

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

IN THE MATTER OF: Utah County, Utah, Respondent	Docket No. CWA-08-2025-0008 CONSENT AGREEMENT Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g)
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I. INTRODUCTION

1. This is an administrative penalty assessment proceeding pursuant to sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules of Practice), as codified at 40 C.F.R. part 22.
2. The parties to this proceeding are the undersigned U.S. Environmental Protection Agency (EPA) official (Complainant) and Utah County, Utah (Respondent).
3. This proceeding concerns an approximately 1,000-acre tract in Utah County, Utah, located at or near Latitude 40.0674°N and Longitude 111.6884°W (the Site), at which construction of the Loafer Mountain Parkway has occurred.
4. The parties, having agreed settlement of this action is in the public interest, consent to the entry of this consent agreement (Agreement) without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Agreement.

II. JURISDICTION

5. This Agreement is issued under the authority of section 309(g) of the Clean Water Act (Act), 33 U.S.C. § 1319(g).
6. This proceeding is subject to the Consolidated Rules of Practice, under which

a proceeding may be simultaneously commenced and concluded by a final order from a Regional Judicial Officer or Regional Administrator ratifying a consent agreement. 40 C.F.R. § 22.13(b).

III. GOVERNING LAW

7. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits any person from discharging any pollutant into navigable waters except as in compliance with certain other provisions of the Act, including section 404, 33 U.S.C. § 1344.
8. The terms “discharge of a pollutant,” “pollutant,” and “navigable waters” are defined in section 502 of the Act, 33 U.S.C. § 1362.
9. Under section 404 of the Act, 33 U.S.C. § 1344, the Secretary of the Army, acting through the Chief of Engineers of the Corps, is authorized to issue permits for the discharge of dredged or fill material into navigable waters, which are defined as waters of the United States.
10. According to 33 C.F.R. § 323.3(a), a permit issued by the Corps is required for the discharge of dredged or fill material into waters of the United States unless an exemption pursuant to 33 C.F.R. § 323.4 applies.
11. Any person who discharges a pollutant to navigable waters without a permit in violation of section 301(a) of the Act, 33 U.S.C. § 1311(a), may be assessed an administrative civil penalty by the EPA, according to section 309(g) of the Act, 33 U.S.C. § 1319(g). As adjusted for inflation pursuant to 40 C.F.R. part 19, the maximum administrative class II penalty under section 309 of the Act for violations occurring after November 2, 2015, where penalties are assessed on or after December 27, 2023, is \$26,685 per day for each day during which the violation continues, with a maximum of \$333,552. (See 88 Fed. Reg. 89309, 89312 (December 27, 2023).)

IV. ALLEGATIONS OF FACT AND LAW

The following allegations apply at all times relevant to this Agreement:

12. Respondent is a Utah county.
13. Respondent is a “municipality” and a “person” as defined in sections 502(4) and 502(4) of the Act, 33 U.S.C. §§ 1362(4) and 1362(5), respectively.
14. At all relevant times, the Respondent owned, managed, operated on, or otherwise controlled property at the Site.
15. Beer Creek flows through the Site.
16. Beer Creek is a perennial tributary of the Benjamin Slough.

17. The Benjamin Slough is a perennial tributary of Utah Lake.
18. Utah Lake is a navigable-in-fact water.
19. Commencing on or around November 1, 2022, in the course of conducting mechanical land-clearing and filling activities for construction of the Loafer Mountain Parkway, Respondent and/or those acting on behalf of Respondent, discharged dredged and/or fill material into approximately 1,224 linear feet along a perennial stream channel, including Beer Creek and tributaries of Beer Creek, and 6.04 acres of wetlands adjacent to Beer Creek.
20. The activities described in paragraph 19, above, were performed using common earthmoving vehicles and equipment.
21. The vehicles and equipment used in the activities described in paragraph 19, above are and were at all relevant times each a “point source” as defined in section 502(14) of the Act, 33 U.S.C. § 1362(14).
22. The material discharged at the Site and described in paragraph 19, above, is and was at all relevant times “dredged material” or “fill material” as defined in 33 C.F.R. § 323.2(c) or 33 C.F.R. § 323.2(e), respectively, and “pollutants” as defined in section 502(6) of the Act, 33 U.S.C. § 1362(6).
23. The tributaries of Beer Creek and the adjacent wetlands mentioned in paragraph 19, above, Beer Creek itself, Benjamin Slough, and Utah Lake are and were at all relevant times “navigable waters” as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7).
24. The placement of dredged and/or fill material into Beer Creek and its adjacent wetlands described in paragraph 19, above, constitutes the “discharge of pollutants” as defined in section 502(12) of the Act, 33 U.S.C. § 1362(12).
25. The United States Army Corps of Engineers (Corps) conducted an initial inspection of the Site on August 30, 2023. The EPA conducted an inspection of the Site on May 2, 2024. The inspections of the site confirmed the activities listed in paragraph 19, above.
26. Respondent was not authorized by a permit issued pursuant to section 404 of the Act, 33 U.S.C. § 1344, to conduct any of the activities described in paragraph 19.
27. In 2017, the Corps issued a permit to Respondent authorizing certain impacts on waters of the United States in connection with the Loafer Mountain Parkway project. That permit, however, expired before Respondent began the construction and discharges described in paragraph 19, above.

28. The activities conducted by Respondent and/or by persons acting on Respondent's behalf as described in paragraph 19, above, have violated section 301(a) of the Act, 33 U.S.C. § 1311(a). Each discharge of pollutants from a point source by Respondent into waters of the United States without authorization under section 404 of the Act, 33 U.S.C. § 1344, or any other provision of the Act, has constituted a violation of section 301(a) of the Act, 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) of the Act, 33 U.S.C. § 1311(a).

V. TERMS OF CONSENT AGREEMENT

29. For the purpose of this proceeding, Respondent, by signing this Agreement:
- a. admits the facts set forth in paragraph 3 of this Agreement;
 - b. admits the jurisdictional allegations in section II of this Agreement;
 - c. neither admits nor denies the factual allegations in section IV of this Agreement;
 - d. consents to the assessment of a civil penalty as stated below;
 - e. acknowledges this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement action; and
 - f. waives (i) any right to contest the allegations in this Agreement, (ii) any rights or defenses Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and (iii) any right to appeal or challenge the lawfulness of any final order ratifying this Agreement.
30. In determining the amount of the penalty to be assessed, the EPA considered 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.
31. Based on the allegations in section IV above, and having considered the penalty assessment factors cited in paragraph 30, above, the Complainant has determined a civil penalty of \$85,000 is appropriate to settle this proceeding.

32. Penalty Payment. Respondent agrees to pay a civil penalty in the amount of \$85,000 (Assessed Penalty) within 30 calendar days after the date the order ratifying this Agreement becomes final.
33. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website <https://www.epa.gov/financial/makepayment>. For additional instructions, see <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.
34. When making a payment, Respondent shall:
- a. identify every payment with Respondent's name and the docket number that appears on the final order ratifying this Agreement,
 - b. indicate every payment is payable to "Treasurer, United States of America," and
 - c. concurrently with any payment or within 24 hours after any payment, serve proof of such payment via electronic mail to each of the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 8
R8_Hearing_Clerk@epa.gov

and

Zachary Schlachter, Life Scientist
U.S. Environmental Protection Agency, Region 8
schlachter.zachary@epa.gov

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
CINWD_AcctsReceivable@epa.gov

"Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate payment has been made according to EPA requirements, in the amount due, and identified with Respondent's name and the docket number that appears on the final order ratifying this Agreement.

35. Interest, Charges, and Penalties on Late Payment. Pursuant to 33 U.S.C. § 1319(g)(9), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty per this Agreement, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and the EPA is authorized to recover the following amounts.
- a. Interest. Interest begins to accrue 30 days after the order approving this Agreement becomes final. If the Assessed Penalty is paid within 30 days, interest accrued is waived. If the Assessed Penalty is not paid in full within 30 days, interest will continue to accrue until the unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. Interest will be assessed at prevailing rates, per 33 U.S.C. § 1319(g)(9). The rate of interest is the Internal Revenue Service (IRS) standard underpayment rate.
 - b. Handling Charges. The United States' enforcement expenses including, but not limited to, attorneys' fees and costs of collection proceedings.
 - c. Late Payment Penalty. A 20% quarterly non-payment penalty.
36. Late Penalty Actions. In addition to the amounts described in paragraph 35, above, if Respondent fails to make timely payment of any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, the EPA may take additional actions. The actions the EPA may take include, but are not limited to, the following.
- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
 - b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States government for, a person to satisfy the debt the person owes the United States government).
 - c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, per 40 C.F.R. § 13.17.
 - d. Request that the Attorney General bring a civil action in the appropriate district court to recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, per 33 U.S.C. § 1319(g)(9). In any such action, the validity,

amount, and appropriateness of the Assessed Penalty shall not be subject to review.

37. This Agreement applies to Respondent and its officers, directors, employees, agents, trustees, authorized representatives, successors, and assigns. Respondent must give written notice and a copy of this Agreement to any successors in interest prior to any transfer of any interest in the Site occurring prior to payment in full of the penalty referenced above. Any change in ownership or corporate control of Respondent, including but not limited to any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this Agreement.
38. The undersigned representative of Respondent certifies he or she has authority to bind Respondent to this Agreement. Complainant agrees to accept the Respondent's digital or original signature on this Agreement.
39. Except as qualified by paragraph 35, above, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

VII. EFFECT OF CONSENT AGREEMENT

40. Compliance with the final order ratifying this Agreement resolves Respondent's liability only for federal civil penalties for the violations specifically alleged above.
41. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act, any regulation, order, or permit issued pursuant to the Act, and any other federal, state, or local laws, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
42. Nothing herein shall be construed to limit the authority of the EPA to pursue injunctive or other equitable relief, or criminal sanctions, for any violations of law or to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
43. If the EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, the EPA reserves any and all of its legal and equitable rights.

VIII. PUBLIC NOTICE

44. As required by section 309(g)(4), 33 U.S.C. §§ 1319(g)(4), and 40 C.F.R. § 22.45, prior to submitting this Agreement to the Regional Judicial Officer or Regional Administrator for approval, the EPA will provide public notice of this Agreement and a reasonable opportunity to comment on the matter. The EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations indicating this Agreement is inappropriate, improper, or inadequate, or if a hearing is requested under section 309(g)(4)(C), 33 U.S.C. § 1319(g)(4)(C).

IX. SERVICE OF FINAL ORDER

45. The contact information for the individuals authorized to receive service of the final order ratifying this Agreement is:

For Complainant:

Peggy Livingston
Senior Enforcement Attorney
U.S. Environmental Protection Agency
1595 Wynkoop St.
Denver, CO 80202
(303) 312-6858
livingston.peggy@epa.gov

For Respondent:

Richard J. Nielson
Public Works Director / County Engineer
Utah County
2855 South State
Provo, UT 84606
(801) 851-8600
richardjn@utahcounty.gov

46. The parties consent to service of the final order ratifying this Agreement at the respective email addresses in paragraph 45, above. Respondent agrees that the email address provided in paragraph 45, above, and any other address(es) Respondent provides to the Regional Hearing Clerk in connection with this proceeding address may be made public when this Agreement, the Final Order, and any related Certificate(s) of Service are filed or uploaded to a searchable database.

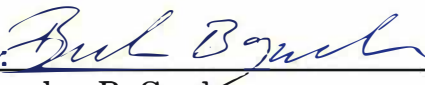
**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8**

Date: 2-14-25

By: _____
Colleen Rathbone, Manager
Water Enforcement Branch
Enforcement and Compliance Assurance Division
1595 Wynkoop St.
Denver, CO 80202
Complainant

**UTAH COUNTY, UTAH
Respondent**

Date: 12-4-24

By: 
Brandon B. Gordon
Chair
Utah County Board of Commissioners