



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

1595 Wynkoop Street  
DENVER, CO 80202-1129  
Phone 800-227-8917  
<http://www.epa.gov/region08>

Ref: 8ENF-L

SENT VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

August 15, 2013

Mr. Edward J. Krisor  
3900 S. Wadsworth Blvd.  
Suite 320  
Lakewood, CO 80235

Re: In the Matter of Urban Drainage and Flood Control District  
Docket No. CWA-08-2013-0024

Dear Ed:

Enclosed is a copy of the Administrative Order on Consent; the original signed copy was sent directly to Mr. Hindman. The Combined Complaint and Consent Agreement has been filed with the EPA's regional hearing officer and the 40-day public comment period will commence shortly. Subsequent to the comment period, the hearing clerk will send to the hearing officer's final order and the District's original copy of the CCCA to Mr. Hindman, with a copy to you.

Thank you once again for your cooperation in this matter. Please call me if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Linda Kato".

Linda S. Kato  
Enforcement Counsel  
Office of Enforcement, Compliance, and  
Environmental Justice

cc: Dick Clark, w/o attachment

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2013 AUG 15 AM 8:25

FILED  
EPA REGION VIII  
HEARING CLERK

IN THE MATTER OF: )

Urban Drainage and Flood )  
Control District )  
2480 W. 26th Ave. )  
Denver, CO 80211-5304 )

Respondent. )  
\_\_\_\_\_ )

ADMINISTRATIVE ORDER  
ON CONSENT

Docket No. CWA-08-2013-0024

**I. INTRODUCTION**

This Administrative Order on Consent (Consent Order) is entered into voluntarily by the United States Environmental Protection Agency (EPA) and Respondent Urban Drainage and Flood Control District. The Consent Order concerns the implementation and completion of actions required to restore the environmental damage caused by allegedly illegal discharges of dredged and fill material into Piney Creek near Tower Road in Centennial, Arapahoe County, Colorado (the Site).

**II. STATUTORY AUTHORITY**

The following FINDINGS are made and ORDER issued pursuant to the authority vested in the Administrator of the EPA by sections 308 and 309 of the Clean Water Act (CWA), 33 U.S.C. §§ 1318 and 1319, and by the Administrator delegated to the Regional Administrator of the EPA Region 8, and redelegated by the Regional Administrator of the EPA Region 8 to the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice. The Consent 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.

### **III. PARTIES BOUND**

This Consent Order shall apply to and be binding upon the EPA and upon Respondent, its officers, directors, agents, successors and assigns. The signatories to this Consent Order certify that they are authorized to execute and legally bind the party they represent to this Consent Order. No change in the ownership or corporate status of Respondent or of the Site shall alter Respondent's responsibilities under this Consent Order unless the EPA, Respondent, and the transferee agree in writing to allow the transferee to assume such responsibilities. Additionally, at least 30 calendar days prior to such transfer, Respondent shall notify the EPA at the address specified in paragraph 27 of this Consent Order.

### **IV. STATEMENT OF PARTIES**

The following FINDINGS OF FACT AND OF VIOLATION are made solely by the EPA. In signing this Consent Order, Respondent neither admits nor denies the FINDINGS OF FACT AND OF VIOLATION. As such, and without any admission of liability, Respondent consents to issuance of this Consent Order and agrees to abide by all of the conditions herein. Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the Respondent may have with respect to any issue of fact or law set forth in this Consent Order, including, but not limited to, any right of judicial review of this section 309(a)(3) Consent Order under the Administrative Procedures Act, 5 U.S.C. §§ 701-708. Respondent further agrees not to challenge the jurisdiction of the EPA or the FINDINGS OF FACT AND OF VIOLATION below in any proceeding to enforce this Consent Order or in any action under this Consent Order.

## **V. FINDINGS OF FACT AND OF VIOLATION**

1. Respondent Urban Drainage and Flood Control District maintains its offices at 2480 W. 26th Ave., Suite 156-B, Denver, Colorado.
2. Piney Creek is a perennial tributary to Cherry Creek, which flows into Cherry Creek Reservoir and thence to the South Platte River, a traditionally navigable water. Wetlands at the Site directly abut Piney Creek.
3. On January 4, 2012, Respondent sent a letter to the Army Corps of Engineers (ACE) describing its intent to remove 35,000 to 40,000 cubic yards of sediment along Piney Creek. The letter inaccurately described the streambed as a concrete low flow channel and as a drainage facility. The letter stated that the sediment would be removed from the project site and did not include a description of any activities that would result in discharges to the streambed and adjacent wetlands.
4. The project site was located along Piney Creek approximately 250 feet upstream and 1,200 feet downstream of Tower Road in Centennial, Arapahoe County, Colorado.
5. On January 6, 2012, the ACE sent a letter to Respondent stating that based upon the information provided by Respondent in its January 4, 2012 letter, Respondent would not be required to obtain a permit from the ACE for the project.
6. On April 13, 2012, the ACE conducted a site inspection at the project site that revealed that dredged fill material had been deposited into the channel of Piney Creek and adjacent wetlands. The affected area covered 2.08 acres of wetlands and 1.01 acres of open water within the banks of Piney Creek.

7. This placement occurred during the project undertaken by Respondent to remove sediment from Piney Creek. The project also resulted in the excavation and redeposit of wetland vegetation. Respondent did not receive a permit from the ACE pursuant to Section 404 of the CWA prior to conducting the sediment removal project.

8. The discharges described in paragraph 6 of this Consent Order resulted from the use of common earthmoving vehicles and equipment, which were operated by Respondent or persons acting on its behalf.

9. Respondent is a “person” within the meaning of section 502(5) of the CWA, 33 U.S.C. § 1362(5).

10. The discharged dredged and fill material referenced in paragraph 6 of this Consent Order is and was 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).

11. The vehicles and equipment described in paragraph 8 this Consent 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).

12. Piney Creek and its adjacent wetlands referenced in paragraph 2 of this Consent Order are and were 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).

13. The placement of dredged and fill material into Piney Creek and its adjacent wetlands constitutes the “discharge of pollutants” within the meaning of section 502(12) of the CWA, 33 U.S.C. § 1362(12).

14. 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.

15. 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.

16. 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.

17. Respondent was not 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 6 of this Consent Order.

18. The activities conducted by Respondent and its agents as described in paragraph 6 of this Consent Order violate section 301 of the CWA, 33 U.S.C. § 1311.

19. Activities to be carried out under this Consent 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). Restoration and mitigation are appropriate to address the actual and potential harm to water quality, aquatic habitat, and wildlife habitat, as well as other functions and values, caused by Respondent's unpermitted activities.

20. These preceding FINDINGS OF FACT AND OF VIOLATION and the ORDER FOR COMPLIANCE below have been made after consultation and coordination with the U.S. Army Corps of Engineers, Omaha District.

## **VI. ORDER FOR COMPLIANCE**

Based upon the foregoing FINDINGS OF FACT AND OF VIOLATION, and pursuant to the authority vested in the Administrator of the EPA under CWA sections 308 and 309(a), 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, it is hereby ORDERED and AGREED:

21. Respondent shall immediately terminate all discharges of dredged and fill material at the Site, 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.

22. Respondent shall conduct restoration and mitigation activities for impacts to waters of the United States resulting from the unauthorized discharges of dredged and fill material at the Site in accordance with the schedule and other requirements set forth in the Restoration and Mitigation Plan (the Plan) appended herein as Attachment A.

23. Within 14 calendar days of receipt of the signed Consent Order, Respondent shall submit to the EPA the name and qualifications, including professional resume, of a consultant experienced in stream and wetlands restoration who will directly supervise all work performed pursuant to the Plan.

24. Respondent shall implement the Plan and then commence all restoration activities in accordance with the approved Plan, including the time frames specified therein, and all granted permits. If any permits are necessary, Respondent shall demonstrate that all permits have been granted by providing copies of all such permits, and any amendments thereto, to the EPA within seven calendar days of issuance of each permit.

25. All restoration activities conducted pursuant to this Consent Order and involving the use of heavy construction equipment shall be undertaken under the direct supervision of the consultant retained pursuant to paragraph 23 of this Consent Order and who shall be on-site during all critical times unless otherwise approved in advance by the EPA.

26. This Consent 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 U.S. Army Corps of Engineers (the Corps) at the address and telephone number below to determine if any work to be performed pursuant to this Consent 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 the EPA at the address listed in paragraph 27 of this Consent Order prior to initiating any work that is to be performed pursuant to this Consent Order.

Kiel Downing  
U.S. Army Corps of Engineers  
9307 S. Wadsworth  
Littleton, Colorado 80128  
Telephone: (303) 979-4120  
Facsimile: 303-979-0602

27. Respondent shall submit all notifications and related correspondence to:

Richard Clark, 8ENF-W  
U.S. Environmental Protection Agency, Region 8  
1595 Wynkoop St.  
Denver, CO 80202-1129  
Telephone: 303-312-6748  
Facsimile: 303-312-6953

A copy of the Plan also shall be provided to the Corps at the address noted in paragraph 26 of this Consent Order.



28. In addition to the notification requirements set forth in paragraph 27 of this Consent Order, after issuance of any Corps authorization for restoration and mitigation work, Respondent shall submit all notifications and correspondence to the Corps in accordance with the terms and conditions in the Corps permit.

29. Any deliverables, plans, reports, specifications, schedules and attachments required by this Consent Order are, upon approval by the EPA, incorporated into this Consent Order. Any noncompliance with such EPA-approved deliverables, plans, reports, specifications, schedules and attachments shall be deemed a failure to comply with this Consent Order and subject to EPA enforcement.

30. A lease, sublease or transfer of the Site shall not relieve Respondent, its officers, directors, agents, successors and assigns of any responsibility in the Consent Order unless the 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 the EPA regarding the details of the lease, sublease or transfer at the address specified in paragraph 27 of this Consent Order.

31. Respondent shall allow, or use their best efforts to allow, access by any authorized representative of the EPA or its contractors, the Corps, and the U.S. Fish and Wildlife Service, to sites and records relevant to this Consent Order for any of the following purposes:

- a. To inspect and monitor progress of the activities required by this Consent Order,
- b. To inspect and monitor compliance with this Consent Order, and
- c. To verify and evaluate data and other information submitted to the EPA.

This Consent Order shall in no way limit or otherwise affect the 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.

32. The signed Consent Order shall be effective upon receipt by the Respondent.

33. Issuance of this Consent 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 Consent Order. However, the EPA and the Respondent have agreed to the assessment of a civil penalty of \$3,450 and implementation of a supplemental environmental project in full settlement of the federal civil penalties for the CWA violations giving rise to the Consent Order.

34. The EPA agrees to submit all notifications and correspondence to:

Mr. Paul A. Hindman  
Executive Director  
Urban Drainage and Flood Control District  
2480 W. 26th Avenue  
Suite 156-B  
Denver, CO 80211-5304

Mr. Edward Krisor  
Counsel for Respondent  
3900 S. Wadsworth Blvd. #320  
Lakewood, CO 80235-2220

35. Any party hereto may, by notice, change the address to which future notices shall be sent or the identities of the persons designated to receive notices hereunder.

36. If an event causes or may cause delay in the achievement of the requirements of this Consent Order, Respondent shall notify the EPA verbally or via e-mail as soon as possible and in writing within ten working days from the date Respondent first knew of such event or should

have known of such event by exercise of due diligence, whichever is earlier. Respondent's written notice shall specify the length of the anticipated delay, the cause(s) of the delay, the measures taken or to be taken by Respondent to minimize the delay and a timetable by which those measures will be or have been implemented. Notification to the EPA pursuant to this paragraph of any anticipated delay, by itself, shall not excuse the delay or the obligation of Respondent to comply with requirements and deadlines of this Consent Order, unless the EPA grants in writing an extension of the applicable requirement or deadline.

37. If Respondent demonstrates to the EPA's satisfaction that the delay or anticipated delay has been or will be entirely caused by circumstances beyond Respondent's control (or the control of any of Respondent's agents) that Respondent could not have foreseen and prevented despite due diligence, and that Respondent has taken all reasonable measures to prevent or minimize such delay, the EPA may excuse performance or extend the time for performance of such requirement for a period not to exceed the actual delay resulting from such circumstances. The EPA's determination on these matters shall be made as soon as possible, and in writing within ten working days, after the receipt of Respondent's written notification of the event. The parties agree that changed economic circumstances shall not be considered circumstances beyond the control of Respondent.

38. Respondent understands and acknowledges the following:

- a. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), authorizes civil penalties of up to \$37,500 per day for each violation of an order issued by the Administrator of the EPA under section 309(a) of the CWA, 33 U.S.C. § 1319(a).

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

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

Date

8/15/2013

*for Eddie A. Sevin*

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

**URBAN DRAINAGE AND FLOOD CONTROL  
DISTRICT**  
Respondent

Date

8/13/13

*Paul A. Hindman*

Paul A. Hindman  
Executive Director  
Urban Drainage and Flood Control District

**CERTIFICATE OF SERVICE**

I hereby certify that on August 15, 2013, the foregoing Administrative Order on Consent in the matter of Urban Drainage and Flood Control District, Docket No. CWA-08-2013-0024, was served via certified mail upon the following persons:

Paul A. Hindman  
Executive Director  
Urban Drainage and Flood Control District  
2480 W. 26th Avenue  
Suite 156-B  
Denver, CO 80211-5304

Edward Krisor  
3900 S. Wadsworth Blvd.  
Suite 320  
Lakewood, Colorado 80235



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Andrea Reed

**EXHIBIT A**

**CERTIFICATE OF SERVICE**

I hereby certify that on August 15, 2013, the foregoing Administrative Order on Consent in the matter of Urban Drainage and Flood Control District, Docket No. CWA-08-2013-0024, was served via certified mail upon the following persons:

Paul A. Hindman  
Executive Director  
Urban Drainage and Flood Control District  
2480 W. 26th Avenue  
Suite 156-B  
Denver, CO 80211-5304

Edward Krisor  
3900 S. Wadsworth Blvd.  
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Andrea Reed