

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

STILLAGUAMISH FLOOD CONTROL
DISTRICT AND PLE LLC

Stanwood, Washington

Respondents.

DOCKET NO. CWA-10-2024-0223

CONSENT AGREEMENTProceedings Under Section 309(g) of the Clean
Water Act, 33 U.S.C. § 1319(g)**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement is entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 309(g) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g).

1.2. Pursuant to CWA Section 309(g)(1)(A), 33 U.S.C. § 1319(g)(1)(A), the EPA is authorized to assess a civil penalty against any person that has violated CWA Section 301, 33 U.S.C. § 1311.

1.3. CWA Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), authorizes the administrative assessment of Class II civil penalties in an amount not to exceed \$10,000 per day for each day during which the violation continues, up to a maximum penalty of \$125,000. Pursuant to 40 C.F.R. Part 19, the administrative assessment of Class II civil penalties may not exceed \$26,685 per day for each day during which the violation continues, up to a maximum penalty of \$333,552. *See also* 88 Fed. Reg. 89309 (December 27, 2023) (“2024 Civil Monetary Penalty Inflation Adjustment Rule”).

1.4. Pursuant to CWA Section 309(g)(1)(A) and (g)(2)(B), 33 U.S.C. § 1319(g)(1)(A) and (g)(2)(B), and in accordance with Section 22.18 of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, the EPA issues,

and Stillaguamish Flood Control District and PLE LLC (Respondents) agree to issuance of, the Final Order attached to this Consent Agreement.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), execution of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. 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 CWA Section 309(g), 33 U.S.C. § 1319(g), to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Enforcement and Compliance Assurance Division, EPA Region 10 (Complainant).

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the CWA, together with the specific provisions of the CWA and implementing regulations that Respondents are alleged to have violated.

III. ALLEGATIONS

Statutory and Regulatory Framework

3.1. 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.”

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

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

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

3.5. A “point source” includes, *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.” CWA Section 502(14), 33 U.S.C. § 1362(14).

3.6. A “pollutant” includes, *inter alia*, rock, sand, biological materials, dredged spoil, and solid waste discharged into water. CWA Section 502(6), 33 U.S.C. § 1362(6).

3.7. “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 and debris, 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.

3.8. 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).

General Allegations

3.9. Respondent Stillaguamish Flood Control District is political subdivision of the State of Washington and Respondent PLE LLC is a limited liability company. Therefore, Respondents are each a “person” under CWA Section 502(5), 33 U.S.C. § 1362(5).

3.10. At all times relevant to this action, Respondents performed work and/or directed work to be performed on property along Jorgensen Slough, also known as Church Creek, from Latitude 48.231212° N, Longitude -122.346515° W to Latitude 48.230113° N, Longitude -122.335731° W in Stanwood, Washington (the “Site”).

3.11. Jorgensen Slough, also known as Church Creek, flows through the Site.

Jorgensen Slough is subject to the ebb and flow of the tide. Accordingly, Jorgensen Slough and its adjacent wetlands are “navigable waters” within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7).

3.12. Starting in or around September 2023, Respondents and/or persons acting on their behalf used certain heavy earthmoving equipment, including but not necessarily limited to an excavator, to relocate and discharge dredged and/or fill material, including but not necessarily limited to organic soils, mud, sediments, silt, and vegetation, below the ordinary high-water mark of Jorgensen Slough and/or into adjacent wetlands, as part of a dredging project.

3.13. The dredged and/or fill material that Respondents and/or persons acting on their behalf caused to be discharged, include organic soils, mud, sediments, silt, and vegetation, 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). By causing such dredged and/or fill materials 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).

3.14. The equipment referenced in Paragraph 3.12 is a “point source” within the meaning of CWA Section 502(14), 33 U.S.C. § 1362(14).

3.15. Respondents’ discharge of dredged and/or fill material described in Paragraphs 3.12 and 3.13 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).

3.16. Respondents have discharged pollutants from a point source into navigable waters at the Site, within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7).

IV. TERMS OF SETTLEMENT

4.1. Respondents admit the jurisdictional allegations contained in this Consent Agreement.

4.2. Respondents neither admit nor deny the specific factual allegations contained in this Consent Agreement.

4.3. As required by CWA Section 309(g)(3), 33 U.S.C. § 1319(g)(3), the EPA has taken into account “the nature, circumstances, extent and gravity of the violation, or 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 violation, and such other matters as justice may require.” After considering all of these factors as they apply to this case, the EPA has determined that an appropriate penalty to settle this action is \$23,500 (“Assessed Penalty”).

4.4. Respondents consent to the assessment of the Assessed Penalty set forth in Paragraph 4.3 and agree to pay the total Assessed Penalty within 30 days after the date of the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk (“Filing Date”).

4.5. Respondents 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>.

4.6. When making a payment, Respondents shall:

4.6.1. Identify every payment with Respondents’ name and the docket number of this Agreement (CWA-10-2024-0223).

4.6.2. Concurrently with any payment or within 24 hours of any payment, Respondents shall serve proof of payment electronically to the following person(s):

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
R10_RHC@epa.gov

Mark Jen
U.S. Environmental Protection Agency, Region 10
Alaska Operations Office
222 West 7th Avenue, #19
Anchorage, Alaska 99513-7588
jen.mark@epa.gov

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to:
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 the EPA’s requirements, in the amount due, and identified with the appropriate docket number and Respondents names.

4.7. 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 Respondents fail to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and the EPA is authorized to recover the following amounts.

4.7.1. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, 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.

4.7.2. Handling Charges. The United States’ enforcement expenses including, but not limited to, attorneys’ fees and costs of collection proceedings.

4.7.3. Late Payment Penalty. A twenty percent (20%) quarterly non-payment penalty.

4.8. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondents fail to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Consent Agreement, the EPA may take additional actions. Such actions the EPA may take include, but are not limited to, the following.

4.8.1. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.

4.8.2. 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.

4.8.3. Suspend or revoke Respondents’ licenses or other privileges, or suspend or disqualify Respondents from doing business with the EPA or engaging in programs the EPA sponsors or funds, per 40 C.F.R. § 13.17.

4.8.4. 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.

4.9. 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 handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

4.10. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

4.11. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, the 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 or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that the 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 the law.” The 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). Failure to comply with providing IRS Form W-9 or Tax Identification Number (“TIN”), as described below, may subject Respondents 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 the EPA with sufficient information to enable it to fulfill these obligations, the EPA herein requires, and Respondents herein agree, that:

4.11.1. Respondents shall each 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>.

4.11.2. Respondents shall therein each certify that they the completed IRS Form W-9 includes Respondents' correct TIN or that Respondents have applied and are waiting for issuance of a TIN;

4.11.3. Respondents shall email their completed Form W-9 to EPA's Cincinnati Finance Center at henderson.jessica@epa.gov within 30 days after the Final Order ratifying this Agreement is filed, and the EPA recommends encrypting IRS Form W-9 email correspondence; and

4.11.4. In the event that Respondents have certified in their completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondents shall provide EPA's Cincinnati Finance Center with Respondents' TIN, via email, within five (5) days of Respondents' receipt of a TIN issued by the IRS.

4.12. The undersigned representative of Respondents certify that they are authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondents to this document.

4.13. The undersigned representatives of Respondents also certify that, as of the date of Respondents signatures of this Consent Agreement, Respondents are correcting the violation(s) alleged in Part III above in accordance with Administrative Compliance Order on Consent Docket No. CWA-10-2024-0190.

4.14. Except as described in Subparagraph 4.7.2, above, each party shall bear its own fees and costs in bringing or defending this action.

4.15. For the purposes of this proceeding, Respondents expressly waive any affirmative defenses and the right to contest the allegations contained in the Consent Agreement and to appeal the Final Order.

4.16. The provisions of this Consent Agreement and the Final Order shall bind Respondents and their agents, servants, employees, successors, and assigns.

4.17. The above provisions are STIPULATED AND AGREED upon by Respondents and EPA Region 10.

DATED:

8/15/2024

FOR RESPONDENT STILLAGUAMISH
FLOOD CONTROL DISTRICT:

Chuck Hazelton
~~CHUCK HAZELTON~~ HAZLETON
Chairman
Stillaguamish Flood Control District

DATED:

08/26/24

FOR RESPONDENT PLE LLC:

Jeff Cervick
JEFF CERVICK
Member
PLE LLC

FOR COMPLAINANT:

Edward J. Kowalski
EDWARD J. KOWALSKI
Director
Enforcement and Compliance Assurance Division
EPA Region 10

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In the Matter of:

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Stanwood, Washington

Respondents.

DOCKET NO. CWA-10-2024-0223

FINAL ORDER

Proceedings Under Section 309(g) of the Clean
Water Act, 33 U.S.C. § 1319(g)

1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of the U.S. Environmental Protection Agency (EPA) Region 10, who has in turn delegated this authority to the Regional Judicial Officer in EPA Region 10.

2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondents are ordered to comply with the terms of settlement.

3. The Consent Agreement and this Final Order constitute a settlement by the EPA of all claims for civil penalties pursuant to the Clean Water Act (CWA) for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondents' obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

4. This Final Order shall become effective upon filing.

IT IS SO ORDERED.

RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10