



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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

Ref: 8ENF-W

JAN 13 2009

**FedEx:**  
**RETURN RECEIPT REQUESTED**  
**#8642 1726 6161**

Peak-to-Peak Financial, LLC  
c/o Gary Copperud, Registered Agent  
1234 Trappers Point  
Fort Collins, CO 80524

Re: Findings of Violation and Administrative  
Order for Compliance,  
Docket No. **CWA-08-2009-0002**

Dear Mr. Copperud:

Based on our review of all available information, the United States Environmental Protection Agency ("EPA") has determined that Peak-to-Peak Financial, LLC ("Respondent") is in violation of section 301 of the Clean Water Act, as amended ("CWA"), 33 U.S.C. § 1311. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), among other things, prohibits the discharge of pollutants into waters of the United States except as in compliance with section 404 of the CWA, 33 U.S.C. § 1344. Section 404 of the CWA requires that an authorizing permit be obtained from the United States Army Corps of Engineers ("Corps") prior to the discharge of dredged or fill material into waters of the United States. Waters of the United States include both surface waters and wetlands as defined by 40 C.F.R. § 122.2 and 33 C.F.R. § 328.3.

Specifically, Peak-to-Peak Financial, LLC and/or persons acting on its behalf discharged dredged or fill material into waters of the United States without authorization under the CWA. These discharges of pollutants into wetlands adjacent to Dry Creek occurred on property owned, leased, and/or otherwise controlled by Respondent, located in Southwest ¼ of Section 26, Township 6 North, Range 69 West, Loveland, Larimer County, Colorado (the "Site").

Enclosed please find a document entitled "Findings of Violation and Administrative Order for Compliance" ("Order"), which specifies the nature of the violations and describes actions necessary in order for Respondent to achieve compliance with sections 301 and 404 of the CWA. Pursuant to this Order, within twenty-one (21) calendar days after your receipt of this Order, Respondent must inform EPA in writing of its intent to fully comply with the Order. EPA's authority for such action is provided under section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3).



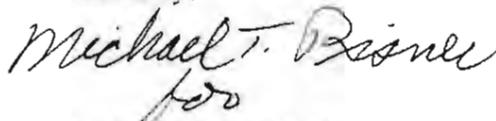
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The CWA requires the Administrator of EPA to take all appropriate enforcement action necessary to secure prompt compliance with the CWA and any order issued thereunder. Section 309 of the CWA, 33 U.S.C. § 1319, authorizes a variety of possible enforcement actions, including filing of a civil or criminal action, administrative penalty action, and/or debarment from Federal contracts and/or loans for any noncompliance with the CWA or an order issued pursuant to the CWA. Please be advised that failure to comply with the requirements of the Order is a violation of that Order and may be enforced through the mechanisms referenced above. Please also be advised that the issuance of this Order does not preclude civil or criminal actions in U.S. District Court pursuant to sections 309(b) or (c) of the CWA, 33 U.S.C. §§ 1319(b) or (c), or assessment of civil penalties pursuant to sections 309(d) or (g) of the CWA, 33 U.S.C. §§ 1319(d) or (g), for the violations cited in the Order or for any other violations that Respondent may have committed prior to or may commit after the issuance of the enclosed Order.

EPA has agreed to notify small businesses of their right to comment on regulatory enforcement activities at the time of an Agency enforcement activity pursuant to the Small Business Regulatory Enforcement and Fairness Act ("SBREFA"). SBREFA does not eliminate your responsibility to comply with the Act or the Order, nor does it create any new rights or defenses under law. We have enclosed a SBREFA information sheet containing further information on compliance assistance resources and tools available to small businesses.

Please review the Order carefully. If you have any questions, the most knowledgeable people on my staff are Wendy Silver, Senior Enforcement Attorney, at 303-312-6637, and Kenneth Champagne, Section 404 Enforcement Officer, at 303-312-6608.

Sincerely,



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

Enclosures

1. Findings of Violation and Administrative Order for Compliance
2. SBREFA Information Sheet

cc: David LaGrone, U.S. Army Corps of Engineers, w/enclosures  
Timothy T. Carey, U.S. Army Corps of Engineers, w/enclosures  
Steve Gunderson, Director, CDPHE, w/enclosures  
Tina Artemis, EPA, 8RC, w/enclosures



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

IN THE MATTER OF	)	FINDINGS OF VIOLATION AND
	)	ADMINISTRATIVE ORDER FOR
Peak-to-Peak Financial, LLC	)	COMPLIANCE
1234 Trappers Point	)	
Fort Collins, CO 80524	)	Docket No. CWA-08-2009-0002
	)	
Respondent.	)	
_____	)	

**I. STATUTORY AUTHORITY**

1. This Findings of Violation and Administrative Order for Compliance ("Order") is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by sections 308 and 309(a) of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1318 and 1319(a). This authority has been properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8. The Order is based on the following findings of violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a), which, among other things, prohibits the discharge of pollutants into waters of the United States except as in compliance with section 404 of the CWA, 33 U.S.C. § 1344.

**II. FINDINGS OF VIOLATION**

2. Respondent Peak-to-Peak Financial, LLC is a Colorado limited liability corporation having a registered office address of 1234 Trappers Point, Fort Collins, Colorado 80524.

3. At all relevant times, Respondent owned, controlled and/or operated property containing wetlands adjacent to Dry Creek located in Southwest ¼ of Section 26, Township 6 North, Range 69 West, Loveland, Larimer County, Colorado (the "Site").

4. Dry Creek is tributary to Horseshoe Lake, which is tributary to Boyd Lake. Boyd Lake is and was at all relevant times, a traditionally navigable water.

5. Sometime in May 2005, Respondent and/or persons acting on its behalf began discharging dredged or fill material into wetlands adjacent to Dry Creek during construction of the Copper Ridge Development.

6. On May 31, 2005, the United States Army Corps of Engineers ("Corps") conducted an inspection of the Site. The Corps found, and EPA through issuance of this Order finds, that Respondent and/or persons acting on its behalf discharged dredged or fill material into wetlands adjacent to Dry Creek at the Site during construction of the Copper Ridge Development.

7. In a letter to the Corps dated April 22, 2006, Respondent's consultant submitted a wetland delineation of the Site and a plan to restore 0.45 acres of wetlands that were filled as a result of Respondent's unauthorized activities described in paragraphs 5 and 6 above.

8. In a letter to Respondent, dated April 27, 2006, the Corps found, and EPA through issuance of this Order finds, that Respondent's activities, as described in paragraphs 5 and 6 of Section II of this Order, required prior authorization from the Corps and that the required authorization had not been sought or granted. In this letter, the Corps confirmed Respondent had agreed to voluntarily restore the impacted wetlands at the Site. Accordingly, the Corps directed Respondent to remove the unauthorized fill from the impacted wetland, submit an

initial restoration report after removal of the unauthorized fill, and subsequently submit annual restoration monitoring reports by December 31 of each year.

9. In a letter to Respondent, dated August 31, 2006, the Corps again directed Respondent, by September 22, 2006, to remove the unauthorized fill from the impacted wetland, notify the Corps once the unauthorized fill had been removed, and subsequently submit annual restoration monitoring reports by December 31 of each year.

10. In a letter to Respondent, dated November 28, 2007, the Corps again directed Respondent, by January 15, 2008, to remove the unauthorized fill from the impacted wetland, notify the Corps once the unauthorized fill had been removed, and subsequently submit annual restoration monitoring reports by December 31 of each year.

11. After numerous unsuccessful attempts to obtain restoration from Respondent, the Corps referred the case to EPA on February 15, 2008, for enforcement in accordance with the "Memorandum of Agreement Between the Department of the Army and the Environmental Protection Agency Concerning Federal Enforcement of the Section 404 Program of the Clean Water Act," dated January 19, 1989.

12. The activities described in paragraphs 5 and 6 of Section II of this Order were performed using common earthmoving vehicles and equipment, all of which were operated by Respondent and/or by persons acting on its behalf.

13. Respondent is a "person" within the meaning of section 502(5) of the CWA, 33 U.S.C. § 1362(5).

14. The discharged dredged or fill material referenced above is and was at all relevant times "dredged material" or "fill material" within the meaning of 33 C.F.R. § 323.2(c) or

33 C.F.R. § 323.2(e), respectively, and “pollutants” within the meaning of section 502(6) of the CWA, 33 U.S.C. § 1362(6).

15. The vehicles and equipment described in paragraph 12 of Section II of this Order are and were at all relevant times each a “point source” within the meaning of section 502(14) of the CWA, 33 U.S.C. § 1362(14).

16. Dry Creek and its adjacent wetlands referenced above are and were at all relevant times “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 CWA, 33 U.S.C. § 1362(7).

17. The placement of dredged or fill material into wetlands adjacent to Dry Creek constitutes the “discharge of pollutants” within the meaning of section 502(12) of the CWA, 33 U.S.C. § 1362(12).

18. Dry Creek and its adjacent wetlands filled and disturbed by Respondent’s unauthorized activities provided various functions and values, including: wildlife habitat for birds, mammals, reptiles and amphibians; water quality enhancement; flood attenuation; and/or aesthetics.

19. Section 301(a) of the CWA, 33 U.S.C. § 1311, prohibits, among other things, the discharge of pollutants by any person into waters of the United States except as in compliance with section 404 of the CWA, 33 U.S.C. § 1344.

20. Section 404 of the CWA, 33 U.S.C. § 1344, sets forth a permitting system authorizing the Secretary of the Army, acting through the Chief of Engineers of the Corps, to issue permits for the discharge of dredged or fill material into navigable waters which are defined as waters of the United States.

21. 33 C.F.R. § 323.3(a) specifies that, unless exempted pursuant to 33 C.F.R. § 323.4, a permit issued by the Corps is required for the discharge of dredged or fill material into waters of the United States.

22. Respondent is not and never has been authorized by a permit issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344, to conduct any of the activities described in paragraphs 5 and 6 of Section II of this Order.

23. The activities conducted by Respondent and/or by persons acting on its behalf as described in paragraphs 5 and 6 of Section II of this Order violate section 301 of the CWA, 33 U.S.C. § 1311. Each discharge of pollutants from a point source by Respondent into waters of the United States without the required permits issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344, constitutes a violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a). Each day the discharges remain in place without the required permits constitutes an additional day of violation of section 301(a).

24. The removal of the dredged or fill material illegally discharged into waters of the United States at the Site and restoration of the impacted wetlands to a condition that closely approximates their condition and function prior to the discharge of the dredged or fill material, can be achieved as a practical matter through commonly used methods of construction, digging, revegetation, and best management practices.

25. Activities to be carried out under this Order are remedial, not punitive, and are necessary to achieve the CWA's objective "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters," as specified in section 101(a) of the CWA, 33 U.S.C. § 1251(a). The removal and restoration described in paragraph 24 of Section II of this Order are

appropriate to alleviate actual and potential harm to water quality, aquatic habitat, and wildlife habitat caused by Respondent's unpermitted activities.

26. This Order was issued after consultation and coordination with the Corps' Omaha District, Denver Regulatory Office.

### **III. ORDER FOR COMPLIANCE**

Based upon the foregoing FINDINGS OF VIOLATION, and pursuant to the authority vested in the Administrator of the EPA pursuant to sections 308 and 309(a) of the CWA, 33 U.S.C. §§ 1318 and 1319(a), as properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8, it is hereby ORDERED:

27. Respondent shall immediately terminate all unauthorized discharges of dredged or fill material, now and in the future, into waters of the United States, unless specifically authorized by the Corps under a valid permit issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344. This prohibition includes all mechanical land clearing, dredging, filling, grading, leveling, installation of utilities, construction, and any other activities that result in a discharge of dredged or fill material into waters of the United States.

28. Within twenty-one (21) calendar days of receipt of this Order, Respondent shall inform EPA in writing of its intent to fully comply with the Order. If Respondent has concerns or questions about the requirements of the Order, EPA requests that Respondent schedule a meeting and/or conference call with EPA within fourteen (14) calendar days of receipt of this Order to discuss these concerns or questions. The scheduling of such a meeting and/or conference call shall not alter Respondent's responsibility to meet any of the deadlines specified in this Order unless otherwise clearly stated in a written communication to Respondent by EPA.

29. Upon EPA approval of the Restoration Plan required by paragraph 31 of Section III of this Order, Respondent shall remove all dredged or fill material that was discharged as a result of the violations identified in this Order and restore the impacted wetlands at the Site to their pre-impact condition and grade, unless otherwise approved by EPA in the Restoration Plan.

30. All dredged or fill material removal and restoration activities shall be conducted in accordance with an EPA-approved Restoration Plan prepared by a consultant experienced in wetland restoration. The consultant also shall directly supervise all work performed pursuant to the EPA-approved Restoration Plan. A statement of the consultant's qualifications, including professional resume and business references, shall be submitted to EPA within twenty-eight (28) calendar days of receipt of this Order.

31. Within sixty (60) calendar days of receipt of this Order, Respondent shall submit to EPA for review, comment, and approval a Restoration Plan, prepared by the consultant referenced in paragraph 30 of Section III of this Order, providing for the: (1) removal of all dredged or fill material that was discharged into wetlands at the Site; and (2) restoration, to their pre-impact configuration and/or grade, of the wetlands that were impacted as a result of Respondent's unauthorized discharges of dredged or fill material at the Site.

32. The Restoration Plan shall be prepared in accordance with "U.S. Environmental Protection Agency, Region 8 - Clean Water Act § 404 Enforcement: Removal/Restoration Plans and Habitat Mitigation/Monitoring Proposals," attached hereto as Exhibit A, and with the guidelines referenced in section 404(b)(1) of the CWA, 33 U.S.C. § 1344(b)(1), and set forth in 40 C.F.R. Part 230. In addition, the Restoration Plan shall include:

- a. A detailed work plan and schedule for completion of all of the work and activities identified by the Restoration Plan, including the application for any required

permits, providing for completion of all aspects of the restoration work no later than six (6) months after EPA approves the Restoration Plan;

- b. Locations and delineations of all wetlands and other waters of the United States included in the restoration. The delineations shall be performed in accordance with the procedures in the "Corps of Engineers Wetlands Delineation Manual, January 1987 - Final Report," including the procedures for atypical situations, and subsequent interpretive guidance published by the Corps;
- c. Grading, planting, and monitoring plans, measurable criteria for success of restoration or mitigation, and provisions for proper disposal of any excess soils or other materials generated during construction and/or restoration;
- d. Detailed professional drawings of all of the work to be accomplished by the Restoration Plan, including plan and profile drawings with contour elevations; and
- e. A description of all costs to prepare and implement the Restoration Plan, including the costs of all consultations, permits, construction, monitoring, land acquisition, etc.

33. EPA will review the Restoration Plan and approve it, approve it with modifications, or reject it with comments. If EPA rejects the Restoration Plan, Respondent shall, within thirty (30) calendar days of receipt of EPA's rejection letter, submit a revised plan that corrects the deficiencies identified by EPA.

34. Upon receiving EPA's written approval of the Restoration Plan, Respondent must make a timely and complete application for each permit necessary to implement the EPA-approved plan and for conducting restoration in accordance with the approved plan, including the

schedule specified therein, with all granted permits, and with all applicable laws. Respondent must demonstrate that all necessary permits have been granted by providing complete copies of all such permits, and any amendments thereto, to EPA within seven (7) calendar days of issuance of each permit.

35. This Order is not a permit or an authorization to place or discharge dredged or fill material in waters of the United States. Respondent shall consult with the Corps at the address and telephone number below to determine if any work to be performed pursuant to this Order requires a permit from the Corps under section 404 of the CWA. If any such permit is required, Respondent shall obtain such permit(s) and provide a copy or copies to EPA pursuant to paragraph 34 of Section III of this Order prior to initiating any work that is to be performed pursuant to this Order.

U.S. Army Corps of Engineers  
Denver Regulatory Office  
9307 South Wadsworth Ave.  
Littleton, CO 80128-6901  
Telephone: 303-979-4120  
Facsimile: 303-979-0602

36. Respondent shall submit two (2) hard copies of the Restoration Plan, one (1) electronic copy of the Restoration Plan, all notifications, and related correspondence to:

Kenneth M. Champagne, 8ENF-W  
U.S. Environmental Protection Agency, Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129  
Telephone: 303-312-6608  
Facsimile: 303-312-7518

A hard copy and electronic copy of the Restoration Plan, all notifications, and related correspondence also shall be provided to:

Wendy Silver, 8ENF-L  
U.S. Environmental Protection Agency, Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129  
Telephone: 303-312-6637  
Facsimile: 303-312-6953

A hard copy and electronic copy of the Restoration Plan also shall be provided to the Corps at the address noted in paragraph 35 of Section III of this Order.

37. In addition to the notification requirements set forth in paragraph 34 of Section III of this Order, after issuance of any Corps authorization for the restoration work, Respondent shall submit all notifications and correspondence to the Corps in accordance with the terms and conditions in the Corps permit.

38. All plans (including, but not limited to, the Restoration Plan), deliverables, reports, specifications, schedules, or attachments required by this Order are, upon approval by EPA, incorporated into this Order. Any non-compliance with such EPA-approved plans, deliverables, reports, specifications, schedules, or attachments shall be deemed a failure to comply with this Order and subject to EPA enforcement.

39. If Respondent leases, subleases, or transfers control and/or ownership of any property, in whole or in part, where work is to be performed pursuant to the Restoration Plan before it has fulfilled its obligations under this Order, Respondent shall provide a copy of this Order and the EPA-approved Restoration Plan to the lessee, sublessee, or transferee not less than thirty (30) calendar days prior to the lease, sublease, or transfer. A lease, sublease, or transfer of such property interest shall not relieve Respondent of any responsibility in the Order unless EPA, Respondent, and the lessee, sublessee, or transferee agree in writing to allow the lessee,

sublessee, or transferee to assume such responsibility. Additionally, at least thirty (30) calendar days prior to such lease, sublease, or transfer, Respondent shall notify EPA regarding the details of the lease, sublease, or transfer at the addresses specified in paragraph 36 of Section III of this Order.

40. Respondent shall allow, or use its best efforts to allow, access by any authorized representatives of EPA, the Corps, the Natural Resources Conservation Service, the U.S. Fish and Wildlife Service, and the Colorado Department of Public Health and Environment, or any of the agencies' contractors, upon proper presentation of credentials, to sites and records relevant to this Order for any of the following purposes:

- a. To inspect and monitor progress of the activities required by this Order;
- b. To inspect and monitor compliance with this Order; and
- c. To verify and evaluate data and other information submitted to EPA.

41. This Order shall in no way limit or otherwise affect EPA's authority, or the authority of any other governmental agency, to enter the Site, conduct inspections, have access to records, issue notices and orders for enforcement, compliance, or abatement purposes, or monitor compliance pursuant to any statute, regulation, permit, or court order.

42. This Order shall be effective upon receipt by Respondent.

43. Please be advised that section 309(d) of the CWA, 33 U.S.C. § 1319(d), authorizes civil penalties of up to \$32,500 per day for each violation of section 301 of the CWA, 33 U.S.C. § 1311, and for each violation of an order issued by the Administrator of EPA under section 309(a) of the CWA, 33 U.S.C. § 1319(a). Additionally, section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes EPA to impose administrative penalties for violations of the

CWA. Further, section 309(c) of the CWA, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations of the CWA.

44. Issuance of this Order shall not be deemed to be an election by the United States to forego any civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA for violations giving rise to the Order:

45. Compliance with the terms and conditions of the Order shall not be construed to relieve Respondent of its obligation to comply with any applicable Federal, state, or local law or regulation.

46. Failure by Respondent to complete the tasks described herein in the manner and time frame specified pursuant to this Order may subject Respondent to a civil action under section 309 of the CWA, 33 U.S.C. § 1319, for violation of this Order.

DATED this 11<sup>th</sup> day of December, 2008.

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

## **Exhibit A**

**U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 8**

**CLEAN WATER ACT § 404 ENFORCEMENT:  
REMOVAL/RESTORATION PLANS  
AND HABITAT MITIGATION/MONITORING PROPOSALS**

**INTRODUCTION**

These guidelines are designed to assist respondents in the preparation of (1) removal and restoration plans and (2) habitat mitigation and monitoring plans associated with projects required under EPA administrative orders. They have been developed from the experiences of many cases and are intended to be merely guidelines. In the event of a conflict between an administrative order and these guidelines, the administrative order controls.

For answers to questions regarding the interpretation of these guidelines or of acceptable restoration and mitigation for a specific project, please contact the person at EPA Region 8 in the Technical Enforcement Program who is handling the case.