



REGION 9

SAN FRANCISCO, CA 94105

October 17, 2024

Sent Via Electronic Mail: john.zuckerman@pelicanrenewables.com

John Zuckerman, Managing Member
Pelican Renewables, LLC
3028 Navy Drive
Stockton CA 95206

RE: Notification of Potential Enforcement Action for Apparent Violations of Section 311 of the Clean Water Act and Oil Spill Prevention, Control, and Countermeasure Regulations.

Dear John Zuckerman:

On June 25, 2024, a representative from the U.S. Environmental Protection Agency's Region 9 conducted an inspection of the Pelican Renewables, LLC facility located at 3028 Navy Drive, Stockton California. The inspection was conducted pursuant to EPA's authority under Section 311(m)(2) of the Clean Water Act (CWA), 33 U.S.C. § 1321(m)(2). The purpose of the inspection was to determine the facility's compliance with Section 311 of the CWA and the Spill Prevention, Control, and Countermeasures (SPCC) requirements contained in 40 C.F.R. Part 112.

Based on information gathered before, during, and after the inspection, EPA now believes that Pelican Renewables violated Section 311 of the CWA and the SPCC and Facility Response Plan (FRP) regulations. Specifically, Pelican Renewables Corporation failed to update and implement the SPCC Plan and prepare and implement an FRP in violation of Section 311 of the Clean Water Act, 33 U.S.C. §1321, and 40 C.F.R. §§ 112.3 and 112.20.

EPA anticipates filing an administrative complaint against Pelican Renewables, LLC within sixty (60) days unless you advise EPA of substantial reasons not to proceed. Before filing an administrative action, EPA is extending to you this opportunity to advise EPA of any further information that EPA should consider. Even if you are unaware of any mitigating or exculpatory factors, EPA is also extending to you the opportunity to commence discussions concerning resolution of the above-described violation through settlement. If you would like to submit relevant information or are interested in commencing settlement negotiations, please contact Janice Witul of my staff at (415) 972-3089 or witul.janice@epa.gov, or have your attorney contact Matthew Trawick, Office of Regional Counsel, at (415) 972-3868 or trawick.matthew@epa.gov, no later than fifteen (15) days after receipt of this letter to schedule a meeting or conference call.

EPA's regulations on confidential business information are found in Part 2, Subpart B of Title 40 of the Code of Federal Regulations. Please identify any information that you claim is confidential business information. If you make a confidentiality claim, and if EPA determines that the information you designated meets the criteria in 40 C.F.R. § 2.208, we will disclose the information only to the extent, and by means of the procedures, specified in 40 C.F.R. Part 2, Subpart B. If you do not make a claim of confidentiality, we will assume that you are waiving confidentiality and the information you provide may be made public without further notice. Pursuant to 40 C.F.R. § 2.302(h), you are hereby given notice that EPA may disclose your response to authorized representatives of EPA, including contractors and to state or local agencies that have duties or responsibilities under the Clean Water Act.

Any penalty proposed in the context of settlement discussions for violations of the Clean Water Act and its implementing regulations will be calculated pursuant to EPA's Penalty Policy for Sections 311(b) and (j) of the Clean Water Act¹ and adjusted for inflation.² EPA may, as a matter of enforcement discretion, consider a respondent's performance of a Supplemental Environmental Project (SEP) as one factor in determining an appropriate settlement. A SEP is an environmentally beneficial project or activity that is not required by law, but that a respondent agrees to undertake as part of the settlement of an enforcement action. SEPs secure environmental and/or public health benefits in addition to those achieved by compliance with applicable laws. EPA evaluates proposed projects under the framework established in the Supplemental Environmental Projects Policy 2015 Update.³

EPA has created a number of helpful resources for small businesses. EPA developed a fact sheet about the Small Business Regulatory Enforcement Fairness Act, which is available at: <https://www.epa.gov/sites/default/files/2017-06/documents/smallbusinessinfo.pdf>. EPA has also established the National Compliance Assistance Clearinghouse as well as Compliance Assistance Centers, which offer various forms of resources to small businesses. Information about such resources is available at: <https://www.epa.gov/resources-small-businesses>.

If you have any questions, please contact Janice Witul at (415) 972-3089 or witul.janice@epa.gov, or have your counsel contact Matthew Trawick at (415) 972-3868 or trawick.matthew@epa.gov. Thank you for your prompt attention to this matter.

Sincerely,

**JAMES
MARINCOLA**

James Paul Marincola, Manager
Storm Water, Wetlands and Oil Enforcement Section

Digitally signed by JAMES
MARINCOLA
Date: 2024.10.17 17:32:21 -07'00'

¹ The Penalty Policy is available at: <https://www.epa.gov/enforcement/civil-penalty-policy-section-311b3-and-section-311j-clean-water-act-cwa-august-1998>.

² See <https://www.epa.gov/enforcement/enforcement-policy-guidance-publications#penalty>; <https://www.govinfo.gov/content/pkg/FR-2023-01-06/pdf/2022-28611.pdf>.

³ See <https://www.epa.gov/enforcement/supplemental-environmental-projects-seps>



REGION 9

SAN FRANCISCO, CA 94105

September 18, 2024

VIA MAIL AND ELECTRONIC MAIL

Steven Wallace and Deborah Wallace
3529 Riverside Drive
Anderson, CA 96007
braveheartmanor@yahoo.com

RTA Construction, Inc
Attn: Mark Trewick
9614 Tanqueray Ct
Redding, California 96003-6812
mark@rta-c.com

Butler Engineering Group, Inc.
Attn: Kevin Butler
9512 Crossroads Drive A,
Redding, CA 96003-6812
kevin@butlergroup.us

Re: Notice of Proposed Assessment of a Clean Water Act Administrative Civil Penalty
In the Matter of the Wallace Rock Slope Protection Project.

Dear Steven and Deborah Wallace, Mark Trewick, and Kevin Butler:

The United States Environmental Protection Agency, Region 9 ("EPA") has evidence indicating that you violated section 301(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1311(a), by the grading and placement of rock slope protection ("RSP") in the Sacramento River below the ordinary high-water mark ("OHWM") without authorization from the Army Corps of Engineers ("ACOE").

As part of an investigation conducted by the ACOE, Sacramento District ("SPK") in January 2023 (File No. SPK-2023-00061), the ACOE requested information about the work performed on the shoreline, and the responsible parties responded stating that Butler Engineering engineered the rock slope protection project ("Project") which was conducted and completed by RTA Construction. Responses also indicated that the Project involved the removal of a failing retaining wall and installation of fill

material, the RSP, in the Sacramento River using a small excavator and small loaders. According to the responses, the Project took place in January 2022, and took approximately two weeks to be completed.

In December 2023, the ACOE, consistent with an existing memorandum of agreement with EPA, referred this matter to EPA to proceed as the lead enforcement agency, since a CWA Section 404 permit for the discharge of dredged or fill material to waters of the United States was not obtained by the responsible parties, the property owner or the contractors.

EPA now writes to inform you that it is prepared to initiate an administrative civil enforcement action for violations of section 301(a) of the CWA and to offer you the opportunity to discuss this matter with EPA prior to the filing of an administrative complaint for civil administrative penalties pursuant to EPA's Consolidated Rules of Practice at 40 C.F.R. Part 22. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes EPA to assess administrative penalties for violations of the CWA, and Section 309(d) authorizes EPA to bring a civil action in federal district court. Under the terms of Section 309, EPA must consider the following factors in determining the amount of penalty it will seek: the seriousness of the violation(s), the economic benefit (if any) resulting from the violation, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and other matters as justice may require.

EPA offers the opportunity to settle cases out of court to avoid the time and expense of litigation. If we are able to reach a settlement, we would enter into the Administrative Consent Agreement and Final Order to resolve the penalty aspect of this matter, which would make it unnecessary for EPA to file a complaint.

If the respective parties and EPA are unable to reach a settlement within a reasonable amount of time of initiating negotiations, EPA may initiate formal administrative penalty proceedings. The civil penalty proceedings will either be filed in a case before an administrative law judge or referred to the Department of Justice for filing in federal district court. EPA specifically reserves the right to use any and all enforcement tools at its disposal to address these violations by Continental regardless of any future discussions in response to this letter.

EPA has not determined whether Butler Engineering and/or RTA Construction, either acting alone or in concert with another entity, constitute a "small business" under the Small Business Regulatory Enforcement and Fairness Act (SBREFA). Information on compliance assistance or contacting the SBREFA Ombudsman to comment on federal enforcement and compliance activities may be found at <https://www.epa.gov/sies/production/files/2017-06/documents/smallbusinessinfo.pdf>. Any decision to communicate with the SBREFA Ombudsman or to otherwise seek compliance assistance through this program does not relieve you of your obligation to respond in a timely manner to this letter, any EPA information request or any enforcement action, and does not create any new rights or defenses under law.

Please consider the settlement negotiation opportunities being made available through this letter. To reach a settlement, we will need to begin pre-filing negotiations as soon as possible. If you wish to set up an initial meeting to discuss this matter, please contact Juliana Gomez at (213) 244-1826 or gomez.juliana@epa.gov, or have your attorney contact Marcela von Vacano in the Office of Regional

Counsel at (415) 972-3905 or vonvacano.marcela@epa.gov within **fourteen (14) days** of receipt of this letter. Thank you for your prompt attention to this important matter.

Sincerely,

**ROBERTO
RODRIGUEZ**

Digitally signed by ROBERTO
RODRIGUEZ

Date: 2024.09.18 15:48:18
-07'00'

Roberto Rodriguez

Assistant Director, Water Branch

Enforcement and Compliance Assurance Division