

ERIN BREWER
Attorney Advisor
United States Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105
(415) 972-3362

KIMBERLY WELLS
Attorney Advisor
United States Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105
(415) 972-3948

Attorneys for Complainant

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9

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. After the answer is filed, the Administrative Law Judge is the Presiding Officer with jurisdiction over this action pursuant to the Rules of Practice at 40 C.F.R. § 22.3 and § 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 (“Respondent”) is an individual and a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5). Since at least February 5, 2010, Respondent has owned the property located at approximately 13.3955°N, 144.6943°E, in Santa Rita, Guam,

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referred to as “Buena Vista Estates” or “Project Site.”

21. Buena Vista Estates includes properties located on Buena Vista Drive south of its intersection with Bishop Baumgartner and the associated feeder roads, including, but not limited to: Matthew Ct., Dax Ct., and Jakey Ct., as well as undeveloped parcels on the ridgeline and mountainous areas accessible from Route 5 and Route 17.

A. Respondent Discharged Stormwater Without a Permit in Violation of CWA Section 301(a)

22. Between April 30, 2017, and February 21, 2023, Respondent conducted construction activities at Buena Vista Estates including clearing and grading.

23. Construction on the subdivision occurred in different stages, referred to as Phases 1-5 and in a stage referred to as “fire roads.”

24. The stormwater runoff from Buena Vista Estates between April 30, 2017, and February 21, 2023, was associated with construction activity, including clearing and grading.

25. Stormwater runoff from construction sites, such as the Buena Vista Estates, includes sediment, metals, phosphorous, elevated alkalinity (measured as high pH), and other chemicals found in construction products.

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

27. The engineered conveyances that collect stormwater from Buena Vista Estates 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 Buena Vista Estates 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.

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

30. Stormwater runoff carrying pollutants from Buena Vista Estates 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 Estates from least April 30, 2017, to February 21, 2023, as that term is defined in the 2017 and 2022 Construction General Permits.

33. 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 Estates.

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

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

36. Discharges of stormwater runoff carrying pollutants from the Buena Vista Estates site between at least August 26, 2021 and February 21, 2023 are unauthorized discharges of stormwater from construction activities.

37. 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

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the construction of fire roads in Buena Vista Estates, Respondent did not complete the permitting process or provide the documentation required to obtain authorization under the 2022 Construction General Permit.

38. 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.

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

B. Respondent Violated the Terms of the June 2022 Administrative Order on Consent

40. In June 2022, Respondent entered into an Administrative Order on Consent (AOC), with EPA to address alleged violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, which occurred between April 30, 2017, and August 26, 2021.

41. The AOC is assigned docket number CWA-09-2022-004 and has an effective date of June 10, 2022. The AOC is attached hereto as Exhibit A.

42. The AOC is a legally binding order under CWA Section 309(a), 33 U.S.C. § 1319(a).

43. On approximately 313 occasions between April 30, 2017, and February 21, 2023, precipitation events generated 0.5 inches or more of rainfall in the vicinity of Buena Vista Estates.

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

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45. Respondent obtained coverage under the 2017 Construction General Permit for stormwater discharges from subprojects that occurred in the period of construction referred to as Phase 4. On March 6, 2017, Respondent obtained NPDES ID #: GUR1000001 and on March 7, 2017, Respondent obtained NPDES ID# GU100002 for stormwater discharges from Phase 4 of construction at Buena Vista Estates.

46. Respondent failed to comply with multiple requirements of the 2017 Construction General Permit. Specifically:

- a. Respondent did not develop a Stormwater Pollution Prevention Plan (SWPPP) for Phase 4 of construction at Buena Vista Estates.
- b. Respondent did not implement stabilization measures as required by the 2017 Construction General Permit to minimize erosion during Phase 4 of construction at Buena Vista Estates.
- c. Respondent did not install or maintain storm drain inlet protection measures during Phase 4 of construction at Buena Vista Estates.
- d. Respondent did not provide cover or stabilization for sediment, material, and waste stockpiles during Phase 4 of construction at Buena Vista Estates.
- e. Respondent did not maintain Project Site inspection records during Phase 4 of construction at Buena Vista Estates.

47. The AOC alleges that Respondent failed to comply with conditions or limits in the 2017 Construction General Permit for the subprojects in Phase 4 of construction at Buena Vista Estates. AOC, ¶ 32. Specifically, the AOC alleges that Respondent:

- a. did not develop a SWPPP;
- b. did not implement appropriate stabilization measures to minimize erosion;
- c. did not install or maintain storm drain inlet protection measures;

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- d. did not provide cover or stabilization for sediment, material, and waste stockpiles; and
- e. did not maintain Project Site inspection records.

AOC, ¶ 30.

48. Respondent discharged construction stormwater without a permit in Phases 1, 2, 3 and 5 of construction at Buena Vista Estates.

49. The AOC alleges that Respondent did not obtain authorization to discharge stormwater from the construction activities that occurred in Phases 1, 2, 3, and 5 of construction at Buena Vista Estates. AOC, ¶ 32.

50. The AOC ordered Respondent to take the following steps to comply with the requirements of the CWA and the 2017 Construction General Permit:

- a. Within sixty (60) days of the Effective Date of the AOC, Respondent was required to develop a site specific SWPPP for the whole Buena Vista Estates site that meets the requirements of the 2022 Construction General Permit. AOC ¶ 33(a).
- b. Within thirty (30) days of the Effective Date of the AOC, Respondent was required to “stabilize all exposed portions of the Project Site including, but not limited to, all graded surfaces and active construction areas in accordance with Part 2.2.14 of the 2022 Construction General Permit.” AOC ¶ 33(b).
- c. Within thirty (30) days of the Effective Date of the AOC, Respondent was required to “install and maintain storm drain inlet protection measures at the Project Site in accordance with Part 2.2.10 of the 2022 Construction General Permit.” AOC ¶ 33(c).

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- d. Within thirty (30) days of the Effective Date of the AOC, Respondent was required to “remove all sediment, material, and waste stockpiles at the Project Site in accordance with Part 2.2.5 of the 2022 Construction General Permit.” AOC ¶ 33(d).
- e. Within thirty (30) days of the Effective Date of the AOC, Respondent was required to “stabilize and/or install erosion control measures below all drainage outlets at the Project Site in accordance with Part 2.2.7 of the 2022 Construction General Permit.” AOC ¶ 33(e).
- f. Upon the Effective Date of the AOC, Respondent was required to conduct inspections at the Project Site in accordance with the schedule required by Part 4 of the 2022 Construction General Permit. Respondent was also required to create and maintain inspection records related to the Project Site as required by Part 4.7 of the 2022 Construction General Permit. AOC ¶ 33(f).
- g. Within thirty (30) days after Respondent had fully completed the AOC’s requirements, Respondent was required to “submit for the EPA’s review and approval a final report, that includes a description, including photographs, and timeline of all of actions which have been taken toward achieving compliance with this AOC and the CWA.” AOC ¶ 34.

51. Respondent did not develop a SWPPP that included Phases 1, 2, 3, or 5 of construction at Buena Vista Estates.

52. Respondent violated Paragraph 33.a of the AOC by failing to develop a SWPPP for the entire Project Site within 60 days of the effective date of the AOC.

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53. Respondent failed to implement stabilization measures or implemented inadequate stabilization measures for exposed portions of Buena Vista Estates within 30 days of the Effective Date of the AOC.

54. Respondent violated Paragraph 33.b. of the AOC which required Respondent to stabilize all exposed portions of the Project Site within 30 days of the Effective Date of the AOC.

55. Respondent failed to properly design, install, and maintain storm drain inlet protection to prevent sediment-laden stormwater from entering the drainage system at Buena Vista Estates.

56. Respondent's improperly designed, improperly installed, and unmaintained storm drain inlet protection measures did not prevent pollutants from entering the drainage system at Buena Vista Estates.

57. Respondent violated Paragraph 33.c. of the AOC by failing to properly install and maintain storm drain inlet protection measures at the Project Site within 30 days of the Effective Date of the AOC.

58. Respondent did not remove sediment, material, and waste stockpiles from Buena Vista Estates within 30 days of the Effective Date of the AOC.

59. Respondent violated Paragraph 33.d. of the AOC by failing to remove all sediment, material, and waste stockpiles at the Project Site within 30 days of the Effective Date of the AOC.

60. Respondent failed to implement erosion control at Buena Vista Estates.

61. The lack of erosion controls at Buena Vista Estates has resulted in continued and significant downstream erosion, including steep, eroding channels and significant bank cutting and gullying in the Maemong River drainage and other downgradient flow paths receiving stormwater from the Project Site.

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62. Respondent violated Paragraph 33.e of the AOC which required Respondent to stabilize and/or install erosion control measures below all drainage outlets at the Project Site within 30 days of the Effective Date of the AOC.

63. Respondent failed to conduct inspections at the required frequency and failed to maintain the required inspection log records for construction at Buena Vista Estates.

64. Respondent violated Paragraph 33.f of the AOC, which required Respondent to conduct inspections at the Project Site in accordance with Part 4 of the 2022 Construction General Permit and to create and maintain inspection records as required by Part 4.7.

65. Respondent did not submit for the EPA's review and approval a final report.

66. Respondent violated Paragraph 34 of the AOC, which required Respondent to submit a final report that includes a description, including photographs, and timeline of all of actions which have been taken toward achieving compliance with the AOC and the CWA.

V. RELIEF SOUGHT: CIVIL PENALTY DEMAND

67. 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) for Respondent's violations of the CWA.

68. 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.

69. 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

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assessment factors, the Presiding Officer assess Respondent a civil administrative penalty in an amount not to exceed \$342,218.

70. 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

71. 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 Respondent may file an answer in accordance with the Administrative Law Judge's Order of Designation issued on January 6, 2026.

B. Request for a Hearing

72. 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 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.

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

74. 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.

VIII. REQUESTING AN INFORMAL SETTLEMENT CONFERENCE

75. 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

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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

76. 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 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).

77. 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.

78. 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).

79. 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.

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Amy C. Miller-Bowen, Director
Enforcement and Compliance Assurance Division

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