

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

PORTER INVESTMENTS, LLC

Greenbank, Washington

Respondent.

DOCKET NO. CWA-10-2025-0046

ADMINISTRATIVE ORDER ON CONSENT

I. INTRODUCTION

1.1. The U.S. Environmental Protection Agency (EPA) makes the findings set forth in Section IV below and is issuing this Administrative Order on Consent (“Order”) to Porter Investments, LLC (“Respondent”) under the authorities in Sections 308 and 309(a) of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1318 and 1319(a).

1.2. This Order is mutually entered into by the EPA and Respondent.

1.3. The EPA alleges that Respondent violated CWA Section 301(a), 33 U.S.C. § 1311(a), by discharging a pollutant or pollutants into navigable waters from a point source without authorization by a Department of Army permit issued by the U.S. Army Corps of Engineers (“Corps”) pursuant to CWA Section 404, 33 U.S.C. § 1344.

1.4. By entering into this Order, Respondent (1) consents to the EPA’s authority to issue and enforce this Order; (2) neither admits nor denies the factual allegations as set forth in this Order; (3) agrees to undertake all actions required by the terms and conditions of this Order; (4) consents to be bound by the requirements set forth herein; and (5) agrees not to contest the authority of the EPA to issue or enforce this Order or the validity of any terms or conditions in this Order.

II. STATUTORY AUTHORITY

2.1. CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person except, *inter alia*, as authorized by a permit issued by the Corps pursuant to CWA Section 404, 33 U.S.C. § 1344.

2.2. CWA Section 309(a), 33 U.S.C. § 1319(a), provides that whenever the EPA finds that any person is in violation of any condition or limitation that implements, *inter alia*, CWA Sections 301(a) and 404, 33 U.S.C. §§ 1311(a) and 1344, the EPA shall issue an order requiring such person to comply with such condition or limitation, and shall specify a time for compliance that the EPA determines to be reasonable taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

2.3. CWA Section 308(a), 33 U.S.C. § 1318(a), authorizes the EPA to require the submission of any information required to carry out the objectives of the CWA.

2.4. The authorities in CWA Sections 308 and 309(a), 33 U.S.C. §§ 1318 and 1319(a), have been delegated to the Regional Administrator for EPA Region 10 and have been redelegated to the Region 10 Director of the Enforcement and Compliance Assurance Division (“Director”).

III. DEFINITIONS

3.1. All terms used, but not defined, in this Order have the meanings provided to them in the CWA, 33 U.S.C. § 1251 *et seq.*, and the EPA regulations promulgated under the CWA.

3.2. “Act” or “CWA” means the Clean Water Act, 33 U.S.C. § 1251 *et seq.*

3.3. “Day” or “days” means a calendar day or calendar days unless expressly stated to be a business day. When computing any period of time under this Order, should the last day fall on a Saturday, Sunday, or federal holiday, the period shall run until the end of the next business day.

3.4. “Discharge of a pollutant,” as defined in CWA Section 502(12), means *inter alia*, “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12).

3.5. “Discharge of dredged material,” as defined in 40 C.F.R. § 232.2, means *inter alia*, “any addition of dredged material into, including redeposit of dredged material other than incidental fallback within, the waters of the United States.”

3.6. “Discharge of fill material,” as defined in 40 C.F.R. § 232.2, means *inter alia*, “the addition of fill material into waters of the United States.”

3.7. “Dredged material,” as defined in 40 C.F.R. § 232.2, means “material that is excavated or dredged from waters of the United States.”

3.8. “Fill material,” defined in 40 C.F.R. § 232.2, means *inter alia*, “material placed in waters of the United States where the material has the effect of: (i) Replacing any portion of a water of the United States with dry land; or (ii) Changing the bottom elevation of any portion of a water of the United States.”

3.9. “High tide line,” defined in 33 C.F.R. § 328.3, means *inter alia*, “the line of intersection of the land with the water’s surface at the maximum height reached by a rising tide.”

3.10. “Navigable waters,” as defined in CWA Section 502(7), means “the waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7).

3.11. “Parties” means the EPA and Respondent.

3.12. “Person,” as defined in CWA Section 502(5), means an “individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.” 33 U.S.C. § 1362(5).

3.13. “Point source,” as defined in CWA Section 502(14), means “any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

3.14. "Pollutant," as defined in CWA Section 502(6), means "dredged spoil, 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).

3.15. "Site" means the parcel owned, possessed, and controlled by Respondent at 3712 Oceanside Drive, Lagoon Point, Division 2, Lot 4, near latitude 48.0751443° N and longitude - 122.6128175 ° W, in Greenbank, Island County, Washington.

IV. FINDINGS OF FACT AND LAW

4.1. Respondent is a "person" as defined by CWA Section 502(5), 33 U.S.C. § 1362(5).

4.2. At all times relevant to this Order, Respondent owned the Site, and retained and directed a contractor to perform work resulting in unauthorized discharges at the Site.

4.3. The Site abuts Admiralty Inlet, in the Puget Sound. Admiralty Inlet and Puget Sound are subject to the ebb and flow of the tide and are traditional navigable waters. As such, Admiralty Inlet and Puget Sound are "navigable waters" within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7).

4.4. In or around March 2023, persons acting on behalf of Respondent used certain heavy mechanical earthmoving equipment, including but not necessarily limited to excavators, loaders, and/or dump trucks to discharge fill material, including boulders and rip rap rock, along approximately 60-linear feet of the Site below the high tide line of Admiralty Inlet and Puget Sound.

4.5. The heavy mechanical earthmoving equipment referenced in Paragraph 4.4 of this Order is a "point source" within the meaning of CWA Section 502(14), 33 U.S.C. § 1362(14).

4.6. The fill material that persons acting as the operator on behalf of Respondent caused to be discharged, as referenced in Paragraph 4.4 of this Order, include boulder and rip rap rock, which constitutes “fill material” within the meaning of 40 C.F.R. § 232.2, and which constitutes a “pollutant” within the meaning of CWA Section 502(6), 33 U.S.C. § 1362(6).

4.7. By causing such fill material to enter waters of the United States, including Admiralty Inlet and Puget Sound, Respondent 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).

4.8. According to the State of Washington Department of Fish and Wildlife, the fill material discharged below the high tide line of Admiralty Inlet and Puget Sound altered the natural intertidal flow and circulation patterns and likely increased the wave energy deflecting off the face of the boulder rock armoring, which disrupts sediment transport and accretion processes; increases scouring and erosion of the beach substrate; impacts habitat for migration, feeding, and rearing during periods of high wave energy, which makes the nearshore environment inhospitable for forage fish and juvenile salmon.

4.9. Because Respondent is the owner of the Site and directed the operator to engage in the discharge of pollutants from a point source into navigable waters, Respondent and the Site have been subject to the CWA at all times relevant to this Order. Thus, any such discharge has been and is subject to the CWA.

4.10. During all times relevant to this Order, Respondent was not issued a Corps permit pursuant to CWA Section 404, 33 U.S.C. § 1344.

4.11. Respondent is a person whose activities caused the discharge of pollutant(s) from point source(s) into navigable waters, without a permit pursuant to the CWA Section 404, 33 U.S.C. § 1344. Accordingly, each instance in which Respondent discharged pollutant(s) to navigable waters, is a violation of CWA Section 301, 33 U.S.C. § 1311.

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

4.13. Taking into account the seriousness of these violations and any good faith efforts to comply with applicable requirements, the parties acknowledge and agree that the schedule for compliance contained in Section V of this Order is reasonable and appropriate.

V. COMPLIANCE MEASURES

Based upon the foregoing findings and the authority granted to the undersigned Director, it is hereby ordered and agreed to in accordance with CWA Sections 308 and 309(a), 33 U.S.C. §§ 1318 and 1319(a), that Respondent comply with the following actions:

5.1. Prohibition of Discharge: Respondent shall not discharge any additional pollutants into any waters of the United States at the Site except in compliance with this Order or a permit issued pursuant to the CWA.

5.2. Rock Removal: No later than February 15, 2025, Respondent shall have completely removed all boulder and rip rap rock discharged in front of the existing bulkhead and below the high tide line of Admiralty Inlet and Puget Sound at the Site. That boulder and rip rock removal shall comply with the following terms and conditions:

5.2.1. Respondent shall not perform boulder and rip rap rock removal activities or operate heavy mechanical earthmoving equipment within the work area during periods of tidal inundation;

5.2.2. Respondent shall maintain only one access point to the beach work area for ingress and egress of heavy mechanical earthmoving equipment;

5.2.3. Respondent shall maintain the work area and the use of heavy mechanical earthmoving equipment on the beach to a maximum 25-foot wide work corridor waterward of the existing bulkhead;

5.2.4. Prior to commencement of boulder and rip rap rock removal activities, highly visible marking flags shall be staked on the beach and removed at the end of the workday prior to tidal inundation of the beach in order to visibly highlight and delineate the limits of the work corridor for the operator established by Paragraph 5.2.3 of this Order;

5.2.5. Heavy mechanical equipment operations and/or staging, and construction material(s) shall not extend waterward on the beach area outside the limits of the work corridor established by Paragraph 5.2.3 of this Order;

5.2.6. Respondent shall place rubber mats or other types of ground protective construction matting along the beach work corridor established by Paragraph 5.2.3 of this Order for heavy mechanical equipment access and operations to minimize impacts to the beach substrate;

5.2.7. Respondent shall check equipment daily for leaks and complete any required repairs before operating the equipment in the work corridor on the beach established by Paragraph 5.2.3 of this Order or near Admiralty Inlet and/or Puget Sound;

5.2.8. Respondent shall use lubricants composed of biodegradable base oils such as vegetable oils, synthetic esters, and polyalkylene glycols for use in equipment operated in or near water;

5.2.9. Respondent shall prevent contaminants such as petroleum products, hydraulic fluid, fresh concrete, sediments, sediment-laden water, chemicals, or any other toxic or harmful materials, from entering or leaching into Admiralty Inlet and/or Puget Sound;

5.2.10. Respondent shall maintain oil spill clean-up materials (e.g., absorbent socks, pads, mats, etc.) and containment materials (floating plastic foam or

fiber booms, etc.) on Site in order to respond to accidental releases and spills of petroleum products into Admiralty Inlet and/or Puget Sound;

5.2.11. Respondent shall not stockpile excavated boulders and rip rap rock and other materials on the beach waterward of the high tide line of Admiralty Inlet and/or Puget Sound;

5.2.12. If heavy surface flow or precipitation conditions arises that will result in erosion or sediments potentially entering Admiralty Inlet and/or Puget Sound, Respondent shall cease all heavy mechanical equipment operations and boulder and rip rap rock removal activities, except those needed to control erosion and sedimentation;

5.2.13. Other than the boulder and rip rap rock discharged at the Site, Respondent shall not remove from the Site any native beach sand or gravel, large woody logs and stumps or other natural habitat features during the boulder and rip rap rock removal activities;

5.2.14. Respondent shall remove any construction debris that may have broken off on the beach during the removal process (e.g. concrete chunks, angular rock pieces) and shall transport and dispose of this debris material to an upland location where it will not contact waters of the United States;

5.2.15. Upon project completion, Respondent shall reshape and grade the beach substrate where depressions and trenches have formed during project work activities to its approximate pre-disturbance elevations and contours;

5.2.16. Following removal of all boulder and rip rap rock and any construction debris, Respondent shall dispose of materials at an off-Site upland location approved by the Island County Planning and Community Development Department;

5.2.17. Respondent shall comply with all other federal, state, and local authorizations and permits.

5.3. Notification Prior to Work Activities: At least three (3) days prior to commencing the work activities on the Site required by Paragraph 5.2 of this Order, Respondent shall provide written notification to the EPA contacts identified in Paragraph 6.1 of this Order and include: (1) Respondent's name(s); (2) work location address; (3) the dates certain when the boulder and rip rap rock removal activities on the Site will commence and conclude; (4) the name(s) and contact information (e.g., cell phone, email, etc.) of all individuals operating on the Site; and (4) a list of heavy mechanical equipment performing the work activities on the Site as required by Paragraph 5.2 of this Order.

5.4. Notification Following Completion of Work Activities: No more than seven (7) days after completing the work activities on the Site required by Paragraph 5.2 of this Order, Respondent shall provide written notification to the EPA contacts identified in Paragraph 6.1 of this Order and include: (1) Respondent's name(s); (2) work location address; (3) the dates certain when the boulder and rip rap rock removal activities on the Site concluded; (4) the name(s) and contact information (e.g., cell phone, email, etc.) of all individuals operating on the Site; and (5) a list of heavy mechanical equipment that performed the work activities on the Site as required by Paragraph 5.2 of this Order.

5.5. Completion Report: Within thirty (30) days of completing the activities on the Site required by Paragraph 5.2 of this Order, Respondent shall provide the EPA contacts identified in Paragraph 6.1 of this Order with a Completion Report, which shall include digital photographs of the Site conditions before and after completion of the work activities required by Paragraph 5.2 of this Order and a narrative summary of Respondent's compliance with all of the requirements of Paragraph 5.2 of this Order. The Completion Report shall comply with the requirements of Section VI of this Order, including but not limited to the requirements of Paragraph 6.3 of this Order. The EPA will review and, if appropriate, approve the Completion Report after receipt of Respondent's written notification. The EPA may request a Site visit to

inspect the completion of work activities prior to approving the Completion Report. If the EPA does not approve the Completion Report, Respondent shall be notified of the actions necessary to obtain the EPA's approval.

5.6. Site Access: Until termination of this Order, Respondent shall, commencing on the Effective Date, provide or otherwise obtain for the EPA, reasonable access to the areas of the Site owned by Respondent and exert their best efforts to obtain reasonable access to any off-Site areas to which access is necessary to implement this Order. Respondent shall provide access to all records and documentation reasonably related to the conditions at the Site and the restoration activities conducted pursuant to this Order. Such access shall be provided to EPA employees and its designated representatives. These individuals shall be permitted to move freely at the Site and, if access is granted thereto, appropriate off-Site areas in order to conduct actions which the EPA determines to be necessary, so long as they do not unreasonably interfere with any of Respondent's activities at the Site.

VI. DOCUMENTATION AND SUBMISSIONS

6.1. All reports, notifications, documentation, submissions, and other correspondence required to be submitted by this Order shall be submitted to the EPA electronically, to the extent possible.

6.1.1. Electronic submissions shall be sent to the following addresses:

R10enforcement@epa.gov, jen.mark@epa.gov, and johnson.patrick@epa.gov.

6.1.2. The email subject line shall include the docket number of this Order and subject of the deliverable.

6.1.3. All materials must be in final and text-searchable format, such as Portable Document Format (PDF) with Optical Character Recognition (OCR) applied.

6.2. If electronic submittal is not possible, the submissions must be made by certified mail (return receipt requested). Mailed submissions must be sent to the following addresses:

Attn: Mark Jen
U.S. Environmental Protection Agency
Region 10, Alaska Operations Office
222 West Seventh Avenue, No. 19
Anchorage, Alaska 99513

Attn: Patrick Johnson
U.S. Environmental Protection Agency
Region 10, Alaska Operations Office
222 West Seventh Avenue, No. 19
Anchorage, Alaska 99513

6.3. All reports, notifications, documentation, and submissions required by this Order must be signed by Respondent and/or a duly authorized representative as specified by 40 C.F.R. § 122.22(b) and (d) and must include the following statement:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

6.4. Respondent may not withhold information based on a claim that it is confidential. However, pursuant to 40 C.F.R. Part 2, Subpart B, Respondent may assert a claim of business confidentiality regarding any portion of the information submitted in response to this Order. The manner of asserting such claims is specified in 40 C.F.R. § 2.203(b). Information subject to a business confidentiality claim is available to the public only to the extent, and by means of the procedures, set forth in 40 C.F.R. Part 2, Subpart B. If Respondent does not assert a claim of business confidentiality when it submits the information, the EPA may make the information available to the public without further notice. 40 C.F.R. § 2.203(c).

6.5. If Respondent finds at any time after submitting information that any portion of that information is false or incorrect, the signatory must notify the EPA immediately. Knowingly submitting false information to the EPA in response to this Order may subject

Respondent to criminal prosecution under CWA Section 309(c), 33 U.S.C. § 1319(c), as well as 18 U.S.C. § 1001 and 1341.

6.6. Submissions by Respondent are incorporated and enforceable as part of this Order. In case of inconsistency between any submission by Respondent and this Order and its subsequent modifications, this Order and its subsequent modifications shall control.

6.7. The EPA may use any information submitted in response to this Order in support of an administrative, civil, or criminal action against Respondent.

6.8. The information required to be submitted pursuant to this Order is not subject to the approval requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 et seq.

6.9. Respondent shall preserve and retain, and shall instruct its consultant, contractor, and other persons acting on their behalf in connection with this Order, to preserve and retain all records and documents relating in any manner to this Order until the EPA has issued a written notice pursuant to Paragraph 12.3 of this Order. If the EPA asks Respondent for any copies of any records or documents related to the activities conducted pursuant to this Order, Respondent shall, at no cost to the EPA, provide the EPA the original or copies of the records or documents within thirty (30) days of the EPA's request.

VII. GENERAL PROVISIONS

7.1. Respondent has had the opportunity to confer with and submit information to the EPA concerning the validity and provisions of this Order.

7.2. This Order does not affect Respondent's responsibility to comply with the CWA and other local, state, and federal laws and regulations.

7.3. The undersigned signatory for each party has the authority to bind each respective party to the terms and conditions of this Order.

7.4. Respondent agrees to accept service of the Order and other EPA correspondences by electronic mail to rick@unioncorner.com.

7.5. This Order shall be binding on Respondent and their agents, employees, successors, and assigns, and on all persons, contractors, and consultants acting in concert with or under the direction of Respondent or of this Order.

7.6. Respondent shall provide a copy of this Order to all operators, contractors, and/or consultants retained to perform any of the work described in this Order at least 48 hours prior to the initiation of such work.

7.7. Until such time as all tasks required under this Order are completed, Respondent shall provide a copy of this Order to any successor in ownership, control, or operation in all or any portion of the real property at issue at least thirty (30) days prior to the transfer and shall simultaneously notify the EPA in writing that such notice has been given. No transfer or contract shall in any way affect Respondent's obligation to comply fully with all the terms and conditions of this Order.

7.8. This Order does not restrict the EPA's authority to enforce any section of the CWA or its implementing regulations.

7.9. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2), performance of Section V of this Order, is restitution, remediation, or required to come into compliance with law.

7.10. The EPA reserves all rights and remedies, legal and equitable, available to address any violation cited in this Order and any other violation of the CWA, and to enforce this Order. Neither issuance of this Order by the EPA nor compliance with its terms precludes further enforcement action pursuant to CWA Section 309, 33 U.S.C. § 1319, for the violations cited in this Order, for any other violations of the CWA committed by Respondent, or to enforce this Order.

VIII. SANCTIONS

8.1. Failure to comply with the terms of this Order may subject Respondent to civil penalties under CWA Section 309(d), 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Should the EPA commence an action seeking penalties for violations of this Order, a United States district court has the authority, after notice and opportunity for a hearing, to impose separate civil penalties for violation of the CWA as well as for violation of this Order.

IX. MODIFICATION OF ORDER

9.1. The deadlines set forth in this Order may be modified upon written approval by the EPA. Any other modification of this Order shall be by agreement of all Parties and in writing and shall not take effect until the written agreement is signed by all Parties.

X. JUDICIAL REVIEW

10.1. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including, but not limited to, any right of judicial review of this Order under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.

XI. EFFECTIVE DATE

11.1. This Order shall become effective upon the execution of the Order by both parties and will remain in effect until Respondent has demonstrated compliance and the EPA has notified Respondent pursuant to Section XII of this Order.

XII. FINAL REPORT AND TERMINATION

12.1. The EPA may terminate this Order at any time by written notice to Respondent.

12.2. Absent the notice described in Paragraph 12.1 of this Order, upon the EPA's approval of the Completion Report pursuant to Paragraph 5.5 of this Order, the EPA will notify Respondent whether they have satisfied all requirements of this Order under the procedures set forth in Section VI of this Order. If the EPA concludes that Respondent have failed to satisfy the

requirements of this Order, the EPA may require further actions as set forth under this Order or it may pursue administrative or civil judicial actions. If the EPA concludes that Respondent has satisfied all requirements of this Order, this Order shall be terminated.

IT IS SO STIPULATED AND AGREED. FOR RESPONDENT PORTER INVESTMENTS, LLC:

January 16, 2025
DATE



Rick Porter, Governor
Porter Investments, LLC

IT IS SO ORDERED AND AGREED. FOR COMPLAINANT:

EDWARD
KOWALSKI
Digitally signed by EDWARD
KOWALSKI
Date: 2025.01.22 09:00:07
-08'00'

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