

**U.S. EPA REGION 8
HEARING CLERK**

Docket No. CWA-08-2025-0010

1. This is an administrative penalty assessment proceeding pursuant to sections 22.13(b) and 22.18(b)(2) and (3) of 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 (Consolidated Rules of Practice).
2. The parties to this proceeding are the undersigned U.S. Environmental Protection Agency (EPA) official (Complainant) and The City of Boulder, Colorado (Respondent).
3. Respondent owns, manages, operates on, or otherwise controls property under and adjacent to Albion Lake, an impoundment of North Boulder Creek, and property adjacent to the North Boulder Creek near Latitude 40.045257° N, Longitude -105.602274° W (Site). Albion Dam impounds North Boulder Creek waters into Albion Lake.
4. The parties, having agreed settlement of this action is in the public interest, consent to the entry of this consent agreement (Agreement) without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Agreement.

5. This Agreement is issued under the authority of section 309(g) of the Clean Water Act (Act), 33 U.S.C. § 1319(g).
6. This proceeding is subject to the Consolidated Rules of Practice, under which this proceeding may be resolved by issuance of a final order from a Regional Judicial Officer or Regional Administrator ratifying this Agreement (Final Order). If issued, a Final Order will simultaneously commence and conclude this proceeding. 40 C.F.R. § 22.13(b).

III. GOVERNING LAW

Pollutant Discharge Prohibition

7. Section 301(a) of the Act, 33 U.S.C. § 1311(a) (Section 301(a)), prohibits any person from discharging any pollutant into navigable waters except in compliance with sections 301, 302, 306, 307, 308, 402, and 404 of the Act, 33 U.S.C. §§ 1311, 1312, 1316, 1317, 1318, 1342, and 1344.

Enforcement

8. Any person who discharges a pollutant to navigable waters in violation of section 301(a) of the Act may be assessed an administrative civil penalty by the EPA according to section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1). As adjusted for inflation pursuant to 40 C.F.R. Part 19, the maximum administrative class I penalty under section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), for violations occurring after November 2, 2015, where penalties are assessed on or after January 8, 2025, is \$27,378 per violation, with a maximum of \$68,445. *See* 90 Fed. Reg. 1375, 1377 (January 8, 2025).

IV. ALLEGATIONS OF FACT AND LAW

The following allegations apply at all times relevant to this Agreement:

9. Respondent is a municipality, and a political subdivision of the State of Colorado.
10. At all relevant times, Respondent owned, managed, operated on, or otherwise controlled the property under and adjacent to Albion Lake and North Boulder Creek at the Site.
11. From June through November 2022, May through November 2023, and May through June 2024, Respondent conducted work to rehabilitate Albion Dam (Project). Project work resulting in discharges of dredged or fill material into Albion Lake, North Boulder Creek, and adjacent wetlands included: installing a culvert over North Boulder Creek to allow for construction access across the creek and constructing a concrete plinth along the length of Albion Dam, in support of formwork for upstream reinforced concrete facing. Project work also including utilizing piled rock and soil from previous construction of the dam to grade a staging area about 800 feet downstream of the dam so equipment and material could be stored for construction. Respondent graded a portion of the access road to contain water that was flowing across the road, thus impacting wetland and riparian habitat from moving rock and soil to maintain the access road and staging area (Project Activities).
12. The United States Army Corps of Engineers (Corps) conducted an inspection of the Site on June 17, 2024, and confirmed the Project Activities listed in paragraph 11 resulted in discharges of dredged or fill material into Albion Lake and North Boulder Creek.

13. The Project Activities resulted in discharges of dredged and/or fill material affecting approximately 0.122 acres of perennial stream channel, and 0.097 acres of adjacent wetlands.
14. The Project Activities were performed using common earthmoving vehicles and equipment.
15. Respondent is a “person” as defined in section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.
16. The material discharged during Project Activities at the Site is and was “dredged material” or “fill material” as defined in 33 C.F.R. § 323.2(c) or 33 C.F.R. § 323.2(e), respectively, and “pollutants” as defined in section 502(6) of the Act, 33 U.S.C. § 1362(6).
17. The vehicles and equipment used to conduct the Project Activities are each a “point source” as defined in section 502(14) of the Act, 33 U.S.C. § 1362(14).
18. Albion Lake and North Boulder Creek are “waters of the United States” as defined in 33 C.F.R. § 328.3(a) and therefore “navigable waters” as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7).
19. The placement of dredged or fill material into Albion Lake and North Boulder Creek and adjacent wetlands during the Project Activities constitutes the “discharge of pollutants” as defined in section 502(12) of the Act, 33 U.S.C. § 1362(12).
20. Section 301(a) of the Act, 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 Act, 33 U.S.C. § 1344.
21. Section 404 of the Act, 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.
22. At the time of the Project Activities, Respondent was not authorized by a permit issued pursuant to section 404 of the Act, 33 U.S.C. § 1344, to discharge dredged or fill material into Albion Lake or North Boulder Creek or adjacent wetlands.
23. Any person who discharges a pollutant to navigable waters without a permit in violation of section 301(a) of the Act, 33 U.S.C. § 1311(a), may be assessed an administrative civil penalty by the EPA, according to section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1).

V. ALLEGED VIOLATIONS OF LAW

24. The discharge of pollutants from a point source by Respondent into waters of the United States during Project Activities without the required permits issued pursuant to section 404 of the Act, 33 U.S.C. § 1344, constitutes a violation of section 301(a) of the Act, 33 U.S.C. § 1311(a). Each day the discharges remain in place without the required permits constitutes an additional day of violation of section 301(a) of the Act, 33 U.S.C. § 1311(a).

VI. TERMS OF CONSENT AGREEMENT

25. For the purpose of this proceeding, Respondent:
- a. admits the facts set forth in paragraph 3 of this Agreement;
 - b. admits the jurisdictional allegations in section II of this Agreement;
 - c. neither admits nor denies the factual allegations in sections IV and V of this Agreement;
 - d. consents to the assessment of the civil penalty described below;
 - e. acknowledges this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement action; and
 - f. waives its right to contest the allegations in this Agreement, to appeal or otherwise challenge any Final Order ratifying this Agreement, and waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial.
26. In determining the amount of the penalty to be assessed, the EPA considered: the nature, circumstances, extent and gravity of the violations; Respondent's ability to pay; any prior history of such violations by Respondent; the degree of Respondent's culpability; the economic benefit or savings (if any) resulting from the violations; and other matters as justice may require.
27. Based on the allegations in sections IV and V above, and having considered the penalty assessment factors cited in paragraph 26, above, the Complainant has determined a civil penalty of \$20,000 is appropriate to settle this proceeding.
28. Penalty Payment. Respondent agrees to:
- a. pay a civil penalty in the amount of \$20,000 within 30 calendar days after the Effective Date (*see*, paragraph 41 below);

- b. pay the civil penalty using any method provided on the website <https://www.epa.gov/financial/makepayment>;
- c. make each payment payable to the “Environmental Protection Agency” and include in each and every payment a reference to the docket number that appears on the Final Order ratifying this Agreement;
- d. no later than 24 hours after each payment, email proof of payment to Monica Crosby, Enforcement Officer, EPA Region 8, at crosby.monica@epa.gov (whom the Complainant designates for service of proof of payment) and the Regional Hearing Clerk for EPA Region 8 at R8_Hearing_Clerk@epa.gov. “Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate payment has been made according to EPA requirements, in the amount due, and identified with the docket number that appears on the Final Order.

29. If Respondent fails to timely pay any portion of the penalty, the EPA may:

- a. request the Attorney General to bring a civil action under section 309 of the Act, 33 U.S.C. § 1319, in an appropriate district court to recover the amount assessed, plus interest at currently prevailing rates from the date of the final order, attorney’s fees and costs for collection proceedings, and a 20% quarterly nonpayment penalty for each quarter during which failure to pay persists;
- b. refer the debt to a credit reporting agency or a collection agency under 40 C.F.R. §§ 13.13, 13.14, and 13.33;
- c. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, under 40 C.F.R. Part 13, Subparts C and H; and
- d. suspend or revoke Respondents’ licenses or other privileges or suspend or disqualify Respondents from doing business with the EPA or engaging in programs the EPA sponsors or funds under 40 C.F.R. § 13.17.

30. Consistent with section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), Respondent will not deduct penalties paid under this Agreement for federal tax purposes.

31. This Agreement applies to Respondent and its employees, agents, authorized representatives, successors, and assigns. Respondent must give written notice and a copy of this Agreement to any successors-in-interest prior to any transfer of any interest in the Site occurring prior to payment in full of the penalty referenced above. Any change in ownership or corporate control of the Site, shall not alter Respondent's responsibilities under this Agreement.
32. The undersigned representative of Respondent certifies he or she has authority to bind Respondent to this Agreement.
33. Except as qualified by paragraph 29 above, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

VII. EFFECT OF CONSENT AGREEMENT

34. In accordance with 40 C.F.R. § 22.18(c), compliance with the Final Order ratifying this Agreement resolves Respondent's liability only for federal civil penalties for the violations specifically alleged herein.
35. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act, any regulation, order, or permit issued pursuant to the Act, and any other federal, state, or local laws, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, tribal, state, or local permit.
36. Nothing herein shall be construed to limit the power of the EPA to pursue injunctive or other equitable relief, or criminal sanctions, for any violations of law or to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
37. If, after signing this Agreement, the EPA finds that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, the EPA reserves any and all of its legal and equitable rights.

VIII. PUBLIC NOTICE

38. As required by section 309(g)(4), 33 U.S.C. §§ 1319(g)(4), and 40 C.F.R. § 22.45, prior to submitting this Agreement to the Regional Judicial Officer or Regional Administrator for approval, the EPA will provide public notice of this Agreement and an opportunity to comment on the matter for 30 days. If comments received before the close of the public comment period disclose facts or considerations indicating this Agreement is inappropriate, improper, or inadequate, or if a hearing is requested under section 309(g)(4)(C), 33 U.S.C. § 1319(g)(4)(C), the EPA can modify or withdraw its consent to this Agreement. If no comment is received the Agreement will be submitted to the Regional Judicial Officer with a request that the Agreement be ratified by the issuance of a Final Order.

IX. SERVICE OF FINAL ORDER

39. The contact information for the individuals authorized to receive service for each party are:

For Complainant:

Chuck Figur, 8ORC-LE-R
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129
Telephone: (303) 312-6915
email: figur.charles@epa.gov

For Respondent:

Nuria Rivera-Vandermyde, City Manager
City of Boulder, Colorado
1777 Broadway
Boulder, CO 80302
Telephone: (303) 441-4296
Email: rivera-vandermyden@bouldercolorado.gov

With Copy To:

Jessica Pault-Atiase, Senior Counsel
Boulder City Attorney's Office
Telephone: (303) 441-4016
Email: pault-atiasej@bouldercolorado.gov

40. The parties consent to service of the Final Order, if any, by email to the persons named in the paragraph above.
41. This Agreement shall become effective on the date a Final Order is transmitted electronically to the Parties by the Regional Hearing Clerk (Effective Date).

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

Date: _____

By: _____
Emilio Llamozas, Supervisor
NPDES and Wetlands Enforcement Section
Enforcement and Compliance Assurance
Division

**THE CITY OF BOULDER, COLORADO
Respondent**

Date: 04/18/2025

By: YPR _____
Nuria River-Vandermyde
City Manager

ATTEST:


City Clerk

APPROVED AS TO FORM:


City Attorney's Office