

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2017 JAN 12 AM 11:14

IN THE MATTER OF:)	COMBINED COMPLAINT AND
)	CONSENT AGREEMENT
Robert Gregg Sease)	
)	Docket No. CWA-08-2017-0005
Respondent.)	
_____)	

FILED
EPA COMPLAINTS
HEARING CLERK

The United States Environmental Protection Agency, Region 8 (EPA or Complainant), and Robert Gregg Sease (Respondent), by their undersigned representatives, hereby consent and agree as follows:

I. AUTHORITY

1. This proceeding is subject to the EPA’s “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits.” 40 C.F.R. part 22. This Combined Complaint and Consent Agreement (CCCA) is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
2. The EPA has jurisdiction over this matter pursuant to 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).

II. PARTIES BOUND

3. This CCCA, upon incorporation into a Final Order, applies to and is binding upon the EPA and upon Respondent and Respondent’s employees, agents, successors and assigns. Any change in ownership of the Site or transfer of assets or real or personal property shall not alter the Respondent’s responsibilities under this CCCA unless the EPA, the Respondent, and the transferee agree in writing to allow the transferee to assume such responsibilities. Additionally, thirty (30) days prior to such transfer,

Respondent shall notify the EPA at the address specified in paragraph 43(d) of this CCCA of the pending transfer.

III. STATEMENT OF THE PARTIES

4. For the purposes of this settlement only, Respondent admits the jurisdictional allegations contained herein and neither admits nor denies the specific factual allegations.

5. In any proceeding to enforce this CCCA, Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that the Respondent may have with respect to any issue of fact or law set forth in this CCCA, including his right to a hearing before any tribunal under the Administrative Procedure Act, 5 U.S.C. §§ 701-706, and his right to judicial review of the Final Order.

6. The EPA asserts that settlement of this matter is in the public interest, and the EPA and Respondent agree that entry of this CCCA and its incorporation into a Final Order without further litigation and without adjudication of any issue of fact or law will avoid prolonged and complicated litigation between the parties.

7. This CCCA, upon incorporation into the Final Order and full satisfaction by the parties, shall be a complete and full resolution of the Respondent's liability for federal civil penalties for the violations alleged below. The Respondent's liability to remove the dredged or fill material will be resolved in an Administrative Compliance Order on Consent (AOC) under section 309(a) of the CWA.

IV. GENERAL ALLEGATIONS

8. Respondent is an individual with a primary place of residence of 4413 Orofino Place, Castle Rock, Colorado 80108.

9. At all relevant times, Respondent owned, managed, operated and/or otherwise controlled property located in Sections 5, 7, and 8, Township 45 North, Range 5 East of the N.M.P.M., Saguache County, Colorado, including Sheep Creek and its adjacent wetlands (the Site). Respondent also owns a place of residence at the Site of 28890 County Road 33 Ee, Saguache, Colorado 81149.

10. Sheep Creek is a relatively permanent tributary to San Luis Lake. From the Site, Sheep Creek flows approximately 3.1 miles to Saguache Creek, which flows approximately 60 miles to San Luis Creek, which then flows approximately 20 miles to San Luis Lake. San Luis Lake is currently used, or was used in the past, or may be susceptible to use by interstate or foreign travelers, for recreational or other interstate or foreign commerce.

11. On or about the week of August 24, 2009, Respondent and/or persons acting on his behalf removed approximately sixty (60) undecreed stream impoundments from within Sheep Creek at the Site. The dredged material removed from Sheep Creek was side-casted along the creek's banks and placed directly within adjacent wetlands at the Site.

12. On September 2, 2009, the U.S. Army Corps of Engineers (Corps) conducted an inspection of the Site. The Corps found that Respondent and/or persons acting on his behalf discharged dredged or fill material into Sheep Creek and its adjacent wetlands during Respondent's removal of approximately sixty (60) undecreed stream impoundments within Sheep Creek at the Site without a permit, as required by section 404 of the CWA, 33 U.S.C. § 1344. The August 2009 activities conducted by Respondent and/or by persons acting on his behalf violated section 301 of the CWA, 33 U.S.C. § 1311.

13. On January 13, 2010, the Corps referred this matter to the EPA for enforcement in accordance with the "*Memorandum of Agreement Between the Department of the Army and the Environmental Protection Agency Concerning Federal Enforcement of the Section 404 Program of the Clean Water Act*," dated January 19, 1989.

14. On June 9, 2011, the EPA issued a Findings of Violations and Administrative Order for Compliance, Docket No. CWA-08-2011-0015 (June 9, 2011, Order), to Respondent for the CWA violations described in paragraphs 11 and 12, above. The June 9, 2011, Order specified the nature of the CWA violations and described actions necessary for Respondent to achieve compliance with sections 301 and 404 of the CWA.

15. On September 29, 2011, the EPA approved Respondent's Restoration Plan (1st Plan) submitted on September 19, 2011, by Bikis Water Consultants, LLC, for the: (1) removal of all dredged or fill material that was discharged into the waters and wetlands at the Site; and (2) restoration, to their pre-impact configuration and/or grade, of the waters and wetlands that were impacted as a result of Respondent's unauthorized 2011 discharges of dredged or fill material at the Site.

16. In letters to the EPA dated November 14, 2011, and November 16, 2011, Respondent's legal counsel stated that Respondent had advised him that the work set forth in the 1st Plan had been completed, except for some small areas where the work would be completed the next day.

17. Between September 2011 and August 2012, Respondent and/or persons acting on his behalf again discharged dredged or fill material into Sheep Creek and its adjacent wetlands at approximately eighty-six (86) locations over 1.66 miles of Sheep Creek at the Site. Some, if not all, of the dredged or fill material that was required to be removed as part of the 1st Plan had been discharged back into Sheep Creek and its adjacent wetlands at the Site by Respondent and/or persons acting on his behalf.

18. On July 18, 2012, the Colorado Division of Water Resources (CODWR) conducted inspections of the Site and observed that additional activities had taken place at the Site.

19. On July 24, 2012, CODWR informed the Corps and the EPA about Respondent's additional ongoing activities in Sheep Creek and its adjacent wetlands at the Site.

20. On August 29, 2012, a multi-agency inspection was conducted at the Site with Respondent, Respondent's legal counsel, and Bikis Water Consultants, LLC. The agencies participating in this inspection included the Corps, the EPA, and the CODWR. During this inspection, the EPA and the Corps found that Respondent and/or persons acting on his behalf discharged dredged or fill material into Sheep Creek and its adjacent wetlands at approximately eighty-six (86) locations over 1.66 miles of Sheep Creek at the Site without a permit, as required by section 404 of the CWA.

21. On June 23, 2014, the EPA and Respondent entered into an Administrative Order on Consent, Docket No. CWA-08-2014-0024 (June 23, 2014, Consent Order), for the CWA violations described in paragraph 20, above. A Second Restoration Plan (2nd Plan) was attached to the Consent Order, which described actions necessary for Respondent to achieve compliance with sections 301 and 404 of the CWA.

22. The EPA was notified by Bikis Water Consultants, LLC that all work required to be performed by Respondent in the 2nd Plan was completed by August 22, 2014.

23. On September 25, 2015, the State of Colorado informed the EPA about Respondent's ongoing activities in Sheep Creek and its adjacent wetlands at the Site that CODWR observed during a recent inspection of the Site.

24. During inspections on September 21, 2015, December 31, 2015, and March 21, 2016, CODWR observed and documented eleven (11) sites where the Respondent and/or persons acting on his behalf discharged dredged or fill material within the ordinary high water mark of Sheep Creek during the construction of stream impoundments, dams, and bank stabilization, which occurred sometime between April and October 2015.

25. On March 4, 2016, the EPA sent a Notice of Violation to the Respondent for failure to comply with the June 23, 2014, Consent Order and for the unauthorized activities described in paragraph 24, above.

26. The activities described in paragraph 24, above, resulted in discharges of dredged or fill material into Sheep Creek and its adjacent wetlands, which provide numerous functions and values including: recreation, aquatic and wildlife habitat, water quality enhancement, flood attenuation and groundwater recharge.

27. The activities described in paragraph 24, above, were performed using common earthmoving vehicles and equipment, which were operated by Respondent or persons acting on his behalf.

V. SPECIFIC ALLEGATIONS

28. Respondent is a "person" as defined in section 502(5) of the CWA, 33 U.S.C. § 1362(5).

29. The material discharged at the Site described in paragraphs 23 and 24, above, is and was at all relevant times "dredged material" or "fill material" as defined in 33 C.F.R. § 323.2(c) or 33 C.F.R. § 323.2(e), respectively, and "pollutants" as defined in section 502(6) of the CWA, 33 U.S.C. § 1362(6).

30. The vehicles and equipment described in paragraph 27, above, are and were at all relevant times each a "point source" as defined in section 502(14) of the CWA, 33 U.S.C. § 1362(14).

31. Sheep Creek and its adjacent wetlands are and were at all relevant times "waters of the United States" as defined in 33 C.F.R. § 328.3(a) and therefore "navigable waters" as defined in section 502(7) of the CWA, 33 U.S.C. § 1362(7).

32. The placement of dredged or fill material into Sheep Creek and its adjacent wetlands constitutes the "discharge of pollutants" as defined in section 502(12) of the CWA, 33 U.S.C. § 1362(12).

33. 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(a).

34. 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.

35. According to 33 C.F.R. § 323.3(a), a permit issued by the Corps is required for the discharge of dredged or fill material into waters of the United States, unless an exemption pursuant to 33 C.F.R. § 323.4 applies.

36. Respondent is not and never was 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 paragraphs 23 and 24, above.

37. The activities conducted by Respondent and/or by persons acting on its behalf as described in paragraph 24, above, violate section 301(a) of the CWA, 33 U.S.C. § 1311(a). 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 separate 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). The period of violation for which EPA is seeking penalties began in April 2015 and continues to this day.

38. The activities conducted by Respondent and/or by persons acting on his behalf as described in paragraph 24, above, violate the June 9, 2011, Order and June 23, 2014, Consent Order, both issued under section 309(a) of the CWA.

39. Removal of the dredged or fill material from Sheep Creek and its adjacent wetlands will be addressed in an Administrative Compliance Order on Consent under section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a).

VI. CIVIL PENALTY

40. Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), authorizes the EPA, after consultation with the State of Colorado, to impose administrative penalties up to \$16,000, for each violation of the Act, with a total maximum allowed penalty of \$187,500, for Class II violations, as adjusted by the Civil Monetary Penalty Inflation Adjustment Rule, 78 Fed. Reg. 66643 (November, 6, 2013), and further adjusted by the penalty inflation adjustment rule issued on July 1, 2016, which raised per day per violation penalties to \$20,628, with a total maximum allowed penalty of \$257,848.

41. Pursuant to section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), and based on the nature and extent of the violations, Respondent's history of similar violations, the degree culpability, and other factors, the EPA has determined that an appropriate civil penalty to settle this matter is \$75,000.

42. Respondent consents and agrees to the assessment and payment of the civil penalty cited in paragraph 41, above, in the amount of \$75,000. Respondent agrees to pay the civil penalty on the following schedule:

- a. first installment of no less than \$10,000 is due no later than thirty (30) days after the effective date of this Final Order;
- b. second installment of no less than \$10,000 is due no later than three (3) months to the day after the first payment,
- c. the remaining 2017 quarterly installments are to be made every three (3) months, with each quarterly payment due fifteen (15) days after the end of each calendar quarter (e.g. October 15, 2017, for the third quarter of 2017) and all quarterly installments after the first and second payments are to be no less than \$5,500; and
- d. the quarterly installments of 2018 and 2019 are to be made no later than fifteen (15) days after the end of each calendar quarter (e.g. January 15, 2018; April 15, 2018; July 15, 2018; and October 15, 2018) and each installment is to be no less than \$5,500.

43. Respondent shall pay the agreed upon civil penalty by one of the following methods:

- a. **Payment by cashier's or certified check:**

A cashier's or certified check, including the name and docket number of this case, for this amount, payable to "Treasurer, United States of America," to:

Regular Mail:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

Overnight Mail:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

b. Wire Transfer:

Wire transfers should be directed to the Federal Reserve Bank of New York with the following information:

ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

c. On-Line Payment:

This option is available through the Department of Treasury.

www.pay.gov

Enter sfo 1.1 in the search field.

Open form and complete the required fields.

- d. Copies of the check or record of payment shall be sent to:

Kenneth Champagne
U.S. Environmental Protection Agency (8ENF-W)
1595 Wynkoop Street
Denver, Colorado 80202-1129

and

Melissa Haniewicz
Regional Hearing Clerk
U.S. Environmental Protection Agency (8RC)
1595 Wynkoop Street
Denver, Colorado 80202-1129

A transmittal letter identifying the case title and docket number must accompany the remittance and copies of the check.

- e. In the event payment is not received by the specified due date, interest accrues from the date of the final order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received (i.e., on the 1st late day, 30 days of interest will have accrued).
- f. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 31st day from the due date of any payment, and for each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date. Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.

44. The penalty specified in Paragraphs 41 and 42, above, represents civil penalties assessed by the EPA and the Respondent agrees the civil penalties shall never be claimed as a federal or other tax deduction or credit.

45. Complainant will consult with the State of Colorado on the appropriateness of the penalty in this matter during the public notice period required by 40 C.F.R. § 22.45.

VII. PUBLIC NOTICE

46. This CCCA shall be subject to a public comment period of not less than forty (40) days, pursuant to section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45. The EPA may modify or withdraw its consent to this CCCA if comments received disclose facts or considerations which indicate that the CCCA is inappropriate, improper or inadequate.

47. If comments received during the public comment period do not require modification or withdrawal by the EPA from this CCCA, the parties agree to submit this CCCA to the Regional Judicial Officer, following closure of the public comment period, with a request that it be incorporated into a Final Order.

48. This CCCA resolves Respondent's liability for federal civil penalties under section 309(d) and (g) of the Act, 33 U.S.C. § 1319(d) and (g), for the alleged violations in paragraph 37. This CCCA shall not in any case affect the EPA's right to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law whether or not alleged in this CCCA. This CCCA shall not affect Respondent's right to assert any defense in any action by the EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

VIII. GENERAL PROVISIONS

49. Nothing in this CCCA shall relieve Respondent of the duty to comply with the CWA and any regulation, order, or permit issued pursuant to the CWA.

50. Any failure by the Respondent to comply with any of the terms of this CCCA shall constitute a breach of the CCCA and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

51. Nothing in this CCCA shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this CCCA.


52. Each undersigned representative of the parties to this CCCA certifies that he or she is fully authorized by the party represented to bind the parties to the terms and conditions of this CCCA and to execute and legally bind that party to this CCCA.

53. Each party shall bear its own costs and attorney's fees in connection with all issues associated with this CCCA.

IN THE MATTER OF: Robert Gregg Sease, Docket No.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY REGION 8
Complainant**

DATE: 1/10/17

By: 
Suzanne J. Bohan
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

IN THE MATTER OF: Robert Gregg Sease, Docket No.

ROBERT GREGG SEASE
Respondent

DATE: 1-2-2017

By: 