



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

DEC - 9 2008

CERTIFIED MAIL #7004 1350 0001 5669 8452
RETURN RECEIPT REQUESTED

Ref: 8ENF-W

Lawrence Germann
7901 Oxford Road
Longmont, CO 80503

Re: Findings of Violation and
Administrative Order for Compliance
Docket No. **CWA-08-2009-0001**

Dear Mr. Germann:

Based on our review of all available information, the United States Environmental Protection Agency ("EPA") has determined that you are in violation of the Clean Water Act, as amended ("CWA"). The CWA requires that an authorizing permit be obtained from the United States Army Corps of Engineers prior to the discharge of pollutants (i.e., dredged or fill material) into waters of the United States. See 33 U.S.C. § 1311. Waters of the United States include both surface waters and wetlands as defined by 33 C.F.R. § 328.3.

Specifically, you or persons acting on your behalf discharged dredged or fill material into waters of the United States without authorization under the CWA. These discharges of pollutants to Left Hand Creek occurred in connection with efforts to relocate the creek channel on your property located in section 24, Township 2 North, Range 70 West in Boulder County, Colorado.

Enclosed is an EPA Region 8 administrative order that specifies the nature of the violations and describes actions necessary in order for you to achieve compliance with the CWA. EPA's authority for such action is provided under section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3). The order requires you to inform EPA in writing, within 14 days of receipt, of your intent to fully comply with the order.

The CWA requires the Administrator of EPA to take all appropriate enforcement action necessary to secure prompt compliance with the CWA and any order issued thereunder. Section 309 of the CWA authorizes a variety of possible enforcement actions, including filing of a civil or criminal action, administrative penalty action, and/or debarment from Federal contracts and/or loans for any noncompliance with the CWA or an order issued pursuant to the CWA. Please be advised

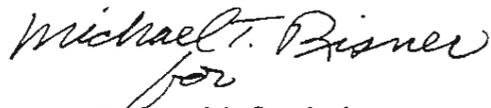


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that the issuance of this order does not preclude civil or criminal actions in the U.S. District Court pursuant to sections 309(b) or (c) of the CWA, 33 U.S.C. §§ 1319(b) or (c), or assessment of civil penalties pursuant to sections 309(d) or (g) of the Act, 33 U.S.C. §§ 1319(d) or (g), for the violations cited in the order.

Please review the order carefully. If you have any questions, the most knowledgeable people on my staff are Amy Swanson, Enforcement Attorney, at 303-312-6906 and Monica Heimdal, Enforcement Officer, at 303-312-6359.

Sincerely,

Handwritten signature of Michael T. Bisner in cursive script.

for
Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

Enclosure

cc: Tina Artemis, EPA, Regional Hearing Clerk
Timothy T. Carey, U.S. Army Corps of Engineers
David L. Lagrone, U.S. Army Corps of Engineers

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

IN THE MATTER OF:)	FINDINGS OF VIOLATION AND
)	ADMINISTRATIVE ORDER FOR
Lawrence Germann)	COMPLIANCE
7901 Oxford Road)	
Longmont, CO 80503)	Docket No. CWA-08-2009-0001
)	
Respondent.)	
_____)	

I. STATUTORY AUTHORITY

This Findings of Violation and Administrative Order for Compliance (“Order”) is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by sections 308 and 309(a) of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1318 and 1319(a). This authority has been properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8. This Order is based on the findings of violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a), which, among other things, prohibits the discharge of pollutants into waters of the United States except as in compliance with section 404 of the CWA, 33 U.S.C. § 1344.

II. FINDINGS OF VIOLATION

1. Respondent Lawrence Germann is an individual residing at 7901 Oxford Road, Longmont, Colorado, 80503.
2. At all relevant times, Respondent owned, controlled, and/or operated property containing Left Hand Creek located in section 24, Township 2 North, Range 70 West in Boulder County, Colorado (the “Site”).

3. Left Hand Creek is a perennially-flowing tributary to St. Vrain Creek, which is tributary to the South Platte River, a navigable, interstate water.
4. During April and May of 2008, the Respondent or persons acting on Respondent's behalf began construction activities, without a permit, within the banks of Left Hand Creek that resulted in the discharge of dredged and fill material to the creek. The work involved:
 - a. Partial construction of a new channel approximately 40 feet north of the existing creek channel; and
 - b. Placement of fill material approximately 300 feet in length and 5 to 8 feet wide into the existing creek channel to relocate Left Hand Creek to the north.
5. On May 18, 2008, representatives of the United States Army Corps of Engineers ("Corps") conducted an inspection of the Site following issuance of a cease-and-desist order from Boulder County.
6. During the inspection, the Corps confirmed that Respondent or persons acting on his behalf had discharged or allowed the discharge of dredged and fill material to Left Hand Creek as described in paragraph 4 of Section II of this Order without a permit.
7. On May 28, 2008, the Corps issued a cease and desist order notifying Respondent that the work performed in Left Hand Creek was an apparent violation of the CWA and requiring him to cease any further unauthorized work.
8. The construction activities described in paragraph 4 of Section II of this Order resulted in discharges of dredged and fill material several hundred feet long within the banks of Left Hand Creek. Left Hand Creek provides numerous functions and values including aquatic and wildlife habitat, flood attenuation, groundwater recharge, recreation, and aesthetics.

9. The discharges described in paragraph 4 of Section II of this Order were performed using common earthmoving vehicles and equipment, which were operated by Respondent or persons acting on his behalf.
10. Respondent is a “person” within the meaning of section 502(5) of the CWA, 33 U.S.C. § 1362(5).
11. The discharged dredged and fill material referenced in paragraph 4 of Section II of this Order are and were at all relevant times “dredged material” and “fill material” within the meaning of 33 C.F.R. § 323.2(c) and (e), respectively, and “pollutants” within the meaning of section 502(6) of the CWA, 33 U.S.C. § 1362(6).
12. The vehicles and equipment described in paragraph 9 of Section II of this Order are and were at all relevant times each a “point source” within the meaning of section 502(14) of the CWA, 33 U.S.C. § 1362(14).
13. Left Hand Creek referenced in paragraphs 3 and 4 of Section II of this Order is and was at all relevant times “waters of the United States” within the meaning of 33 C.F.R. § 328.3(a) and therefore “navigable waters” within the meaning of section 502(7) of the CWA, 33 U.S.C. § 1362(7).
14. The placement of dredged or fill material into Left Hand Creek constitutes the “discharge of pollutants” within the meaning of section 502(12) of the CWA, 33 U.S.C. § 1362(12).
15. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits, among other things, the discharge of pollutants by any person into waters of the United States except as in compliance with section 404 of the CWA, 33 U.S.C. § 1344.

16. Section 404 of the CWA, 33 U.S.C. § 1344, sets forth a permitting system authorizing the Secretary of the Army, acting through the Chief of Engineers of the Corps, to issue permits for the discharge of dredged or fill material into navigable waters, which are defined as waters of the United States.
17. 33 C.F.R. § 323.3(a) specifies that, unless exempted pursuant to 33 C.F.R. § 323.4, a permit issued by the Corps is required for the discharge of dredged or fill material into waters of the United States.
18. Respondent is not and never has been authorized by a permit issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344, to conduct any of the activities described in paragraph 4 of Section II of this Order.
19. The activities conducted by Respondent and his agents as described in paragraph 4 of Section II of this Order violate section 301 of the CWA, 33 U.S.C. § 1311. Each discharge of pollutants from a point source by Respondent into waters of the United States without the required permits issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344, constitutes a violation of section 301(a) of the CWA, 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 CWA, 33 U.S.C. § 1311(a).
20. The removal of the dredged and fill material illegally discharged into waters of the United States at the Site and restoration of the impacted areas of Left Hand Creek to a condition that closely approximates the conditions and functions prior to the discharge of dredged and fill material can be achieved as a practical matter through commonly used methods of construction, digging, revegetation, and best management practices.

21. Activities to be carried out under this Order are remedial, not punitive, and are necessary to achieve the CWA's objective "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters," as specified in section 101(a) of the CWA, 33 U.S.C. § 1251(a). The removal and restoration described in paragraph 20 of Section II of this Order are appropriate to alleviate actual and potential harm to water quality.
22. This Order was issued after consultation and coordination with the Corps' Omaha District.

III. ORDER

Based upon the foregoing FINDINGS OF VIOLATION, and pursuant to the authority vested in the Administrator of EPA pursuant to sections 308 and 309(a) of the CWA, 33 U.S.C. §§ 1318 and 1319(a), as properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8, it is hereby ORDERED:

1. Respondent shall immediately terminate all unauthorized discharges of dredged or fill material, now and in the future, into waters of the United States, unless specifically authorized by the Corps under a valid permit issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344. This prohibition includes all mechanical land clearing, dredging, filling, grading, leveling, installation of utilities, construction, and any other activities that result in the discharge of dredged or fill material into waters of the United States.
2. Within 14 calendar days of receipt of this Order, Respondent shall inform EPA in writing of his intent to fully comply with the Order.
3. Upon EPA approval of the restoration plan required by paragraph 5 of Section III of this Order, Respondent shall remove all dredged and fill material that was discharged as a

result of the violations identified in this Order and restore the impacted areas of Left Hand Creek to its pre-impact condition and grade.

4. All dredged and fill material removal and restoration activities shall be conducted in accordance with an EPA-approved restoration plan prepared by a consultant experienced in stream restoration. The consultant also shall directly supervise all work performed pursuant to the EPA-approved restoration plan. A statement of the consultant's qualifications, including professional resume and business references, shall be submitted to EPA within 21 calendar days of receipt of this Order.
5. Within 60 calendar days of receipt of this Order, Respondent shall submit to EPA for review and comment a restoration plan, prepared by the consultant referenced in paragraph 4 of Section III of this Order, for removing the discharged dredged and fill material from Left Hand Creek and any other illegally impacted areas at the Site and restoring all impacted areas to their pre-impact condition and grade.
6. The restoration plan shall be prepared in accordance with "U.S. Environmental Protection Agency - Region VIII Section 404 Enforcement: General Guidelines for Removal and Restoration Plans," attached hereto as Exhibit A. The restoration plan shall include:
 - a. A complete assessment of the impacts to Left Hand Creek due to Respondent's unauthorized discharges of dredged or fill material;
 - b. Locations of the existing natural features and man-made improvements, including all surface disturbance, fills, channel excavations, road crossings, culverts, structures, and any other work, including a corresponding map of these locations;

- c. A detailed work plan and schedule for all of the work to be accomplished, as specified in the restoration plan, including the application for any required permits, providing for completion of all aspects of the restoration work no later than 60 days after EPA approves the restoration plan; and
 - d. Grading, planting, and monitoring plans, measurable criteria for success of restoration, and provisions for proper disposal of any excess soils or other materials generated during removal and restoration.
7. EPA will review the restoration plan and approve it, approve it with modifications, or reject it with comments. If EPA rejects the restoration plan, Respondent shall, within 30 calendar days of receipt of EPA's rejection letter, submit a revised plan that corrects the deficiencies identified by EPA.
8. Upon receiving EPA's written approval of the restoration plan, Respondent shall obtain all necessary permits to implement the EPA-approved plan and then commence all restoration activities in accordance with the approved plan, including the time frames specified therein, and all granted permits. Respondent shall demonstrate that all necessary permits have been granted by providing copies of all such permits, and any amendments thereto, to EPA within 7 calendar days of issuance of each permit.
9. All restoration activities conducted pursuant to this Order and involving the use of heavy construction equipment shall be undertaken by an equipment operator experienced in stream restoration. A statement of the equipment operator's qualifications, including professional resume and business references, shall be submitted to EPA within 21 calendar

days of receiving EPA's written approval of the restoration plan and prior to commencement of restoration activities.

10. This Order is not a permit or an authorization to place or discharge dredged or fill material in waters of the United States. Respondent shall consult with the Corps at the address and telephone number below to determine if any work to be performed pursuant to this Order requires a permit from the Corps under section 404 of the CWA, 33 U.S.C. § 1344. If required, Respondent shall obtain such permit(s) and provide a copy to EPA pursuant to paragraph 8 of Section III of this Order prior to initiating any work that is to be performed pursuant to this Order.

U.S. Army Corps of Engineers
Denver Regulatory Office
9307 South Wadsworth Blvd.
Littleton, CO 80128-6901
Telephone: 303-979-4120
Facsimile: 303-979-0602

11. Respondent shall submit two copies of the restoration plan, all notifications, and related correspondence to:

Monica Heimdal, 8ENF-W
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
Telephone: 303-312-6359
Facsimile: 303-312-6953

A copy of the restoration plan, all notifications, and related correspondence also shall be provided to:

Amy Swanson, 8ENF-L
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
Telephone: 303-312-6906
Facsimile: 303-312-6953

A copy of the restoration plan also shall be provided to the Corps at the address noted in paragraph 10 of Section III of this Order.

12. In addition to the notification requirements set forth in paragraph 11 of Section III of this Order, after issuance of any Corps authorization for restoration work, Respondent shall submit all notifications and correspondence to the Corps in accordance with the terms and conditions in the Corps permit.
13. Any deliverables, plans, reports, specifications, schedules, and attachments required by this Order are, upon approval by EPA, incorporated into this Order. Any non-compliance with such EPA-approved deliverables, plans, reports, specifications, schedules, and attachments shall be deemed a failure to comply with this Order and subject to EPA enforcement.
14. A lease, sublease, or transfer of the Site shall not relieve Respondent of any responsibility in the Order unless EPA, Respondent, and the lessee, sublessee, or transferee agree in writing to allow the lessee, sublessee, or transferee to assume such responsibility. Additionally, at least 30 calendar days prior to such lease, sublease, or transfer,

Respondent shall notify EPA regarding the details of the lease, sublease, or transfer at the address specified in paragraph 11 of Section III of this Order.

15. Respondent shall allow, or use his best efforts to allow, access by any authorized representative of EPA or its contractors, the Corps, the Natural Resources Conservation Service, the U.S. Fish and Wildlife Service, and the Colorado Department of Public Health and Environment, upon proper presentation of credentials, to sites and records relevant to this Order for any of the following purposes:
 - a. To inspect and monitor progress of the activities required by this Order,
 - b. To inspect and monitor compliance with this Order, and
 - c. To verify and evaluate data and other information submitted to EPA.

This Order shall in no way limit or otherwise affect EPA's authority, or the authority of any other governmental agency, to enter the Site, conduct inspections, have access to records, issue notices and orders for enforcement, compliance, or abatement purposes, or monitor compliance pursuant to any statute, regulation, permit, or court order.

16. This Order shall be effective upon receipt by Respondent.

17. Please be advised that section 309(d) of the CWA, 33 U.S.C. § 1319(d), authorizes civil penalties of up to \$32,500.00 per day for each violation of section 301 of the CWA, 33 U.S.C. § 1311, and for each violation of an order issued by the Administrator of EPA under section 309(a) of the CWA, 33 U.S.C. § 1319(a), including this Order. Additionally, section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes EPA to impose administrative penalties for violations of the CWA. Further, section 309(c) of the CWA, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations

of the CWA. Issuance of this Order shall not be deemed an election by the United States to forego any civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA for violations giving rise to the Order.

18. Compliance with the terms and conditions of the Order shall not be construed to relieve Respondent of his obligation to comply with any applicable Federal, state, or local law or regulation. Failure by Respondent to complete the tasks described herein in the manner and time frame specified pursuant to this Order may subject Respondent to a civil action under section 309 of the CWA, 33 U.S.C. § 1319, for violation of this Order.

DATED this 8th day of DECEMBER, 2008.

for Michael T. Binner
Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

Exhibit A

U. S. ENVIRONMENTAL PROTECTION AGENCY - REGION VIII

SECTION 404 ENFORCEMENT:

GENERAL GUIDELINES FOR REMOVAL AND RESTORATION PLANS

The following guidelines serve as general specifications for preparing removal and restoration plans to remediate the unpermitted filling of wetlands. As environmental conditions vary at every site, precise specifications will depend upon the environmental conditions peculiar to the site in question. The size of the wetland area to be restored, its biological and physical characteristics, and the level of disturbance the wetland has experienced will further define the scope and complexity of the restoration plan. In most cases, the types of information listed below represent the minimum required to formulate an acceptable removal and restoration plan. When these guidelines are incorporated into an EPA Administrative Order, the recipient of the Order should obtain the approval of EPA's technical representative on the case before departing from the general specifications outlined below.

I. Existing Physical Conditions

- A. A surveyed site plan depicting property boundaries, streets, buildings, waterbodies (with ordinary high water line indicated), wetlands, FEMA 100-year floodplain (if applicable), areas of unpermitted fill, elevation contours, and other ground surface features at a scale no greater than 1 inch = 40 feet. This plan shall include a cross-section view of the site which shows soil depths, fill depths, and average depth to groundwater across the site.
- B. A narrative description of existing physical conditions, including the area of the site; area of unpermitted fill; existing wetlands (including the types of vegetation); the soil types present (including the types of unpermitted fill present); the hydrologic regime of the site; and other relevant information.

II. Proposed Physical Conditions

- A. Using the site plan described in I.A. as a base, show the exact areas where remedial activities will occur (e.g., removal of fill, replacing dredged material into ditches, etc.). Indicate proposed finished grades, expected ordinary high water elevations, the location of proposed plantings/seedings, and the location of all sediment and erosion control structures (e.g., hay bales, silt screens, etc.). This plan shall include a cross-section view of the site which shows proposed soil depths and average depth to groundwater across the site.
- B. Provide a narrative description of the remedial work to occur, including the methods and equipment to be employed; how the equipment will gain access to the site to perform the work; the location of the ultimate disposal site for any removed fill; how the work will progress across the site; a listing of the plant species to be seeded/planted at the site; the sources of the plant material (note: as a rule, transplanting of plant stock will not be permitted); the planting method(s) and scheme (i.e., physical layout of how plant material will be installed); any methods to be used to minimize adverse impacts while remedial work is underway; the expected hydrologic regime of the site in its restored condition; and other relevant information.
- C. Delineate the area(s) on the site to be restored by installation of flagging, sedimentation and erosion control structures, or other appropriate method; this delineation shall represent the limit of construction activities such that no work shall occur beyond these boundaries.

III. Actual Restored Physical Conditions

- A. Using the site plan described in I.A. as a base, show the actual physical conditions at the site at the completion of grading activities (i.e., an "as-built" plan), including actual finished grades and all pertinent ground surface features. This plan shall include a cross-section view of the site which shows actual soil depths and average depth to groundwater across the site. This as-built plan shall be prepared and submitted prior to planting/seedling activities.

IV. Monitoring/Measures of Success

- A. Normally, monitoring shall be performed midway through and near the end of the first and second growing seasons, then annually near the end of each successive growing season for the duration of the required monitoring period. Monitoring shall be performed for a period of three to five years, depending upon the scope and complexity of the remedial efforts required.
- B. A monitoring plan shall incorporate a simple statistical approach to assessing relative success or failure of restoration efforts (e.g., transects with sampling stations for measuring parameters such as percent areal cover in each vegetative stratum). A permanent photographic record shall be included as part of the monitoring plan.
- C. Depending upon the scope and complexity of the remedial efforts, general criteria to measure success shall be determined by EPA. These criteria shall be directly related to reestablishing the structural components of the aquatic ecosystem being restored. A general provision shall be included to allow for corrective action to be taken, at the direction of EPA, should monitoring show that criteria for success are not being met.
- D. A report shall be prepared and submitted after each monitoring event which describes the environmental conditions at the site and assesses relative success or failure of restoration efforts. This report shall include photographic evidence as well. This report shall identify any problems discovered and recommend appropriate corrective action to ensure the success of restoration.

V. Inspections

- A. The plan shall provide for inspections by EPA personnel after installation of all sedimentation and erosion control structures, after completion of grading activities, after completion of initial planting/seeding activities, and after monitoring indicates that the criteria for success have been attained.

VI. Schedule

- A. A comprehensive schedule integrating all removal, restoration, inspection, and monitoring activities as well as report/product submissions shall be included.