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**U.S. EPA REGION 9
HEARING CLERK**

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**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, California 94105**

In the matter of:)	DOCKET NO. CWA-09-2026-0016
)	
Henry Simpson,)	CONSENT AGREEMENT
)	AND FINAL ORDER
Santa Rita, Guam,)	
)	
Respondent.)	<i>Class II Administrative Penalty Proceeding under Section 309(g) of the Clean Water Act, 33 U.S.C. §1319(g), and 40 C.F.R. §§ 22.13(b) and 22.18</i>

CONSENT AGREEMENT

I. AUTHORITY AND PARTIES

1. This is a Class II civil administrative penalty proceeding under Section 309(g)(1)(A) and 2(B) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(1)(A) and 2(B), and 40 C.F.R. Part 22 (Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits).
2. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency (EPA) is authorized to assess administrative penalties against persons who violate Section 301(a) of the CWA, 33 U.S.C. § 1311(a). The Administrator has delegated the authority to sign consent agreements between the EPA and the party against whom a penalty is proposed to be assessed pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), to the Regional Administrator of EPA Region 9, who has redelegated this authority to the Director of the Enforcement and Compliance Assurance Division, EPA Region 9 (Complainant).
3. Respondent is Henry Simpson.
4. This Consent Agreement and Final Order (CA/FO) concludes this penalty proceeding, as authorized by 40 C.F.R. § 22.18(b)(2) and (3).
5. Complainant and Respondent agree that settling this action without the adjudication of any issue of fact or law is in their respective interest and in the public interest.

II. STATUTORY AND REGULATORY AUTHORITY

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" means any addition of any pollutant to navigable waters from any point source. 33 U.S.C. § 1362(12).
9. Under CWA Section 502(6), the term "pollutant" means dredged soil, 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).
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. Under Section 402(p)(2)(B) of the CWA, certain stormwater discharges, including discharges of stormwater associated with industrial activity, require NPDES permit authorization. 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 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. The EPA issued the 2017 NPDES General Permit for Discharges from Construction Activities (2017 Construction General Permit), which was in effect from February 16, 2017, through February 16, 2022, and subsequently issued the 2022 NPDES General Permit for Discharges from Construction Activities (2022 Construction General Permit) on February 17, 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.

III. GENERAL ALLEGATIONS

18. 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).
19. Since at least February 5, 2010, Respondent has owned the property located at approximately 13.3955°N, 144.6943°E, in Santa Rita, Guam, referred to as Buena Vista Estates or the Project Site.
20. 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.

IV. ALLEGED VIOLATIONS

21. Between August 26, 2021, and February 21, 2023, Respondent conducted construction activities at Buena Vista Estates including clearing and grading.
22. The stormwater runoff from Buena Vista Estates between August 26, 2021, and February 21, 2023, was associated with construction activity, including clearing and grading.
23. 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.
24. Stormwater runoff from Buena Vista Estates is collected in engineered conveyances including swales, drainage pipes, and headwalls.
25. 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).
26. 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.
27. Stormwater runoff carrying pollutants from the southeast portion of Buena Vista Estates is discharged from the engineered conveyances to tributaries that flow to the Talofofu River, which flows to Talofofu Bay and then to the Pacific Ocean.
28. Stormwater runoff carrying pollutants from Buena Vista Estates discharges to Waters of the United States.
29. 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.

30. Respondent was an “operator” associated with a construction project at Buena Vista Estates from at least August 26, 2021, to February 21, 2023, as that term is defined in the 2017 and 2022 Construction General Permits.
31. 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.
32. 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.
33. 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).
34. 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.
35. While Respondent submitted a Notice of Intent (NOI) to seek coverage under EPA’s 2022 Construction General Permit in September 2022 for stormwater discharges associated with the construction of fire roads in Buena Vista Estates, Respondent did not complete the permitting process or provide the documentation required to obtain authorization under the 2022 Construction General Permit.
36. Accordingly, Respondent did not receive coverage for discharges of stormwater from construction activities related to the fire roads that occurred after September 2022, or for stormwater discharges associated with any other construction activities prior to or after September 2022.
37. Respondent’s unauthorized discharges of stormwater from construction activities conducted between 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.

V. RESPONDENT’S ADMISSIONS AND WAIVERS

38. In accordance with 40 C.F.R. § 22.18(b)(2), for the purpose of this proceeding, Respondent: (i) admits the jurisdictional allegations of this Consent Agreement; (ii) neither admits nor denies the specific factual allegations contained in the Complaint and in this CA/FO; (iii) consents to all conditions specified in this CA/FO and to the assessment of the civil administrative penalty set forth in Section VI below; (iv) waives any right to contest the allegations set forth in this CA/FO; and (v) waives its right to appeal this CA/FO.

39. Respondent also waives the right to a hearing under CWA section 309(g)(2)(B) and to any appeal of the Final Order under CWA section 309(g)(8)(B), 33 U.S.C. §§ 1319(g)(2)(B) and 1319(g)(8)(B).
40. By signing this Consent Agreement, Respondent waives any rights or defenses that Respondent has or may have for this civil administrative matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the Final Order accompanying the Consent Agreement.

VI. ADMINISTRATIVE PENALTY

41. Respondent agrees to the assessment of a civil penalty of sixty thousand dollars (\$60,000) ("Assessed Penalty") for the claims set forth herein and in the Complaint as final settlement of the civil claims against Respondent as alleged in the Complaint and in Section IV of this CA/FO.
42. Respondent shall pay the Assessed Penalty according to the terms of this CA/FO within thirty (30) days after the Effective Date of the CA/FO. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website:
<https://www.epa.gov/financial/makepayment>. For additional instructions see:
<https://www.epa.gov/financial/additional-instructions-making-payments-epa>.
43. When making a payment, Respondent shall:
 - a. Identify every payment with Respondent's name and the docket number of this Consent Agreement, CWA-09-2026-0016.
 - b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve via electronic mail proof of such payment to the following person(s):

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105
R9HearingClerk@epa.gov

and

Ash Nieman (ENF 3-2)
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region IX

75 Hawthorne Street
San Francisco, CA 94105
nieman.ash@epa.gov

and

U.S. Environmental Protection Agency
Cincinnati Finance Division
CINWD_AcctsReceivable@epa.gov

“Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent’s name.

44. **Interest, Charges, and Penalties on Late Payments.** Pursuant to 33 U.S.C. § 1319(g)(9), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Consent Agreement, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and EPA is authorized to recover the following amounts.

- a. **Interest.** Interest begins to accrue from the date of delinquency, which is thirty (30) days after the Effective Date, if full payment of the \$60,000 Assessed Penalty is not made by that date. If the Assessed Penalty is paid in full within thirty (30) days after the date of delinquency, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days of the date of delinquency, interest will continue to accrue until the unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. Interest will be assessed at prevailing rates, per 33 U.S.C. § 1319(g)(9). The rate of interest is the IRS standard underpayment rate.
- b. **Handling Charges.** Administrative costs incurred for processing and handling the delinquent debt. The calculation of administrative costs will be based on actual costs incurred or upon estimated costs as determined by EPA.
- c. **Late Payment Penalty.** Respondent shall pay a penalty charge of not more than 6 percent a year for failure to pay a part of a debt more than 90 days past due. The penalty charge will be at a rate not to exceed 6% per annum and will be assessed monthly.

45. **Late Penalty Actions.** In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Consent Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following.
- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14;
 - b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
 - c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds if Respondent fails to pay the debt within a reasonable time, and Respondent will be notified before such action is taken and applicable suspension or debarment procedures will be used, per 40 C.F.R. § 13.17.
 - d. Request that the Attorney General bring a civil action in the appropriate district court to recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, pursuant to 33 U.S.C. § 1319(g)(9). In any such action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.
46. **Allocation of Payments.** Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding administrative costs, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.
47. **Tax Treatment of Penalties.** Penalties, interest, and other charges paid pursuant to this Consent Agreement shall not be deductible for purposes of federal taxes.

VII. APPLICABILITY

48. This CA/FO shall apply to and be binding on Respondent, Respondent's officers, directors, partners, trustees, authorized representatives, agents, employees, contractors, successors and assigns. Action or inaction of any persons, firms, contractors, employees, agents or corporations acting under, through, or for Respondent shall not excuse any failure of Respondent to fully perform its obligations

under this CA/FO. Changes in ownership, real property interest, or transfer of personal assets shall not alter Respondent's obligations under this CA/FO.

VIII. RESERVATION OF RIGHTS

49. In accordance with 40 C.F.R. § 22.18(c), compliance with this CA/FO only resolves Respondent's CWA civil penalty liabilities for the violations specifically alleged herein and in the Complaint and does not in any case affect the right of the EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
50. This CA/FO is not a permit or modification of any existing permit issued pursuant to any federal, state, or local laws or regulations, and, except for the resolution of the allegations including alleged violations stated herein and in the Complaint, shall in no way relieve or affect Respondent's obligations under any applicable federal, state or local laws, regulations, or permits.

IX. ADDITIONAL TERMS

51. Each party shall bear its own attorney's fees and costs.
52. This CA/FO can be signed in counterparts.
53. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
54. By signing this CA/FO, Respondent acknowledges that this CA/FO does not contain any confidential business information (CBI) or waives any claim of CBI.
55. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service ("IRS") annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order and settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Respondent's failure to comply with providing IRS Form W-9 or Taxpayer Identification Number ("TIN"), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that

- a. Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- c. Respondent shall email its completed Form W-9 to EPA’s Cincinnati Finance Division at sherrer.dana@epa.gov, within 30 days after the Effective Date, and EPA recommends encrypting IRS Form W-9 email correspondence; and
- d. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days after the Effective Date, then Respondent, using the same email address identified in the preceding sub-paragraph, shall further:
 - i. notify EPA’s Cincinnati Finance Division of this fact, via email, within 30 days after the Effective Date of this CA/FO and
 - ii. provide EPA’s Cincinnati Finance Division with Respondent’s TIN, via email, within five (5) days of Respondent’s issuance and receipt of the TIN.

X. PUBLIC NOTICE

56. As required by section 309(g)(4), 33 U.S.C. §§ 1319(g)(4), and 40 C.F.R. § 22.45, the EPA provided public notice of the Complaint and demand for civil penalties in this matter, and provided a reasonable opportunity to comment on the matter. The EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations indicating this Agreement is inappropriate, improper, or inadequate, or if a hearing is requested under section 309(g)(4)(C), 33 U.S.C. § 1319(g)(4)(C).

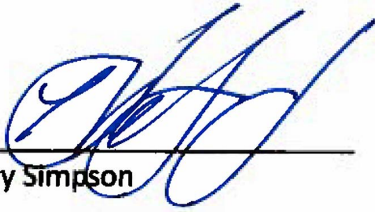
XI. EFFECTIVE DATE

57. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), the Effective Date of this CA/FO is the date that the Final Order, having been signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

IT IS SO AGREED.

In re: Henry Simpson

For Respondent Henry Simpson:


Henry Simpson

5/13/26
Date

In re: Henry Simpson

For Complainant the U.S. Environmental Protection Agency, Region IX:

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

Date

Of Counsel:

Erin Brewer
Attorney-Advisor
Office of Regional Counsel

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (U.S. EPA Docket No. CWA-09-2026-0016) be entered, and that Respondent shall pay a civil penalty in the amount of sixty thousand dollars in accordance with the terms of this Consent Agreement and Final Order.

SO ORDERED: _____.

Beatrice Wong
Regional Judicial Officer
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original of the foregoing Consent Agreement and Final Order in the matter of Henry Simpson (Docket No. CWA-09-2026-0016) has been filed with the Regional Hearing Clerk, and a copy was served on Respondent and Counsel for Complainant by email, as indicated below:

FOR COMPLAINANT: Erin Brewer, Attorney Advisor
Office of Regional Counsel (ORC 2-4)
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brewer.erin@epa.gov

FOR RESPONDENT: Delia Lujan Wolff
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Ponly Tu
Regional Hearing Clerk
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