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BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the matter of:)	
STANLEY PIENIAZEK,)	Docket No. CWA-10-2004-0139
Fairbanks, Alaska,)	
)	COMPLAINT
Respondent.)	

I. STATUTORY AUTHORITY

1.1. This Administrative Complaint is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 309(g) of the Clean Water Act ("Act"), 33 U.S.C. § 1319(g). The Complainant in this action is the Region 10 Director of the Office of Ecosystems and Communities, who has been delegated authority to institute this action.

1.2. Pursuant to Section 309(g)(2)(B) of the Act, and in accordance with 40 C.F.R. Part 22, the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" ("Part 22 Rules"), Complainant hereby proposes the assessment of a civil penalty against Stanley Pieniazek ("Respondent") for the unlawful discharge of dredged or fill material into waters of the United States without authorization by a U.S. Army Corps of Engineers ("Corps") permit, as required by Section 404 of the Act, 33 U.S.C. § 1344, 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 Alaska before issuing a final order
3 assessing a penalty in this matter.

4 **II. GENERAL ALLEGATIONS**

5 2.1. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants
6 into waters of the United States by any person, except as authorized by a permit issued pursuant
7 to Section 402 or 404 of the Act, 33 U.S.C. § 1342 or 1344. Each discharge of pollutants from a
8 point source that is not authorized by such a permit constitutes a violation of Section 301(a) of
9 the Act, 33 U.S.C. § 1311(a).

10 2.2. Respondent Stanley Pieniazek is an individual and therefore a “person” within the
11 meaning of Sections 301(a) and 502(5) of the Act, 33 U.S.C. §§ 1311(a) and 1362(5).

12 2.3. Respondent owns, possesses, and/or controls property in the Fairbanks North Star
13 Borough, Alaska known as Lot 13 of the Ballaine Lake Subdivision, Section 31, Township 1
14 North, Range 1 West, Fairbanks Meridian. Lot 13 is hereinafter referred to as the “Site.”

15 2.4. The Site is comprised in its entirety of open water and wetlands meeting the three
16 criteria for jurisdictional wetlands in the 1987 “Federal Manual for Identifying and Delineating
17 Jurisdictional Wetlands.”

18 2.5. The Site’s open water and wetlands complex are hydrologically connected and
19 adjacent to an unnamed creek which is a tributary of Noyes Slough.

20 2.6. Noyes Slough is a navigable-in-fact waterbody and contributes its flow through the
21 Chena, Tanana, and Yukon Rivers to the Bering Sea. The Bering Sea is subject to the ebb and
22 flow of the tide.

23 2.7. The Site’s open water and wetlands are “waters of the United States” within the
24 meaning of 33 C.F.R. § 328.3(a) and 40 C.F.R. § 232.2 and therefore are “navigable waters”
25 within the meaning of Section 502(7) of the Act, 33 U.S.C. 1362(7).

1 **III. VIOLATIONS**

2 3.1. Beginning in the summer of 1999 and continuing at least through September 2002,
3 Respondent, at various times and at various locations within the Site, directed the operation of
4 dump trucks and other earthmoving equipment which were used to discharge gravel, dirt, sand,
5 sod, and other materials into jurisdictional open water and wetlands at the Site.

6 3.2. As of the date of this Complaint, the gravel, dirt, sand, sod, and other materials
7 referenced in the preceding paragraph remain in place.

8 3.3. The gravel, dirt, sand, sod, and other materials referenced in Paragraph 3.1 above
9 constitute "fill material" and/or "dredged material" within the meaning of 40 C.F.R. § 232.2 and
10 "pollutant[s]" within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), and 40
11 C.F.R. § 232.2.

12 3.4. Each piece of earthmoving equipment referenced in Paragraph 3.1 above is a "point
13 source" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

14 3.5. By causing such dredged or fill material to enter waters of the United States,
15 Respondent has engaged in the "discharge of pollutants" from a point source within the meaning
16 of Sections 301(a) and 502(12) of the Act, 33 U.S.C. §§ 1311(a) and 1362(12).

17 3.6. Respondent's discharge of pollutants was not authorized by any permit issued
18 pursuant to Section 402 or 404 of the Act, 33 U.S.C. § 1342 or 1344.

19 3.7. Respondent's discharge of pollutants into waters of the United States without a
20 permit under the Act has placed Respondent in violation of Section 301(a) of the Act, 33 U.S.C.
21 § 1311(a).

22 3.8. Each day the dredged or fill material remains in place without the required permit
23 constitutes an additional day of violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

24 3.9. On April 16, 2003, Respondent was issued an administrative compliance order
25 ("Order") issued pursuant to Sections 308 and 309(a) of the Act, 33 U.S.C. §§ 1318 and 1319(a),
26 requiring Respondent to perform certain work and to provide certain information related to
27 restoration of the Site.

1 3.10. On August 11, 2003, EPA visited the Site and determined that Respondent had not
2 taken any action towards restoring the wetlands as directed in the April 2003 Order.

3 3.11. As of the date of this Complaint, Respondent has not responded to the April 2003
4 Order and is in violation of the Order.

5 3.12. Under Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R.
6 Parts 19 and 22, Respondent is liable for the administrative assessment of civil penalties in an
7 amount not to exceed \$11,000 per day per violation, up a maximum of \$157,500 for the
8 violations described in the preceding paragraphs.

9 **IV. PROPOSED PENALTY**

10 4.1. Based on the foregoing allegations, and pursuant to the authority of Section
11 309(g)(2)(B) of the Act, Complainant proposes that an administrative penalty of TEN
12 THOUSAND DOLLARS (\$10,000.00) be assessed against Respondent. Complainant proposes
13 this penalty amount after considering the facts alleged in this Complaint and the applicable
14 statutory penalty factors in Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3).

15 4.2. Pursuant to Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), EPA must, in
16 determining the penalty to be assessed in this matter, take into account the nature, circumstances,
17 extent, and gravity of the violation, and, with respect to Respondent, ability to pay, prior history
18 of violations, degree of culpability, economic benefit and savings (if any) resulting from the
19 violation, and such other matters as justice may require. The following six paragraphs of this
20 complaint briefly address each of these statutory penalty factors as they apply to the facts of this
21 case.

22 4.3. Nature, Circumstances, Extent, and Gravity of the Violations: The proposed
23 penalty reflects Complainant's determination that Respondent's construction activities have
24 resulted in the discharge of dredged or fill material to approximately 0.13 acres of wetland and
25 open water areas of the Site. These wetlands provide water quality and aquatic ecosystem
26 benefits through flood water retention, base flow support, wildlife habitat, nutrient cycling,
27 removal of imported elements and compounds, processing of pollutants from the nearby roads
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1 and developed areas, particulate retention, and organic carbon export. Respondent's violations
2 threaten to destroy this wetlands community. Furthermore, by failing to promptly comply with
3 the April 2003 Order, Respondent has decreased the probability that any restoration efforts will
4 be successful.

5 4.4. Ability to Pay: Based on the information available to EPA regarding Respondent's
6 financial condition, Respondent appears able to pay a civil penalty of up to \$10,000.00. Should
7 Respondent submit information substantiating an inability to pay this amount, Complainant will
8 revise the proposed penalty to reflect this inability.

9 4.5. Prior History of Violations: Complainant is unaware of any prior history of
10 violations of the Act by Respondent.

11 4.6. Culpability: The proposed penalty reflects Complainant's determination that
12 Respondent had little or no degree of culpability prior to the initial filling activity in 1999.
13 However, Respondent's subsequent unauthorized filling activities were conducted with
14 knowledge of the Section 404 program. The proposed penalty also reflects Respondent's
15 unresponsiveness to the April 2003 Order, as well as his pattern of refusing service of
16 correspondence from regulatory agencies and ignoring specific warnings to cease his
17 unauthorized activities.

18 4.7. Economic Benefit: Respondent has realized an economic benefit as a result of the
19 violations described above. This economic benefit includes: increase in property value; avoided
20 costs associated with obtaining a proper Section 404 permit from the Corps; and other delayed or
21 avoided compliance costs such as those that would have been associated with obtaining an after-
22 the-fact Section 404 permit.

23 4.8. Other Matters: Respondent, as well as other property owners in the vicinity of this
24 wetland, may be deterred from future violations by the assessment of a penalty in this case. In
25 particular, assessment of a penalty for the violation involved in this action may encourage
26 Respondent and others similarly situated to apply for and obtain Section 404 permits prior to
27 discharging into waters of the United States.

1 **VII. INFORMAL SETTLEMENT CONFERENCE**

2 7.1. Whether or not Respondent requests a hearing, Respondent may request an informal
3 settlement conference to discuss the facts of this case, the proposed penalty, and the possibility of
4 settling this matter. To request such a settlement conference, Respondent should contact:

5 R. David Allnut, Assistant Regional Counsel
6 U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Mail Stop ORC-158
7 Seattle, WA 98101-1128


8 Tel. (206) 553-2581
9 Fax. (206) 553-0163

10 7.2. Note that a request for an informal settlement conference does not extend the thirty
11 (30) day period for filing a written Answer to this Complaint, nor does it waive Respondent's
12 right to request a hearing.

13 **VIII. RESERVATIONS**

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

19 Dated this 10th day of May, 2004.

20 

21 _____
22 Michelle Pirzadeh, Director
23 Office of Ecosystems and Communities
24 U.S. EPA Region 10
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CERTIFICATE OF SERVICE

In the Matter of: Stanley Pieniazek, CWA-10-2004-0139, I hereby certify that a copy of Complaint was delivered to the following persons, in the manner specified, on the date below:

Mr. Stanley Pieniazek
P.O. Box 81756
Fairbanks, AK 99708-1756

Certified Mail and Return Receipt

and the original and one copy was hand delivered to:

Carol Kennedy
Regional Hearing Clerk
U.S. EPA, Region 10
1200 Sixth Avenue
Seattle, WA 98101

Hand Deliver copy to :

David Allnut
U.S. EPA, Region 10
1200 Sixth Avenue
Seattle, WA 98101

Dated: May 11, 2004

Melissa L. Whitaker
Melissa L. Whitaker
Environmental Protection Agency



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

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ENVIRONMENTAL APPEALS BOARD

APR 15 2005

MEMORANDUM

SUBJECT: Stanley Peiniasek
Docket Number: CWA-10-2004-0139

FROM: Eurika Durr *Eurika Durr*
Clerk of the Board

TO: Carol Kennedy
Regional Hearing Clerk
Region 10

No appeal was filed, and the Board elected not to review the case sua sponte. The Default Order and Initial Decision thus become the Board's final order under 40 C.F.R. § 22.27.

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SECOND AMENDED CERTIFICATE OF SERVICE MARCH 31 PM 4:01

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The undersigned certifies that the original of the attached **DEFAULT ORDER/INITIAL DECISION** in **In the Matter of: Stanley Pieniazek, DOCKET NO.: CWA-10-2004-0139** was filed with the Regional Hearing Clerk on March 1, 2005.

On March 1, 2005 the undersigned certifies that a true and correct copy of the document was delivered to:

David Allnutt, Esquire
US Environmental Protection Agency
1200 Sixth Avenue
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail March 31, 2005, to:

Stanley Pieniazek
P.O. Box 22885
Juneau, AK 99802-2885

Stanley Pieniazek
P.O. Box 81756
Fairbanks, AK 99708-1756

DATED this 31st day of March 2005



Carol Kennedy
Regional Hearings Clerk
EPA Region 10

AMENDED CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **DEFAULT ORDER/INITIAL DECISION** in **In the Matter of: Stanley Pieniazek, DOCKET NO.: CWA-10-2004-0139** was filed with the Regional Hearing Clerk on March 1, 2005.

On March 1, 2005 the undersigned certifies that a true and correct copy of the document was delivered to:

David Allnutt, Esquire
US Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in Federal Express March 29, 2005, to:

Stanley Pieniazek
253 Madcap Lane
Fairbanks, Alaska 99708-1756

Stanley Pieniazek
257 Madcap Lane
Fairbanks, Alaska 99708-1756

DATED this 29th day of March 2005.



Carol Kennedy
Regional Hearings Clerk
EPA Region 10



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY RECEIVED
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

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EPA--REGION 10

March 02, 2005

Reply To
Attn Of: ORC-158

Eurika Durr
Clerk of the Environmental Appeals Board
U.S. Environmental Protection Agency
607 14th Street, N.W.
Washington, D.C. 20005

Re: Stanley Pieniazek
Docket Number CWA-10-2004-0139

Dear Ms. Durr:

Enclosed is one true copy of the entire administrative record of CWA-10-2004-0139, Stanley Pieniazek for review by the Environmental Appeals Board. Also enclosed is a certified index of the entire administrative record.

The attorney for this matter is David Allnutt. David may be reached at 206-553-2581.

Sincerely,

A handwritten signature in cursive script that reads "Carol D. Kennedy".

Carol D. Kennedy
Regional Hearings Clerk

Enclosures

cc: Susan L. Biro, Chief Administrative Law Judge
David Allnutt, Esquire