



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

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

SEP 30 2013

Ref: 8ENF-W

**CERTIFIED MAIL #7009 3410 0000 2592 8703**  
**RETURN RECEIPT REQUESTED**

Kevin Frederick, Administrator  
Water Quality Division  
Wyoming Department of Environmental Quality  
122 West 25th Street  
Herschler Building, 4th Floor-West  
Cheyenne, Wyoming 82002

Re: Notice of Proposed Assessment of Class I Civil Penalty  
Docket No. CWA-08-2013-0036

Dear Mr. Frederick:

Enclosed is a copy of an administrative complaint (Complaint), which proposes to assess a civil penalty against Farmers Canal Company (Respondent) of Burlington, Wyoming. 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 I civil penalty of \$25,000 against Respondent for the unauthorized discharges of dredged and/or fill material to waters of the United States. Because the violations occurred in Wyoming, the 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 Wyoming; 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.

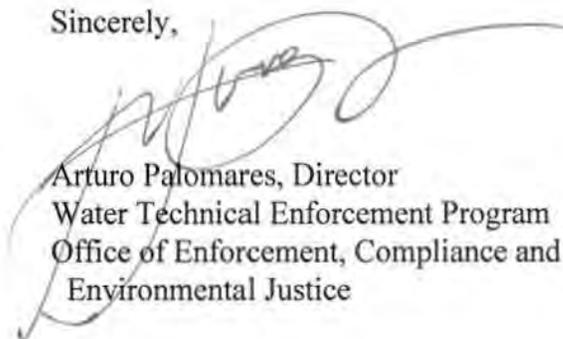
A copy of the EPA procedures governing the administrative assessment of civil penalties under the CWA is enclosed for your reference. For any technical questions, the most knowledgeable person on my staff is Monica Heimdal, Section 404 Enforcement Officer, who can be reached at 303-312-6359.



Printed on Recycled Paper

For any legal questions, please contact Peggy Livingston, Enforcement Attorney, who can be reached at 303-312-6858. Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'Arturo Palomares', is written over the typed name and title. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Arturo Palomares, Director  
Water Technical Enforcement Program  
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

**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:

Mary Howard, Registered Agent  
Farmers Canal Company  
P.O. Box 36  
Burlington, Wyoming 82411

Certified Return Receipt No. 7009 3410 0000 2592 8697

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

Kevin Frederick, Administrator  
Water Quality Division  
Wyoming Department of Environmental Quality  
122 West 25th Street  
Herschler Building, 4th Floor-West  
Cheyenne, Wyoming 82002

Certified Return Receipt No. 7009 3410 0000 2592 8703

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, Colorado 80202-1129

Date: September 30, 2013 

State agency, authorized to receive such funds in conducting this program.

**§ 21.13 Effect of certification upon authority to enforce applicable standards.**

The certification by EPA or a State for SBA Loan purposes in no way constitutes a determination by EPA or the State that the facilities certified (a) will be constructed within the time specified by an applicable standard or (b) will be constructed and installed in accordance with the plans and specifications submitted in the application, will be operated and maintained properly, or will be applied to process wastes which are the same as described in the application. The certification in no way constitutes a waiver by EPA or a State of its authority to take appropriate enforcement action against the owner or operator of such facilities for violations of an applicable standard.

**PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION/TERMINATION OR SUSPENSION OF PERMITS**

**Subpart A—General**

Sec.

- 22.1 Scope of this part.
- 22.2 Use of number and gender.
- 22.3 Definitions.
- 22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.
- 22.5 Filing, service, and form of all filed documents; business confidentiality claims.
- 22.6 Filing and service of rulings, orders and decisions.
- 22.7 Computation and extension of time.
- 22.8 *Ex parte* discussion of proceeding.
- 22.9 Examination of documents filed.

**Subpart B—Parties and Appearances**

- 22.10 Appearances.
- 22.11 Intervention and non-party briefs.
- 22.12 Consolidation and severance.

**Subpart C—Prehearing Procedures**

- 22.13 Commencement of a proceeding.
- 22.14 Complaint.
- 22.15 Answer to the complaint.
- 22.16 Motions.

- 22.17 Default.
- 22.18 Quick resolution; settlement; alternative dispute resolution.
- 22.19 Prehearing information exchange; prehearing conference; other discovery.
- 22.20 Accelerated decision; decision to dismiss.

**Subpart D—Hearing Procedures**

- 22.21 Assignment of Presiding Officer; scheduling the hearing.
- 22.22 Evidence.
- 22.23 Objections and offers of proof.
- 22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard.
- 22.25 Filing the transcript.
- 22.26 Proposed findings, conclusions, and order.

**Subpart E—Initial Decision and Motion to Reopen a Hearing**

- 22.27 Initial decision.
- 22.28 Motion to reopen a hearing.

**Subpart F—Appeals and Administrative Review**

- 22.29 Appeal from or review of interlocutory orders or rulings.
- 22.30 Appeal from or review of initial decision.

**Subpart G—Final Order**

- 22.31 Final order.
- 22.32 Motion to reconsider a final order.

**Subpart H—Supplemental Rules**

- 22.33 [Reserved]
- 22.34 Supplemental rules governing the administrative assessment of civil penalties under the Clean Air Act.
- 22.35 Supplemental rules governing the administrative assessment of civil penalties under the Federal Insecticide, Fungicide, and Rodenticide Act.
- 22.36 [Reserved]
- 22.37 Supplemental rules governing administrative proceedings under the Solid Waste Disposal Act.
- 22.38 Supplemental rules of practice governing the administrative assessment of civil penalties under the Clean Water Act.
- 22.39 Supplemental rules governing the administrative assessment of civil penalties under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.
- 22.40 [Reserved]



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

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SEP 30 2013

Ref: 8ENF-W

**CERTIFIED MAIL #7009 3410 0000 2592 8697**  
**RETURN RECEIPT REQUESTED**

Mary Howard, Registered Agent  
Farmers Canal Company  
P.O. Box 36  
108 Center Street  
Burlington, Wyoming 82411

Re: Notice of Proposed Assessment of Class I Civil Penalty  
Docket No. **CWA-08-2013-0036**

Dear Ms. Howard:

Enclosed is a document entitled Administrative Complaint and Notice of Opportunity for Hearing (Complaint). The United States Environmental Protection Agency (EPA) is issuing this Complaint against Farmers Canal Company (Respondent) pursuant to section 309 of the Clean Water Act (the Act), 33 U.S.C. § 1319. In the Complaint, the 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 Greybull River and its adjacent wetlands in Big Horn County, Wyoming. The Complaint proposes that a penalty of \$25,000 be assessed for these violations.

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 the EPA follows in Class I penalty assessments. Please note the requirements for an answer to the Complaint in 40 C.F.R. § 22.15(b).

**If Respondent wishes to contest the allegations in the Complaint or the penalty proposed in the Complaint, it must file an answer within thirty (30) days of receipt of the enclosed Complaint with the EPA Region 8 Hearing Clerk at the following address:**

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

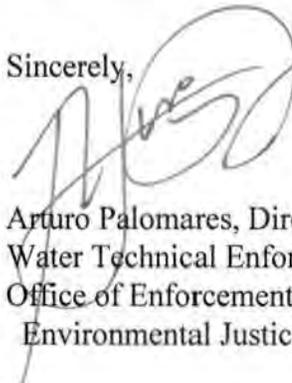
If Respondent does not file an answer by the applicable deadline, it may be found in default. 40 C.F.R. § 22.17(a). A default judgment may impose the full penalty proposed in the Complaint. (See 40 C.F.R. § 22.17(b).)

The EPA has agreed to notify small businesses of their right to comment on regulatory enforcement activities at the time of an EPA enforcement activity, pursuant to the Small Business Regulatory Enforcement and Fairness Act (SBREFA). SBREFA does not eliminate the responsibility to comply with the Act or this Complaint. We have enclosed a SBREFA information sheet containing further information on compliance assistance resources and tools available to small businesses.

The EPA encourages settlement of these proceedings at any time prior to a formal hearing if the settlement is consistent with the provisions and objectives of the Act and applicable regulations. (See 40 C.F.R. § 22.18.) If a mutually satisfactory settlement can be reached, it will be formalized in a consent agreement. Upon final approval of the consent agreement by the Regional Judicial Officer, Respondent will be bound by the terms of the consent agreement and will waive its right to a hearing on, and judicial appeal of, the agreed upon civil penalty. Respondent has the right to be represented by an attorney at any stage of the proceedings, including any informal discussions with the EPA, but this is not required.

**Please note that arranging for a settlement meeting does not relieve Respondent of the need to file a timely answer to the EPA's Complaint.** If Respondent wishes to discuss settlement of this matter, the most knowledgeable person on my staff for legal issues is Peggy Livingston, Enforcement Attorney, who can be reached at 303-312-6858. 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,



Arturo Palomares, Director  
Water Technical Enforcement Program  
Office of Enforcement, Compliance and  
Environmental Justice

Enclosures:

1. Complaint
2. Consolidated Rules of Practice (40 C.F.R. part 22)
3. SBREFA Information Sheet

cc: Tina Artemis, EPA, Regional Hearing Clerk  
Matthew A. Bilodeau, U.S. Army Corps of Engineers  
David L. LaGrone, U.S. Army Corps of Engineers

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

2013 SEP 30 AM 8:06

**IN THE MATTER OF:** )  
)  
**Farmers Canal Company** )  
**P.O. Box 36** )  
**108 Center Street** )  
**Burlington, Wyoming 82411** )  
)  
)  
**Respondent.** )

**ADMINISTRATIVE COMPLAINT AND  
NOTICE OF OPPORTUNITY FOR  
HEARING**

EPA REGION VIII  
HEARING CLERK

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

Docket No. **CWA-08-2013-0036**

In this Administrative Complaint and Notice of Opportunity for Hearing (Complaint), the United States Environmental Protection Agency (EPA) proposes to assess an administrative penalty against Farmers Canal Company (Respondent). The undersigned EPA officials have been duly authorized to institute this action.

**I. JURISDICTIONAL ALLEGATIONS**

1. This Complaint is issued pursuant to section 309(g) of the Clean Water Act (Act), 33 U.S.C. § 1319(g). Section 309(g) of the Act authorizes the EPA to make findings and to assess civil penalties for violations of section 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 is being provided to Respondent with 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*, section 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. According to 33 C.F.R. § 323.3(a), a permit issued by the Corps is required for the discharge of dredged or fill material into waters of the United States, unless an exemption pursuant to 33 C.F.R. § 323.4 applies.

6. The terms “discharge of a pollutant” and “discharge of pollutants” are defined in section 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 section 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 section 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 33 C.F.R. § 328.3 and 40 C.F.R. § 232.2, includes, *inter alia*, all waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce; all interstate waters including interstate wetlands; tributaries of such waters; and 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 section 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)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. part 19 authorize the assessment of a Class I civil penalty of up to \$16,000 per violation of section 301 of the Act, 33 U.S.C. § 1311, up to a maximum of \$37,500, for violations occurring after 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 Wyoming. Respondent’s office is located at 108 Center Street, Burlington, Wyoming.
15. The registered agent of Respondent is Mary Howard. The registered agent’s mailing address is P.O. Box 36, Burlington, Wyoming, 82411.

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 Greybull River is perennial, navigable-in-fact, and a traditional navigable water.
18. The Greybull River flows into the Bighorn 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.
19. The Bighorn River is perennial, navigable-in-fact, and a traditional navigable water.
20. The Greybull River is a “water of the United States” within the meaning of 33 C.F.R. § 328.3 and 40 C.F.R. § 232.2.
21. The Bighorn River is a “water of the United States” within the meaning of 33 C.F.R. § 328.3 and 40 C.F.R. § 232.2.
22. The wetlands located along the banks of the Greybull River at the location of the violations alleged in Paragraphs 26-29 of this Complaint provide, among other benefits, flood attenuation, shoreline protection, water quality protection and wildlife habitat.
23. The wetlands located along the banks of the Greybull River at the location of the violations alleged in Paragraphs 26-29 of this Complaint are adjacent to and abut the Greybull River and, therefore, are “waters of the United States” within the meaning of 40 C.F.R. § 232.2.
24. Pursuant to § 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1), the EPA has consulted with the Wyoming Department of Environmental Quality, Water Quality Division, regarding assessment of this administrative penalty by furnishing a copy of this Complaint and inviting comments on behalf of the State of Wyoming.

#### **IV. SPECIFIC ALLEGATIONS**

25. On or about April 20, 2012, the Corps received a complaint of work being done in the Greybull River upstream of a diversion structure that supplies irrigation water to Bench Canal and Farmers Canal. On April 20, 2012, the complainant provided photographs to the Corps that allegedly show recent earthwork within and adjacent to the Greybull River upstream of the diversion structure.
26. On July 17, 2012, the Corps conducted an inspection of the location where the reported work in the Greybull River had been performed. Based on its observations during the field visit, the Corps concluded that the work that was done at the site included excavation within the Greybull River and side casting of the dredged material into waters of the U.S., including adjacent wetlands, for several hundred feet of the river.
27. The Corps continued its investigation and on December 12, 2012, sent a letter to Respondent seeking information regarding Respondent’s involvement in the work that was done in the Greybull River. Respondent provided an initial response letter to the Corps on January 21, 2013,

and a subsequent letter with further information on February 1, 2013. The letters report that Respondent, or one or more persons acting on its behalf, had been working in the river in June and July of 2011, and again in April and May of 2012, to remove sand bars, gravel bars and other blockages to improve the flow of irrigation water from the river into the irrigation canals.

28. As a result of its investigation, the Corps found that in June of 2011, Respondent hired a contractor to redistribute riverbed material within the Greybull River upstream of the diversion structure that supplies irrigation water to Bench Canal and Farmers Canal. The work began some time in June of 2011 and stopped on or around July 4, 2011, due to the breakdown of the equipment (a bulldozer) used to perform the earthmoving activities in the river. Work in the Greybull River resumed some time in April of 2012, and ended some time in May of 2012.
29. Based upon its field visit and correspondence provided by Respondent, and after further investigation, including analysis and comparison of aerial photography, the Corps found that approximately 2900 feet of the Greybull River had been excavated and the dredged material had been side cast in the river and its adjacent wetlands. The Corps concluded that, as a result of the work, dredged and fill material had been discharged to 7.9 acres of the river, as well as its adjacent wetlands, without a permit from the Corps, in section 7 and section 18, Township 51 North, Range 97 West, Big Horn County, Wyoming.
30. The Corps issued a notice of violation and cease and desist order to Respondent on February 20, 2013, and referred the case to the EPA.
31. The activities described in paragraphs 26-29 of this Complaint were performed using common earthmoving equipment, which was operated by Respondent and/or by one or more individuals on behalf of Respondent.

#### **V. VIOLATION - DISCHARGE OF POLLUTANTS WITHOUT A PERMIT**

32. The discharged materials described in paragraphs 26-29 of this Complaint are, and were at all times relevant to the Complaint, "pollutants" within the meaning of section 502(6) of the Act, 33 U.S.C. § 1362(6).
33. The equipment described in paragraphs 28 and 31 of this Complaint is, and was at all times relevant to the Complaint, a "point source" within the meaning of section 502(14) of the Act, 33 U.S.C. § 1362(14).
34. The Greybull River and its adjacent wetlands are, and were at all times relevant to this Complaint, "waters of the United States" within the meaning of 33 C.F.R. § 328.3 and 40 C.F.R. § 232.2, and, therefore, "navigable waters" within the meaning of section 502(7) of the Act, 33 U.S.C. § 1362(7).
35. Each instance of the placement of dredged and/or fill material into the Greybull River and/or its adjacent wetlands constitutes the "discharge of a pollutant" or "discharge of pollutants" within the meaning of section 502(12) of the Act, 33 U.S.C. § 1362(12).

36. The discharges of pollutants from a point source by Respondent into waters of the United States described in paragraphs 26-29 of this Complaint, undertaken without the required permit or other authorization issued by the Corps pursuant to section 404 of the Act, 33 U.S.C. § 1344, constitute violations of section 301 of the Act, 33 U.S.C. § 1311, and are subject to the assessment of penalties pursuant to section 309(g) of the Act, 33 U.S.C. § 1319(g).
37. Each unauthorized discharge described in paragraphs 26-29 of this Complaint constitutes a separate violation of section 301 of the Act, 33 U.S.C. § 1311, and is subject to a separate penalty pursuant to section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A).

#### **VI. NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY**

38. Based on the foregoing allegations and pursuant to the authority of section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA Region 8 hereby proposes to assess a penalty in the amount of Twenty-five Thousand Dollars (\$25,000).
39. The proposed penalty amount was determined by the EPA after taking into account all factors identified in section 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. The EPA may issue a final order assessing the penalty proposed above 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**

40. As provided in section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), 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 this Complaint.
41. Respondent's answer must (1) clearly and directly admit, deny or explain each of the factual allegations contained in this 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 the proposed penalty, 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 this Complaint constitutes an admission of the allegation. 40 C.F.R. § 22.15(d).

42. An original and one copy of Respondent's answer must be filed with:

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

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

Peggy Livingston  
Senior Enforcement Attorney  
U.S. EPA Region 8 (8ENF-L)  
1595 Wynkoop Street  
Denver, Colorado 80202-1129

43. Should Respondent request a hearing on this proposed penalty assessment, members of the public, to whom the EPA is obligated to give notice of this proposed action, will have a right under section 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.**

44. Should Respondent not request a hearing, the EPA will issue a final order assessing the proposed penalty. Only those members of the public who submit timely comments on this proposal will have an additional thirty (30) days to petition the EPA to set aside that order and to hold a hearing thereon. The EPA will grant the petition and will hold a hearing only if the petitioner's evidence is material and was not considered by the EPA in the issuance of its final order.

#### **VIII. TERMS OF PAYMENT FOR QUICK RESOLUTION**

45. 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. 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. 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.

46. Payment shall be made by one of the following methods:

a. Payment by check:

The check is to include the name and docket number of this case, be payable to "Treasurer, United States of America" and sent as follows:

If sent by U.S. Postal Service, by first class mail to:

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

If sent by a commercial carrier:

U.S. Environmental Protection Agency  
Fines and Penalties  
Government Lockbox 979077  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, Missouri 63101

b. Wire Transfer:

Wire transfers should be directed to the Federal Reserve Bank of New York with the following information:

ABA: 02130004  
Account: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, New York 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency."

c. Automated clearinghouse (ACH) for receiving US currency:

U.S. Treasury REX / Cashlink ACH receiver  
ABA 051036796  
Account Number 310006  
Environmental Protection Agency  
CTX Format Transaction Code 22 – checking

Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, Maryland 20737

Contacts: Jon Schmid (202-874-7026) and REX (Remittance Express) 800-234-5681

d. Online Payment:

This option is available through the Department of the Treasury.

[www.pay.gov](http://www.pay.gov)

Enter sfo 1.1 in the search field. Open the form and complete the required fields.

47. At the same time that the payment is made, notice that the payment has been made shall be provided to:

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

and

Peggy Livingston  
U.S. EPA Region 8 (8ENF-L)  
1595 Wynkoop Street  
Denver, Colorado 80202-1129

and

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

The notice shall include documentation demonstrating that the payment was made. If payment is made by check, the notice shall include a copy of the check.

48. 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.
49. Neither assessment nor payment of an administrative civil penalty pursuant to section 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, permit, or regulation and any separate compliance order issued under section 309(a) of the Act, 33 U.S.C. § 1319(a), for the violations alleged herein.

### **IX. Settlement Conference**

50. The EPA encourages the exploration of settlement possibilities through an informal settlement conference. However, 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 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 Peggy Livingston, Senior Enforcement Attorney, at the address above. Ms. Livingston also can be reached at 303-312-6858.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8  
Complainant.

Date: Sept. 27, 2013

David Roll: for J.Eppers

James H. Eppers, Supervisory Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance and  
Environmental Justice  
U.S. Environmental Protection Agency  
1595 Wynkoop Street  
Denver, Colorado 80202

Date: 27 Sept 2013

Arturo Palomares  
Arturo Palomares, Director  
Water Technical Enforcement Program  
Office of Enforcement, Compliance and  
Environmental Justice  
U.S. Environmental Protection Agency  
1595 Wynkoop Street  
Denver, Colorado 80202

State agency, authorized to receive such funds in conducting this program.

**§ 21.13 Effect of certification upon authority to enforce applicable standards.**

The certification by EPA or a State for SBA Loan purposes in no way constitutes a determination by EPA or the State that the facilities certified (a) will be constructed within the time specified by an applicable standard or (b) will be constructed and installed in accordance with the plans and specifications submitted in the application, will be operated and maintained properly, or will be applied to process wastes which are the same as described in the application. The certification in no way constitutes a waiver by EPA or a State of its authority to take appropriate enforcement action against the owner or operator of such facilities for violations of an applicable standard.

**PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION/TERMINATION OR SUSPENSION OF PERMITS**

**Subpart A—General**

- Sec.
- 22.1 Scope of this part.
  - 22.2 Use of number and gender.
  - 22.3 Definitions.
  - 22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.
  - 22.5 Filing, service, and form of all filed documents; business confidentiality claims.
  - 22.6 Filing and service of rulings, orders and decisions.
  - 22.7 Computation and extension of time.
  - 22.8 *Ex parte* discussion of proceeding.
  - 22.9 Examination of documents filed.

**Subpart B—Parties and Appearances**

- 22.10 Appearances.
- 22.11 Intervention and non-party briefs.
- 22.12 Consolidation and severance.

**Subpart C—Prehearing Procedures**

- 22.13 Commencement of a proceeding.
- 22.14 Complaint.
- 22.15 Answer to the complaint.
- 22.16 Motions.

- 22.17 Default.
- 22.18 Quick resolution; settlement; alternative dispute resolution.
- 22.19 Prehearing information exchange; prehearing conference; other discovery.
- 22.20 Accelerated decision; decision to dismiss.

**Subpart D—Hearing Procedures**

- 22.21 Assignment of Presiding Officer; scheduling the hearing.
- 22.22 Evidence.
- 22.23 Objections and offers of proof.
- 22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard.
- 22.25 Filing the transcript.
- 22.26 Proposed findings, conclusions, and order.

**Subpart E—Initial Decision and Motion to Reopen a Hearing**

- 22.27 Initial decision.
- 22.28 Motion to reopen a hearing.

**Subpart F—Appeals and Administrative Review**

- 22.29 Appeal from or review of interlocutory orders or rulings.
- 22.30 Appeal from or review of initial decision.

**Subpart G—Final Order**

- 22.31 Final order.
- 22.32 Motion to reconsider a final order.

**Subpart H—Supplemental Rules**

- 22.33 [Reserved]
- 22.34 Supplemental rules governing the administrative assessment of civil penalties under the Clean Air Act.
- 22.35 Supplemental rules governing the administrative assessment of civil penalties under the Federal Insecticide, Fungicide, and Rodenticide Act.
- 22.36 [Reserved]
- 22.37 Supplemental rules governing administrative proceedings under the Solid Waste Disposal Act.
- 22.38 Supplemental rules of practice governing the administrative assessment of civil penalties under the Clean Water Act.
- 22.39 Supplemental rules governing the administrative assessment of civil penalties under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.
- 22.40 [Reserved]

## U.S. EPA Small Business Resources Information Sheet

The United States Environmental Protection Agency provides an array of resources, including workshops, training sessions, hotlines, websites and guides, to help small businesses understand and comply with federal and state environmental laws. In addition to helping small businesses understand their environmental obligations and improve compliance, these resources will also help such businesses find cost-effective ways to comply through pollution prevention techniques and innovative technologies.

### EPA's Small Business Websites

Small Business Environmental Homepage - [www.smallbiz-enviroweb.org](http://www.smallbiz-enviroweb.org)

Small Business Gateway - [www.epa.gov/smallbusiness](http://www.epa.gov/smallbusiness)

EPA's Small Business Ombudsman - [www.epa.gov/sbo](http://www.epa.gov/sbo) or 1-800-368-5888

### EPA's Compliance Assistance Homepage

[www.epa.gov/compliance/assistance/business.html](http://www.epa.gov/compliance/assistance/business.html)

This page is a gateway to industry and statute-specific environmental resources, from extensive web-based information to hotlines and compliance assistance specialists.

### EPA's Compliance Assistance Centers

[www.assistancecenters.net](http://www.assistancecenters.net)

EPA's Compliance Assistance Centers provide information targeted to industries with many small businesses. They were developed in partnership with industry, universities and other federal and state agencies.

### Agriculture

[www.epa.gov/agriculture/](http://www.epa.gov/agriculture/)

### Automotive Recycling

[www.ecarcenter.org](http://www.ecarcenter.org)

### Automotive Service and Repair

[www.ccar-greenlink.org](http://www.ccar-greenlink.org) or 1-888-GRN-LINK

### Chemical Manufacturing

[www.chemalliance.org](http://www.chemalliance.org)

### Construction

[www.cicacenter.org](http://www.cicacenter.org) or 1-734-995-4911

### Education

[www.campuserc.org](http://www.campuserc.org)

### Food Processing

[www.fpeac.org](http://www.fpeac.org)

### Healthcare

[www.hercenter.org](http://www.hercenter.org)

### Local Government

[www.lgean.org](http://www.lgean.org)

### Metal Finishing

[www.nmfrc.org](http://www.nmfrc.org)

### Paints and Coatings

[www.paintcenter.org](http://www.paintcenter.org)

### Printed Wiring Board Manufacturing

[www.pwbrc.org](http://www.pwbrc.org)

### Printing

[www.pneac.org](http://www.pneac.org)

### Ports

[www.portcompliance.org](http://www.portcompliance.org)

### U.S. Border Compliance and Import/Export Issues

[www.bordercenter.org](http://www.bordercenter.org)

### Hotlines, Helplines and Clearinghouses

[www.epa.gov/epahome/hotline.htm](http://www.epa.gov/epahome/hotline.htm)

EPA sponsors many free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements. Some examples are:

### Antimicrobial Information Hotline

[info-antimicrobial@epa.gov](mailto:info-antimicrobial@epa.gov) or  
1-703-308-6411

### Clean Air Technology Center (CATC) Info-line

[www.epa.gov/ttn/catc](http://www.epa.gov/ttn/catc) or 1-919-541-0800

### Emergency Planning and Community Right-To-Know Act

[www.epa.gov/superfund/resources/infocenter/epcra.htm](http://www.epa.gov/superfund/resources/infocenter/epcra.htm) or 1-800-424-9346

### EPA Imported Vehicles and Engines Public Helpline

[www.epa.gov/otaq/imports](http://www.epa.gov/otaq/imports) or  
734-214-4100

### National Pesticide Information Center

[www.npic.orst.edu/](http://www.npic.orst.edu/) or 1-800-858-7378

### National Response Center Hotline -

to report oil and hazardous substance spills  
[www.nrc.uscg.mil](http://www.nrc.uscg.mil) or 1-800-424-8802

### Pollution Prevention Information Clearinghouse (PPIC)

[www.epa.gov/opptintr/ppic](http://www.epa.gov/opptintr/ppic) or  
1-202-566-0799

### Safe Drinking Water Hotline

[www.epa.gov/safewater/hotline/index.html](http://www.epa.gov/safewater/hotline/index.html) or 1-800-426-4791

### Stratospheric Ozone Protection Hotline

[www.epa.gov/ozone](http://www.epa.gov/ozone) or 1-800-296-1996

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