



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9
75 Hawthorne Street
San Francisco, CA 94105-3901



IN THE MATTER OF: ) Docket No. CWA-09-2022-0033
)
)
BRETT WOMACK )
)
Lake Almanor, California ) COMPLAINT/CONSENT AGREEMENT
) AND FINAL ORDER
)
Respondent. ) Class II Administrative Penalty Proceeding under
) Section 309(g) of the Clean Water Act, 33 U.S.C. §
) 1319(g), and 40 C.F.R. §§ 22.13(b) and 22.18
)

CONSENT AGREEMENT

I. AUTHORITY AND PARTIES

1. This is a Class II civil administrative penalty proceeding under section 309(g)(1)(A) and (2)(B) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(1)(A) and (2)(B), and 40 C.F.R. Part 22 (Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits).

2. Pursuant to section 309(g) of the CWA, 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency ("EPA") is authorized to assess administrative penalties against persons who violate section 301(a) of the CWA, 33 U.S.C. § 1311(a). The Administrator has delegated this authority to the Regional Administrator of the EPA Region 9, who in turn has delegated this authority to the Director of the Enforcement and Compliance Assurance Division, hereinafter "Complainant."

3. Respondent is Brett Womack of Lake Almanor, California.

4. This Consent Agreement and Final Order ("CA/FO"), which contains the elements of a complaint required by 40 C.F.R. § 22.14(a), simultaneously commences and concludes this penalty proceeding, as authorized by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

NOW THEREFORE, before the taking of any testimony, without adjudication of any issue of fact or law, and upon consent by EPA and Respondent, it is hereby STIPULATED, AGREED, AND ORDERED:

## **II. STATUTORY AND REGULATORY FRAMEWORK**

5. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), makes it unlawful for a person to discharge pollutants, including dredged or fill material, from a point source into waters of the United States, except as authorized by a CWA permit. Under section 404 of the CWA, 33 U.S.C. § 1344, the U.S. Army Corps of Engineers (“Corps”) issues permits for the discharge of dredged or fill material into waters of the United States.

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

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

8. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” to include “any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged.”

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

10. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “waters of the United States, including the territorial seas” and its implementing regulations.

11. Regulations codified at 33 C.F.R. § 328.3(c)(7) define “ordinary high water mark” (OHWM) as the “line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.”

12. Regulations codified at 33 C.F.R. § 323.2(e)(1) define “fill material” as “material placed in waters of the United States where the material has the effect of: (i) Replacing any portion of a water of the United States with dry land; or (ii) Changing the bottom elevation of any portion of a water of the United States.”

13. Pursuant to CWA section 309(g), 33 U.S.C. § 1319(g), and 40 C.F.R. Part 19, EPA may assess a Class II civil administrative penalty of up to \$23,989 per day of violation, not to exceed \$299,857 in total, against a person for CWA section 301(a) violations that occurred after November 2, 2015, where penalties are assessed on or after December 23, 2020.

## **III. GENERAL ALLEGATIONS**

14. Brett Womack (“Respondent”) is a “person” within the meaning of section 502(5) of the CWA, 33 U.S.C. § 1362(5).

15. Respondent is the sole owner of “Womack Construction,” a construction company located in Lake Almanor, California that has been operating since approximately 1984 and which, *inter alia*, conducts residential bank stabilization projects in the Lake Almanor area.

16. Respondent was hired by the property owners of two residences located at 656 Peninsula Drive and 658 Peninsula Drive to conduct bank stabilization projects at their respective residences in late 2020. The property owners obtained applicable permits and approvals from the U.S. Army Corps of Engineers (“Corps”), Central Valley Water Quality Resources Control Board (“RB5”), the California Department of Fish and Wildlife (“CDFW”), and Pacific Gas & Electric (“PG&E”).

17. Respondent’s bank stabilization activities at the 656 and 658 Peninsula Drive properties began on or about November 16, 2020.

18. On November 19, 2020, staff from RB5 conducted an inspection and observed Respondent and his employees actively using the lakebed below the OHWM located near 636-646 Peninsula Drive as a staging area (hereafter, “Staging Area”) for the bank stabilization projects. Respondent and his employees were operating heavy machinery and placing soil fill material and rip-rap at the Staging Area.

19. The Staging Area is approximately five-hundred (500) feet away from the bank stabilization projects. Respondent’s activities in the Staging Area were not contemplated or authorized in any of the abovementioned permits or approvals.

20. On November 30, 2020, staff from RB5 conducted another inspection and observed Respondent and his employees’ activities to be ongoing, including the unauthorized staging of materials below the OHWM at the Staging Area.

21. Respondent’s activities in the area concluded on or about December 10, 2020.

22. Respondent and his employees used an unknown number of dump trucks to transport and discharge approximately one-thousand-forty (1,040) cubic yards of rip-rap and approximately two-hundred (200) cubic yards of soil fill material into the Staging Area below the OHWM.

23. Lake Almanor is a perennial water that is navigable in-fact, and also, a hydraulically connected impoundment of the Feather River, a traditionally “navigable waters” within the meaning of section 502(7) of the CWA, 33 U.S.C. § 1362(6), and its implementing regulations.

24. The dump-truck equipment described in paragraph 22 above is a “point source” within the meaning of CWA section 502(14), 33 U.S.C. § 1362(14).

25. Based on EPA’s investigation into the matter, EPA alleges that Respondent discharged fill material, including rock, into approximately one (1) acre of Lake Almanor below the OHWM at the Staging Area, which is “navigable waters” and “waters of the United States”

within the meaning of section 502(7) of the CWA, 33 U.S.C. § 1362(7), and its implementing regulations.

26. Respondent's discharge of fill material, including rock, into waters of the United States constitutes a "discharge of pollutants" within the meaning of CWA section 502(12), 33 U.S.C. § 1362(12).

#### **IV. ALLEGED VIOLATION**

27. As a result of the alleged activity at the Staging Area in November 16, 2020 through December 10, 2020, Respondent and/or persons acting on Respondent's behalf, discharged or caused to be discharged fill material without authorization under section 404 of the CWA, 33 U.S.C. § 1344, in violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).

#### **V. ADMINISTRATIVE PENALTY**

28. In consideration of the penalty factors of CWA section 309(g), 33 U.S.C. § 1319(g), Respondent shall pay to the United States a civil administrative penalty in the amount of **Forty-Two Thousand (\$42,000.00)** within thirty (30) calendar days of the Effective Date, as defined in Section X below, of this CA/FO.

29. Respondent shall pay the penalty by check (mail or overnight delivery), wire transfer, automated clearing house, or online payment. Payment instructions are available at <https://www.epa.gov/financial/makepayment>. If clarification regarding a particular method of payment remittance is needed, contact the EPA Cincinnati Finance Center at (513) 487-2091.

a. Check Payment:

- i. Checks sent by regular U.S. Postal Service mail shall be made payable to "Treasurer, United States of America" and mailed to:

U.S. Environmental Protection Agency  
Fines and Penalties  
PO Box 979077  
St. Louis, MO 63197-9000

- ii. Checks sent by express mail (non-U.S. Postal Service entities that do not deliver to P.O. Boxes) shall be made payable to "Treasurer, United States of America" and mailed to:

U.S. Environmental Protection Agency  
Government Lockbox 979077  
USEPA Fines and Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101

- b. Automated Clearinghouse Payment: Payment by Automated Clearinghouse (ACH) via Vendor Express shall be made through the U.S. Treasury as follows:

US Treasury REX/Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking

- c. Fedwire: Payment by wire transfer to EPA shall be made through the Federal Reserve Bank of New York as follows:

Federal Reserve Bank of New York  
ABA: 021030004  
Account: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, NY 10045  
(Field Tag 4200 of the Fedwire message should read: D 68010727  
Environmental Protection Agency)

- d. On-line Payment: Go to [www.pay.gov](http://www.pay.gov). Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open “EPA Miscellaneous Payments – Cincinnati Finance Center” form and complete the required fields.

30. Concurrent with the payment, Respondent shall send a true and correct copy of the payment and accompanying transmittal information to the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 9  
75 Hawthorne Street  
San Francisco, California 94105  
[r9HearingClerk@epa.gov](mailto:r9HearingClerk@epa.gov)

Scott McWhorter  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency  
Region 9  
75 Hawthorne Street  
San Francisco, California 94105  
[mcwhorter.scott@epa.gov](mailto:mcwhorter.scott@epa.gov)

31. Respondent shall not, and shall not allow any other person to, deduct any penalties and interest paid under this CA/FO from federal, state, or local taxes.

32. Pursuant to CWA section 309(g)(9), 33 U.S.C. § 1319(g)(9), if Respondent fails to pay the assessed penalty on time, EPA may request the U.S. Department of Justice to bring a civil action to recover the overdue amount, plus interest at currently prevailing rates from the effective date of this CA/FO. In such an action, the validity, amount, or appropriateness of the assessed penalty shall not be subject to review. In addition to any assessed penalty and interest, Respondent shall pay attorney fees, costs for collection proceedings, and a quarterly nonpayment penalty, which shall equal 20% of the aggregate amount of Respondent's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter, for each quarter during which such failure to pay persists. EPA may also take other debt collection actions as authorized by law, including but not limited to the Debt Collection Act, 31 U.S.C. § 3711.

## **VI. APPLICABILITY**

33. This CA/FO shall apply to and be binding on Respondent, Respondent's officers, directors, partners, agents, employees, contractors, successors, and assigns. Action or inaction of any persons, firms, contractors, employees, agents, or corporations acting under, through, or for Respondent shall not excuse any failure of Respondent to fully perform its obligations under this CA/FO. Changes in ownership, real property interest, or transfer of personal assets shall not alter Respondent's obligations under this CA/FO.

## **VII. RESPONDENT'S ADMISSIONS AND WAIVERS**

34. In accordance with 40 C.F.R. § 22.18(b), solely for the purpose of this proceeding, Respondent: (a) admits the jurisdictional allegations of the complaint; (b) neither admits nor denies the specific factual allegations contained in this Consent Agreement; (c) consents to all conditions specified in this CA/FO and to the assessment of the civil administrative penalty set forth in Section V above; (d) waives any right to contest the allegations set forth in this CA/FO; and (e) waives its right to appeal this proposed Final Order.

## **VIII. RESERVATION OF RIGHTS**

35. In accordance with 40 C.F.R. § 22.18(c), full payment of the penalty set forth in this CA/FO only resolves Respondent's CWA civil penalty liabilities for the violations specifically alleged herein and does not in any case affect the right of the EPA to pursue appropriate injunctive relief or other equitable relief or criminal sanction for any violations of law.

36. This CA/FO is not a permit or modification of any existing permit issued pursuant to any federal, state, or local laws or regulations, and shall in no way relieve or affect Respondent's obligations under any applicable federal, state, or local laws, regulations, or permits. Nothing in this CA/FO shall limit the ability of the Corps to issue, modify, suspend, revoke, or deny any individual permit or any nationwide or regional general permit pursuant to CWA section 404, 33 U.S.C. § 1344.

**IX. ATTORNEY FEES AND COSTS**

37. Unless otherwise specified, each party shall bear its own attorney fees and costs.

**X. EFFECTIVE DATE AND TERMINATION**

38. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall take effect on the date that the Final Order, having been signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk (the “Effective Date”), and shall terminate when Respondent has complied with this CA/FO in full.

**XI. PUBLIC NOTICE**

39. Pursuant to CWA section 309(g)(4), 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45(b), this Consent Agreement is subject to public notice and comment prior to issuance of the proposed Final Order. Complainant reserves the right to withhold or withdraw consent to this Consent Agreement if public comments disclose relevant and material information that was not considered by Complainant in entering into this Consent Agreement. Respondent may withdraw from this Consent Agreement only upon receipt of written notice from EPA that it no longer supports entry of this Consent Agreement.

40. Pursuant to section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), EPA has consulted with the State of California regarding this penalty action.

For Complainant the U.S. Environmental Protection Agency, Region 9

**AMY MILLER-** Digitally signed by AMY  
**BOWEN** MILLER-BOWEN  
Date: 2022.03.21  
08:50:24 -07'00'

---

Amy C. Miller-Bowen, Director  
Enforcement and Compliance Assurance Division

Of counsel:  
Daron Ravenborg  
Attorney-Advisor  
Office of Regional Counsel



For Respondent Brett Womack

Brett Womack  
Brett Womack

3-8-22  
Date

FINAL ORDER

It is Hereby Ordered that this Consent Agreement and Final Order (U.S. EPA Docket No. CWA-09-2022-0033) be entered and that Respondent shall pay a civil penalty in the amount of forty-two thousand dollars (\$42,000) in accordance with the terms of this Consent Agreement and Final Order.

**STEVEN  
JAWGIEL**

Digitally signed by  
STEVEN JAWGIEL  
Date: 2022.04.27  
09:05:42 -07'00'

---

Steven L. Jawgiel  
Regional Judicial Officer

## CERTIFICATE OF SERVICE

I certify that the original of the foregoing Complaint/Consent Agreement and Final Order in the matter of Brett Womack (CWA-09-2022-0033) has been filed with the Regional Hearing Clerk, and a copy was served on both Respondent and Counsel for Complainant by email, as indicated below:

### COMPLAINANT:

Daron Ravenborg  
U.S. Environmental Protection Agency  
Region 9  
75 Hawthorne Street  
San Francisco, California 94105  
Email: [Ravenborg.Daron@epa.gov](mailto:Ravenborg.Daron@epa.gov)

### RESPONDENT:

Brett Womack  
461 Firehouse Road  
Lake Almanor, California 96137  
Email: [Brett@Womackent.com](mailto:Brett@Womackent.com)

---

Ponly Tu  
Regional Hearing Clerk  
U.S. EPA Region 9