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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9**

IN THE MATTER OF:)	DOCKET NO. CWA-09-2026-0016
)	
Henry Simpson,)	
d/b/a Buena Vista Subdivision)	
Santa Rita, Guam,)	
)	
Respondent.)	ADMINISTRATIVE COMPLAINT
)	
Proceedings under Section 309(g) of the Clean)	
Water Act, 33 U.S.C. § 1319(g).)	
)	
)	
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)	

In re: Henry Simpson

Administrative Complaint CWA-09-2026-0016

I. AUTHORITY

1. This Administrative Complaint (“Complaint”) seeks the assessment of civil penalties pursuant to the authority vested in the Administrator of the Environmental Protection Agency (EPA) by Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g).

2. The Director of the EPA Region 9 Enforcement and Compliance Assurance Division (“Complainant”) has been delegated the authority to issue this Complaint.

3. The rules for this proceeding are the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits” (Rules of Practice), 40 Code of Federal Regulation (C.F.R.) Part 22, a copy of which is enclosed. *See, specifically* 40 C.F.R. § 22.1(a)(9).

4. Pursuant to the Rules of Practice, 40 C.F.R. § 22.13(a), this Complaint conforms to the prehearing procedures at 40 C.F.R. § 22.14 governing administrative complaints.

II. JURISDICTION

5. The Regional Judicial Officer for EPA Region 9 is the Presiding Officer with jurisdiction over this action until an answer is filed pursuant to the Rules of Practice at 40 C.F.R. § 22.4.

III. STATUTORY AND REGULATORY BACKGROUND

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), makes it unlawful for a person to discharge pollutants except, among other things, as authorized by a National Pollutant Discharge Elimination System (NPDES) permit.

7. Section 502(5) of the CWA, 33 U.S.C. § 1362(5) defines the term “person” to mean an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.

8. Under CWA Section 502(12), the term “discharge of a pollutant(s)” means any addition of any pollutant to navigable waters from any point source or any addition of any pollutant to the

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waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft. 33 U.S.C. § 1362(12).

9. Under CWA Section 502(6), the term “pollutant” means 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).

10. Under CWA Section 502(7), the term “navigable waters” means the waters of the United States, including the territorial seas. 33 U.S.C. § 1362(7). The territorial seas extend seaward from the coast three miles offshore. 33 U.S.C. § 1362(8).

11. Under CWA Section 502(14), the term “point source” means any discernible, confined, and discrete conveyance from which pollutants are or may be discharged. 33 U.S.C. § 1362(14).

12. Certain stormwater discharges, including discharges of stormwater associated with industrial activity, require NPDES permit authorization. Section 402(p)(2)(B) of the CWA, 33 U.S.C. § 1342(p)(2)(B); 40 C.F.R. § 122.26(a)(1)(ii).

13. Stormwater discharge associated with industrial activity includes stormwater discharge from construction activity, which includes clearing, grading, and excavation disturbing one acre or more. 40 C.F.R. §§ 122.26(b)(14)(x) and 122.26(b)(15).

14. Section 402 of the CWA, 33 U.S.C. § 1342, establishes the NPDES program and authorizes the EPA and authorized states to issue permits governing the discharge of pollutants from point sources into waters of the United States.

15. The operator of a facility or activity discharging stormwater associated with industrial activity must request and obtain authorization to discharge under either an individual NPDES

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permit or a promulgated NPDES general permit issued by the EPA or by a state with an EPA-approved NPDES program. 40 C.F.R. § 122.26(c)(1), 33 U.S.C. §§ 1311(a) and 1342(p).

16. The EPA is the NPDES permitting authority in the territory of Guam. Since 1992, the EPA has issued a series of Construction General Permits that are applicable to Guam. Most recently, the EPA issued the *2022 NPDES General Permit for Discharges from Construction Activities* (hereinafter, “2022 Construction General Permit”) on February 17, 2022. The 2022 Construction General Permit replaced the 2017 Construction General Permit, which was in effect from February 16, 2017, through February 16, 2022.

17. Both the 2017 and 2022 Construction General Permits define an “operator” as any party associated with a construction project that either has (a) operational control over the construction plans and specifications, including the ability to make modifications to those plans and specifications, or (b) day-to-day operational control of those activities at a project that are necessary to ensure compliance with the permit conditions. See Parts 1.1.1.a and 1.1.1.b. of the 2017 Construction General Permit and 2022 Construction General Permit.

18. Under 40 C.F.R. § 122.21(c), a discharger proposing a discharge of stormwater associated with construction activity covered by 40 C.F.R. § 122.26(b)(14)(x) must submit an application ninety (90) days prior to the date construction is to commence, or submit a notice of intent to seek coverage under an applicable general permit in accordance with the deadlines provided by the terms of the general permit. See 40 C.F.R. § 122.28(b)(2).

IV. FACTUAL AND LEGAL ALLEGATIONS

19. Henry Simpson, doing business as Buena Vista Subdivision, (“Respondent”) is an individual and a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

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20. Since at least February 5, 2010, Respondent has owned the property located at 976-C Cross Island Route 17 in Santa Rita, Guam, referred to as Buena Vista Subdivision.

21. Between at least August 26, 2021, and February 21, 2023, Respondent conducted construction activities at Buena Vista Subdivision including clearing and grading.

22. On approximately 101 occasions between August 26, 2021, and February 21, 2023, precipitation events generated 0.5 inches or more of rainfall in the vicinity of Buena Vista Subdivision.

23. A storm event which generates 0.5 inches of rainfall or more will generate runoff in Southern areas of Guam, including at Buena Vista Subdivision.

24. The stormwater runoff from Buena Vista Subdivision between August 26, 2021, and February 21, 2023, was associated with construction activity, including clearing and grading.

25. Stormwater runoff from construction sites, such as the Buena Vista Subdivision, include sediment, metals from exposed rebar, phosphorous, pH from concrete debris, and other chemicals found in construction products.

26. Stormwater runoff carrying pollutants from Buena Vista Subdivision is collected in engineered conveyances including swales, drainage pipes, and headwalls.

27. The engineered conveyances that collect stormwater from Buena Vista Subdivision are point sources, as that term is defined at Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

28. Stormwater runoff carrying pollutants from the northwest portion of the Buena Vista Subdivision is discharged from the engineered conveyances to tributaries that flow to the Atantano River, which flows to Apra Harbor and then to the Pacific Ocean.

29. Stormwater runoff carrying pollutants from the southeast portion of the Buena Vista Subdivision is discharged from the engineered conveyances to tributaries that flow to the Talofoto River, which flows to the Talofoto Bay and then to the Pacific Ocean.

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30. Stormwater runoff carrying pollutants from Buena Vista Subdivision discharges to Waters of the United States.

31. Respondent had operational control over the construction plans and specifications or had day to day operational control of those activities necessary to ensure compliance with the 2017 and 2022 Construction General Permit.

32. Respondent was an “operator” associated with a construction project at Buena Vista Subdivision from least August 26, 2021 to February 21, 2023, as that term is defined in the 2017 and 2022 Construction General Permits.

33. Respondent did not obtain authorization under any NPDES permit for stormwater discharges associated with construction activities conducted at the Buena Vista Subdivision site between August 26, 2021, and February 21, 2023, in violation of 40 C.F.R. § 122.26(c)(1).

34. Discharges of stormwater runoff carrying pollutants from the Buena Vista Subdivision site are unauthorized discharges of stormwater from construction activities.

35. While Respondent submitted a Notice of Intent (NOI) to seek coverage under EPA’s 2022 Construction General Permit in September 2022 for stormwater discharges associated with the construction of fire roads in Buena Vista Subdivision, Respondent did not complete the permitting process or provide the documentation required to obtain authorization under the 2022 Construction General Permit.

36. Accordingly, Respondent did not receive coverage for discharges of stormwater from construction activities related to the fire roads that occurred after September 2022, or for stormwater discharges associated with any other construction activities prior to or after September 2022.

37. Respondent’s unauthorized discharges of stormwater from construction activities conducted between August 26, 2021, and February 21, 2023, violated Section 301(a) of the

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Clean Water Act, 33 U.S.C. § 1311(a), which prohibits the discharge of pollutants from point sources to waters of the United States except in compliance with a valid permit.

V. RELIEF SOUGHT: CIVIL PENALTY DEMAND

38. Complainant requests that the Presiding Officer issue an order in this matter assessing an administrative penalty pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

39. Section 309(g)(2) of the CWA, 33 U.S.C. § 1319(g)(2), as adjusted for inflation at 40 C.F.R. § 19.4, provides that Respondent shall pay an administrative penalty of up to \$27,378 for each day of violation of the CWA, up to a maximum penalty of \$342,218. In determining the amount of the penalty assessed, Section 309(g)(3) of the CWA requires the Presiding Officer to take into account the nature, circumstances, extent, and gravity of the violations and Respondent's ability to pay, prior history of such violations, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require. Accordingly, Complainant requests that after consideration of these statutory assessment factors, the Presiding Officer assess Respondent a civil administrative penalty in an amount not to exceed \$342,218.

40. Complainant will notify the public of this Complaint in accordance with the requirements of 40 C.F.R. § 22.45(b).

VII. ANSWERING THE COMPLAINT AND REQUESTING A HEARING ON THE DEMAND FOR PENALTIES

A. Answer to the Complaint

41. If Respondent intends to contest any material fact upon which the Complaint is based, or wishes to contend that the proposed penalty is inappropriate, or that Respondent is entitled to judgment as a matter of law, then the Rules of Practice at 40 C.F.R. § 22.15(a) require that Respondent file an original and one copy of a written Answer with EPA Region 9's Regional Hearing Clerk within 30 days after service of this Complaint. Respondent may submit the

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Answer electronically, using the Electronic Filing System (EFS). Instructions for filing using the EFS are enclosed. Alternatively, if Respondent does not wish to submit the Answer using the EFS, Respondent must contact the Regional Hearing Clerk at R9HearingClerk@epa.gov to discuss alternate means of filing. Parties should not unilaterally mail documents to the Regional Hearing Clerk and assume the documents are filed in a timely manner.

42. The Rules of Practice at 40 C.F.R. § 22.15(a) also require that Respondent serve an additional copy of the Answer on Complainant, who has authorized Erin Brewer to receive service related to this proceeding:

Erin Brewer
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street (mail code: ORC 2-3)
San Francisco, CA 94105
Phone: (415) 972-3362
brewer.erin@epa.gov

43. In accordance with 40 C.F.R. § 22.15(b), the contents of the Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with regard to which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. Under 40 C.F.R. Section 22.15(d), Respondent's failure to admit, deny or explain any material factual allegation contained in this Complaint constitutes an admission of the allegation. The Answer must also, in accordance with 40 C.F.R. § 22.15(b), state: (1) The circumstances or arguments that are alleged to constitute the grounds of any defense; (2) the facts that Respondent disputes; (3) the basis for opposing the proposed relief; and (4) whether a hearing is requested.

B. Request for a Hearing

44. In accordance with Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B) and 40 C.F.R. §§ 22.14(a)(5) and 22.15(c), Respondent may request a hearing on any material fact

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alleged in this Complaint, or on the appropriateness of the proposed civil penalties. A hearing in this matter would be subject to the Hearing Procedures at 40 C.F.R. Subpart D.

45. If Respondent wishes to request a hearing, they must include the request in its Answer, pursuant to 40 C.F.R. § 22.15(c).

46. Respondent's failure to affirmatively raise in the Answer facts that constitute or might constitute grounds for its defense may preclude Respondent from raising such facts and/or from having such facts admitted into evidence at a hearing.

C. Default

47. To avoid the Presiding Officer's entry of a default order pursuant to 40 C.F.R. § 22.17(a) for a penalty up to \$342,218, Respondent must file a written Answer with the Regional Hearing Clerk in the manner described above.

48. Any penalty assessed in a default order will become due and payable by Respondent without further proceedings 30 days after the default order becomes final. 40 C.F.R. § 22.17(d).

VIII. REQUESTING AN INFORMAL SETTLEMENT CONFERENCE

49. In accordance with 40 C.F.R. § 22.18(b), whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this case, the proposed penalty and compliance order, and settlement. To request such a settlement conference, please contact:

Erin Brewer
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street (mail code: ORC 2-3)
San Francisco, CA 94105
(415) 972-3362
brewer.erin@epa.gov

50. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged herein. A request for an informal settlement conference is not

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a request for a hearing in accordance with 40 C.F.R. § 22.15(c), or as provided for by Section 309(g)(2)(B) of the Clean Water Act, 33 U.S.C. § 1319(g)(2)(B).

51. Settlement discussions do not affect Respondent's obligation to file a timely Answer to the Complaint. 40 C.F.R. §§ 22.15 and 22.18(b)(1). Complainant will not modify its Complaint simply because an informal settlement conference is held.

52. The terms and conditions of any settlement that may be reached as a result of a settlement conference will be recorded in a written Consent Agreement signed by all parties. 40 C.F.R. § 22.18(b)(2). To conclude the proceeding, the EPA will execute a Final Order ratifying the parties' Consent Agreement. 40 C.F.R. § 22.18(b)(3). In accepting the Consent Agreement, Respondent would waive any right to contest the allegations herein and waive any right to appeal the Final Order accompanying the Consent Agreement. 40 C.F.R. § 22.18(b)(2).

53. Respondent entering into a Consent Agreement would not extinguish, waive, satisfy, or otherwise affect Respondent's obligation to comply with all applicable statutory and regulatory requirements and legal orders.

**AMY MILLER-
BOWEN**

Digitally signed by
AMY MILLER-BOWEN
Date: 2025.10.31
10:03:11 -07'00'

Amy C. Miller-Bowen, Director

Enforcement and Compliance Assurance Division

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CERTIFICATE OF SERVICE

In the matter of Henry Simpson

EPA Docket No. CWA-09-2026-0016

I certify that the foregoing Complaint, Notice of Proposed Penalty, and Notice of Opportunity for Hearing, was filed via Electronic Filing Service with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 9 at R9HearingClerk@epa.gov and that a true and correct copy of the (1) Complaint, Notice of Proposed Penalty, and Notice of Opportunity for Hearing; (2) the Consolidated Rules of Practice at 40 C.F.R. Part 22; and (3) the Regional Judicial Officer's Standing order Dated November 15, 2024, was sent via Certified Mail with return receipt requested to:

Henry Simpson,


Tracking No. 7015 0640 0001 1122 0062

**JAMES
MARINCOLA**

Digitally signed by JAMES
MARINCOLA
Date: 2025.11.03 13:06:41 -08'00'

James Marincola
Stormwater, Fill and Oil Supervisor
Enforcement and Compliance Assurance Division
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San Francisco, CA 94105
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