



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

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

DEC - 6 2007

CERTIFIED MAIL #7005 1820 0005 4856 5075

RETURN RECEIPT REQUESTED

Ref: 8ENF-W

Bert Potestio, Board President
Avondale Water and Sanitation District
P.O. Box 188
321 Third Street
Avondale, CO 81022

Re: Findings of Violation and
Administrative Order for Compliance
Docket No. **CWA-08-2008-0003**

Dear Mr. Potestio:

Based on our review of all available information, the United States Environmental Protection Agency ("EPA") has determined that the Avondale Water and Sanitation District (the "District") is in violation of the Clean Water Act, as amended ("CWA" or the "Act"). The CWA requires that an authorizing permit be obtained from the United States Army Corps of Engineers prior to the discharge of pollutants (i.e., dredged or fill material) into waters of the United States. See 33 U.S.C. § 1311. Waters of the United States include both surface waters and wetlands as defined by 33 C.F.R. § 328.3.

Specifically, the District, or persons acting on its behalf, have discharged dredged or fill material into waters of the United States without authorization under the Act. These discharges of pollutants occurred in connection with construction of a berm and a channel within the Arkansas River, located approximately 200 feet upstream of the Avondale Road bridge in Avondale, Pueblo County, Colorado, in section 8, Township 21 South, Range 62 West.

Enclosed is an EPA Region 8 administrative order that specifies the nature of the violations and describes actions necessary in order for you to achieve compliance with the CWA. EPA's authority for such action is provided under section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3). The order requires you to inform EPA in writing, within 14 days of receipt, of your intent to fully comply with the order.

The CWA requires the Administrator of EPA to take all appropriate enforcement action necessary to secure prompt compliance with the CWA and any order issued thereunder. Section 309

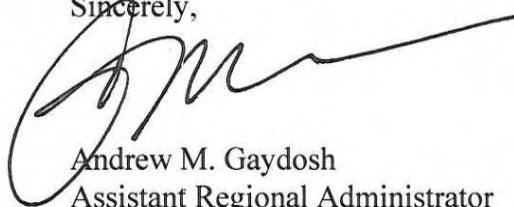


Printed on Recycled Paper

of the Act authorizes a variety of possible enforcement actions, including filing of a civil or criminal action, administrative penalty action, and/or debarment from Federal contracts and/or loans for any non-compliance with the CWA or an order issued pursuant to the CWA. Please be advised that the issuance of this order does not preclude civil or criminal actions in the U.S. District Court pursuant to sections 309(b) or (c) of the CWA, 33 U.S.C. §§ 1319(b) or (c), or assessment of civil penalties pursuant to sections 309(d) or (g) of the Act, 33 U.S.C. §§ 1319(d) or (g), for the violations cited in the order.

Please review the order carefully. If you have any questions, the most knowledgeable people on my staff are Wendy Silver, Senior Attorney, at 303-312-6637 and Monica Heimdal, Enforcement Officer, at 303-312-6359.

Sincerely,

A handwritten signature in black ink, appearing to read 'AG', with a long horizontal line extending to the right.

Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

Enclosure

cc: Tina Artemis, EPA, Regional Hearing Clerk
Donald Borda, U.S. Army Corps of Engineers
Van Truan, U.S. Army Corps of Engineers

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

2007 DEC -6 AM 9:46

IN THE MATTER OF:)	FINDINGS OF VIOLATION AND
)	ADMINISTRATIVE ORDER FOR
Avondale Water and Sanitation District)	COMPLIANCE
321 3rd Street)	
Avondale, CO 81022)	Docket No. CWA-08-2008-0003
)	
Respondent.)	
_____)	

I. STATUTORY AUTHORITY

This Findings of Violation and Administrative Order for Compliance (“Order”) is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by sections 308 and 309(a) of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1318 and 1319(a). This authority has been properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8. This Order is based on the findings of violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a), which, among other things, prohibits the discharge of pollutants into waters of the United States except as in compliance with section 404 of the CWA, 33 U.S.C. § 1344.

II. FINDINGS OF VIOLATION

1. Respondent Avondale Water and Sanitation District is a quasi-municipal corporation with offices located at 321 Third Street, Avondale, Colorado.
2. At all relevant times, Respondent managed, operated on, and/or otherwise controlled property along the Arkansas River located in the northeast quarter of section 8, Township 21 South, Range 62 West in Pueblo County, Colorado (the “Site”).
3. The Arkansas River is a navigable, interstate waterway.

4. On June 9, 2003, Respondent telephoned the U.S. Army Corps of Engineers (“Corps”) in Pueblo, Colorado, to consult regarding protection of two municipal water wells from encroachment by the Arkansas River, located approximately 200 feet to the south. The Avondale Road bridge also was reportedly threatened.
5. On June 17, 2003, representatives of the Corps met at the Site with Respondent, who expressed its desire to dredge a channel through a sandbar in order to move the Arkansas River towards the south, away from the municipal wells. The Corps informed Respondent that an individual permit issued by the Corps would be required for such work. The Corps suggested bank stabilization measures that could be authorized under Nationwide Permit 13 and undertaken while an individual permit application for construction of a channel was prepared and reviewed. Respondent did not implement the suggested bank stabilization measures and did not submit an individual permit application.
6. In or about October 2006, Respondent or persons acting on Respondent’s behalf began construction activities, without a permit, within the banks of the Arkansas River that resulted in the discharge of dredged and fill material to the river. The work involved:
 - a. Construction of a channel approximately 40 feet wide and 300 to 500 feet long through a sandbar within the Arkansas River. The dredged material was deposited on both sides of the new channel, within the banks of the river.
 - b. Construction of a berm across the existing channel of the Arkansas River, northwest of the Avondale Road bridge.

7. On February 16, 2007, the Corps inspected the Site and confirmed that Respondent or persons acting on its behalf had discharged or allowed the discharge of dredged and fill material to the Arkansas River as described in paragraph 6 of Section II of this Order.
8. On March 22, 2007, the Corps issued a cease and desist order notifying Respondent that the work performed in the Arkansas River was an apparent violation of the CWA and requiring it to cease any further unauthorized work. The Corps further requested that Respondent provide any relevant information pertaining to the violation, including the composition and quantity of, and reason for, the fill placed in the river.
9. On April 2, 2007, Respondent replied to the Corps' cease and desist order and indicated that Respondent had stopped all activity in the river channel. Respondent further indicated that the work had been undertaken to redirect the Arkansas River to its south bank.
10. The construction activities described in paragraph 6 of Section II of this Order resulted in discharges of dredged and fill material several hundred feet long within the banks of the Arkansas River. The Arkansas River provides numerous functions and values including aquatic and wildlife habitat, flood attenuation, groundwater recharge, recreation, and aesthetics.
11. The discharges described in paragraph 6 of Section II of this Order were performed using common earthmoving vehicles and equipment, which were operated by Respondent or persons acting on its behalf.
12. Respondent is a "person" within the meaning of section 502(5) of the CWA, 33 U.S.C. § 1362(5).

13. The discharged dredged and fill materials referenced in paragraph 6 of Section II of this Order are and were at all relevant times “dredged material” and “fill material” within the meaning of 33 C.F.R. § 323.2(c) and (e), respectively, and “pollutants” within the meaning of section 502(6) of the CWA, 33 U.S.C. § 1362(6).
14. The vehicles and equipment described in paragraph 11 of Section II of this Order are and were at all relevant times each a “point source” within the meaning of section 502(14) of the CWA, 33 U.S.C. § 1362(14).
15. The Arkansas River referenced in paragraphs 3 and 6 of Section II of this Order is and was at all relevant times “waters of the United States” within the meaning of 33 C.F.R. § 328.3(a) and therefore “navigable waters” within the meaning of section 502(7) of the CWA, 33 U.S.C. § 1362(7).
16. The placement of dredged or fill material into the Arkansas River constitutes the “discharge of pollutants” within the meaning of section 502(12) of the CWA, 33 U.S.C. § 1362(12).
17. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits, among other things, the discharge of pollutants by any person into waters of the United States except as in compliance with section 404 of the CWA, 33 U.S.C. § 1344.
18. Section 404 of the CWA, 33 U.S.C. § 1344, sets forth a permitting system authorizing the Secretary of the Army, acting through the Chief of Engineers of the Corps, to issue permits for the discharge of dredged or fill material into navigable waters, which are defined as waters of the United States.

19. 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.
20. Respondent is not and never has been authorized by a permit issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344, to conduct any of the activities described in paragraph 6 of Section II of this Order.
21. The activities conducted by Respondent and its agents as described in paragraph 6 of Section II of this Order violate section 301 of the CWA, 33 U.S.C. § 1311. Each discharge of pollutants from a point source by Respondent into waters of the United States without the required permits issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344, constitutes a violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a). Each day the discharges remain in place without the required permits constitutes an additional day of violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).
22. The removal of the dredged and fill material illegally discharged into waters of the United States at the Site and restoration of the impacted areas of the Arkansas River to a condition that closely approximates the conditions and functions prior to the discharge of dredged and fill material can be achieved as a practical matter through commonly used methods of construction, digging, revegetation, and best management practices.
23. Activities to be carried out under this Order are remedial, not punitive, and are necessary to achieve the CWA's objective "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters," as specified in section 101(a) of the CWA,

33 U.S.C. § 1251(a). The removal and restoration described in paragraph 22 of Section II of this Order are appropriate to alleviate actual and potential harm to water quality.

24. This Order was issued after consultation and coordination with the Corps' Albuquerque District.

III. ORDER

Based upon the foregoing FINDINGS OF VIOLATION, and pursuant to the authority vested in the Administrator of EPA pursuant to sections 308 and 309(a) of the CWA, 33 U.S.C. §§ 1318 and 1319(a), as properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8, it is hereby ORDERED:

1. Respondent shall immediately terminate all unauthorized discharges of dredged or fill material, now and in the future, into waters of the United States, unless specifically authorized by the Corps under a valid permit issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344. This prohibition includes all mechanical land clearing, dredging, filling, grading, leveling, installation of utilities, construction, and any other activities that result in the discharge of dredged or fill material into waters of the United States.
2. Within 14 calendar days of receipt of this Order, Respondent shall inform EPA in writing of its intent to fully comply with the Order.
3. Upon EPA approval of the restoration plan required by paragraph 5 of Section III of this Order, Respondent shall remove all dredged and fill materials that were discharged as a result of the violations identified in this Order and restore the impacted areas of the Arkansas River to its pre-impact condition and grade.

4. All dredged and fill material removal and restoration activities shall be conducted in accordance with an EPA-approved restoration plan prepared by a consultant experienced in stream restoration. The consultant also shall directly supervise all work performed pursuant to the EPA-approved restoration plan. A statement of the consultant's qualifications, including professional resume and business references, shall be submitted to EPA within 21 calendar days of receipt of this Order.
5. Within 60 calendar days of receipt of this Order, Respondent shall submit to EPA for review and comment a restoration plan, prepared by the consultant referenced in paragraph 4 of Section III of this Order, for removing the discharged dredged and fill material from the Arkansas River and any other illegally impacted areas at the Site and restoring all impacted areas to their pre-impact condition and grade.
6. The restoration plan shall be prepared in accordance with "U.S. Environmental Protection Agency - Region VIII Section 404 Enforcement: General Guidelines for Removal and Restoration Plans," attached hereto as Exhibit A. The restoration plan shall include:
 - a. A complete assessment of the impacts to the Arkansas River due to Respondent's unauthorized discharges of dredged or fill material;
 - b. Locations of the existing natural features and man-made improvements, including all surface disturbance, fills, channel excavations, road crossings, culverts, structures, and any other work, including a corresponding map of these locations;
 - c. A detailed work plan and schedule for all of the work to be accomplished, as specified in the restoration plan, including the application for any required

permits, providing for completion of all aspects of the restoration work no later than 60 days after EPA approves the restoration plan; and

- d. Grading, planting, and monitoring plans, measurable criteria for success of restoration, and provisions for proper disposal of any excess soils or other materials generated during removal and restoration.
7. EPA will review the restoration plan and approve it, approve it with modifications, or reject it with comments. If EPA rejects the restoration plan, Respondent shall, within 30 calendar days of receipt of EPA's rejection letter, submit a revised plan that corrects the deficiencies identified by EPA.
8. Upon receiving EPA's written approval of the restoration plan, Respondent shall obtain all necessary permits to implement the EPA-approved plan and then commence all restoration activities in accordance with the approved plan, including the time frames specified therein, and all granted permits. Respondent shall demonstrate that all necessary permits have been granted by providing copies of all such permits, and any amendments thereto, to EPA within 7 calendar days of issuance of each permit.
9. All restoration activities conducted pursuant to this Order and involving the use of heavy construction equipment shall be undertaken by an equipment operator experienced in stream restoration. A statement of the equipment operator's qualifications, including professional resume and business references, shall be submitted to EPA within 21 calendar days of receiving EPA's written approval of the restoration plan and prior to commencement of restoration activities.

10. This Order is not a permit or an authorization to place or discharge dredged or fill material in waters of the United States. Respondent shall consult with the Corps at the address and telephone number below to determine if any work to be performed pursuant to this Order requires a permit from the Corps under section 404 of the CWA, 33 U.S.C. § 1344. If required, Respondent shall obtain such permit(s) and provide a copy to EPA pursuant to paragraph 8 of Section III of this Order prior to initiating any work that is to be performed pursuant to this Order.

U.S. Army Corps of Engineers
Southern Colorado Regulatory Office
200 South Santa Fe Avenue, Suite 301
Pueblo, CO 81003
Telephone: 719-543-9459
Facsimile: 719-543-9475

11. Respondent shall submit two copies of the restoration plan, all notifications, and related correspondence to:

Monica Heimdal, 8ENF-W
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop St.
Denver, CO 80202-1129
Telephone: 303-312-6359
Facsimile: 303-312-6953

A copy of the restoration plan, all notifications, and related correspondence also shall be provided to:

Wendy I. Silver, 8ENF-L
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop St.
Denver, CO 80202-1129
Telephone: 303-312-6637
Facsimile: 303-312-6953

A copy of the restoration plan also shall be provided to the Corps at the address noted in paragraph 10 of Section III of this Order.

12. In addition to the notification requirements set forth in paragraph 11 of Section III of this Order, after issuance of any Corps authorization for restoration work, Respondent shall submit all notifications and correspondence to the Corps in accordance with the terms and conditions in the Corps permit.
13. Any deliverables, plans, reports, specifications, schedules, and attachments required by this Order are, upon approval by EPA, incorporated into this Order. Any non-compliance with such EPA-approved deliverables, plans, reports, specifications, schedules, and attachments shall be deemed a failure to comply with this Order and subject to EPA enforcement.
14. A lease, sublease, or transfer of the Site shall not relieve Respondent of any responsibility in the Order unless EPA, Respondent, and the lessee, sublessee, or transferee agree in writing to allow the lessee, sublessee, or transferee to assume such responsibility. Additionally, at least 30 calendar days prior to such lease, sublease, or transfer, Respondent shall notify EPA regarding the details of the lease, sublease, or transfer at the address specified in paragraph 11 of Section III of this Order.
15. Respondent shall allow, or use its best efforts to allow, access by any authorized representative of EPA or its contractors, the Corps, the Natural Resources Conservation Service, the U.S. Fish and Wildlife Service, and the Colorado Department of Public Health and Environment, upon proper presentation of credentials, to sites and records relevant to this Order for any of the following purposes:

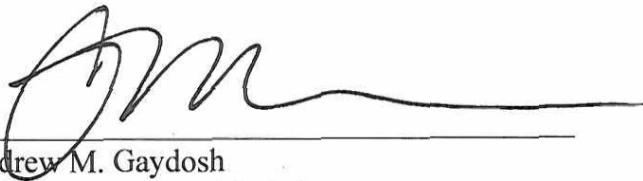
- a. To inspect and monitor progress of the activities required by this Order,
- b. To inspect and monitor compliance with this Order, and
- c. To verify and evaluate data and other information submitted to EPA.

This Order shall in no way limit or otherwise affect EPA's authority, or the authority of any other governmental agency, to enter the Site, conduct inspections, have access to records, issue notices and orders for enforcement, compliance, or abatement purposes, or monitor compliance pursuant to any statute, regulation, permit, or court order.

16. This Order shall be effective upon receipt by Respondent.
17. Please be advised that section 309(d) of the CWA, 33 U.S.C. § 1319(d), authorizes civil penalties of up to \$32,500.00 per day for each violation of section 301 of the CWA, 33 U.S.C. § 1311, and for each violation of an order issued by the Administrator of EPA under section 309(a) of the CWA, 33 U.S.C. § 1319(a), including this Order. Additionally, section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes EPA to impose administrative penalties for violations of the CWA. Further, section 309(c) of the CWA, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations of the CWA. Issuance of this Order shall not be deemed an election by the United States to forego any civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA for violations giving rise to the Order.
18. Compliance with the terms and conditions of the Order shall not be construed to relieve Respondent of its obligation to comply with any applicable Federal, state, or local law or regulation. Failure by Respondent to complete the tasks described herein in the manner

and time frame specified pursuant to this Order may subject Respondent to a civil action under section 309 of the CWA, 33 U.S.C. § 1319, for violation of this Order.

DATED this 5th day of December 2007.



Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice