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HEARINGS CLERK
EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO.
Robert Paul Rice, an Individual,)	CWA-10-2016-0111
Idaho Falls, Idaho,)	
)	CONSENT AGREEMENT
)	
Respondent.)	
)	

I. PRELIMINARY STATEMENT

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 309(g)(2)(B) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(B).

1.2. EPA initiated this proceeding for the assessment of a civil penalty pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), by issuing a Complaint against Respondent on June 17, 2016.

1.3. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA issued public notice of the Complaint via the internet at https://yosemite.epa.gov/R10/ENFORCE.NSF/Current+Public+Notices/rice_cwa_2016, and afforded the public thirty days to comment on the Complaint and proposed penalty. At the expiration of the notice period, EPA received no comments from the public.

1.4. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), with issuance of the Complaint, the Idaho Department of Environmental Quality has been given the opportunity to consult with EPA regarding the assessment of the administrative civil penalty against Respondent.

1.5. Pursuant to Section 309(g)(1) and (2)(B) of the CWA, 33 U.S.C. § 1319(g)(1) and (2)(B), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA issues, and Robert Paul Rice ("Respondent") agrees to the issuance of, the Final Order attached to this Consent Agreement ("Final Order").

1.6. The Parties agree that settlement of the relevant matters without further litigation will save time and resources, that it is in the public's interest, and that the entry of this Consent Agreement and the Final Order is the most appropriate means of resolving the violations alleged by EPA in the administrative Complaint issued to Respondent on June 17, 2016.

II. CONSENT AGREEMENT

2.1. The complete factual and jurisdictional basis for proposing the assessment of a civil penalty is set forth in the underlying Complaint and is hereby incorporated by reference. Complaint ¶¶ 2.1-3.8. The Complaint alleges, among other things, that at all relevant times: (1) Respondent was a "person" that owned and/or operated a suction dredge that was a "point source" and that Respondent's operation of the suction dredge resulted in a "discharge" of "pollutants" to "waters of the United States" within the meaning of CWA Section 502, 33 U.S.C. § 1362, and 40 C.F.R. 122.2; (2) Respondent was subject to the provisions of the CWA, 33 U.S.C. § 1251 *et seq.*, and the National Pollution Discharge Elimination System ("NPDES") permit program; and (3) Respondent violated CWA Section 301, 33 U.S.C. § 1311 as specified in the Complaint.

2.2. Respondent admits the jurisdictional and factual allegations in the Complaint and the summary of allegations contained in Paragraph 2.1 of this Consent Agreement.

2.3. As required by Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA has taken into account the nature, circumstances, extent, and gravity of the alleged violations as well as Respondent's economic benefit of noncompliance, Respondent's ability to pay, and other relevant factors. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$3,600.

2.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 2.3 within 30 days of the effective date of the Final Order.

2.5. Payment under this Consent Agreement and Final Order must be made by a cashier's check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondent must note on the check the title and docket number of this action.

2.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 2.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Tara Martich
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-133
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

2.7. If Respondent fails to pay the penalty assessed by this Consent Agreement and Final Order in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty under the CWA, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

2.7.1. Interest. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order, provided however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

2.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 2.3, Respondent shall pay (in addition to any assessed penalty and interest) attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20% of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

2.8. The penalty described in Paragraph 2.3, including any additional costs incurred under Paragraph 2.7, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

2.9. Except as described in Subparagraph 2.7.2, above, each party shall bear its own costs in bringing or defending this action.

2.10. Respondent expressly waives any right to contest the allegations contained in the Complaint and this Consent Agreement and waives any right to appeal the Final Order.

2.11. The provisions of this Consent Agreement and Final Order shall bind Respondent and his agents, servants, employees, successors, and assigns.

2.12. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

11-4-16

FOR RESPONDENT:



ROBERT PAUL RICE

DATED:

12-2-16

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of:

Robert Paul Rice, an Individual,

Idaho Falls, Idaho,

Respondent.

) DOCKET NO.
) CWA-10-2016-0111

) **FINAL ORDER**

)

)

)

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has in turn delegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

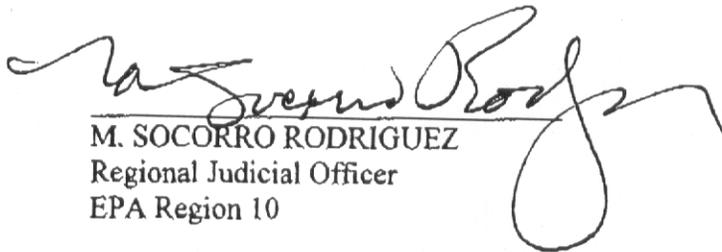
1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

1.4. Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which Respondent may have with respect to any

issue of fact or law set forth in this Final Order, including, but not limited to, any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.

1.5. This Final Order shall become effective upon filing.

SO ORDERED this 8th day of December, 2016.



M. SOCORRO RODRIGUEZ
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Robert Paul Rice, Docket No.: CWA-10-2016-0111**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Endre Szalay
Assistant Regional Counsel
1200 Sixth Avenue, Mail Stop ORC113
Suite 900
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Mr. Robert Paul Rice, Jr.
1015 W. Sunnyside Road
Idaho Falls, Idaho 83402

DATED this 9 day of December, 2016

Teresa Young
Signature

Teresa Young
Regional Hearing Clerk
EPA Region 10



URL: https://yosemite.epa.gov/R10/ENFORCE.NSF/Current+Public+Notices/rice_cwa_2016
Last updated on Sunday, November 06, 2016

Region 10: the Pacific Northwest

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Administrative complaint against Robert Paul Rice, Jr. for Clean Water Act Violations

Description

Pursuant to Section 309(g)(4) of the Clean Water Act (CWA), the EPA is providing public notice of the administrative complaint described below. In order to provide opportunity for public comment, the EPA will not take final action in this proceeding prior to 40 days after publication of this notice.

EPA proposes to commence an administrative complaint and penalty action against Robert Paul Rice, Jr. ("Respondent") for a violation of the Clean Water Act. On July 22, 2015, the Respondent operated a suction dredge and discharged pollutants to the South Fork of the Clearwater River without a National Pollutant Elimination System (NPDES) permit.

This is a Class II administrative penalty proceeding, governed by Section 309(g)(2)(B) of the CWA and the procedural rules found at 40 CFR Part 22. The requirements that apply to public comment and participation are set forth in 40 CFR 22.45.

For additional information on this action or to obtain a copy of the administrative complaint, please contact [Tara Martich](mailto:martich.tara@epa.gov) (martich.tara@epa.gov), 907-271-6323.

Comments Accepted

Persons wishing to comment on the EPA's proposed action or to become participants in this action may do so by submitting their address and telephone number, along with written comments, to the Regional Hearing Clerk at the address below within 30 days of the date of this notice.

Regional Hearing Clerk:

Teresa Luna, Regional Hearing Clerk
U.S. Environmental Protection
Agency
Region 10 (ORC-113)
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101-3140
(206) 553-1632

Complainant:

Edward J. Kowalski, Director
Office of compliance and Enforcement
U.S. Environmental Protection Agency
Region 10 (OCE-101)
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101-3140

Respondent:

Robert Paul Rice, Jr.
1015 Sunnyside Rd.
Idaho Falls, ID 83402

Public Notice Summary

Action: Administrative complaint under the Clean Water Act

Date of Notice: June 29, 2016

Comment Period Ends: July 29, 2016

Case Name: Robert Paul Rice, Jr.

Complaint Docket Number: CWA-10-2016-0111

How to Submit Comments: In accordance with 40 CFR 22.45, anyone wishing to comment on or participate in this proceeding must notify the Regional Hearing Clerk within 30 days of this notice. Please provide your name, complete mailing address, and any comments you have on this action.

Location of Facility: South Fork Clearwater River near Mile Post 39 of Highway 14

Applicable Permit Number: N/A

Business/activity of Respondent: Miner



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101-3140

JUN 17 2016

OFFICE OF
COMPLIANCE AND ENFORCEMENT

Reply To: OCE-101

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. John Tippetts
Idaho Department of Environmental Quality
1410 North Hilton
Boise, Idaho 83706

Re: Robert Paul Rice, Jr., Docket No. CWA-10-2016-0111

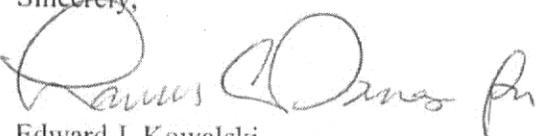
Dear Mr. Tippetts:

This letter is to advise you of an administrative complaint which Region 10 of the U.S. Environmental Protection Agency (EPA) plans to file in the state of Idaho. The proposed action is in response to alleged violations of the Clean Water Act by Robert Paul Rice, Jr., for suction dredging activities in the South Fork of the Clearwater River near Elk City, Idaho.

EPA is providing notice of this action to the State of Idaho pursuant to Section 309(g)(2) of the CWA, 33 U.S.C. § 1319(g)(2). Please consider this an opportunity to provide EPA Region 10 with any comments the Idaho Department of Environmental Quality may have regarding this action. You may find the proposed action at:

<http://yosemite.epa.gov/R10/homepage.nsf/Information/R10PN>

Any comments or questions you may have regarding this action may be directed to Tara Martich of my staff at 907-271-6323. Thank you for your assistance in this matter.

Sincerely,

Edward J. Kowalski
Director

cc via email: John Cardwell
Idaho Department of Environmental Quality