



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET
DENVER, COLORADO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

Ref: 8ENF-L

OCT 28 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
#7008 3230 0003 0731 3880

Glenda Walton, Registered Agent
Dockmaster Inc.
517 Cleveland St. SW
Polson, MT 59860

Re: Complaint and Notice of
Opportunity for Hearing
Docket No. **CWA-08-2011-0002**

Dear Ms. Walton:

Enclosed is an administrative "Complaint and Notice of Opportunity for Hearing" (complaint) filed against Dockmaster Inc. (Dockmaster) under § 309 of the Clean Water Act (CWA), 33 U.S.C § 1319. The U.S. Environmental Protection Agency (EPA) alleges in the complaint that Dockmaster discharged dredged or fill material into Flathead Lake without a permit, in violation of § 301(a) of the CWA, 33 U.S.C. § 1311(a). The violations are specifically set out in the complaint.

By law, Dockmaster has the right to request a hearing regarding the matters set forth in the complaint. Please pay particular attention to those parts of the complaint under the heading "Notice of Opportunity to Request a Hearing." If Dockmaster does not file an answer to this complaint within 30 days of receipt, a default judgment may be entered and the proposed civil penalty may be assessed without further proceedings. In its answer Dockmaster may request a hearing. Dockmaster has the right to be represented by an attorney at any stage of these proceedings.

EPA encourages all parties against whom it files a complaint proposing assessment of a penalty to pursue the possibilities of settlement through an informal conference. Any such settlement shall be finalized by the issuance of a final order by the Regional Judicial Officer, EPA Region 8. The issuance of a consent agreement shall constitute a waiver of the right to request a hearing on any matter to which Dockmaster has stipulated in that agreement.

Whether or not Dockmaster requests a hearing, its representative(s) may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty. However, an informal settlement conference does **not** substitute for filing a written answer and requesting a hearing. A request for an informal conference also does not extend the 30-day period during which Dockmaster must submit a written answer and a request for a hearing. Dockmaster may simultaneously litigate this matter and informally discuss settlement with EPA.

If Dockmaster is a small entity, you may find the enclosed Small Business Regulatory Enforcement and Fairness Act (SBREFA) information sheet useful. It contains information on compliance assistance resources and tools available to small entities. SBREFA does not eliminate the responsibility to comply with the CWA.

For any questions specific to the violations or penalty, the most knowledgeable people on my staff regarding this matter are Kenneth Champagne, Environmental Protection Specialist, who can be reached at 800/227-8917, extension 6608, or Peggy Livingston, Enforcement Attorney, who can be reached at 800/227-8917, extension 6858.

We urge your prompt attention to this matter.

Sincerely,



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

Enclosures

1. Administrative Complaint
2. Certificate of Service
3. Consolidated Rules of Practice (40 C.F.R. Part 22)
4. SBREFA Information Sheet

cc: Tina Artemis, Regional Hearing Clerk
John Arrigo, Montana Department of Environmental Quality
David L. LaGrone, U.S. Army Corps of Engineers
Todd Tillinger, U.S. Army Corps of Engineers



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2010 OCT 28 PM 2:12

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)
)
Dockmaster Inc.,) ADMINISTRATIVE
Polson, Montana,) PENALTY COMPLAINT
)
Respondent.) Docket No. CWA-08-2011-0002
)
_____)

This Administrative Penalty Complaint (complaint) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by § 309(g)(1)(A) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(1)(A), and properly delegated to the undersigned EPA official.

Pursuant to § 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," 40 C.F.R. part 22 (a copy of which is Exhibit 1 to this complaint), EPA hereby proposes to assess a civil penalty against Respondent Dockmaster Inc. for its violations of § 301(a) of the CWA, 33 U.S.C. § 1311(a).

I. ALLEGATIONS

1. Respondent Dockmaster Inc. (Dockmaster or Respondent) is a corporation organized under the laws of the State of Montana. The address of the registered office for Dockmaster is 517 Cleveland St. SW, Polson, Montana, 59860. Its registered agent at that address is Glenda Walton.

2. On or about November 7, 8, and 9, 2007, Respondent, along with McCrumb Construction & Marine, Inc. (McCrumb Construction) and Montana Eagle Development, LLC (MED), discharged at least 400 cubic feet of soil, dirt, clay, gravel, and rocks from a barge into Flathead Lake, south of Caroline Point, near Lakeside, Montana.
3. The discharge described in the preceding paragraph was accomplished with an excavator, which was on the deck of the barge.
4. The barge mentioned above was owned by Dockmaster.
5. The excavator on the barge mentioned above was operated by employees of Dockmaster.
6. McCrumb Construction leased or contracted for the use of the barge and excavator mentioned in above, during the time period in which the discharges described in paragraph 2, above, occurred.
7. The discharges described in paragraph 2, above, were done at the direction of Brett McCrumb of McCrumb Construction.
8. The soil, dirt, clay, gravel, and rocks mentioned in paragraph 2, above, were wastes consisting of residual building materials from the demolition of a crib dock and/or construction of a replacement dock near the shore of Flathead Lake near Lakeside, Montana. MED owns that dock.
9. Flathead Lake has supported and/or is capable of supporting commercial navigation. Part of Flathead Lake is within the external boundaries of the Flathead Indian Reservation.
10. The Respondent discharged and/or allowed the discharge of the dredged or fill material described in paragraph 2, above.

11. The unauthorized dredged or fill material described in paragraph 2, above, has not been removed from Flathead Lake.
12. The discharges described in paragraph 2, above, were performed using an excavator, which was operated by or on behalf of Respondent.
13. The Respondent is a “person” within the meaning of § 502(5) of the CWA, 33 U.S.C. § 1362(5).
14. The soil, dirt, gravel, and rocks referenced in paragraphs 2 and 8, above, are “dredged material” or “fill material” as defined in 33 C.F.R. § 323.2(c) and 33 C.F.R. § 323.2(e), respectively, and “pollutants” as defined in § 502(6) of the CWA, 33 U.S.C. § 1362(6).
15. The barge and excavator referenced above are “point sources” as that term is defined in § 502(14) of the CWA, 33 U.S.C. § 1362(14).
16. Flathead Lake is a “water of the United States” as defined in 33 C.F.R. § 328.3(a) and a “navigable water” as defined in § 502(7) of the CWA, 33 U.S.C. § 1362(7).
17. The Respondent’s placement of dredged or fill material into Flathead Lake constitutes the “discharge of pollutants” as defined in § 502(12) of the CWA, 33 U.S.C. § 1362(12).
18. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into waters of the United States except as in compliance with, among other things, § 404 of the CWA, 33 U.S.C. § 1344.
19. 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.

20. According to 33 C.F.R. § 323.3(a), 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.
21. In a letter to MED dated January 7, 2005, the Corps determined that its proposal to repair existing docks and structures on Flathead Lake was authorized by Department of Army Nationwide Permit 39: Residential, Commercial, and Institutional Developments. This authorization allowed for approximately 0.2018 of an acre of total fill to be placed below the ordinary high water mark for the project (concrete foundation and foundation piers and sea wall only).
22. The discharges described in paragraph 2, above, were not authorized by the Corps' January 7, 2005, Nationwide Permit 39 verification letter.
23. Except for the dock and structure repair activities described in paragraph 21, above, no entity was authorized by a permit issued pursuant to § 404 of the CWA, 33 U.S.C. § 1344, to conduct the activities described in paragraph 2, above. Additionally, the discharges described in paragraph 2, above, exceeded, and were therefore in violation of, the January 7, 2005, authorization granted by the Corps pursuant to Nationwide Permit 39: Residential, Commercial, and Institutional Developments.
24. Respondent's discharges of dredged or fill material into Flathead Lake were never exempt from permitting pursuant to § 404(f) of the CWA, 33 U.S.C. § 1344(f), or 33 C.F.R. § 323.4.
25. Respondent's discharges of dredged or fill material into Flathead Lake violate § 301(a) of the CWA, 33 U.S.C. § 1311(a). Each discharge of pollutants from a point source by

Respondent into waters of the United States without authorization by a permit issued pursuant to § 404 of the CWA, 33 U.S.C. § 1344, constitutes a violation of § 301(a) of the CWA, 33 U.S.C. § 1311(a). Each day the discharged dredged or fill material remains in place without the required permit(s) constitutes an additional day of violation of § 301(a) of the CWA, 33 U.S.C. § 1311(a).

26. The discharges described in paragraph 2, above, resulted in the localized destruction of aquatic habitat and degradation of water quality, including but not limited to increases in turbidity.
27. On November 17, 2008, the Montana Department of Environmental Quality (MDEQ) issued a notice of violation to Flathead Dock & Pile, Inc. (predecessor in interest to McCrumb Construction) and to Brett McCrumb, stating that the discharges described in paragraph 2, above, were in violation of Montana law.
28. Pursuant to CWA § 309(g), 33 U.S.C. § 1319(g), EPA will consult with the MDEQ on the assessment of this administrative penalty by furnishing the MDEQ a copy of this complaint.
29. McCrumb Construction and MED have entered into a consent agreement with EPA resolving their civil penalty liability for the discharges described in paragraph 2, above.

II. PROPOSED ADMINISTRATIVE PENALTY

Based upon the foregoing allegations, and pursuant to its authority under § 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), EPA Region 8 hereby proposes to assess an administrative penalty of \$10,000 against Respondent.

The statutory maximum administrative penalty provided in § 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), has been adjusted for inflation to \$177,500, as described in 40 C.F.R. part 19.

In proposing its penalty, and in accordance with § 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA has considered the nature, circumstances, extent, and gravity of the violations, the Respondent's prior compliance history, Respondent's degree of culpability for the cited violations, any economic benefit or savings accruing to Respondent by virtue of the violations, Respondent's ability to pay the proposed penalty, and other matters that justice may require.

III. TERMS OF PAYMENT

If Respondent does not contest the findings and assessments set out above, it may pay EPA a penalty of \$10,000 for its violations. If such payment is made within 30 calendar days of Respondent's receipt of this complaint, then no answer need be filed. Penalty payment must be made by certified or cashier's check payable to "Treasurer, the United States of America." and remitted as follows:

If by first class U.S. mail, to:

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

If by Federal Express, Airborne, or other commercial carrier, to:

US Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

A copy of the check shall be sent to:

Margaret J. (Peggy) Livingston
Enforcement Attorney
U.S. EPA, Region 8 (8ENF-L)
1595 Wynkoop Street
Denver, CO 80202

A transmittal letter identifying the case title and docket number must accompany the remittance and copy of the check. The case title and docket number (see the first page of this complaint) should also be indicated directly on the check.

Neither the assessment nor the payment of an administrative penalty pursuant to § 309(g) of the CWA shall affect Respondent's continuing obligation to comply with the CWA or any other Federal, state, or local law or regulation or any compliance order issued under the CWA.

IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

As provided in § 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. § 22.15(c), Respondent has the right to a hearing in this matter. If Respondent (1) contests any material fact upon which this complaint is based, (2) contends that the amount of penalty proposed in this complaint is inappropriate, or (3) contends that it is entitled to judgment as a matter of law, Respondent must file a written answer in accordance with 40 C.F.R. § 22.15 within thirty (30) days after service of this complaint.

Respondent's answer must (1) clearly and directly admit, deny, or explain each of the factual allegations contained in this complaint, (2) state the circumstances or arguments that are alleged to constitute grounds for defense, (3) state the facts intended to be placed at issue, and (4) specifically request a hearing, if desired. 40 C.F.R. § 22.15(b). Failure to admit, deny, or

explain any materially factual allegation contained in this complaint constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). An original and one copy of each answer must be filed with:

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA, Region 8
1595 Wynkoop St.
Denver, CO 80202

A copy of the answer and each other document filed in this action must be sent to:

Margaret J. (Peggy) Livingston
Enforcement Attorney
U.S. EPA, Region 8 (8ENF-L)
1595 Wynkoop St.
Denver, CO 80202

By failing to request a hearing or to file a written answer within the thirty (30) day time limit, Respondent may waive the right to contest any of the allegations set forth in this complaint and/or be subject to a default judgment pursuant to 40 C.F.R. § 22.17 imposing the full penalty proposed in this complaint.

EPA is obligated to provide the public with an opportunity to comment on this proceeding and/or to participate in the hearing, if any. Please see § 309(g)(4)(B) of the CWA and 40 C.F.R. § 22.45 for more details, including procedures for members of the public to participate in the hearing and comment on any settlement.

V. SETTLEMENT CONFERENCE

EPA encourages parties to explore settlement possibilities through an informal settlement conference. **Please note that requesting, scheduling, or participating in a settlement conference neither substitutes or extends the deadline for filing a written answer and**

request for hearing with the Regional Hearing Clerk. The settlement process, however, may be pursued simultaneously with the administrative litigation process. If a settlement can be reached, its terms must be expressed in a written consent agreement signed by the parties and

Please direct any request for a settlement conference, or any questions regarding this Complaint, to Margaret J. (Peggy) Livingston, Enforcement Attorney, U.S. EPA, Region 8 (8ENF-L), 1595 Wynkoop St., Denver, CO 80202, telephone number 303-312-6858.

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

Date: 10/28/10

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

Date: 10/28/10

Margaret J. (Peggy) Livingston
Margaret J. (Peggy) Livingston
Enforcement Attorney
Office of Enforcement, Compliance
and Environmental Justice
1595 Wynkoop St.
Denver, CO 80202-1129

CERTIFICATE OF SERVICE

I certify that, on the date noted below, I hand delivered the original and one copy of the foregoing Administrative Penalty Complaint to:

Tina Artemis, Regional Hearing Clerk (8RC)
U.S. EPA, Region 8
1595 Wynkoop St.
Denver, CO 80202

I also certify that on the date noted below, I mailed a copy of the foregoing Administrative Penalty Complaint, with all exhibits, to the following as indicated below.

Glenda Walton, Registered Agent
Dockmaster Inc.
517 Cleveland St. SW
Polson, MT 59860
By U.S. Mail, Certified Return Receipt No. 7008 3230 0003 0731 3880

Enforcement Division
Montana Department of Environmental Quality
P.O. Box 200901
Helena, MT 50620-0901
By U.S. Mail, Certified Return Receipt No. 7008 3230 0003 0731 3897

Date: 10/28/2010

Judith M. McTernan