

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Granite Excavation, Inc., Nisula Gravel Pit

McCall, Idaho

Respondent.

DOCKET NO. CWA-10-2021-0116

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), EPA is authorized to assess a civil penalty against any person that has violated CWA Section 301, 33 U.S.C. § 1311, and/or any permit condition or limitation in a permit issued under CWA Section 402, 33 U.S.C. § 1342.

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).

1.4. Pursuant to CWA Section 309(g)(1)(A) and (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 Granite Excavation, Inc. (Respondent) agrees to issuance of, the Final Order attached to this Consent Agreement.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), execution of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. 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).

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the CWA, together with the specific provisions of the CWA and implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

Statutory and Regulatory Framework

3.1. As provided in CWA Section 101(a), 33 U.S.C. § 1251(a), the objective of the CWA is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

3.2. CWA Section 301(a) prohibits the discharge of pollutants by any person from any point source into waters of the United States except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342. 33 U.S.C. § 1311(a).

3.3. CWA Section 502(12) defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12).

3.4. CWA Section 502(6) defines “pollutant” to include, *inter alia*, “solid waste,” “biological materials,” “heat,” and industrial waste discharged into water. 33 U.S.C. § 1362(6).

3.5. CWA Section 502(5) defines “person” to include “an individual, corporation, partnership, [or] association . . .” 33 U.S.C. § 1362(5).

3.6. CWA Section 502(14) defines “point source” to include, *inter alia*, “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, [or] container . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

3.7. CWA Section 502(7) defines “navigable waters” as “the waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7). At the time of the violations, “waters of the United States” was defined to include, *inter alia*, all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; tributaries to such waters; and wetlands adjacent to the foregoing waters. *See* 40 C.F.R. § 122.2 (1993).

3.8. Section 402(a) of the CWA provides that EPA may issue NPDES permits that authorize the discharge of any pollutant to navigable waters, but only in compliance with Section 301 of the CWA, 33 U.S.C. § 1311, and such terms and conditions as EPA determines are necessary to carry out the provisions of the CWA. 33 U.S.C. § 1342(a).

3.9. Section 402(p)(2)(B) of the CWA requires an NPDES permit for stormwater discharges associated with industrial activity. 33 U.S.C. § 1342(p)(2)(B).

3.10. On June 4, 2015, EPA issued the 2015 Multi-Sector General Permit (2015 General Permit). The 2015 General Permit authorizes operators of stormwater discharges associated with industrial activity in areas where EPA is the permitting authority to discharge to waters of the United States in accordance with the eligibility and Notice of Intent (NOI) requirements, effluent limitations, inspection, requirements, and other conditions set forth in the 2015 General Permit. The 2015 General Permit became effective in the State of Idaho on August 12, 2015.

General Allegations

3.11. Respondent is a corporation authorized to conduct business in Idaho and is therefore a “person” under CWA Section 502(5), 33 U.S.C. § 1362(5).

3.12. At all times relevant to this action, Respondent operated the Nisula Gravel Pit (Site) located at 50 East Lake Fork Road in McCall, Idaho.

3.13. Respondent conducts industrial activity, including mining, crushing, and screening sand and gravel on approximately 30 acres at the Site and the entire Site is exposed to stormwater.

3.14. At all times relevant to this action, Respondent was authorized to discharge stormwater containing pollutants, as well as certain non-stormwater discharges, from the Site in accordance with the requirements and conditions, including sector-specific conditions, contained

in the 2015 General Permit, NPDES Tracking No.: IDR053083 (Permit). Operations at the Site fall under Sector J, as defined by the 2015 General Permit.

3.15. On July 9, 2019, the Idaho Department of Environmental Quality (IDEQ) received a complaint alleging turbid discharge from the Site into Lake Fork Creek.

3.16. On July 18, 2019, IDEQ followed up on that complaint by conducting an inspection on behalf of EPA to determine Respondent's compliance with the requirements of the Permit and the CWA at the Site.

3.17. According to the Site's October 21, 2015 Stormwater Pollution Prevention Plan (2015 SWPPP), the Site discharges stormwater through a single outfall along the south side of the Site. The 2015 SWPPP indicates that Respondent will discharge stormwater and any non-stormwater discharges authorized by the Permit through this outfall, which discharges to the Valley County Stenberg Pit Detention System, which flows to Lake Fork Creek.

3.18. However, at the time of the inspection, the inspector observed Respondent pumping dewatering water from the Site into a culvert on the west side of the Site that flowed and discharged to Lake Fork Creek.

3.19. The outfall along the south side of the Site and the culvert on the west side of the Site that discharges to Lake Fork Creek are "point sources" within the meaning of Section 502(14) of the CWA.

3.20. Stormwater and non-stormwater discharges associated with industrial activity are "pollutants" within the meaning of Section 502(6) of the CWA.

3.21. Lake Fork Creek flows through Lake Cascade to the North Fork of the Payette River. The Payette River flows to the Snake River. The Snake River Flows to the Columbia River, which flows to the Pacific Ocean. Lake Fork Creek is a perennial stream and a tributary to the Payette River. The Payette River is a tributary to the Snake River, which is a traditional

navigable water and thus a water of the United States. Accordingly, Lake Fork Creek is a “navigable water” under Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and applicable regulations that were in effect at all times relevant to the violations alleged herein.

3.22. Respondent discharged pollutants from a point source into waters of the United States at the Site within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7)

Violations

3.23. The Permit establishes, *inter alia*, authorized and prohibited discharges; requirements related to control measures and best management practices (BMPs); inspection, monitoring, corrective action, and training requirements; as well as the requirement to develop, implement, and maintain a Storm Water Pollution Prevention Plan (SWPPP).

3.24. As described below, from June 2016 through August 2019, Respondent violated CWA Section 301, 33 U.S.C. § 1311, and the conditions and/or limitations of its Permit.

Count 1 – Unauthorized Discharge

3.25. The Permit authorizes stormwater discharges associated with industrial activity and certain allowable non-stormwater discharges into waters of the United States in accordance with the eligibility and Notice of Intent (NOI) requirements, effluent limitations, inspection requirements, and other conditions set forth in the Permit.

3.26. Part 1.1.3 of the Permit describes allowable non-stormwater discharges under the Permit. Specifically, Part 1.1.3.1 of the Permit identifies the only allowable non-stormwater discharges authorized under the Permit for all sectors and Part 1.1.3.3 of the Permit identifies additional allowable non-stormwater discharges for earth-disturbing activities conducted prior to active mining activities for Sector J, including dewatering water that has been treated by an appropriate control. Part 1.1.3.3 specifically notes that these additional allowable non-stormwater discharges are only authorized for earth-disturbing activities conducted prior to

active mining activities, as defined in Part 8.J.3.2 and that after earth-disturbing activities conducted prior to active mining activities have ceased, the only allowable non-stormwater discharges are those listed in Part 1.1.3.1.

3.27. Part 8.J.3.2 defines earth-disturbing activities conducted prior to active mining activities as activities performed for purposes of mine site preparation, including: cutting new rights of way; providing access to a mine site for vehicles and equipment; other earth disturbances associated with site preparation activities on any areas where active mining activities have not yet commenced; construction of staging areas to prepare for erecting structures such as to house project personnel and equipment; and construction of access roads. Active mining activities, as defined by Part 8.J.3.3, relate to the extraction, removal or recovery, and benefaction of non-metallic minerals from the earth; removal of overburden and waste rock to expose mineable minerals; and site reclamation and closure activities.

3.28. On at least July 18, 2019, Respondent discharged non-stormwater dewatering water from an active mining activity related to the extraction, removal or recovery, and benefaction of non-metallic minerals from the earth. Accordingly, Respondent's discharge of dewatering water was not an allowable non-stormwater discharge authorized by the Permit and was in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count 2 – Failure to Select, Design, Install, and Implement Adequate Control Measures

3.29. Part 2.1 of the Permit requires operators to select, design, install, and implement control measures, including BMPs, to minimize pollutant discharges that address selection and design considerations elsewhere in the Permit. Respondent also must select, design, install, and implement these control measures in accordance with good engineering practices.

3.30. Respondent selected control measures, including BMPs, based on an historic site design that does not reflect current conditions at the Site and failed to address the selection and

design considerations in the Permit as applicable to current site conditions, which is also inconsistent with good engineering practices, in violation of Part 2.1 of the Permit.

Count 3 – Failure to Maintain Adequate SWPPP

3.31. Part 5.4 of the Permit requires operators to retain a complete copy of its current SWPPP on site in an accessible format. The SWPPP must be immediately available to, among others, facility employees, EPA, and the state.

3.32. At the time of the inspection, Respondent did not have a copy of the SWPPP at the Site in any format and the SWPPP was not immediately available to facility employees or IDEQ, in violation of Part 5.4 of the Permit.

3.33. Part 5.2.1 of the Permit requires operators to identify in the SWPPP all staff members, by name or title, that comprise the facility's stormwater pollution prevention team and must identify each member's individual responsibilities. Each member of the stormwater pollution prevention team must have ready access to either an electronic or paper copy of applicable portions of the Permit, the most updated copy of the SWPPP, and other relevant documents or information that must be kept with the SWPPP.

3.34. Respondent failed to identify in its SWPPP members of the stormwater pollution prevention team. Additionally, because Respondent failed to keep a copy of the SWPPP at the Site, no employee had ready access to the SWPPP, the applicable portions of the Permit, or any other documentation that must be kept with the SWPPP, in violation of Part 5.2.1 of the Permit.

3.35. Part 5.2.2 of the Permit requires operators to include in the SWPPP a site map that shows, among other things, the locations of all stormwater control measures, the location of all receiving water, including wetlands in the immediate vicinity of the facility, the locations of all stormwater conveyances including ditches, and the locations of certain activities where such activities are exposed to stormwater.

3.36. Respondent failed to identify on its SWPPP site map all of the information required by the Permit, in violation of Part 5.2.2 of the Permit.

3.37. Part 5.2.7 of the Permit requires operators to sign and date the SWPPP in accordance with Appendix B, Subsection 11 of the Permit.

3.38. Respondent failed to sign and date the SWPPP in accordance with Appendix B, Subsection 11 of the Permit, in violation of Part 5.2.7 of the Permit.

Count 4 – Failure to Conduct Training

3.39. Part 2.1.2.8 of the Permit requires operators to train all employees who work in areas where industrial materials or activities are exposed to stormwater, or who are responsible for implementing activities necessary to meet the conditions of the Permit, including all members of the stormwater pollution prevention team.

3.40. Respondent failed to train all employees who work in areas where industrial materials or activities are exposed to stormwater, or who are responsible for implementing activities necessary to meet the conditions of the Permit, which resulted in an unauthorized discharge, in violation of Part 2.1.2.8 of the Permit.

Count 5 – Failure to Take Corrective Action

3.41. Part 4 of the Permit addresses corrective action, including conditions that trigger corrective action, corrective actions that must be implemented, timelines to complete corrective action, and required documentation. Part 4.1 of the Permit requires, in relevant part, that when an unauthorized discharge occurs, operators must review and revise the SWPPP as appropriate. Part 4.4 of the Permit requires that operators document the existence of any condition triggering corrective action, including unauthorized discharges, within 24 hours of becoming aware of such condition, as well as the corrective actions taken or to be taken within 14 days from the time of discovery of the condition. Operators must provide dates when each corrective action was

initiated and completed (or is expected to be completed). In addition, operators must summarize findings related to corrective action in the annual report per Part 7.5 of the Permit.

3.42. Respondent failed to identify the unauthorized discharge of dewatering water as a condition triggering correct action. After the IDEQ inspector alerted Respondent to the unauthorized discharge, Respondent took action to stop the discharge but failed to review and revise, as appropriate, the SWPPP in response to the unauthorized discharge, in violation of Part 4.1 of the Permit. Respondent also failed to document the corrective action in accordance with Part 4 of the Permit and failed to summarize findings related to corrective action in the annual report, in violation of Parts 4.4 and 7.5 of the Permit.

Count 6 – Failure to Adequately Inspect, Monitor, and Report

3.43. Part 3.1 of the Permit requires operators to conduct routine facility inspections at least quarterly. Part 3.1.2 of the Permit requires operators to document the findings of routine facility inspections and maintain such documentation on site with the SWPPP as required by Part 5.5 of the Permit. Part 5.5 of the Permit requires Respondent to retain routine facility inspection reports on site with its SWPPP to demonstrate full compliance with the conditions of the Permit.

3.44. Respondent failed to conduct routine facility inspections at least quarterly, failed to document the findings of routine facility inspections, and/or failed to keep such documentation at the Site with the SWPPP, in violation of Parts 3.1, 3.1.2, and 5.5 of the Permit.

3.45. Part 7.4 of the Permit requires operators to submit all monitoring data collected pursuant to Part 6.2 of the Permit to EPA using EPA's NetDMR system, including quarterly benchmark monitoring no later than 30 days after it receives complete laboratory results for all monitoring outfalls for the reporting period.

3.46. Respondent submitted 14 late Discharge Monitoring Reports to EPA, in violation of Part 7.4 of the Permit.

3.47. Each violation of the conditions of the Permit described above constitutes a violation of Section 301 of the CWA, 33 U.S.C. § 1311.

IV. TERMS OF SETTLEMENT

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

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

4.3. As required by CWA Section 309(g)(3), 33 U.S.C. § 1319(g)(3), 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 \$64,800.

4.4. Respondent consents to the assessment of the civil penalty set forth in Paragraph 4.3 and agrees to pay the total civil penalty within 30 days of the effective date of the Final Order.

4.5. 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.

4.6. Respondent must serve photocopies of the check, or proof of other payment method described in Paragraph 4.5, on the Regional Hearing Clerk and EPA Region 10

Compliance Officer at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
Seattle, WA 98101
R10_RHC@epa.gov

Charissa Bujak
U.S. Environmental Protection Agency
Region 10
950 W Bannock, Suite 900
Boise, ID 83702
bujak.charissa@epa.gov

4.7. 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 set forth in Part V, 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 4.3, 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.

4.8. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. 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.

4.10. Except as described in Subparagraph 4.7.b., above, each party shall bear its own costs in bringing or defending this action.

4.11. 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.

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

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

DATED:

8/2/21

FOR RESPONDENT:



JOSH DAVIS
President
Granite Excavation, Inc.

DATED:

FOR COMPLAINANT:

EDWARD
KOWALSKI

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

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EDWARD KOWALSKI
Date: 2021.07.13
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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Granite Excavation, Inc., Nisula Gravel Pit

McCall, Idaho

Respondent.

DOCKET NO. CWA-10-2021-0116

FINAL ORDER

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

1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of the U.S. Environmental Protection Agency (EPA) Region 10, who has in turn delegated this authority to the Regional Judicial Officer in EPA Region 10.

2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act (CWA) for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

4. This Final Order shall become effective upon filing.

SO ORDERED this _____ day of _____, 2021.

RICHARD
MEDNICK

Digitally signed by
RICHARD MEDNICK
Date: 2021.07.14
15:09:19 -0700

RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: GRANITE EXCAVATION, INC., DOCKET NO.: CWA-10-2021-0116** was served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered via email to:

Caitlin M. Soden
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 10
soden.caitlin@epa.gov

Further, the undersigned certifies that a true and correct copy of the aforementioned document was delivered via email to:

Josh Davis
President
Granite Excavation, Inc.
josh@graniteexcavation.com

DATED this _____ day of _____, 2021.

TERESA
YOUNG

Digitally signed by
TERESA YOUNG
Date: 2021.07.15
09:36:35 -07'00'

Teresa Young
Regional Hearing Clerk
EPA Region 10