



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10  
1200 Sixth Avenue  
Seattle, Washington 98101

OCT 28 1999

Reply To  
Attn Of: ECO-083

SENT VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Jack Golden  
P.O. Box 64  
Oysterville, WA 98641-0064

RE: Jack Golden  
Administrative Complaint  
Docket No. CWA-10-99-0188

Dear Mr. Golden:

Enclosed is an Administrative Complaint for Civil Penalties ("Complaint") which the U.S. Environmental Protection Agency ("EPA") is issuing to Jack Golden. This Complaint is being issued pursuant to Section 309(g) of the Clean Water Act ("Act"), and 33 U.S.C. § 1319(g), as a result of EPA's determination that you unlawfully discharged dredged and/or fill material into waters of the United States in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). The Complaint requests that a penalty of \$40,000 be assessed against you for the violation.

As described more fully in the Complaint, you may resolve this action at any time after ten days have elapsed following the close of the public comment period by mailing the proposed penalty in full to EPA. You also have the right to request a hearing to contest the factual allegations in the Complaint. If you admit the allegations, or if the allegations are found to be true after you have had an opportunity for a hearing, you have the right to contest the penalty proposed in the Complaint. A copy of the procedures EPA follows in cases of this kind is enclosed. Please note the requirements for an Answer in §§22.15 and 22.17 of these procedures. If you wish to contest the allegations in the Complaint or the penalty proposed in the Complaint, within thirty (30) days of receipt of the enclosed Complaint you must file an Answer with the EPA Regional Hearing Clerk at the following address:

RECEIVED  
99 OCT 28 PM 4:02  
HEARINGS CLERK  
EPA--REGION 10

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10

IN THE MATTER OF:	)	ADMINISTRATIVE COMPLAINT
	)	FOR PENALTIES
	)	
Jack Golden,	)	Proceeding to Assess Class II
	)	Civil Penalty Under Section
Oysterville, WA.	)	309(g) of the Clean Water Act
	)	
Respondent.	)	Docket No. CWA-10-99-0188

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**STATUTORY AUTHORITY**

1. This Administrative Complaint is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 309(g) of the Clean Water Act ("Act"), 33 U.S.C. § 1319(g). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 10.

2. Pursuant to Section 309(g)(2)(B) of the Act, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," 64 Fed. Reg. 40138-190 (July 23, 1999) which will be codified in 40 C.F.R. Part 22 ("Part 22 Rules"), Complainant hereby proposes the assessment of a civil

ADMINISTRATIVE COMPLAINT  
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U.S. Environmental Protection Agency  
1200 Sixth Avenue  
Seattle, Washington 98101  
(206) 553-1810

penalty against Jack Golden ("Respondent") for the unlawful discharge of pollutants into navigable waters in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

**GENERAL ALLEGATIONS**

3. Section 301(a) of the Act, 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 Act, 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 Act, 33 U.S.C. § 1311(a).

4. Jack Golden, Respondent, is an individual and therefore a "person" within the meaning of Section 502 (5) of the Act, 33 U.S.C. § 1362(5).

5. Respondent owns, possesses, and controls certain property on Oysterville Road, in Oysterville, Washington. Respondent's property is hereinafter referred to as the "Site." The Site covers approximately 250 acres. The Site has the following legal description: Section 4, Township 12 North, Range 11 West, W.M., Oysterville, Pacific County, Washington.

6. The Site contains palustrine forested wetland habitat which is part of a mosaic wetlands/uplands system adjacent to Willapa Bay.

7. On or before January 5, 1998, Respondent commenced mechanized landclearing and logging of the wetlands in the mixed wetlands/uplands portion of the Site. The activity involved excavation and redeposition of vegetation and topsoil throughout a large area that extends north/south along the entire western portion of the Site.

8. In addition, Respondent excavated and redeposited vegetation and topsoil along a one-half mile section of mixed wetlands/uplands along the eastern portion of the Site.

9. Aerial photographs taken of the Site before and after the time that the activities

described in Paragraphs 8 and 9 occurred and inspections of the Site by EPA and the Corps disclose that approximately 15 acres of wetland areas were impacted by these activities.

10. The wetland portions of the Site (“wetland areas”) were, at all times relevant to the Complaint, “navigable waters” and “waters of the United States” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), 33 C.F.R. § 328.3(a), and 40 C.F.R. § 122.2.

11. The materials discharged by Respondent to the wetland areas of the Site remain in place to this date.

12. The soil and vegetation discharged to the wetland areas of the Site are “pollutants” within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), and “fill material” within the meaning of 40 C.F.R. § 232.2.

13. The discharge of dredged and fill material described in Paragraphs 7 and 8 above was accomplished by the use of an excavator and other heavy equipment.

14. The excavator and heavy equipment are a “point source” within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

15. By causing such dredged and fill material to enter waters of the United States, Respondent has engaged in the “discharge of pollutants” from a point source within the meaning of Sections 301 and 502(12) of the Act, 33 U.S.C. §§ 1311 and 1362(12).

16. Respondent’s discharge of pollutants described in Paragraph 7 and 8 above was not authorized by any permit issued pursuant to Section 402 or 404 of the Act, 33 U.S.C. §§ 1312 or 1314. Respondent therefore violated Section 301 of the Act, 33 U.S.C. § 1311.

#### **PROPOSED PENALTY**

17. Under Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Parts 19 and 22, Respondent is liable for the administrative assessment of civil

penalties in an amount not to exceed \$11,000 per day per violation, up to a maximum of \$137,500.

18. Each day the discharged materials remain in waters of United States constitutes an additional day of violation.

19. Based on the foregoing allegations, and pursuant to the authority of Section 309(g)(2)(B) of the Act, Complainant proposes that an administrative penalty of \$40,000 be assessed against Respondent. Complainant proposes this penalty amount after considering the applicable statutory penalty factors in Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3). These are: the nature, circumstances, extent, and gravity of the violation, or violations, and, with respect to Respondent, 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.

20. The proposed penalty has been calculated based on the facts alleged in this Complaint and the factors in Section 309(g)(3) of the Act.

21. The nature, circumstances, extent, and gravity of the violation described above were significant. Respondent's activities affected a significant amount of high quality wetlands by severely impairing their hydrological and ecological functions.

22. Respondent's degree of culpability is high. Respondent was aware that a permit under Section 404 of the Act was required to authorize his activities. Respondent received a previous Notice of Violation in 1995 from the Corps of Engineers for landclearing and placement of dredged/fill material in wetlands on the Site without authorization of a permit. The area of violation was restored pursuant to an order for restoration issued by the Corps.

23. Respondent, as well as other "persons," may be deterred from future violations

by the assessment of a penalty in this case. In particular, assessment of a penalty for the violation involved in this action may encourage Respondent and others similarly situated to properly apply for and obtain Section 404 permits prior to discharging into waters of the United States.

**ANSWER TO COMPLAINT/OPPORTUNITY TO REQUEST HEARING**

24. In accordance with 40 C.F.R. § 22.15, Respondent's Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. Failure to admit, deny, or explain any material factual allegation contained in the Complaint constitutes an admission of the allegation. The Answer shall also state: (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) the facts which Respondent disputes; (3) the basis for opposing the proposed relief; and (4) whether a hearing is requested.

25. Respondent may, pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), within thirty (30) days of receipt of this Complaint, request a hearing on the civil penalty assessment proposed herein, and at the hearing may contest any material fact contained in this Complaint, and also may contest the appropriateness of the proposed penalty described above.

26. The procedures for the hearing, if one is requested, are set out in the Part 22 Rules, a copy of which is enclosed.

27. Any answer and request for a hearing must comply with 40 C.F.R. § 22.15 and must be submitted to the attention of the Regional Hearing Clerk, at the following address:

U.S. Environmental Protection Agency  
Region 10  
1200 Sixth Avenue, ORC-158  
Seattle, Washington 98101  
Attn: Regional Hearing Clerk

28. If Respondent requests a hearing on this proposed penalty assessment, members of the public, to whom EPA is obligated to give notice of this proposed action, will have a right under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B), to be heard and to present evidence on the appropriateness of the penalty assessment. If Respondent does not request a hearing, EPA will issue a final order assessing administrative penalties and any members of the public who commented on this proposed assessment during the thirty (30) day period following Respondent's receipt of this document will have an additional 30 days to petition EPA to set aside the final order assessing administrative penalties and to request EPA to hold a hearing thereon. EPA will grant the petition and will hold a hearing provided the petitioner's evidence is material and was not considered by EPA in the issuance of the final order assessing administrative penalties.

29. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), shall affect Respondent's continuing obligation to comply with the Clean Water Act, with every term and condition of any applicable Corps permit, and with any separate Compliance Order issued to Respondent under Section 309(a) of the Act, 33 U.S.C. § 1319(a), concerning the violations alleged herein.

**INFORMAL CONFERENCE**

30. EPA encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations. Whether or not Respondent requests a hearing, Respondent may request an informal settlement

conference to discuss the facts of this case, the proposed penalty, and the possibility of settling this matter. To request such a settlement conference, please contact:

Deborah Hilsman  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 10  
1200 Sixth Avenue, ORC-158  
Seattle, Washington 98101  
(206) 553-1810

Please note that a request for an informal settlement conference does not extend the thirty (30) day period for filing a written Answer to this Complaint, nor does it waive Respondent's right to request a hearing.

31. Instead of filing a written Answer requesting a hearing, Respondent may choose to pay the total amount of the proposed penalty. In order to do this, Respondent must pay the proposed penalty within thirty (30) days after receipt of the Complaint and file a copy of the check or other instrument of payment with the Regional Hearing Clerk (at the address noted in Paragraph 27 of the Complaint). Respondent can obtain a thirty (30) day extension to pay the proposed penalty in full without filing an Answer by complying with the requirements of 40 C.F.R. § 22.18(b). A copy of the check or other instrument of payment should be provided to the EPA Assistant Regional Counsel identified above. Payment of the penalty should be made by sending a cashier's or certified check payable to the "Treasurer, United States of America," in the full amount of the penalty proposed in this Complaint to the following addressee:

Mellon Bank  
U. S. Environmental Protection Agency, Region 10  
P.O. Box 360903M  
Pittsburgh, Pennsylvania 15251

A transmittal letter indicating Respondent's name, complete address, and this case docket number must accompany the payment. Such payment of the civil penalty terminates this administrative litigation, but does not satisfy Respondent's legal obligation to comply with the Clean Water Act.

Dated this 28<sup>th</sup> day of October, 1999.

  
CHUCK CLARKE  
Regional Administrator  
US EPA, Region 10

ADMINISTRATIVE COMPLAINT  
FOR PENALTIES -8-  
Docket No. CWA-10-99-0188

U.S. Environmental Protection Agency  
1200 Sixth Avenue  
Seattle, Washington 98101  
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the "Administrative Complaint for Penalties" In the Matter of Jack Golden, Pacific County, Washington, Docket No. CWA-10-99-0188, was delivered to the following persons, in the manner specified, on the date below:

Original and one copy hand-delivered:

Mary Shillcutt, Regional Hearing Clerk  
U.S. Environmental Protection Agency  
1200 Sixth Avenue, Mail Stop ORC-158  
Seattle, Washington 98101;

Copy, together with copies of the Part 22 Rules, by certified mail, return receipt requested and fax to:

Mr. Jack Golden  
Post Office Box 876  
Ocean Park, WA 98640

Date: 10/28/99

  
Lydia Arneson  
U.S. EPA, Region 10