

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:) DOCKET NO.
) CWA-10-2021-0035
Carl Grissom, an Individual,)
) **COMPLAINT**
West Richland, Washington,)
)
Respondent.)
_____)

I. STATUTORY AUTHORITY

1.1. This administrative Complaint (“Complaint”) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA” or “Complainant”) by Section 309(g)(2)(B) of the Federal Water Pollution Control Act (“CWA”), 33 U.S.C. § 1319(g)(2)(B). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 10, who in turn has redelegated this authority to the Director of the Enforcement and Compliance Assurance Division in Region 10.

1.2. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22 (“Rules of Practice”), EPA hereby proposes the assessment of a civil penalty against Carl Grissom (“Respondent”) for violations of the CWA.

1.3. 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), EPA shall notify the State of Idaho within 30 days following proof of service of this Complaint and provide the State of Idaho with an opportunity to consult with EPA on this matter.

II. STATUTORY AND REGULATORY BACKGROUND

2.1. As provided in Section 101(a), the objective of the CWA is “to restore and maintain the chemical, physical, and biological quality of the Nation’s waters.” 33 U.S.C. § 1251(a). Congress enacted the CWA to prevent, reduce, and eliminate water pollution in the United States and to conserve the waters of the United States for the protection and propagation of fish and aquatic life and wildlife, recreational purposes, and the use of such waters for public drinking water, agricultural, industrial, and other uses. 33 U.S.C. § 1252(a).

2.2. Section 301(a) of the CWA prohibits any person from discharging a pollutant into navigable waters, except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. 33 U.S.C. § 1311(a).

2.3. Section 502(5) of the CWA defines “person” to include an individual. 33 U.S.C. § 1362(5).

2.4. Section 502(12) of the CWA 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).

2.5. Section 502(6) of the CWA defines “pollutant” to include, *inter alia*, dredged spoil, rock, and sand. 33 U.S.C. § 1362(6).

2.6. Section 502(14) of the CWA defines “point source” to include “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit . . . or vessel or other floating craft, from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

2.7. Section 502(7) of the CWA defines “navigable waters” as “waters of the United States.” 33 U.S.C. § 1362(7). In turn, at the time of the discharge, “waters of the United States”

was defined to include waters that were currently used, were used in the past, or that may have been susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide, and tributaries to those waters. 40 C.F.R. § 122.2.

2.8. In 2013, pursuant to Section 402 of the CWA, EPA issued NPDES General Permit No. IDG370000 (“General Permit”), which authorizes “owners and operators of placer mining operations in Idaho with small suction dredges . . . to discharge to waters of the United States, except those sites excluded from coverage under this NPDES permit, in accordance with effluent limitations.” The General Permit became effective on May 6, 2013, and expired on April 30, 2018.

2.9. On April 25, 2018, EPA reissued the General Permit authorizing “owners and operators of small suction dredges in Idaho . . . to discharge to waters of the United States, except those sites excluded from coverage under this NPDES permit, in accordance with effluent limitations, monitoring requirements, and other conditions set forth herein.” The General Permit became effective on June 1, 2018, and will expire on May 31, 2023.

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

2.11. Section 309(g)(1) of the CWA authorizes EPA to assess administrative penalties against any person who violates Section 301 of the CWA. 33 U.S.C. § 1319(g)(1).

III. ALLEGATIONS

3.1. Respondent is an individual and is thus a “person” as defined in Section 502(5) of the CWA. 33 U.S.C. § 1362(5).

3.2. Respondent conducted placer mining activities on the South Fork Clearwater River.

3.3. In placer mining, miners dredge the bottom of the stream bed using either hydraulic or mechanical systems to dig through the rock and sand at the bottom of a stream to extract gold or other heavy metals and minerals from stream bed, or alluvial, deposits.

3.4. Respondent used a suction dredge, the most common hydraulic dredging system for small and recreational gold placer miners. Small suction dredge mining involves using a high-pressure pump to create suction through a flexible intake hose to excavate streambed sediments. Once excavated, streambed sediments are vacuumed through the intake nozzle and processed through a sluice tray mounted on floats. Dense particles, including gold, are trapped in the sluice box tray while all other stream bed material, such as rock and sand, is discharged from suction dredge outlets and into the stream as tailings or turbidity plumes that consist of suspended particles of rock and sand.

3.5. Respondent applied for and received a permit from the Idaho Department of Water Resources (“IDWR”) that authorized him to alter the South Fork Clearwater River in accordance with the conditions set forth therein.

3.6. In its permit authorization, IDWR stated that Respondent was “responsible for complying with all local, state, and federal permit requirements and/or authorizations prior to operating dredge mining equipment at the location authorized under this permit” and that the IDWR permit “**does not serve in lieu of other permits that may be required by other state or federal agencies.**” (emphasis in original).

3.7. The wastewater produced from placer mining includes sediment and suspended particles, which constitute “pollutants” under the CWA. 33 U.S.C. § 1362(6). Accordingly, the

discharge of sediment and suspended particles from placer mining operations, including suction dredges, into waters of the United States requires an NPDES permit issued pursuant to the CWA. 33 U.S.C. §§ 1311(a) and 1342.

3.8. To apply for coverage under the General Permit, an applicant must submit a Notice of Intent (“NOI”) to EPA and wait for written authorization from EPA before operating.

3.9. Respondent did not submit an NOI to EPA and therefore failed to obtain coverage under the General Permit. Respondent did not receive any authorization pursuant to the CWA.

3.10. On October 2, 2018, EPA received a citizen complaint from the Idaho Conservation League (“ICL”) regarding unauthorized discharges of pollutants from suction dredges on the South Fork Clearwater River. In its complaint, ICL provided investigative reports of unauthorized dredging on the South Fork Clearwater River, including documentation of Respondent’s suction dredge activity from July 15, 2018 through August 15, 2018.

3.11. On July 15, 2018, Respondent operated a suction dredge in the South Fork Clearwater River near Mile Post 32 on State Highway 14.

3.12. On July 17, 2018, Respondent operated a suction dredge in the South Fork Clearwater River near Mile Post 32 on State Highway 14. Respondent’s suction dredge activities caused a sediment plume that extended approximately 250 feet downstream of Respondent’s suction dredge.

3.13. On July 18, 2018, Respondent operated a suction dredge in the South Fork Clearwater River near Mile Post 34.5 on State Highway 14. Respondent’s suction dredge activities caused a sediment plume that extended approximately 845 feet downstream of Respondent’s suction dredge.

3.14. On July 22, 2018, Respondent operated a suction dredge in the South Fork Clearwater River near Mile Post 34.5 along State Highway 14.

3.15. On July 25, 2018, Respondent operated a suction dredge in the South Fork Clearwater River near Mile Post 34.5 along State Hwy 14.

3.16. On July 27, 2018, Respondent operated a suction dredge on the South Fork Clearwater River near Mile Post 39 along State Highway 14. Respondent's suction dredge activities caused a sediment plume that extended approximately 820 feet downstream of Respondent's suction dredge.

3.17. On July 30, 2018, Respondent operated a suction dredge on the Southfork Clearwater River. Respondent's suction dredge activities caused a sediment plume that extended at least 1000 feet downstream of Respondent's suction dredge.

3.18. On August 1, 2018, Respondent operated a suction dredge on the South Fork Clearwater River near Mile Post 39.1 along State Highway 14.

3.19. On August 12, 2018, Respondent operated a suction dredge in the South Fork Clearwater River near Mile Post 39.1 and 34.5 along State Highway 14 to backfill the holes that resulted from Respondent's previous suction dredge activity.

3.20. The dredged spoil, rock, and sand Respondent discharged from his suction dredge constitute "pollutants" as defined by Section 502(6) of the CWA. 33 U.S.C. § 1362(6).

3.21. The suction dredge Respondent operated on the South Fork Clearwater River constitutes a "point source" as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

3.22. The South Fork Clearwater River flows to the Clearwater River, which flows to the Snake River. The Snake River flows to the Columbia River and eventually to the Pacific Ocean. The South Fork Clearwater River is a tributary to the Clearwater River, a traditional

navigable water. The Clearwater River is a tributary to the Snake River, a traditional navigable water. The Snake River is a tributary to the Columbia River, another traditional navigable water. Accordingly, the South Fork Clearwater River is a “water of the United States” as defined by 40 C.F.R. § 122.2 and is therefore a “navigable water” within the meaning of Section 502(7) of the CWA. 33 U.S.C. § 1362(7).

3.23. Respondent “discharged a pollutant” within the meaning of Section 502(12) of the CWA when he discharged dredged spoil, rock, and sand from his suction dredge into a navigable water. 33 U.S.C. § 1362(12).

3.24. None of Respondent’s discharges of a pollutant were authorized by a permit issued pursuant to Section 402 of the CWA. 33 U.S.C. § 1342.

3.25. Accordingly, on July 15, 17, 18, 22, 25, 27, and 30, 2018 and on August 1 and 12, 2018, Respondent discharged a pollutant from a point source into navigable waters without CWA authorization.

3.26. Each unauthorized discharge of a pollutant without authorization constitutes a violation of Section 301(a) of the CWA. 33 U.S.C. § 1311(a).

IV. PROPOSED PENALTY

4.1. Based on the foregoing allegations, Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a). Consequently, pursuant to 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 in an amount not to exceed \$22,584 per day for each day during which the violation occurred, up to a maximum of \$282,293.

4.2. Respondent discharged pollutants to the South Fork Clearwater River, a water of the United States, on July 15, 17, 18, 22, 25, 27, and 30, 2018 and on August 1 and 12, 2018

without authorization issued pursuant to a CWA Section 402 NPDES permit, in violation of Section 301(a) of the CWA. 33 U.S.C. § 1311(a).

4.3. In accordance with Section 22.14(a)(4)(ii) of the Rules of Practice, 40 C.F.R. § 22.14(a)(4)(ii), Complainant proposes that a Final Order be issued to Respondent assessing an administrative penalty in an amount not to exceed \$180,672, taking into account the nature, circumstances, extent and gravity of the 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 violations, and such other matters as justice may require. 33 U.S.C. § 1319(g)(3).

4.4. *Nature, Circumstances, Extent, and Gravity of the Violations:* Respondent's unauthorized discharge of pollutants into waters of the United States is a serious violation that caused harm to the environment and significantly undermines the CWA's regulatory scheme.

4.4.1 The NPDES permit program was created to allow for certain discharges in specified surface waters in a way that minimizes the potential for harm to water quality, including to protect and conserve fish and aquatic life and wildlife.

4.4.2 The NPDES permit program enables EPA, in part, to provide additional protection for waterbodies that are designated as critical habitat under the Endangered Species Act ("ESA") and for areas that are occupied by ESA-listed aquatic species to ensure the protection of those species. The South Fork Clearwater River is occupied by Snake River fall Chinook salmon and Snake River Basin steelhead, both of which are listed as threatened under the ESA. The South Fork Clearwater River is designated critical habitat for Snake River Basin steelhead. The South Fork Clearwater River is also also designated as Essential Fish Habitat ("EFH") for Chinook and Coho salmon

pursuant to Section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act. EFH is habitat considered essential for fish to survive and reproduce. Suction dredge operations damage spawning and rearing habitat for fish and limits efforts to restore degraded habitat.

4.4.3 The NPDES permit program also provides additional protections for waterways listed as impaired for pollutants to protect those waters from further degradation. The South Fork Clearwater River is listed as impaired for sediment and for temperature pursuant to Section 303(d) of the CWA. 33 U.S.C. § 1313(d).

4.4.4 Because of potential impacts to threatened species, critical and Essential Fish Habitat, and water quality, the General Permit includes limitations for suction dredging on the South Fork Clearwater River. Operators' compliance with the General Permit's effluent limitations, monitoring requirements, and other conditions is critical to the NPDES regulatory program. Operating without permit authorization or failing to adhere to the effluent limitations, monitoring requirements, and other conditions undermines the statutory and regulatory purposes of the CWA.

4.5. *Respondent's Ability to Pay:* Complainant has no information to indicate that Respondent is unable to pay a penalty up to the statutory maximum penalty for the alleged violations. Respondent bears the burden to prove an inability to pay. Complainant will consider any information Respondent submits related to his ability to pay a penalty.

4.6. *Respondent's History of Prior Violations:* Complainant is not aware of any prior violations.

4.7. *Respondent's Degree of Culpability:* Respondent has demonstrated a high degree of culpability. As set forth in Paragraph 3.7, IDWR notified Respondent that a federal permit

may be required for suction dredging in the South Fork Clearwater River. Respondent elected not to apply for coverage under the General Permit.

4.8. *Respondent's Economic Benefit:* Respondent received an economic benefit by dredging and removing naturally occurring metals, including gold, from the South Fork Clearwater River.

4.9. *Other Matters as Justice May Require:* No facts justify the use of this factor to adjust the penalty amount.

V. OPPORTUNITY TO REQUEST A HEARING

5.1. Respondent has the right to file an Answer and request a hearing on any material fact contained in this Complaint or on the appropriateness of the penalty proposed herein. Upon request, the Presiding Officer may hold a hearing for the assessment of these civil penalties, conducted in accordance with the provisions of the Rules of Practice and the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.* A copy of the Rules of Practice accompanies this Complaint.

5.2. Respondent's Answer, including any request for hearing, must comply with the requirements set forth in 40 C.F.R. § 22.15 and must be filed with the Regional Hearing Clerk for Region 10 (RHC) within thirty (30) days after service of the Complaint, as determined by reference to 40 C.F.R. § 22.7(c).

5.3. The Rules of Practice provide that “[t]he Presiding Officer . . . may by order authorize or require filing by facsimile or other electronic filing system subject to any appropriate conditions and limitations.” 40 C.F.R. § 22.5(a)(1).

5.4. Pursuant to their authority as Presiding Officers, the Regional Judicial Officers of EPA Region 10 have issued a Standing Order to designate EPA's Outlook-based email system to

serve as EPA Region 10's Electronic Filing System (EFS). The Standing Order does not require that documents be filed using the email EFS. Rather, it authorizes the use of the email EFS as an option, in addition to those methods already authorized by the Rules of Practice for the filing of documents with the RHC. A copy of the Standing Order accompanies this Complaint.

5.5. If Respondent elects to use the email EFS, Respondent may email its Answer to R10_RHC@epa.gov.

5.6. If Respondent elects not to use the email EFS, Respondent must send the original and one copy of its Answer to this Complaint to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 155, Mail Stop ORC-11-C07
Seattle, Washington 98101

VI. FAILURE TO FILE AN ANSWER

6.1. In accordance with 40 C.F.R. § 22.15(b), 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. Respondent's Answer must also state: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) any facts which Respondent intends to place at issue; (3) the basis for opposing any proposed relief; and (4) whether a hearing is requested. Failure to admit, deny, or explain any material factual allegation contained herein constitutes an admission of the allegation.

6.2. If Respondent fails to file a timely Answer to this Complaint, Respondent may be found in default pursuant to 40 C.F.R. § 22.17, which constitutes an admission of all of the facts alleged in the Complaint and a waiver of the right to a hearing.

6.3. Pursuant to 40 C.F.R. § 22.17(d), the penalty assessed in any default order shall become due and payable by Respondent without further proceedings thirty (30) days after the default becomes final.

VII. INFORMAL SETTLEMENT CONFERENCE

7.1. 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, Respondent should contact:

J. Matthew Moore
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 155, Mail Stop ORC-11-C07
Seattle, Washington 98101
(206) 553-6266
moore.johnm@epa.gov

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

7.3. Respondent is advised that, after the Complaint is issued, the Rules of Practice prohibit any *ex parte* (unilateral) discussion of the merits of these or any other factually related proceedings with the Administrator, the Environmental Appeals Board or its members, the Regional Judicial Officer, the Presiding Officer, or any other person who is likely to advise these officials in the decision of this case.

VIII. RESERVATIONS

8.1. Neither assessment nor payment of an administrative civil penalty pursuant to this Complaint shall affect Respondent's continuing obligation to comply with: (1) the CWA and all other environmental statutes and (2) the terms and conditions of all applicable CWA permits.

Dated this ____ day of _____

EDWARD J. KOWALSKI, Director
Enforcement and Compliance Assurance Division