georgetown, Clear Creek County, Colorado (the Site). The Site encompasses the Georgetown Forebay Dam and Reservoir.

12. The Georgetown Forebay Dam has a low-level outlet valve that discharges into South Clear Creek.

13. The low-level outlet valve referenced in paragraph 12 is and was at all relevant times a “point source” within the meaning of section 502(14) of the Act, 33 U.S.C. § 1362(14).

14. South Clear Creek is a “waters of the United States” within the meaning of 33 C.F.R. § 328.3(a) and therefore “navigable waters” within the meaning of section 502(7) of the Act, 33 U.S.C. § 1362(7).

V. SPECIFIC ALLEGATIONS

15. At or about 9:30 A.M. on September 21, 2011, Respondent, or persons acting on its behalf, opened the low-level outlet valve on the dam at the Site for the purpose of drawing down the reservoir in order to inspect the valve and obtain information for a future maintenance project. Flow through the valve discharges to South Clear Creek.

16. At approximately 4 P.M. on September 21, 2011, the Clear Creek County Sheriff’s Office reported to the 24-hour Incident Hotline of the Colorado Department of Public Health and the Environment (CDPHE) a discharge of mud and silt from the Site to South Clear Creek.

17. At approximately 8:00 A.M. on September 22, 2011, representatives of Respondent met at the Site and observed that the water being drained through the low-level outlet valve to South Clear Creek was clear. Beginning at around 9:30 A.M., they observed increased turbidity in the water being

discharged through the low-level outlet valve to South Clear Creek and, between approximately 10:00 and 10:30 A.M., the representatives partially closed the low-level outlet valve from 30 inches to 6 inches. Respondent's representatives reported that the turbidity ceased almost immediately upon the partial closure of the valve.

18. On September 30, 2011, the U.S. Army Corps of Engineers (Corps) visited the Site and observed areas of newly-deposited sediment along the edges of South Clear Creek.

19. On January 24, 2012, the EPA sent Respondent a Request for Information pursuant to section 308 of the Clean Water Act, 33 U.S.C. § 1318 (First Request for Information), requesting information about the reservoir drawdown.

20. On February 24, 2012, Respondent responded to the EPA's First Request for Information, providing, among things, Respondent's position that any turbidity occurring during the reservoir drawdown was de minimis and that the drawdown event was exempt from regulation under section 404(f)(1)(B) of the Act, 33 U.S.C. § 1344(f)(1)(B), as a dam maintenance activity.

21. On March 26, 2012, the EPA sent Respondent a Second Request for Information pursuant to section 308 of the Clean Water Act, 33 U.S.C. § 1318 (Second Request for Information), seeking additional information about the event and the Respondent's position.

22. On April 25, 2012, Respondent responded to the EPA's Second Request for Information providing, among other things, an estimate of the amount of sediment discharged through the low-level outlet valve and other information related to the event and its position.

23. The EPA disagrees with Respondent's position that the drawdown was de minimis and exempt from regulation under the Act as a dam maintenance activity.

24. On June 28, 2012, the EPA notified Respondent that it was preparing to file an administrative complaint seeking administrative penalties for a claim arising under the Act relating to the unpermitted discharge of pollutants from the dam at the Site.
25. Respondent subsequently agreed to settle this matter with the EPA subject to the reservations in paragraph 4 herein.
26. The mud, silt, turbid water, and sediment referenced in paragraphs 16 - 18 constitute material dredged from the Georgetown Forebay Reservoir.
27. The activities described in paragraph 15, above, resulted in the discharge of dredged material to South Clear Creek.
28. The discharges described in paragraphs 15 - 18, above, were from a "point source" within the meaning of section 502(14) of the Act, 33 U.S.C. § 1362(14).
29. The dredged material referenced in paragraph 26 constitutes "pollutants" within the meaning of section 502(6) of the Act, 33 U.S.C. § 1362(6).
30. The Respondent's activities as described in paragraphs 15 and 17, above, constitute the "discharge of pollutants" within the meaning of the definition set forth in section 502(12) of the Act, 33 U.S.C. § 1362(12).

VI. DESCRIPTION OF THE VIOLATION

31. Respondent neither applied for nor received a permit to discharge dredged or fill material into South Clear Creek and has not been authorized by any permit issued under section 404 of the Act, 33 U.S.C. § 1344, to allow unauthorized discharges to remain.
32. The discharges of pollutants from a point source by Respondent into waters of the United States described in paragraphs 15 and 17, above, were carried out without the required permit issued by the

Corps pursuant to section 404 of the Act, 33 U.S.C. § 1344, and, therefore, constitute violations of section 301 of the Act, 33 U.S.C. § 1311.

VII. CIVIL PENALTY

33. Pursuant to section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), and after consideration of the facts of this case as they relate to the factors set forth in section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), the EPA has determined that a civil penalty of \$14,400.00 is appropriate to settle this matter, to be paid within thirty (30) days of receipt of the Consent Agreement and signed Final Order issued by the Regional Judicial Officer.

34. Respondent consents and agrees to the assessment and payment of the civil penalty cited in the foregoing paragraph for settlement purposes.

35. Respondent shall pay the agreed upon civil penalty by one of the following methods:

a. **Payment by cashier's or certified check:**

A cashier's or certified check, including the name and docket number of this case, for \$14,400.00, payable to "Treasurer, United States of America," to:

Regular Mail:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Overnight Mail:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

b. **Wire Transfer:**

Wire transfers should be directed to the Federal Reserve Bank of New York with the following information:

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"

c. **On Line Payment:**

This option is available through the Department of the Treasury.

www.pay.gov

Enter sfo 1.1 in the search field.

Open form and complete the required fields.

Copies of the check or record of payment shall be sent to:

Kenneth Champagne
U.S. Environmental Protection Agency (8ENF-W)
1595 Wynkoop Street
Denver, CO 80202-1129

and

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

A transmittal letter identifying the case title and docket number must accompany the remittance and copies of the check.

36. 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 will have accrued).

37. In addition, a handling charge of fifteen dollars (\$15.00) shall be assessed the 31st day from the due date of the payment, and for 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. Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.

38. The penalty specified in paragraph 33, above, represents civil penalties assessed by the EPA and Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

VIII. OTHER TERMS AND CONDITIONS

39. Failure by Respondent to comply with any of the terms of this Consent 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 Consent Agreement and for such other relief as may be appropriate.

40. Nothing in this Consent agreement shall be construed as a waiver by Complainant 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 Consent Agreement.

41. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to bind the parties to the terms and conditions of this Consent Agreement and to execute and legally bind that party to this Consent Agreement.

42. This Consent Agreement shall be subject to a public comment period of not less than forty (40) days pursuant to section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45. The EPA may modify or withdraw its consent to this Consent Agreement if comments received disclose facts or considerations which indicate that the Consent Agreement is inappropriate, improper or inadequate.

43. If comments received during the public comment period do not require modification or withdrawal by the EPA from this Consent Agreement, the parties agree to submit this Consent Agreement to the Regional Judicial Officer following closure of the public comment period specified in 40 C.F.R. § 22.45 and the period for state consultation specified in 40 C.F.R. § 22.38(b), with a request that it be incorporated into a Final Order.

44. This Consent Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete, full and final settlement of the civil penalty owed for violations alleged in this Consent Agreement. This Consent Agreement resolves Respondent's liability for federal civil penalties under section 309(d) and (g) of the Act, 33 U.S.C. § 1319(d) and (g), for the violations alleged in this Consent Agreement. This Consent Agreement shall not in any case affect the EPA's right to pursue criminal sanctions for any violations of law whether or not alleged in this Consent Agreement.

45. Each party shall bear its own costs and attorneys fees in connection with all issues associated with this Consent Agreement.

IN THE MATTER OF: Public Service Company of Colorado, Docket No. **CWA-08-2013-0011**

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8
Complainant

Date: 4-18-2013

for Eddie O. Sierra
Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

PUBLIC SERVICE COMPANY OF
COLORADO
Respondent.

Date: 3/25/2013

David L. Eves
Name: DAVID L EVES
Title: PRESIDENT & CEO