



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

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

SEP 17 2009

Ref: 8ENF-W

CERTIFIED MAIL #7008 1140 0004 5097 5755
RETURN RECEIPT REQUESTED

Steven H. Gunderson, Director
Water Quality Control Division
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, CO 80246-1530

Re: Notice of Proposed Assessment of
Class II Civil Penalty
Docket No. **CWA-08-2009-0028**

Dear Mr. Gunderson:

Enclosed is a copy of an administrative complaint (Complaint), which proposes to assess a civil penalty against Bucklen Equipment Company, Inc. (Respondent) of Greeley, Colorado. The United States Environmental Protection Agency (EPA) filed the Complaint pursuant to section 309(g), 33 U.S.C. § 1319(g), of the Clean Water Act (CWA) to begin the process to assess administratively a Class II civil penalty of \$22,000 against Respondent for the unauthorized discharges of dredged and/or fill material to waters of the United States. Because the violations occurred in Colorado, EPA is providing notice to you pursuant to CWA section 309(a), 33 U.S.C. § 1319(a). The section 404 program is not a CWA authorized program in Colorado; however, we are willing to provide further information on this proposed assessment.

You or your staff may request a conference within thirty (30) days of receiving this letter. The conference may be in person or by telephone and may cover any matters relevant to the proposed assessment.

A copy of EPA procedures governing the administrative assessment of civil penalties under the CWA is enclosed for your reference. If you have any questions, the most knowledgeable person on my staff for legal issues is Sheldon Muller, Enforcement Attorney, who



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can be reached at 303-312-6916. The most knowledgeable person on my staff for technical issues is Monica Heimdal, Section 404 Enforcement Officer, who can be reached at 303-312-6359.

Sincerely,



for Eddie A. Sierra
Acting Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

Enclosures:

1. Administrative Complaint
2. Certificate of Service
3. Administrative Penalty Procedures (40 C.F.R. Part 22)

cc: Tina Artemis, EPA, Regional Hearing Clerk



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
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SEP 17 2009

Ref: 8ENF-W

CERTIFIED MAIL #7008 1140 0004 5097 5748
RETURN RECEIPT REQUESTED

Randal K. Bucklen, Vice President
Bucklen Equipment Company, Inc.
804 N. 25th Ave.
Greeley, CO 80631

Re: Notice of Proposed Assessment of
Class II Civil Penalty
Docket No. **CWA-08-2009-0028**

Dear Mr. Bucklen:

Enclosed is a document entitled Administrative Complaint and Notice of Opportunity for Hearing (Complaint). The United States Environmental Protection Agency (EPA or Agency) is issuing this Complaint against Bucklen Equipment Company, Inc. (Respondent) pursuant to section 309 of the Clean Water Act (the Act or CWA), 33 U.S.C. § 1319. In the Complaint, EPA alleges that Respondent violated section 301 of the Act, 33 U.S.C. § 1311, by discharging, without authorization, dredged and/or fill material into the Cache la Poudre River and its adjacent wetlands in Weld County, Colorado. The Complaint proposes that a penalty of \$22,000 be assessed for these violations.

Also enclosed is a Consent Agreement (Agreement) that contains the terms of the settlement-in-principle that we have reached to resolve this matter. Please review the Agreement and, if it appears in order, have the Agreement signed and dated by Respondent's president where indicated. Once EPA receives the signed and dated Agreement, EPA will hold the document until ten days after the close of the 30-day public comment period that will begin on or shortly after the date the Complaint is filed. If EPA has not received any comments from the public indicating that it would be inappropriate to issue a final order implementing the Agreement, EPA will sign the Agreement and file it with the Regional Hearing Clerk. The Agreement will then be reviewed by the Regional Judicial Officer (RJO) who will determine whether the Agreement should be issued as a final order. If the RJO determines that the Agreement should be issued as a final order, the RJO will prepare and sign a Final Order effectuating the Agreement. Upon final approval of the Agreement by the RJO, Respondent will be bound by the terms of the Agreement and will waive its right to a hearing on, and judicial appeal of, the agreed upon civil penalty.



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Please be advised that should Respondent decide not to proceed with the settlement by signing and returning the enclosed Agreement, Respondent has the right to a hearing to, among other things, contest the factual allegations in the Complaint. We have enclosed a copy of 40 C.F.R. Part 22, which identifies the procedures EPA follows in Class II penalty assessments. Please note the requirements for an answer to the Complaint in 40 C.F.R. § 22.15(b).

If Respondent decides not to proceed with the settlement by signing and returning the enclosed Agreement, it must file an answer to the enclosed Complaint within thirty (30) calendar days of receipt thereof. The answer must be filed with the EPA Region 8 Hearing Clerk at the following address:

Regional Hearing Clerk (8RC)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

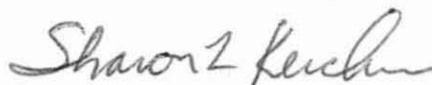
If Respondent decides not to sign and return the enclosed Agreement, and then does not file an answer by the applicable deadline or seek and obtain an extension to file an answer, it may be found in default. 40 C.F.R. § 22.17(a). A default judgment may impose the full penalty proposed in the Complaint. 40 C.F.R. § 22.17(b). Due to the fact that the 30-day deadline for filing an answer may occur prior to the time when the Agreement can be filed with the Regional Hearing Clerk, it would be prudent for the parties to seek an extension of time for the filing of an answer by Respondent prior to the passing of the 30-day deadline for filing an answer. Sheldon Muller, Enforcement Attorney, will contact you within two weeks after receiving the signed Agreement to make those arrangements.

EPA has agreed to notify small businesses of their right to comment on regulatory enforcement activities at the time of an Agency enforcement activity pursuant to the Small Business Regulatory Enforcement and Fairness Act (SBREFA). SBREFA does not eliminate your responsibility to comply with the CWA or this Complaint, nor does it create any new rights or defenses under law. We have enclosed a SBREFA information sheet containing further information on compliance assistance resources and tools available to small businesses. Also enclosed is a Securities and Exchange Commission (SEC) Disclosure Notice.

Please also note that Respondent has the right to be represented by an attorney at any stage of the proceedings, although this is not required. If Respondent has any questions regarding this matter, the most knowledgeable person on my staff for legal issues is Sheldon Muller, Enforcement Attorney, who can be reached at 303-312-6916. The most knowledgeable

person on my staff for technical issues is Monica Heimdal, Section 404 Enforcement Officer, who can be reached at 303-312-6359. We urge your prompt attention to this matter.

Sincerely,



ea Eddie A. Sierra
Acting Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

Enclosures:

1. Administrative Complaint
2. Certificate of Service
3. Consent Agreement
4. Consolidated Rules of Practice (40 C.F.R. Part 22)
5. SBREFA Information Sheet
6. SEC Disclosure Notice

cc: Tina Artemis, EPA, Regional Hearing Clerk
Timothy T. Carey, U.S. Army Corps of Engineers
David L. LaGrone, U.S. Army Corps of Engineers

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

FILED
EPA REGION 8
HEARING CLERK

IN THE MATTER OF:)
)
Bucklen Equipment Company, Inc.)
804 N. 25th Avenue)
Greeley, CO 80631)
)
)
)
Respondent.)
_____)

ADMINISTRATIVE COMPLAINT AND
NOTICE OF OPPORTUNITY FOR
HEARING

SEP 17 2009

Proceedings to Assess a Civil
Penalty Under Section 309(g)
of the Clean Water Act,
33 U.S.C. § 1319(g)

Docket No. CWA-08-2009-0028

I. STATUTORY AUTHORITY

1. This Administrative Complaint and Notice of Opportunity for Hearing (Complaint) is issued pursuant to § 309(g) of the Clean Water Act (Act), 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.13. Section 309(g) of the Act authorizes the Administrator of the United States Environmental Protection Agency (EPA) to make findings and to assess civil penalties for violations of § 301 of the Act, 33 U.S.C. § 1311. This proceeding is subject to 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 accompanies this Complaint. Complainant in this action is the Assistant Regional Administrator for the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8, who has been properly delegated the authority to issue this Complaint.

II. STATUTORY AND REGULATORY FRAMEWORK

2. The objective of the Act is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. 33 U.S.C. § 1251(a).

3. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person except as in compliance with, *inter alia*, § 404 of the Act, 33 U.S.C. § 1344.

4. Section 404 of the Act, 33 U.S.C. § 1344, authorizes the Secretary of the Army, acting through the Chief of Engineers of the United States Army Corps of Engineers (Corps), to issue permits, after notice and opportunity for public hearings, for the discharge of dredged or fill material into navigable waters, which are defined in the Act as waters of the United States.

5. 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.

6. The terms “discharge of a pollutant” and “discharge of pollutants” are defined in § 502(12) of the Act to each mean, in pertinent part, “any addition of any pollutant to navigable waters from any point source” 33 U.S.C. § 1362(12).

7. Section 502(6) of the Act defines “pollutant” as “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.” 33 U.S.C. § 1362(6).

8. “Point source” is defined, in pertinent part, in § 502(14) of the Act as any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

9. “Navigable waters” is defined in § 502(7) of the Act as “waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7).

10. “Waters of the United States,” as defined in 40 C.F.R. § 232.2, includes, *inter alia*: (1) all waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce; (2) all interstate waters including interstate wetlands; and (3) wetlands adjacent to such waters (other than waters that are themselves wetlands).

11. “Ordinary high water mark” is defined in 33 C.F.R. § 328.3(e) as “that line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.”

12. “Person” is defined in § 502(5) of the Act as “an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.” 33 U.S.C. § 1362(5).

13. Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19 authorize the assessment of a Class II civil penalty of up to \$11,000 per day per violation of § 301 of the Act, 33 U.S.C. § 1311, up to a maximum of \$157,500, for violations occurring on or before January 12, 2009.

III. GENERAL ALLEGATIONS

14. Respondent is and was at all times relevant to the Complaint a corporation organized under the laws of the State of Colorado. Respondent’s office is located at 804 N. 25th Ave., Greeley, Colorado, 80631.

15. The president and registered agent of Bucklen Equipment Company, Inc., are, respectively, Michael A. Bucklen, and Goldberg Law Center, P.C.

16. Respondent is and was at all times relevant to the Complaint a “person” within the meaning of § 502(5) of the Act, 33 U.S.C. § 1362(5).

17. The Cache la Poudre River is currently used, or was used in the past, or may be susceptible to use, in interstate or foreign commerce.

18. The Cache la Poudre River is navigable in fact.

19. The Cache la Poudre River flows into the South Platte River, an interstate water that is currently used, or was used in the past, or may be susceptible to use, in interstate or foreign commerce.

20. The South Platte River is navigable in fact.

21. The South Platte River is a “water of the United States” within the meaning of 40 C.F.R. § 232.2.

22. The Cache la Poudre River has a significant nexus to the South Platte River.

23. The Cache la Poudre River is a “water of the United States” within the meaning of 40 C.F.R. § 232.2.

24. Wetlands located along the banks of the Cache la Poudre River at the location of the violations alleged in Paragraphs 27-28 and 32 of this Complaint provide, among other benefits, flood attenuation, shoreline protection, water quality protection, and wildlife habitat.

25. The wetlands located along the banks of the Cache la Poudre River at the location of the violations alleged in Paragraphs 27-28 and 32 of this Complaint are adjacent to and abut the Cache la Poudre River and therefore are “waters of the United States” within the meaning of 40 C.F.R. § 232.2.

26. Pursuant to § 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1), EPA has consulted with the Colorado Department of Public Health and Environment, Water Quality Control Division, regarding assessment of this administrative penalty by furnishing a copy of this Complaint and inviting comments on behalf of the State of Colorado.

IV. SPECIFIC ALLEGATIONS

27. On or about August 6, 2008, the Corps received a complaint of work being done in the Cache la Poudre River, in the vicinity of Respondent's business site, using heavy equipment. According to the complainant, the river was being dredged and regraded. Willows also were being removed as part of those dredging and regrading activities. Photographs of the work, as well as a location map, were forwarded to the Corps by the complainant on or about August 6, 2008.

28. On or about August 7, 2008, the Corps contacted Respondent's vice president who confirmed that Respondent had been working in the river to remove islands and grade the floodway in an attempt to improve the flow of the Cache la Poudre River and lessen the chance of overbank flooding. The Corps explained the work required a Department of the Army permit and advised Respondent to cease the dredging, regrading, and related activities, as such work could constitute a violation of the Act. Respondent agreed to remove all equipment from the Cache la Poudre River.

29. As a result of its investigation, the Corps found that between approximately July 21, 2008, and August 7, 2008, Respondent, without authorization from the Corps or any other regulatory agency, deposited dredged and/or fill material into the Cache la Poudre River.

30. The Corps issued a cease and desist order to Respondent on August 11, 2008, and referred the case to EPA.

31. The Corps and EPA conducted a joint inspection of the site of the alleged violations on May 19, 2009. At that time, Respondent identified the segment of the Cache la Poudre River where work had been conducted and reaffirmed that it had been directly responsible for that work. The upstream and downstream limits of the river segment where work was conducted encompass approximately 1400 feet of river length.

32. During the May 19, 2009, inspection, EPA and the Corps also identified wetlands adjacent to the Cache la Poudre River that had been filled with the material that Respondent had excavated from the Cache la Poudre River.

33. The activities described in paragraphs 27-28 and 32 of this Complaint were performed using common earthmoving vehicles and equipment, all of which were operated by Respondent and/or by one or more individuals on behalf of Respondent.

V. VIOLATION - DISCHARGE OF POLLUTANTS WITHOUT A PERMIT

34. Paragraphs 1 through 33 of this Complaint are realleged and incorporated herein by reference.

35. The discharged materials described in paragraphs 27-28 and 32 of this Complaint are, and were at all times relevant to the Complaint, "pollutants" within the meaning of § 502(6) of the Act, 33 U.S.C. § 1362(6).

36. The vehicles and equipment described in paragraph 33 of this Complaint are, and were at all times relevant to the Complaint, each a "point source" within the meaning of § 502(14) of the Act, 33 U.S.C. § 1362(14).

37. The Cache la Poudre River and its adjacent wetlands are, and were at all times relevant to the Complaint, “waters of the United States” within the meaning of 40 C.F.R. § 232.2, and therefore “navigable waters” within the meaning of § 502(7) of the Act, 33 U.S.C. § 1362(7).

38. Each instance of the placement of dredged and/or fill material into the Cache la Poudre River and/or its adjacent wetlands constitutes the “discharge of a pollutant” or “discharge of pollutants” within the meaning of § 502(12) of the Act, 33 U.S.C. § 1362(12).

39. The discharges of pollutants from a point source by Respondent into waters of the United States described in paragraphs 27-28 and 32 of this Complaint, undertaken without the required permit or other authorization issued by the Corps pursuant to § 404 of the Act, 33 U.S.C. § 1344, constitute violations of § 301 of the Act, 33 U.S.C. § 1311, and are subject to the assessment of penalties pursuant to § 309(g) of the Act, 33 U.S.C. § 1319(g).

40. Each unauthorized discharge described in paragraphs 27-28 and 32 of this Complaint constitutes a separate violation of § 301 of the Act, 33 U.S.C. § 1311, and is subject to a separate penalty pursuant to § 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B).

41. Each day that such unauthorized discharges remain in place in the Cache la Poudre River and its adjacent wetlands constitutes a separate violation of § 301 of the Act, 33 U.S.C. § 1311, and constitutes a continuing violation within the meaning of § 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B).

VI. NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

42. Based on the foregoing allegations and pursuant to the authority of § 309(g) of the Act, 33 U.S.C. § 1319(g), EPA Region 8 hereby proposes to issue a Final Order Assessing

Administrative Penalties to Respondent assessing a penalty in the amount of Twenty-Two Thousand Dollars (\$22,000).

43. The proposed penalty amount was determined by EPA after taking into account all factors identified in § 309(g)(3) of the Act, 33 U.S.C. § 1319(g). These factors include: the nature, circumstances, extent, and gravity of the violation or violations; Respondent's prior compliance history and 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 as justice may require. EPA may issue the Final Order Assessing Administrative Penalties thirty (30) days after Respondent's receipt of this Complaint, unless Respondent, within that time, requests a hearing on this Complaint pursuant to section VII (Notice of Opportunity to Request a Hearing) of this Complaint.

VII. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

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

45. Respondent's answer must: (1) clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint; (2) state the circumstances or arguments which are alleged to constitute the grounds of any defense; (3) state the facts which Respondent disputes; (4) state the basis for opposing any proposed relief; and (5) specifically request a

hearing, if desired. 40 C.F.R. § 22.15(b). Failure to admit, deny, or explain any material factual allegation contained in the Complaint constitutes an admission of the allegation. 40 C.F.R. § 22.15(d).

46. Respondent's answer, an original and one copy, must be filed with:

Regional Hearing Clerk
U.S. EPA Region 8 (8RC)
1595 Wynkoop Street
Denver, CO 80202-1129

A copy of Respondent's answer and all other documents filed in this action must be served on:

Sheldon Muller
Enforcement Attorney
U.S. EPA Region 8 (8ENF-L)
1595 Wynkoop Street
Denver, CO 80202-1129

47. Be aware that should Respondent request a hearing on this proposed penalty assessment, members of the public, to whom EPA is obligated to give notice of this proposed action, will have a right under § 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B), to be heard and to present evidence.

IF RESPONDENT FAILS TO REQUEST A HEARING, IT WILL WAIVE ITS RIGHT TO CONTEST ANY OF THE ALLEGATIONS SET FORTH IN THE COMPLAINT.

IF RESPONDENT FAILS TO FILE A WRITTEN ANSWER WITHIN THE THIRTY (30) DAY LIMIT, A DEFAULT JUDGMENT MAY BE ENTERED PURSUANT TO 40 C.F.R. § 22.17. A DEFAULT JUDGMENT MAY IMPOSE THE FULL PENALTY PROPOSED IN THE COMPLAINT.

48. Should Respondent not request a hearing, EPA will issue a Final Order Assessing Administrative Penalties, and only members of the public who submit timely comments on this proposal will have an additional thirty (30) days to petition EPA to set aside the Final Order Assessing Administrative Penalties and to hold a hearing thereon. EPA will grant the petition and will hold a hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order Assessing Administrative Penalties.

VIII. TERMS OF PAYMENT FOR QUICK RESOLUTION

49. If Respondent does not contest the findings and assessments set out above, this action may be resolved by paying the proposed penalty in full pursuant to 40 C.F.R. § 22.18. Please note that no such payment may be made until ten (10) days after the close of the public comment period provided for under 40 C.F.R. § 22.45. Please also note that if Respondent elects to resolve this action by paying the proposed penalty in full pursuant to 40 C.F.R. § 22.18, no Answer need be filed provided that Respondent files, within thirty (30) days after service of the Complaint, a statement agreeing to pay the proposed penalty in full. If more time is needed for payment, Respondent may file, within thirty (30) days after receipt of the Complaint, a statement agreeing to pay the penalty, and then pay the money within sixty (60) days after receipt of the Complaint. The penalty payment must be made by certified or cashier's check payable to "Treasurer, the United States of America" and remitted to:

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

Copies of the check shall be sent to:

Monica Heimdal
U.S. EPA Region 8 (8ENF-W)
1595 Wynkoop Street
Denver, CO 80202-1129

and

Sheldon Muller
U.S. EPA Region 8 (8ENF-L)
1595 Wynkoop Street
Denver, CO 80202-1129

A transmittal letter identifying the case title and docket number must accompany the remittance and copies of the check.

50. Payment of the penalty in this manner shall constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing in this matter.

51. Neither assessment nor payment of an administrative civil penalty pursuant to § 309 of the Act, 33 U.S.C. § 1319, shall affect Respondent's continuing obligation to comply with the Act or any other federal, state, or local law or regulations, and any separate compliance order issued under § 309(a) of the Act, 33 U.S.C. § 1319(a), for the violations alleged herein.

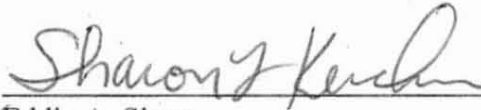
IX. SETTLEMENT CONFERENCE


52. EPA encourages the exploration of settlement possibilities through an informal settlement conference. Please note that a request for, scheduling of, or participation in a settlement conference does not extend the period for filing an answer and request for hearing as set out above. The settlement process, however, may be pursued simultaneously with the administrative litigation process. If a settlement can be reached, its terms will be expressed in a written consent agreement signed by the parties and incorporated into a final order by the

Regional Judicial Officer. 40 C.F.R. § 22.18. To explore the possibility of settlement in this matter, contact Sheldon Muller, Enforcement Attorney, at the address above. Mr. Muller can also be reached at (303) 312-6916.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8
Complainant.

Date: Sept. 17, 2009



 Eddie A. Sierra
Acting Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

CERTIFICATE OF SERVICE

I certify that on the date noted below, I sent by certified mail, return receipt requested, a copy of the foregoing ADMINISTRATIVE COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING, and a copy 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, to:

Randal K. Bucklen, Vice President
Bucklen Equipment Company, Inc.
804 N. 25th Ave.
Greeley, CO 80631

Certified Return Receipt No. 7008 1140 0004 5097 5748

I further certify that on the same date below I sent by certified mail, return receipt requested, a copy of this document to:

Steven H. Gunderson, Director
Water Quality Control Division
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, CO 80246-1530

Certified Return Receipt No. 7008 1140 0004 5097 5755

I further certify that on the same date below the original and one copy were hand-delivered to:

Tina Artemis
Regional Hearing Clerk
U.S. EPA Region 8 (8RC)
1595 Wynkoop Street
Denver, CO 80202-1129

Date: 9/17/09

Andrea Reed

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF:)	CONSENT AGREEMENT
)	
Bucklen Equipment Company, Inc.)	Docket No.
804 N. 25th Avenue)	
Greeley, CO 80631)	
)	
)	
)	
Respondent.)	
_____)	

Complainant, United States Environmental Protection Agency, Region 8 (EPA), and Respondent, Bucklen Equipment Company, Inc., by their undersigned representatives, hereby consent and agree as follows:

I. BACKGROUND

1. On _____, 2009, Complainant issued a Complaint against Respondent alleging certain violations of the Clean Water Act, 33 U.S.C. § 1251 et seq. (Act). The Complaint proposed a civil penalty for the violations alleged therein.

2. Respondent has not yet filed its answer to the Complaint.

II. JURISDICTION

3. Respondent admits the jurisdictional allegations of the Complaint and neither admits nor denies the specific factual allegations of the Complaint.

4. Respondent waives its right to a hearing before any tribunal to contest any issue of law or fact set forth in the Complaint or in this Consent Agreement (Agreement).

III. PARTIES BOUND

5. This Agreement, upon incorporation into a final order, applies to and is binding upon EPA and upon Respondent and Respondent's successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this Agreement. This Agreement contains all terms of the settlement agreed to by the parties.

IV. CIVIL PENALTY

6. Respondent consents and agrees to pay a civil penalty in the amount of SIXTEEN THOUSAND DOLLARS (\$16,000), in the manner described below in this paragraph.

a. Payment is due within 30 calendar days from the date written on the Final Order, issued by the Regional Judicial Officer, that adopts this Consent Agreement. If the due date falls on a weekend or legal federal holiday, the due date is the next business day. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.

b. The payment shall be made by any of the methods set forth in Appendix 1 to this Agreement.

c. Notice that payment has been made shall be provided, at the same time that payment has been made, to:

Monica Heimdal
Enforcement Officer
Technical Enforcement Program (8ENF-W)
U.S. EPA Region 8
1595 Wynkoop
Denver, CO 80202-1129

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA Region 8
1595 Wynkoop
Denver, CO 80202-1129

If payment is made by cashier's or certified check, the notice shall include a copy of the check. If payment is made in any other manner, the notice shall include documentation demonstrating that the payment was made.

d. In the event payment is not received by the specified due date, interest accrues from the date of the final order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received (i.e., on the 1st late day, 30 days of interest accrues).

e. In addition, a handling charge of fifteen dollars (\$15) shall be assessed on the 31st day from the date of the final order, and each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (i.e., the 121st day from the date the final order is signed). Payments are first applied to handling charges, 6% penalty interest, late interest, and any balance is then applied to the outstanding principal amount.

f. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

V. COMPLIANCE WITH CLEAN WATER ACT

7. Nothing in this Agreement shall relieve Respondent of the duty to comply with the Clean Water Act and its implementing regulations.

8. Respondent consents and agrees that within thirty (30) calendar days of the date written on the Final Order, issued by the Regional Judicial Officer, that adopts this Consent Agreement, Respondent will remove, to an upland location, the remaining piles of fill located along the banks of the Cache la Poudre River where the violations alleged in the Complaint took place. In order to ensure that the piles of fill are properly removed, Respondent consents and agrees to submit photographs and/or video to EPA documenting that the work was completed. The photographs and/or video shall be sent to Monica Heimdal at the address set forth in Paragraph 6.c of this Agreement. If EPA determines that the work was not completed satisfactorily, it will advise Respondent accordingly, and Respondent shall undertake any additional work directed by EPA.

9. During July or August 2010, EPA will inspect the area where the violations alleged in the Complaint took place to determine if the area has properly revegetated itself. If it appears to EPA that additional work needs to be done, including recontouring and/or planting additional vegetation in the area where the violations alleged in the Complaint took place, EPA will so advise Respondent. Respondent may be directed at that time to submit a restoration plan to EPA detailing the work that will be done. Respondent shall then undertake the work directed by EPA, which work may be set forth in a restoration plan submitted by Respondent and approved by EPA. Respondent consents and agrees that such work will be completed within thirty (30) calendar days after Respondent's receipt of correspondence from EPA directing the

work or approving any required restoration plan, or within such other time period approved by EPA.

VI. NONCOMPLIANCE WITH AGREEMENT

10. Failure by Respondent to comply with any of the terms of this Agreement shall constitute a breach of the Agreement and may result in referral of the matter to the Department of Justice for enforcement of this Agreement and for such other relief as may be appropriate.

11. Nothing in this Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Agreement.

VII. MISCELLANEOUS

12. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions of this Agreement and to bind Respondent to the terms and conditions of this Agreement.

13. The parties agree to submit this Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.

14. Each party shall bear its own costs and attorneys' fees in connection with this matter.

15. This Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the Complaint.

In the Matter of Bucklen Equipment Company, Inc., Docket No. CWA-08-2009-

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

Complainant.

Date: _____ By: _____

Michael T. Risner, Director
Legal Enforcement Program

Date: _____ By: _____

Diane Sipe, Director
Technical Enforcement Program

In the Matter of Bucklen Equipment Company, Inc., Docket No. CWA-08-2009-

BUCKLEN EQUIPMENT COMPANY, INC.,

Respondent.

Date: _____ By: _____

Michael A. Bucklen
President

CERTIFICATE OF SERVICE

I certify that on the date noted below, I sent by certified mail, return receipt requested, a copy of the foregoing CONSENT AGREEMENT to:

Randal K. Bucklen, Vice President
Bucklen Equipment Company, Inc.
804 N. 25th Ave.
Greeley, Colorado 80631

Certified Return Receipt No. _____

I further certify that on the same date below I sent by certified mail, return receipt requested, a copy of this document to:

Steven H. Gunderson, Director
Water Quality Control Division
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, CO 80246-1530

Certified Return Receipt No. _____

I further certify that on the same date below the original and one copy were hand-delivered to:

Tina Artemis
Regional Hearing Clerk
U.S. Environmental Protection Agency (8RC)
1595 Wynkoop Street
Denver, CO 80202-1129

Date: _____

Consent Agreement - Appendix 1

The following are acceptable payment methods for the civil penalty required to be paid pursuant to the Agreement.

1. If payment is being made by cashier's or certified check, submit the check, including the name and docket number of this case, payable to "Treasurer, United States of America," to:

Regular Mail:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Federal Express, Airborne, or other commercial carrier:

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

Contact: Natalie Pearson
314-418-4087

2. Wire Transfers:

Wire transfers must indicate the name and docket number of this case and be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read " D 68010727
Environmental Protection Agency "

In the Matter of Bucklen Equipment Company, Inc., Docket No. CWA-08-2009-

3. ACH (also known as REX or remittance express):

ACH payments must indicate the name and docket number of this case and be paid in accordance with the following information:

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact - Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

4. On-line Payment:

There is now an On Line Payment Option, available through the Dept. of Treasury. This payment option can be accessed from the information below:

www.pay.gov

Enter "sf0 1.1" (without the quotation marks) in the "Search Public Forms" field.

Click on the first link to open the form, complete required fields, and then click on "Submit Data" button at bottom of form.