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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

JON KOLOSKI,
Shelton, Washington

Respondent.

DOCKET NO. CWA-10-2014-0079

CONSENT AGREEMENT AND
FINAL ORDER

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 309(g)(2)(B) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g)(2)(B).

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has redelegate this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 309(g)(1) and (2)(B) of the CWA, 33 U.S.C. § 1319(g)(1) and (2)(B), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Jon Koloski (“Respondent”) agrees to issuance of, the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Administrator has delegated the authority to sign consent agreements

between EPA and the party against whom a Class II penalty is proposed to be assessed pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Office of Ecosystems, Tribal and Public Affairs, EPA Region 10 (“Complainant”).

2.3. Part III of this CAFO 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 the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. Section 301(a) of the CWA, 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 CWA, 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 CWA, 33 U.S.C. § 1311(a).

3.2. Respondent is a “person” within the meaning of Sections 301(a) and 502(5) of the CWA, 33 U.S.C. §§ 1311(a) and 1362(5).

3.3. Respondent owns, possesses, and/or controls approximately .098 acres of real property in Shelton, Washington. This property is located at 22760 North US Highway 101, Shelton, Washington, Latitude 47.383184°, Longitude -123.148259°. Respondent’s Shelton property is hereinafter referred to as the “Site.”

3.4. At the time of the unauthorized activities described below, the Site extended into the near shore of the Hood Canal, a water which is subject to the ebb and flow of the tide and therefore is a “navigable water” as defined in CWA Section 502(7), 33 U.S.C. § 1362(7), and is a “water of the United States” as defined in 33 C.F.R. § 328.3(a)(1), and 40 C.F.R. § 232.2.

3.5. Without receiving a CWA Section 404 permit and without undertaking the

measures in the National Marine Fisheries Service's December 22, 2011 Biological Opinion, during fall 2011, at times more fully known to Respondent, Respondent and/or persons acting on his behalf, used construction equipment, including a concrete truck and chute, to place dredged and/or fill material into 500 square feet (50 feet by 10 feet) of the near shore of the Hood Canal at the Site. This activity occurred when the Respondent was installing a concrete bulkhead 10 feet waterward of Respondent's original bulkhead and filling behind the newly installed bulkhead

3.6. The construction equipment referenced in Paragraph 3.5 is a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

3.7. The dredged and/or fill materials that Respondent and/or persons acting on his behalf caused to be discharged, as referenced in Paragraph 3.5, included dirt, rock, sand, and concrete, among other things, each of which constitutes "dredged material" and/or "fill material" within the meaning of 40 C.F.R. § 232.2, and each of which constitutes a "pollutant" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

3.8. By causing such dredged and/or fill materials to enter waters of the United States, Respondent engaged in the "discharge of pollutants" from a point source within the meaning of Sections 301(a) and 502(12) of the CWA, 33 U.S.C. §§ 1311(a) and 1362(12).

3.9. Respondent's discharges of dredged and/or fill materials described in Paragraph 3.5 above were not authorized by any permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344. Respondent is therefore in violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).

3.10. Each day the dredged and/or fill material remains in place without the required permit constitutes an additional day of violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

3.11. In accordance with Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, Respondent is liable for the administrative assessment of civil penalties

for violations at the Facility in an amount not to exceed \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500.

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations of this CAFO.

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

4.3. As required by Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA has taken into account the nature, circumstances, extent, and gravity of the alleged violations as well as Respondent's degree of culpability, economic benefit of noncompliance, ability to pay, and other relevant factors. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$60,000.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within 30 days of the effective date of the Final Order contained in Part V of this CAFO.

4.5. Payment under this CAFO must be made by a cashier's check or certified check 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 described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Becky Fauver
U.S. Environmental Protection Agency
Region 10, Mail Stop ETPA-083
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

4.7. If Respondent fails to pay the penalty assessed by this CAFO 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.

4.7.1. Interest. Pursuant to Section 309(g)(9) of the CWA, 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.

4.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 309(g)(9) of the CWA, 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. Except as described in Subparagraph 4.7.2, above, each party shall bear its own costs in bringing or defending this action.

4.10. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

4.11. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

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

DATED:

FOR RESPONDENT:

August 5, 2014 Jon W. Koloski
JON KOLOSKI

DATED:

FOR COMPLAINANT:

August 20, 2014 R. David Allnutt
R. DAVID ALLNUTT, Director
Office of Ecosystems, Tribal and Public Affairs
EPA Region 10

V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO 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 CAFO 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.

5.3. In accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the Washington Department of Ecology has been given the opportunity to consult with EPA regarding the assessment of the administrative civil penalty against Respondent.

5.4. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA has issued public notice of and provided reasonable opportunity to comment on its intent to assess an administrative penalty against Respondent. More than 40 days have elapsed since issuance of this public notice and EPA has received no petition to set aside the Consent Agreement contained herein.

5.5. This Final Order shall become effective upon filing.

SO ORDERED this 23rd day of September, 2014.


M. SOCORRO RODRIGUEZ
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Jon Koloski, Docket No.: CWA-10-2014-0079** 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 to:

Endre Mark Szalay, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

William Lynn, Esq.
Gordon, Thomas, Honeywell, LLP
1201 Pacific Avenue, Suite 2100
Tacoma, Washington 98402

and

Todd Maybrown, Esq.
Allen, Hansen & Maybrown, P.S.
One Union Square
600 University Street, Suite 3020
Seattle, Washington 98101

DATED this 23rd day of Sept., 2014



Signature

Candace Smith
Regional Hearing Clerk
EPA Region 10

