

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO.
)	CWA-10-2024-0024
CANDACE STUART-STEPHENS AND)	
JERROD STUART,)	COMPLAINT
)	
Priest River, Idaho,)	
)	
Respondents.)	

I. STATUTORY AUTHORITY

1.1. This administrative complaint (“Complaint”) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA” or “Complainant”) by Section 309(g)(2)(B) of the Federal Water Pollution Control Act (“CWA”), 33 U.S.C. § 1319(g)(2)(B). The Administrator has delegated this authority to the Regional Administrator of EPA Region 10, who in turn has redelegate this authority to the Director of the Enforcement and Compliance Assurance Division in EPA Region 10.

1.2. Pursuant to CWA Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA hereby proposes the assessment of a civil penalty against Candace Stuart-Stephens and Jerrod Stuart (“Respondents”) for violations of the CWA.

1.3. In accordance with CWA Section 309(g)(1), 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), EPA shall notify the State of Idaho within thirty (30) days following proof of service of this Complaint on the Respondents and provide the State of Idaho with an opportunity to consult with EPA on this matter.

II. STATUTORY AND REGULATORY BACKGROUND

2.1. As provided in CWA Section 101(a), 33 U.S.C. § 1251(a), the objective of the CWA is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

2.2. CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters by any person, except, *inter alia*, as authorized by a Department of Army permit issued by the United States Army Corps of Engineers (“Corps”) pursuant to CWA Section 404, 33 U.S.C. § 1344.

2.3. CWA Section 502(12) defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12).

2.4. CWA Section 502(6) defines “pollutant” to include dredged spoil, solid waste, sewage, garbage, sewage sludge, chemical wastes, biological materials, heat, rock, sand, and industrial waste discharged into water. 33 U.S.C. § 1362(6).

2.5. “Fill material” includes material placed in waters of the United States where the material has the effect of replacing any portion of a water of the United States with dry land or changing the bottom elevation of any portion of a water of the United States. Examples of fill material include rock, sand, soil, clay, construction debris, wood chips, overburden from excavation activities, and materials used to create any structure or infrastructure in the waters of the United States. 40 C.F.R. § 232.2.

2.6. CWA Section 502(5) defines “person” to include “an individual, corporation, partnership, [or] association” 33 U.S.C § 1362(5).

2.7. CWA Section 502(14) defines “point source” to include, *inter alia*, “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch,

channel, tunnel, conduit, well, discrete fissure, [or] container . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

2.8. CWA Section 502(7) defines “navigable waters” as “waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7).

2.9. Each discharge of pollutants from a point source that is not authorized by a permit issued pursuant to the CWA constitutes a violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

2.10. Each day that the dredged and/or fill material remains in place without the required permit constitutes a violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

2.11. CWA Section 309(g)(1), 33 U.S.C. § 1319(g)(1), authorizes EPA to assess administrative penalties against any person who violates CWA Section 301, 33 U.S.C. § 1311, or any permit condition or limitation implementing CWA Section 301, 33 U.S.C. § 1311, in a permit issued under CWA Section 404, 33 U.S.C. § 1344.

III. ALLEGATIONS

3.1 Respondents are individuals and are therefore “persons” as defined by CWA Section 502(5), 33 U.S.C. § 1362(5).

3.2 At all times relevant to this action, Respondents designed, directed, oversaw, and performed work activities, including excavating and sidecasting native material, as preparation to install two bridges and one dock, and designed, directed, oversaw, and performed work activities involving the discharge of riprap rock, decorative rock, and steel pilings during the installation of those two bridges and one dock. This work was performed on property adjacent to the Priest River owned by Respondent Candace Stuart-Stephens and located at Latitude 48.1830° N., Longitude -116.8962° W., Parcel Identification Number RPR28600000020A. The subject property address is 306 Eastside Road in Priest River, Idaho (the “Site”).

3.3 The Priest River has a continuous surface connection to the Pend Oreille River downstream of the Albeni Falls Dam, where it is a traditional navigable water. As such, the Priest River is a “navigable water” within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7).

3.4 As described below, beginning in June 2022, and continuing through the filing of this Complaint, Respondents violated CWA Section 301, 33 U.S.C. § 1311.

3.5 In March 2022, Respondent Candace Stuart-Stephens spoke with the Corps during a phone call about the proposed project and was informed of the need to obtain CWA Section 404, 33 U.S.C. § 1344, permitting prior to commencing the discharge activities.

3.6 Likely in response to gathering that information from the Corps, on May 30, 2022, Respondents submitted a Joint Aquatic Resources Permit Application (“JARPA”) to the State of Idaho Department of Lands (“IDL”) and the U.S. Army Corps of Engineers (“Corps”) for a dock on Priest River, which proposed the discharge of fifty linear feet of ten-inch riprap rock and a fifty-foot by seven-foot dock with five eight-foot long steel pilings. That same day, Respondents submitted a separate JARPA for two bridges each with a five-foot encroachment below the ordinary high water mark of the Priest River.

3.7 Prior to receiving approvals on those permit applications from IDL or the Corps, starting on or around June 4, 2022, Respondents discharged native sediment, small decorative rock, riprap rock, and a total of 15 steel pilings, via an excavator below the ordinary high water mark of the Priest River.

3.8 On June 6, 2022, IDL received a complaint regarding ongoing work in the Priest River. That same day, IDL inspected the Site and documented pilings driven for the two bridges and the dock, as well as the placement of geotextile fabric below the ordinary high water mark of

the Priest River. Further, IDL documented evidence of the discharge of dredged and/or fill material associated with sidecasting material from below the ordinary high water mark of the Priest River.

3.9 On June 6, 2022, IDL issued a Cease and Desist letter and Stop Work Order to the Respondents for performing work activities that required an IDL encroachment permit, including the commencement of placement of materials necessary to support the construction of the bridges and dock below the ordinary high water mark of the Priest River.

3.10 On June 7, 2022, the Corps received a report from IDL indicating possible discharges of fill material below the ordinary high water mark of the Priest River.

3.11 On June 13, 2022, IDL sent Respondents a Notice of Non-Compliance for the unauthorized partial construction of a dock and riprap rock.

3.12 On June 24, 2022, the Corps issued a Notice of Violation (“NOV”) to Respondents for “possible discharges of fill material below the ordinary high water mark of the Priest River.”

3.13 On August 24, 2022, Respondents submitted written statements in response to the Corps’ NOV. In those written statements, Respondents stated that they “started work” prior to receiving the permits and that there was “[n]o excuse, it is no one’s fault but ours for not waiting for our permits from IDL.”

3.14 On August 26, 2022, IDL inspected the Site again and documented that the project was completed in violation of IDL’s June 6, 2022 Cease and Desist letter and Stop Work Order.

3.15 On September 22, 2022, the Corps referred the CWA Section 404 enforcement case to EPA.

3.16 EPA accepted the Corps referral and became the lead enforcement agency on September 27, 2022.

3.17 On October 21, 2022, EPA inspected the Site and documented the alleged unauthorized discharges below the ordinary high water mark of the Priest River.

3.18 The area of the Priest River subject to Respondents' activities is critical habitat for the bull trout, *Salvelinus confluentus*, a species listed as threatened under the Endangered Species Act.¹

3.19 The equipment referenced in Paragraphs 3.6 is a "point source" within the meaning of CWA Section 502(14), 33 U.S.C. § 1362(14).

3.20 The dredged and/or fill material that Respondents and/or persons acting on their behalf caused to be discharged, as referenced in Paragraph 3.2, include riprap rock, decorative rock, and steel pilings, each of which constitutes "dredged material" and/or "fill material" within the meaning of 40 C.F.R. § 232.2, and each of which constitutes a "pollutant" within the meaning of CWA Section 502(6), 33 U.S.C. § 1362(6).

3.21 By causing such dredged and/or fill material to enter waters of the United States, Respondents engaged in the "discharge of pollutants" from a point source within the meaning of CWA Sections 301(a) and 502(12), 33 U.S.C. §§ 1311(a) and 1362(12).

3.22 Respondents' discharge of dredged and/or fill material described in Paragraphs 3.2 and 3.6 was not authorized by any permit issued pursuant to CWA Section 404, 33 U.S.C. § 1344. Respondents are therefore in violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

¹ See Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Bull Trout, 70 F.R. 56212 (Oct. 26, 2005).

IV. PROPOSED PENALTY

4.1. Based on the foregoing allegations, Respondents violated CWA Section 301(a), 33 U.S.C. § 1311(a). Consequently, pursuant to CWA Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, Respondents are liable for the administrative assessment of civil penalties for violations in an amount not to exceed \$26,685 per day for each day during which the violation occurred, up to a maximum of \$333,552.

4.2. Beginning on June 4, 2022, through the filing of this complaint, Respondents discharged pollutants to waters of the United States without authorization under CWA Section 404, 33 U.S.C. § 1344, in violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

4.3. Each day that the dredged and/or fill material remains in place without the required permit constitutes a violation of CWA Section 301(a), 33 U.S.C. § 1311(a). At the time of the filing of this Complaint, the unauthorized dredged and/or fill material has been in place for approximately 600 days.

4.4. In accordance with 40 C.F.R. § 22.14(a)(4)(ii), Complainant proposes that a Final Order be issued to Respondents assessing an administrative penalty in an amount not to exceed \$333,552 taking into account the nature, circumstances, extent and gravity of the violations, and with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violations, and such other matters as justice may require. 33 U.S.C. § 1319(g)(3).

4.5. *Nature, Circumstances, Extent, and Gravity of the Violations:* Respondents' unauthorized discharge of pollutants into waters of the United States is a serious violation that significantly undermines the CWA's regulatory scheme and caused ongoing harm to the environment.

4.6. Respondents' unauthorized activities resulted in impacts to critical habitat for bull trout, *Salvelinus confluentus*, a species listed as threatened under the Endangered Species Act.² Respondents' activities likely contributed to restricted floodplain access, reduced in-channel complexity, reduced habitat structure and complexity, increased habitat fragmentation, reduced water quality, and led to a straighter, higher velocity channel. Each of these consequences of Respondents' actions has the potential to significantly impact an already struggling species.

4.7. Respondents' activities also caused significant turbidity increases within the Priest River. According to a June 23, 2022 "Warning Notice" issued to Respondents by the Idaho Department of Environmental Quality, "[b]rown, turbid water . . . indicate that a discharge into waters of the state occurred and likely resulted in a violation of Idaho's water quality standards." That Notice also stated that "the sediment plumes suggest an exceedance of background turbidity of more than 50 NTU [Nephelometric Turbidity Units]." In addition to the immediate increases in turbidity associated with Respondents' activities, the reduction in coverage of mature emergent vegetation caused by Respondents likely has resulted and will continue to result in an increase in bank erosion and sediment input into the Priest River.

4.8. In addition to general impacts to critical habitat for species listed as threatened under the Endangered Species Act and causing significant sediment plumes as described above, Respondents' activities likely have resulted and will continue to result in an increase in water temperatures. The practice of discharging riprap limits the growth of riparian vegetation that provides shade and the riprap rock's location in the water can contribute to higher water temperatures through solar radiation. As a result, using riprap rock for bank armoring may lead to elevated stream temperatures. This increase in temperature is particularly problematic in the

² *Id.*

Priest River, which is already designated as an impaired waterbody for temperature pursuant to CWA Section 303(d), 33 U.S.C. § 1313(d).³

4.9. In addition to the specific environmental impacts associated with the Respondents' activities, their actions have undermined the permitting structure under CWA Section 404, 33 U.S.C. § 1344. Under this permitting structure, no discharge of dredged or fill material shall be permitted if a practicable alternative exists that would be less damaging to the aquatic environment or if the proposed activity would result in significant degradation to waters of the United States.⁴ Compliance with a permit's conditions and restrictions is vital to the CWA Section 404, 33 U.S.C. § 1344, regulatory scheme, and Respondents' failure to obtain a permit prior to the discharge activity undermines the statutory and regulatory purposes of the CWA.

4.10. *Respondents' Ability to Pay:* Complainant has no information indicating that Respondents are unable to pay a penalty up to the statutory maximum penalty for the violations. The burden to prove an inability to pay falls on Respondents. Complainant will consider any information submitted by Respondents related to their ability to pay a penalty.

4.11. *Respondents' History of Prior Violations:* EPA is not aware of any prior CWA violations by Respondents.

4.12. *Respondents' Degree of Culpability:* As described in Section III of this Complaint, Respondents have a high degree of culpability, as they were clearly aware of the need to obtain a permit but still proceeded with the discharge activities prior to receiving the required authorization.

³ See Idaho's 2022 Integrated Report; <https://www2.deq.idaho.gov/admin/LEIA/api/document/download/16619>.

⁴ See 40 C.F.R. Part 230.

4.13. Respondents' acknowledgement that it proceeded with initiating and completing the discharge activities despite knowledge of the need to first obtain authorization pursuant to CWA Section 404, 33 U.S.C. § 1344, illustrates an extremely high degree of culpability and warrants a substantial penalty to serve as deterrence.

4.14. *Respondents' Economic Benefit:* The discharge activities very likely resulted in an increase in the value of Respondents' property. This increase in property value was obtained without proper CWA authorization and therefore should be considered an unlawful economic benefit that should be recovered through this penalty action.

4.15. *Other Matters as Justice May Require:* There are no facts justifying the use of this factor to adjust the penalty amount.

V. OPPORTUNITY TO REQUEST A HEARING

5.1. Respondents have the right to file an Answer requesting a hearing on any material fact contained in this Complaint or on the appropriateness of the penalty proposed herein. Upon request, the Presiding Officer may hold a hearing for the assessment of these civil penalties, conducted in accordance with the provisions of the Part 22 Rules and the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.* A copy of the Part 22 Rules accompanies this Complaint.

5.2. Respondents' Answer, including any request for hearing, must comply with 40 C.F.R. § 22.15 and must be filed with the Regional Hearing Clerk within thirty (30) days after service of the Complaint, as determined by reference to 40 C.F.R. § 22.7(c).

5.3. The Part 22 rules provide that “[t]he Presiding Officer . . . may by order authorize or require filing by facsimile or an electronic filing system subject to any appropriate conditions and limitations.” 40 C.F.R. § 22.5(a)(1).

5.4. Pursuant to their authority as Presiding Officers, the Regional Judicial Officers of EPA Region 10 have issued a Standing Order to designate EPA's Outlook-based email system to serve as EPA Region 10's Electronic Filing System ("EFS"). The Standing Order does not require that documents be filed using the email EFS. Rather, it authorizes the use of the email EFS as an option, in addition to those methods already authorized by the Part 22 Rules for the filing of documents with the Regional Hearing Clerk. A copy of the Standing Order accompanies this Complaint.

5.5. The original and one copy of the Answer to this Complaint, as well as the original and one copy of all other documents which Respondents file in this action, must be sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10
Alaska Operations Office
222 West 7th Avenue, #19
Anchorage, Alaska 99513

or if Respondents elect to use the email EFS, Respondents' Answer may be emailed to the Regional Hearing Clerk at R10_RHC@epa.gov.

VI. FAILURE TO FILE AN ANSWER

6.1. In accordance with 40 C.F.R. § 22.15, Respondents' Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which Respondents have any knowledge. Respondents' Answer must also state: (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) the facts which Respondents intend to place at issue; and (3) whether a hearing is requested. Failure to admit, deny, or explain any material factual allegation contained herein constitutes an admission of the allegation.

6.2. If Respondents fail to file a timely Answer to this Complaint, Respondents may be found to be in default, pursuant to 40 C.F.R. § 22.17, which constitutes an admission of all the facts alleged in the Complaint and a waiver of the right to a hearing.

6.3. Pursuant to 40 C.F.R. § 22.17(d), the penalty assessed in any default order shall become due and payable by Respondents without further proceedings thirty (30) days after the default order becomes final.

VII. INFORMAL SETTLEMENT CONFERENCE

7.1. Whether or not Respondents request a hearing, Respondents may request an informal settlement conference to discuss the facts of this case, the proposed penalty, and the possibility of settling this matter. To request such a settlement conference, Respondents should contact:

Patrick B. Johnson
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 10
Alaska Operations Office
222 West 7th Avenue, #19
Anchorage, Alaska 99513-7588
(907) 271-3914
Johnson.patrick@epa.gov

7.2. Note that a request for an informal settlement conference does not extend the thirty (30) day period of filing a written Answer to this Complaint, nor does it waive Respondents' right to request a hearing.

7.3. Respondents are advised that, after the Complaint is issued, the Part 22 Rules prohibit any *ex parte* (unilateral) discussion of the merits of these or any other factually related proceedings with the Administrator, the Environmental Appeals Board or its members, the Regional Judicial Officer, the Presiding Officer, or any other person who is likely to advise these officials in the decision of this case.

VIII. RESERVATIONS

8.1. Neither assessment nor payment of an administrative civil penalty pursuant to this Complaint shall affect Respondents' continuing obligation to comply with: (1) the CWA and all other environmental statutes, and (2) the terms and conditions of all applicable CWA permits.

Dated this ____ day of _____

EDWARD J. KOWALSKI, Director
Enforcement and Compliance Assurance Division