

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

RYAN SMITH AND NOAH SMITH

Central, Alaska

Respondents.

DOCKET NO. CWA-10-2024-0020

CONSENT AGREEMENTProceedings 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.

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 \$25,847 per day for each day during which the violation continues, up to a maximum penalty of \$323,081. *See also* 88 Fed. Reg. 986 (January 6, 2023) (2023 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 Ryan Smith and Noah Smith (Respondents) agree 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 redelegated 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 Respondents are 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), 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters by any person, except, *inter alia*, as authorized by a Department of Army permit issued by the United States Army Corps of Engineers (USACE) pursuant to CWA Section 404, 33 U.S.C. § 1344.

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

3.4. The term “navigable waters” is defined as “waters of the United States.” 33 U.S.C. § 1362(7).

3.5. A “point source” includes, *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.” CWA Section 502(14), 33 U.S.C. § 1362(14).

3.5. A “pollutant” includes rock, sand, biological materials, dredged spoil, and solid waste discharged into water. CWA Section 502(6), 33 U.S.C. § 1362(6).

3.6. “Fill material” includes material placed in waters of the United States where the material has the effect of replacing any portion of a water of the United States with dry land, or changing the bottom elevation of any portion of a water of the United States. Examples of fill material include organic and mineral soils, silt, gravel, overburden, woody logs/debris, and materials used to create any structure or infrastructure in the waters of the United States. 40 C.F.R. § 232.2.

3.7. Each discharge of pollutants from a point source that is not authorized by a permit issued pursuant to the CWA constitutes a violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

General Allegations

3.8. Respondents are each individuals and are thus each a “person” as defined by CWA Section 502(5), 33 U.S.C. § 1362(5).

3.9. At all times relevant to this action, “Site” means the properties operated by Respondent Ryan Smith and owned by following persons located near Latitude 65.57033° N., Longitude 144.85272° W.; at Mile Post 126.2 of the Steese Highway, in Central, Alaska.

Respondent Noah Smith:

Tract B of Section 33, Township 9 North, Range 14 East, Fairbanks Meridian, according to the Alaska State Cadastral Survey Plat filed February 7, 1983, as Plat No. 83-18 containing 6.88 acres; Records of the Fairbanks Recording District, Fourth Judicial District, State of Alaska;

Alaska Department of Natural Resources:

Tract D of Section 33, Township 9 North, Range 14 East, Fairbanks Meridian, according to the Alaska State Cadastral Survey Plat filed February 7, 1983, as Plat No. 83-18 containing 149.920 acres; Records of the Fairbanks Recording District, Fourth Judicial District, State of Alaska; and

Alaska Department of Transportation & Public Facilities:

Tract C of Section 33, Township 9 North, Range 14 East, Fairbanks Meridian, according to the Alaska State Cadastral Survey Plat filed February 7, 1983, as Plat No. 83-18 containing 2.790 acres; Records of the Fairbanks Recording District, Fourth Judicial District; State of Alaska.

3.10. The Site contains wetlands adjacent to Crooked Creek, a relatively permanent water. Crooked Creek has a continuous surface connection to Birch Creek, a relatively permanent water. Birch Creek has a continuous surface connection to the Yukon River, a traditional navigable water. As such, the Site's wetlands are "navigable waters" within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7).

3.11. Respondents have 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

3.12. As described below, Respondents violated CWA Section 301, 33 U.S.C. § 1311.

3.13. Between April and September 2021, Respondents and/or persons acting on Respondents' behalf, used certain heavy earthmoving equipment, including an excavator and dump truck, to redistribute and discharge organic and mineral soils, silt, gravel, overburden, logs, and woody debris on the Site, and placed those materials into wetlands.

3.14. The original purpose of Respondents' activities was to mechanically land clear the Site to develop an area for a commercial development. However, Respondents' new purpose is for a residential cabin.

3.15. The heavy earthmoving equipment referenced in Paragraph 3.13 are each a "point source" within the meaning of CWA Section 502(14), 33 U.S.C. § 1362(14).

3.16. The dredged and/or fill materials that Respondents and/or person acting on their behalf caused to be discharged, as referenced in Paragraph 3.13, include organic and mineral soils, silt, gravel, overburden, logs, and woody debris on the Site, each of which constitutes "dredged material" and/or "fill material" within the meaning of 40 C.F.R. § 232.2, each of which constitutes a "pollutant" within the meaning of CWA Section 502(6), 33 U.S.C. § 1362(6).

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

3.18. Respondents' discharge of dredged and fill materials described above was not authorized by any permit issued pursuant to CWA Section 404, 33 U.S.C. § 1344. Respondents are therefore in violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

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

IV. TERMS OF SETTLEMENT

4.1. Respondents admit the jurisdictional allegations contained in this Consent Agreement.

4.2. Respondents neither admit nor deny 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 \$10,000.

4.4. Respondents consent to the assessment of the civil penalty set forth in Paragraph 4.3 and agree 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://www.epa.gov/financial/makepayment>. Payments made by check must be payable to the order of “Treasurer, United States of America” and delivered to the following address:

Address format for standard delivery (no delivery confirmation requested):

U.S. Environmental Protection Agency
P.O. Box 979078
St. Louis, Missouri 63197-9000

Address format for signed receipt confirmation (FedEx, DHL, UPS, USPS certified, registered, etc):

U.S. Environmental Protection Agency
Government Lockbox 979078
3180 Rider Trail S.
Earth City, Missouri 63045

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
R10_RHC@epa.gov

Mark Jen
U.S. Environmental Protection Agency
Region 10
jen.mark@epa.gov

4.7. If Respondents fail 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 Respondents 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 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.

4.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), if Respondents fail to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondents 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 Respondents' 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 expenses 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 representatives of Respondents certifies that they are authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondents to this document.

4.10. The undersigned representatives of Respondents also certify that, as of the date of Respondents' signatures of this Consent Agreement, Respondents have corrected the violation(s) alleged in Part III above other than those alleged violations that will be corrected in accordance with Administrative Order on Consent, Docket No. CWA-10-2023-0069.

4.11. Except as described in Subparagraph 4.7.2, above, each party shall bear its own fees and costs in bringing or defending this action.

4.12. For the purposes of this proceeding, Respondents expressly waive any affirmative defenses and the right to contest the allegations contained in the Consent Agreement and to appeal the Final Order.

4.13. The provisions of this Consent Agreement and the Final Order shall bind Respondents and their agents, servants, employees, successors, and assigns.

4.14. The above provisions are STIPULATED AND AGREED upon by Respondents and EPA Region 10.

DATED:

12-20-23

FOR RESPONDENT RYAN SMITH:

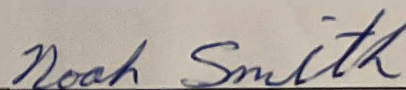


RYAN SMITH

DATED:

12-20-23

FOR RESPONDENT NOAH SMITH:



NOAH SMITH

FOR COMPLAINANT:

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

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Respondents.

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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. Respondents are 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 Respondents' 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.

IT IS SO ORDERED.

RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10