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HEARINGS CLERK
EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. CWA-10-2008-0095
)	
)	COMPLAINT
JACK THOMPSON AND THOMPSON)	
LEASING COMPANY, INC.)	
Aberdeen, Washington)	
)	
Respondents.)	

I. AUTHORITIES

1.1. This Administrative Complaint ("Complaint") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA" or "Complainant") 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, who in turn has redelegated this authority to the Director of the Office of Ecosystems, Tribal and Public Affairs.

1.2. Pursuant to Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22 ("Part 22 Rules"), Complainant hereby proposes the assessment of a civil penalty against Jack Thompson and Thompson Leasing Company, Inc. ("Respondents") for the unlawful discharge of dredged and/or fill material into navigable waters in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

1 1.3. In accordance with Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1), and 40
2 C.F.R. § 22.38(b), EPA will consult with the State of Washington within thirty (30) days
3 following proof of service of this Complaint on Respondent.
4

5 **II. STATUTORY AUTHORITY AND REGULATORY BACKGROUND**

6 2.1. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the “discharge of any
7 pollutant by any person” except as authorized by a permit issued pursuant to Section 402 or
8 Section 404 of the Act, 33 U.S.C. § 1342 or 1344. Each discharge of pollutants from a point
9 source that is not authorized by such a permit constitutes a violation of Section 301(a) of the Act,
10 33 U.S.C. § 1311(a).

11 2.2. Section 502(12) of the Act, 33 U.S.C. § 1362(12), defines the term “discharge of
12 a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

13 2.3. Section 502(6) of the Act, 33 U.S.C. § 1362(6), defines “pollutant” to include,
14 *inter alia*, dredged spoil, rock, sand, and biological materials.

15 2.4. Section 502(7) of the Act, 33 U.S.C. § 1362(7), defines “navigable waters” as
16 “waters of the United States.”

17 2.5. 40 C.F.R. § 232.2 and 33 C.F.R. § 328.3 define “waters of the United States” to
18 include “[a]ll waters which ... may be susceptible to use in interstate or foreign commerce,
19 including all waters which are subject to the ebb and flow of the tide” as well as tributaries and
20 wetlands adjacent to such waters.

21 2.6. Section 502(14) of the Act, 33 U.S.C. § 1362(14), defines “point source” to
22 include “any discernible, confined and discrete conveyance ... from which pollutants are or may
23 be discharged.”
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1 3.6. The Site's wetlands are adjacent to the Wishkah River within the meaning of 33
2 C.F.R. § 328.3(c).

3 3.7 The Wishkah River and its adjacent wetlands are "navigable water[s]" within the
4 meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and "waters of the United States"
5 within the meaning of 40 C.F.R. § 232.2 and 33 C.F.R. § 328.3(a).

6 3.8. On or about July 2003, at times more fully known to Respondents, Respondents
7 began to operate or direct the operation of certain heavy earthmoving equipment which was used
8 to discharge gravel and other materials into approximately 1.5 acres of jurisdictional wetlands at
9 the Site.

10 3.9. The gravel and other materials referenced in Paragraph 3.8 above constitute "fill
11 material" within the meaning of 40 C.F.R. § 232.2 and "pollutants" within the meaning of
12 Section 502(6) of the Act, 33 U.S.C. § 1362(6), and 40 C.F.R. § 232.2.

13 3.10. The heavy equipment referenced in Paragraphs 3.8 above, are "point sources"
14 within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

15 3.11. By causing such fill material to enter waters of the United States, Respondents
16 have engaged in the "discharge of pollutants" from a point source within the meaning of Sections
17 301 and 502(12) of the Act, 33 U.S.C. §§ 1311 and 1362(12).

18 3.12. Respondents' discharges of fill material were not authorized by any permit issued
19 pursuant to Section 402 or 404 of the Act, 33 U.S.C. § 1342 or 1344.

20 3.13. Respondents' discharges of pollutants into waters of the United States at the Site
21 without a permit under the Act placed Respondents in violation of Section 301(a) of the Act, 33
22 U.S.C. § 1311(a).

1 Act, 33 U.S.C. § 1319(g)(3), EPA must, in determining the specific penalty to be assessed in this
2 matter, take into account the nature, circumstances, extent, and gravity of the violation, and, with
3 respect to Respondent, ability to pay, prior history of violations, degree of culpability, economic
4 benefit and savings (if any) resulting from the violation, and such other matters as justice may
5 require. The following five paragraphs of this complaint briefly address each of these statutory
6 penalty factors.

7
8 4.3. Nature, Circumstances, Extent, and Gravity of Violations. The nature,
9 circumstances, extent, and gravity of the violations described above are significant.
10 Respondents' earthmoving activities at the Site have resulted in the discharge of dredged or fill
11 material to approximately 1.5 acres of wetland and riparian areas of the Site. The filled wetlands
12 adjacent to the Wishkah River are in the lower watershed and considered valuable since so many
13 wetlands have been lost in the lower Whiskah River and Aberdeen area. These wetlands provide
14 support and are valuable to salmon and trout and their habitat through the retention of flood
15 flows and recharge of nutrients. The filled wetlands are designated critical habitat for salmon
16 species listed as threatened under the Endangered Species Act. They also provide habitat for
17 invertebrates, and maintain cool freshwater environs downstream in the Chehalis River and
18 Grays Harbor. These wetlands provide water quality and aquatic ecosystem benefits through
19 nutrient cycling, removal of imported elements and compounds, particulate retention, and
20 organic carbon export. Furthermore, by failing to promptly implement the AOC, Respondents
21 extended the timeframe during which these important wetland functions were disrupted and may
22 have decreased the probability that restoration efforts will be successful.
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1 4.4. Respondents' Ability to Pay: Based on the information available to EPA
2 regarding Respondents' financial condition, Respondents appear able to pay a civil penalty of up
3 to \$32,500. Should Respondents submit information substantiating an inability to pay this
4 amount, the specific proposed penalty will be adjusted to reflect this inability.

5 4.5. Respondents' History of Prior Violations: Respondents do not have a history of
6 prior violations of the Act.

7 4.6. Respondents' Degree of Culpability: Respondents were aware of the need for a
8 Section 404 permit before placing dredged and fill material into waters of the United States.
9 Nevertheless, Respondent placed dredged and/or fill material into waters of the United States
10 without a Section 404 permit.

11 4.7. Respondents' Economic Benefit: There is no economic benefit associated with
12 the unauthorized fill activity.

13 4.8. Other Matters as Justice May Require: Credible and consistent enforcement of
14 the Act's requirements to apply for, obtain, and comply with a Section 404 permit is necessary to
15 deter Respondent and others similarly situated from violating the law.

16 **V. OPPORTUNITY TO REQUEST A HEARING**

17 5.1. Respondents have the right to file an Answer requesting a hearing on any material
18 fact contained in this Complaint or on the appropriateness of the penalty proposed herein. Upon
19 request, the Presiding Officer may hold a hearing for the assessment of civil penalties, conducted
20 in accordance with the provisions of the Part 22 Rules and the Administrative Procedures Act, 5
21 U.S.C. § 551 et seq.

22 5.2. Subpart I of the Part 22 Rules applies to this proceeding. A copy of the Part 22
23 Rules accompanies this Complaint.
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1 5.3. Respondents' Answer, including any request for hearing, must be in writing and
2 must be filed with:

3 Regional Hearing Clerk
4 U.S. Environmental Protection Agency
5 1200 Sixth Avenue, Suite 900
6 Mail Stop ORC-158
7 Seattle, Washington 98101

8 **VI. FAILURE TO FILE AN ANSWER**

9 6.1. To avoid a default order being entered pursuant to 40 C.F.R. § 22.17,
10 Respondents must file a written Answer to this Complaint with the Regional Hearing Clerk
11 within thirty (30) days after service of this Complaint.

12 6.2. In accordance with 40 C.F.R. § 22.15, Respondents' Answer must clearly and
13 directly admit, deny, or explain each of the factual allegations contained in this Complaint with
14 regard to which Respondents have any knowledge. Respondents' Answer must also state: (1)
15 the circumstances or arguments which are alleged to constitute a grounds of defense; (2) the facts
16 which Respondents intend to place at issue; and (3) whether a hearing is requested. Failure to
17 admit, deny, or explain any material factual allegation contained herein constitutes an admission
18 of allegation.

19 **VII. INFORMAL SETTLEMENT CONFERENCE**

20 7.1. Whether or not Respondents request a hearing, Respondents may request an
21 informal settlement conference to discuss the facts of this case, the proposed penalty, and the
22 possibility of settling this matter. To request such a settlement conference, Respondents should
23 contact:

24 Lori Houck Cora
25 Assistant Regional Counsel
 U.S. Environmental Protection Agency, Region 10
 1200 Sixth Avenue, Suite 900
 Mail Stop ORC-158

1 Seattle, Washington 98101
2 (206) 553-1115

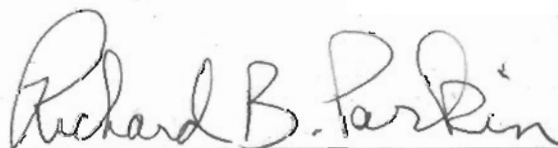
3 7.2. A request for an informal settlement conference does not extend the thirty (30)
4 day period for filing a written Answer to this Complaint, nor does it waive Respondents' right to
5 request a hearing.

6 7.3. Respondents are advised that, after the Complaint is issued, the Part 22 Rules
7 prohibit any *ex parte* (unilateral) discussion of the merits of these or any other factually related
8 proceedings with the Administrator, the Environmental Appeals Board or its members, the
9 Regional Judicial Officer, or any other person who is likely to advise these officials in the
10 decision on this case.

11 **VIII. RESERVATIONS**

12 8.1. Neither assessment nor payment of an administrative civil penalty pursuant to this
13 Complaint shall affect Respondents' continuing obligations to comply with: (1) the Clean Water
14 Act and all other environmental statutes; (2) the terms and conditions of all applicable Clean
15 Water Act permits; and (3) any Compliance Order issued to Respondent under Section 309(a) of
16 the Act, 33 U.S.C. § 1319(a), concerning the violations alleged herein.

17 Dated this 3RD day of June, 2008.

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20 Richard Parkin, Acting Director
21 Office of Ecosystems, Tribal and Public Affairs
22
23
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25

1
2 **CERTIFICATE OF SERVICE**

3 I certify that the foregoing "Complaint" was sent to the following persons, in the manner
4 specified, on the date below:

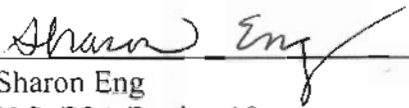
5 Original and one copy, hand-delivered:

6 Carol Kennedy, Regional Hearing Clerk
7 U.S. Environmental Protection Agency, Region 10
8 1200 Sixth Avenue, Mail Stop ORC-158
9 Seattle, WA 98101

10 A true and correct copy, by certified mail, return receipt requested:

11 Jack Thompson
12 Thompson Leasing Co., Inc.
13 P.O. Box 1705
14 Aberdeen, Washington 98520

15 Dated: June 3, 2008

16 
17 _____
18 Sharon Eng
19 U.S. EPA Region 10
20
21
22
23
24
25

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DOCKET NO. CWA-10-2008-0095

U.S. Environmental Protection Agency
1200 Sixth Avenue
Seattle, Washington 98101
(206) 553-1037