Dave Erlanson, Sr.
P.O. Box 46
Swan Valley, Idaho 83449

Certified RRR mail# 7015 1660 0001 0105464

July 14th 2016

U.S. Environmental Protection Agency, Region 10
Teresa Luna, Regional Hearing Clerk
1200 Sixth Ave., Suite 900, Mail Stop ORC-113
Seattle, Washington 98101

Respondent Answer : Complaint docket #CWA-10-2016-0109

Teresa Luna, Regional Hearing Clerk,
I have received a Complaint sent by officer Edward J. Kowalski from your Seattle, Washington Region 10 office dated June 16th 2016. I hereby request an administrative hearing pursuant to Title 40 section 22.19(d) and that it be conducted within Bonneville County, Idaho.

The following are Respondent's answers to the Agency docket complaint:

1.1 Deny
1.2 Deny
1.3 Deny
2.1 Deny
2.2 Deny
2.3 Admit
2.4 Deny
2.5 Admit
2.6 Deny
2.7 Deny
2.8 Deny
2.9 Deny
2.10 Deny
2.11 Deny
2.12 Deny
2.13 Deny
2.14 Deny
2.15 Deny
3.1 Deny
3.2 Deny
3.3 Deny
3.4 Deny
3.5 Deny
3.6 Deny
3.7 Deny
3.8 Deny
3.9 Deny
4.1 Deny
4.2 Deny
4.3 Deny

4.4 Deny
4.4.1 Deny
4.4.2 Deny
4.5 Deny
4.6 Deny
4.7 Deny
4.8 Admit
4.9 Deny
5.1 Deny – not without the written consent and coordination of the Ten Mile Mining District authorized by 30 U.S.C. section 22 and for the fact your agency has already not given (denied) timely due process after certified notice. (see attached)
5.2 Admit
6.1 Deny
6.2 Deny
7.1 Deny
7.2 Deny
7.3 Deny
8.1 Deny

I look forward to a timely notification of the hearing date, location and time or dismissal of the matter for lack of evidence.
Thank you.

Sincerely,

Dave Erlanson, Sr.

Cc: Edward J. Kowalski
U. S. Environmental Protection Agency
1200 Sixth Ave., Suite 900, ORS-113
Seattle, Washington 98101

Dave Erlanson, Sr.
P.O. Box 46
Swan Valley, Idaho 83449

Certified RRR mail# 7015 1660 0001 0101 5464

February 10th 2016

U.S. Environmental Protection Agency
C/O Tara Martich
222 W. 7th Ave. Box #19
Anchorage, AK 99513

Notice of Appeal : Notice of Violation / Request for Information

Dear Ms. Martich,
I have received a Notice of Violation / Request for Information (attached) sent by officer Edward J. Kowalski from your Seattle, Washington region 10 office dated Jan. 22nd 2016. I have good reason to believe that officer Kowalski's notice and request was done in error as a matter of law and fact, for the following reasons:

1) The Notice failed to comport with due process of law.
2) The Notice failed to establish an "addition" of a pollutant.
3) The Notice violates two nationwide federal injunctions restraining the EPA.

The reason why officer Kowalski's notice fails the due process test is because the notice fails to apprise the party, such as the Appellant, of the opportunity to be heard at a meaningful time and meaningful place before penalties can attach or liberties can be infringed upon. *See Bell v. Burson, 402 U.S. 535, 539, 91 S.Ct. 1586, 1589, 29 L.Ed.2d 90 (1971). See also, Chalkboard Inc. v. Brandt, 902 F.2d 1375 (9th Cir.1990).*

The fact that officer Kowalski's notice failed to establish an "addition" of a pollutant from the outside world undermines any requirements to report by the Appellant. The Clean Water Act (CWA) clearly states the "addition" requirement within the CWA specifically within *33 U.S.C. § 1362(12)* where: "The term "discharge of a pollutant" and the term "discharge of pollutants" each means (A) any [addition] of any pollutant to navigable waters from any point source…". Also, the CWA reporting requirements only apply to "additions" that are not indigenous to the waterway. See *Froebel v. Meyer, 13 F. Supp.2d 843 (E.D.Wis. 1998)*. It would be physically impossible for Appellant to report CWA "additions" that do not exist. See the *National Pork Producers v. EPA 635 F.3d 738 (5th Cir. 2011)* where the court stated: "…in the absence of an actual addition of any pollutant to navigable waters from any point, there is no point source discharge, no statutory violation, no statutory obligation of point sources to comply with EPA regulations for point source discharges, and no statutory obligation of point sources to seek or obtain an NPDES permit in the first instance."

On another point, Appellant asserts and believes that "Incidental Fallback" represents a net withdrawal, not an addition of material. Incidental Fallback cannot be a discharge within the meaning of any State or Federal Clean Water Acts (CWA) as the CWA only permits and regulates additions. All gold mining suction dredges, such as Appellant's are designed to withdraw heavy metal (based on their specific gravity) from gravels and soils, it cannot be said that suction dredges add anything within the meaning of the CWA. Quite frankly, suction dredges are reclamation machines that clean the environment. Appellant is aware that the EPA's own website on the subject is outdated:

MEMORANDUM REGULATION OF CERTAIN ACTIVITIES IN LIGHT OF AMERICAN MINING CONGRESS V. CORPS OF ENGINEERS Wetlands US EPA
http://www.epa.gov/cwa-404/memorandum-regulation-certain-activities-light-american-mining-congress-v-corps-engineers
Had EPA's website been more instructive and up to date it may have provided officer Kowalski the guidance if he had taken the time to review the EPA and Army Corp position on the matter at hand and as illustrated below.

Officer Kowalski's notice now disregards two federal and nationwide injunctions restraining his office and others from soliciting information for which he has no regulatory authority. Specifically, in *Nat'l Mining Ass'n v. U.S. Army Corps of Eng'rs, 145 F.3d 1399, 1404 (D.C.Cir.1998)*. Commonly known as "Tulloch I". The court explained that: *"[b]ecause incidental fallback represents a net withdrawal, not an addition, of material, it cannot be a discharge"* and questioned *"how there can be an addition of dredged material when there is no addition of material."*
As your office should be aware, this holding stands today and is extended by the *National Association of Homebuilders v. Corps* (D.D.C. 2007) decision invalidating the January 17, 2001, amendments to the Clean Water Act Section 404 regulatory definition of "discharge of dredged material" (referred to as the "Tulloch II" rule). The U.S. Army Corps of Engineers (Corps) and the Environmental Protection Agency (EPA) have promulgated a joint final rule to amend this definition by conforming the Corps' and EPA's regulations to the language of the court's opinion by deleting language from the regulation that was invalidated.

It should be noted that in *National Association of Homebuilders, supra* the court advised the Corps: "*As the Corps rewrites its definition of incidental fallback, it should also reconsider its statement that it "regards" the use of mechanized earth-moving equipment as resulting in a discharge of dredged material unless project-specific evidence shows otherwise. That statement, followed by the coy explanation that it "is not intended to shift any burden," 66 Fed.Reg. at 4575, essentially reflects a degree of official recalcitrance that is unworthy of the Corps.*" What the Army Corp and EPA were admonished for in court is exactly what officer Kowalski is presently engaging in, which could easily be construed as contempt of court. The court finished by stating: "*... the Court of Appeals has made clear, and the government has acknowledged, that not all uses of mechanized earth-moving equipment may be regulated. The agencies cannot require "project-specific evidence" from projects over which they have no regulatory authority. Because the Tulloch II rule violates the Clean Water Act, it is invalid. Therefore, plaintiffs' motion for summary judgment will be granted, and the Corps and EPA will be enjoined from enforcing and applying the rule. An appropriate order accompanies this memorandum.*"

For the above stated reasons Appellant strongly recommends that your office withdraw officer Kowalski's notice and request in this matter.

Thank you.
Sincerely,

Dave Erlanson, Sr.

cc: Public Lands for the People, Inc.
Rocky Mountain Mining Rights
Idaho Dept. of Environmental Quality