



REGION 8

DENVER, CO 80202

November 18, 2024

ELECTRONIC EMAIL
DIGITAL READ RECEIPT REQUESTED

Mr. Michael Rosengren

(b) (6)

Re: Request for Information Pursuant to Section 308 of the Clean Water Act
U.S.C. § 1318

Dear Mr. Rosengren:

The U.S. Environmental Protection Agency, Region 8, believes that you have discharged dredged and/or fill material into waters of the United States without authorization from a U.S. Army Corps of Engineers (Corps) permit issued under to Section 404 of the Clean Water Act (CWA), 33 U.S.C. § 1344. Our understanding is that the discharges occurred on your property at (b) (6), (b) (7)(C)

. Please see Exhibit A, enclosed, for the approximate location of the dredge and fill activities.

Soda Butte Creek, into which you discharged, is a “water of the United States” regulated under the CWA, and authorization from the Corps is needed prior to discharges into Soda Butte Creek. The Corps did not authorize your discharges and requested that the EPA serve as the lead enforcement agency regarding your unauthorized discharges. For the EPA to fulfill its responsibilities for protecting the nation’s waters, we can require violators to provide information to facilitate reaching an appropriate enforcement resolution. The EPA is authorized to gather this information by Section 308 of the CWA, 33 U.S.C. § 1318.

The EPA is requiring you to provide the information identified in the enclosed Information Request within 30 days of receipt of this letter. You must send this information via email to Rebecca Little Owl, Physical Scientist, at littleowl.rebecca@epa.gov, with a copy to Matt Castelli, Senior Assistant Regional Counsel, at castelli.matthew@epa.gov. You also must sign the enclosed certification and provide it with your response.

Re: Request for Information Pursuant to Section 308 of the Clean Water Act U.S.C. § 1318

It is very important that you respond to this request for information. Please note that under the Clean Water Act any failure to provide information can result in substantial civil penalties and that even harsher criminal consequences are possible in the case of deliberate false statements. (33 U.S.C. § 1319; see also 18 U.S.C. § 1001.)

Although you are required to provide the requested information to the EPA, you may claim all or any part of it is entitled to confidential treatment. Please see especially 40 C.F.R. § 2.203(b) for information on how to assert a confidentiality claim. If you make such a claim, the EPA will disclose the information covered by that claim only to the extent, and by means of the procedures, set forth in 40 C.F.R. part 2, subpart B (as promulgated at 41 Fed. Reg. 36902 on Sept. 1, 1976, 43 Fed. Reg. 39997 on Sept. 8, 1978, and 50 Fed. Reg. 51654 on Dec. 18, 1985). If you do not make a confidentiality claim when submitting information to the EPA, the EPA may make that information available to the public without notifying you. If you do make a confidentiality claim but the EPA determines that the information is not entitled to confidential treatment, the EPA may also make that information publicly available.

Please note that although this letter requests that you respond via email, we would recommend that any information you may claim as confidential be separated and physically mailed or, preferably, hand delivered to the EPA. We also recommend that if any information is hand delivered you contact one of the EPA representatives named in the last paragraph of this letter so we can arrange to have someone be present when it is delivered.

In case this is relevant, a Small Business Regulatory Enforcement and Fairness Act (SBREFA) information sheet is enclosed. It contains information on compliance assistance resources and tools available to small businesses. By including this information sheet, the EPA has not necessarily determined that you own or operate a small business. SBREFA does not eliminate the obligation to respond to this information request.

If you have any questions concerning this matter, please contact Ms. Little Owl at littleowl.rebecca@epa.gov or (303) 312-6219, or, if you are represented by counsel, have your attorney contact Mr. Castelli, at castelli.matthew@epa.gov or (303) 312-6491.

Sincerely,

EMILIO LLAMOZAS

Digitally signed by EMILIO
LLAMOZAS

Date: 2024.11.18 16:44:08 -07'00'

Emilio Llamozas, Supervisor
NPDES and Wetlands Enforcement Section
Enforcement and Compliance Assurance Division

ENCLOSURES

1. Information Request
2. Certification
3. Exhibit A
4. SBREFA information sheet

Re: Request for Information Pursuant to Section 308 of the Clean Water Act U.S.C. § 1318

cc: Jade Metzler, U.S. Army Corps of Engineers, Omaha District
Mike Thom, U.S. Forest Service

CLEAN WATER ACT SECTION 308 INFORMATION REQUEST

Instructions

Please follow these instructions:

1. Provide a separate narrative response to each and every item labeled under “Questions” and each subpart of a Question set forth in this information request.
2. Precede each answer with the number of the Question to which it corresponds.
3. For each document produced in response to this Information Request, indicate on the document, or in some other reasonable manner, the number of the Question to which it responds.
4. Sign the Certification statement and include with the response submittal.

Definitions

The following definitions shall apply to the following words as they appear in the Questions below:

1. All terms not defined in this information request shall have their ordinary meanings, unless such terms are defined in the Clean Water Act (CWA) or its implementing regulations, in which case the statutory or regulatory definitions shall control.
2. Words in the masculine may be construed in the feminine if appropriate, and vice versa, and words in the singular may be construed in the plural if appropriate, and vice versa, in the context of a particular question or questions.
3. The terms “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this Information Request any information which might otherwise be construed outside its scope.
4. The term “Discharge Area” means the wetlands, streams, creeks, and other waterbodies that have been impacted either through filling, excavating or mechanical land clearing with side cast of dredged and/or fill material at the Site, defined below.
5. The term “identify” means, with respect to a natural person, to set forth the person’s name, present or last known business address and business telephone number, present or last known home address and home telephone number, and present or last known job title, position or business.
6. The term “Site” means the approximately 1 acre tract of land at (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

The Site is shown in Exhibit A.

7. The term “Work” means any land clearing activities, ditching, dredging, side casting, road construction, stream crossing construction, mechanical land clearing, piping of streams, timber harvesting, excavating, or filling activities that have occurred in wetlands, streams, creeks, or other waterbodies at the Site from June 1, 2022, to the date of your response to this request for information.
8. The terms “you” and “your” shall mean Mr. Michael Rosengren.

Questions

Please provide the EPA with the following information or documents pertaining to the Site.

1. The name and address of each individual (including you), company, contractor, subcontractor, consultant, or other entity, and each agent or employee of any of the preceding, who directed or participated in the Work at the Site.
2. A description of the equipment used to carry out the Work, and the names and addresses of each individual, company, or other entity that owned or operated such equipment at the time the Work was performed.
3. The dates when the Work commenced and was completed or will be completed and a description of all the Work at the Site. Separately indicate the dates Work began and was completed during or after the June 2022 flood event, during the Spring of 2023, and any Work conducted separately from those timeframes. Also provide the associated description of the Work conducted within each timeframe listed above.
4. A statement of whether the Work was performed on your behalf and, if not, on whose behalf the Work was performed.
5. A description, including, but not limited to, all maps, drawings, and engineering plans, of all planned activities of which the Work was a part. This includes survey maps and engineering plans drafted in response to the Work already conducted.

6. A description of the physical condition of the Site and Discharge Area before Work commenced and pre-flood event, including, but not limited to, all wetlands, streams, creeks, or other waterbodies, biota, soil, and hydrology.
7. A copy of any on-site environmental assessments prepared for the Site. This includes environmental assessments of soils, vegetation, or hydrology that were done at the Site.
8. A copy of each federal, state, or local permit that has been received for the Work at the Site and each application for any such permits.
9. A statement of your reason(s) for not applying for a federal permit under Section 404 of the CWA prior to commencing the Work, including your reason(s) for not submitting the required information and After-the-Fact permit application after conducting emergency work (June 2022) and not applying for a Section 404 permit for additional project activities (Spring 2023) at the Site.
10. A statement of your plans for any additional Work at the Site.
11. A copy of each document and note regarding any written or verbal communication you have had with any federal, state, or local agency regarding the Work.
12. A copy of each contract pertaining to the Work at the Site, including the names and activities of all contractor(s) or consultant(s) or other entities that assisted with securing any local, state, or federal permits or easements associated with the Site.
13. A description of each other property, if any, you have owned during which you or any entity on your behalf has performed filling, dredging, or land disturbing activities. For each such property, provide a copy of each federal, state, or local permit, if any, that has been received for those activities. This includes but is not limited to any applications and/or federal permits under Section 404 of the CWA.
14. If you are being represented by legal counsel, identify the firm and respective attorney for EPA communication.

Please also identify each individual who prepared the responses to this Information Request.

CERTIFICATION

I certify that I have personally reviewed the information contained in this response to the information request and the response is truthful, accurate and complete. I further certify that the response to the information request contains all documents responsive to the request. I am aware that there are significant penalties for submitting false information including the possibility of further enforcement under the CWA.

Michael Rosengren

Date

(b) (6), (b) (7)(C)

U.S. EPA Small Business Resources Information Sheet

The United States Environmental Protection Agency provides an array of resources to help small businesses understand and comply with federal and state environmental laws. In addition to helping small businesses understand their environmental obligations and improve compliance, these resources will also help such businesses find cost-effective ways to comply through pollution prevention techniques and innovative technologies.

Office of Small and Disadvantaged Business Utilization (OSDBU)

<https://www.epa.gov/aboutepa/about-office-small-and-disadvantaged-business-utilization-osdbu>

EPA's OSDBU advocates and advances business, regulatory, and environmental compliance concerns of small and socio-economically disadvantaged businesses.

EPA's Asbestos Small Business Ombudsman (ASBO)

<https://www.epa.gov/resources-small-businesses/asbestos-small-business-ombudsman> or 1-800-368-5888

The ASBO helps make technical resources on environmental regulations, asbestos, and compliance assistance information more accessible, while encouraging communication and partnerships with small business on regulatory compliance, and to address asbestos-related questions from the public.

Small Business Environmental Assistance Program

<https://nationalsbeap.org>

This program provides a "one-stop shop" for small businesses and assistance providers seeking information on a wide range of environmental topics and state-specific environmental compliance assistance resources.

EPA's Compliance Assistance Homepage

<https://www.epa.gov/compliance>

This page is a gateway to industry and statute-specific environmental resources, from extensive web-based information to hotlines and compliance assistance specialists.

Compliance Assistance Centers

<https://www.complianceassistance.net/>

EPA-sponsored Compliance Assistance Centers provide the information you need, in a way that helps make sense of environmental regulations. Each Center addresses real world issues faced by a specific industry or government sector. They were developed in partnership with industry, universities and other federal and state agencies.

Agriculture

<https://www.epa.gov/agriculture>

Automotive Recycling

<http://www.ecarcenter.org>

Automotive Service and Repair

<https://ccar-greenlink.org/> or 1-888- 476-5465

Beneficial Use

<https://www.beneficialuse.org/>

Construction

<https://www.cicacenter.org/>

Education

<https://www.nacubo.org/>

Hazardous Waste Portal

<https://www.hazwasteportal.org/>

Healthcare

<http://www.hercenter.org>

Local Government

<https://www.lgean.net/>

Oil/Natural Gas Energy Extraction

<https://www.eciee.org/>

Paints and Coatings

<https://www.paintcenter.org/>

Ports

<https://www.portcompliance.org/>

Surface Technology Environmental Resource Center (STERC)

<https://sterc.org/>

Transportation

<https://www.tercenter.org/>

U.S. Border Compliance and Import/Export Issues

<https://www.bordercenter.org/>

Veterinary Care

<https://vetca.org/>

EPA Hotlines and Clearinghouses

www.epa.gov/home/epa-hotlines

EPA sponsors many free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements. Examples include:

Clean Air Technology Center (CATC) Info-line

www.epa.gov/catc or 919-541-0800

Superfund, TRI, EPCRA, RMP and Oil Information Center

1-800-424-9346

EPA Imported Vehicles and Engines Public Helpline

www.epa.gov/otaq/imports or 734-214-4100

National Pesticide Information Center

www.npic.orst.edu or 1-800-858-7378

National Response Center Hotline to report oil or hazardous substance spills

<https://nrc.uscg.mil/>; NRC@uscg.mil or 1-800-424-8802

Pollution Prevention Information Clearinghouse (PPIC)

ppic@epa.gov or 202-566-0799

Safe Drinking Water Hotline

safewater@epa.gov or 1-800-426-4791

Toxic Substances Control Act (TSCA) Hotline

tsc hotline@epa.gov or 202-554-1404

Small Entity Compliance Guides

<https://www.epa.gov/reg-flex/small-entity-compliance-guides>

EPA publishes a Small Entity Compliance Guide (SECG) for every rule for which the Agency has prepared a final regulatory flexibility analysis, in accordance with Section 604 of the Regulatory Flexibility Act (RFA).

Regional Small Business Liaisons

www.epa.gov/resources-small-businesses/epa-regional-office-small-business-liaisons

The U.S. Environmental Protection Agency (EPA) Regional Small Business Liaison (RSBL) is the primary regional contact and often the expert on small business assistance, advocacy, and outreach. The RSBL is the regional voice for the EPA Asbestos and Small Business Ombudsman (ASBO).

State Resource Locators

www.envcap.org/srl/

The Locators provide state-specific information on regulations and resources covering the major environmental laws.

State Small Business Environmental Assistance Programs (SBEAPs)

<https://nationalsbeap.org/states>

State SBEAPs help small businesses and assistance providers understand environmental requirements and sustainable business practices through workshops, trainings and site visits.

EPA's Tribal Portal

<https://www.epa.gov/tribal>

The Portal helps users locate tribal-related information within EPA and other federal agencies.

EPA Compliance Incentives

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations before an enforcement action has been initiated, businesses may be eligible for penalty waivers or reductions. EPA has several such policies that may apply to small businesses. More information is available at:

- **EPA's Small Business Compliance Policy**
<https://www.epa.gov/compliance/small-business-compliance>
- **EPA's Audit Policy**
www.epa.gov/compliance/epas-audit-policy

Commenting on Federal Enforcement Actions and Compliance Activities

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established a Small Business Administration (SBA) National Ombudsman and 10 Regional Fairness Boards to receive comments from small business about federal agency enforcement actions.

If you believe that you fall within the SBA's definition of a small business (based on your North American Industry Classification System designation, number of employees or annual receipts, as defined at 13 C.F.R. 121.201; in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, you can call the SBA National Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247), or submit a comment online at: <https://www.sba.gov/about-sba/oversight-advocacy/office-national-ombudsman>.

Every small business that is the subject of an enforcement or compliance action is entitled to comment on the Agency's actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community in response to comments made under SBREFA.

Your Duty to Comply

If you receive compliance assistance or submit a comment to the SBREFA Ombudsman or Regional Fairness Boards, you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions, or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes, including the right to take emergency remedial actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act or related provisions.