UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

APR 27 2017

OFFICE OF
COMPLIANCE AND ENFORCEMENT

Reply To: OCE-101

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Ronald L. Kelly
42381 Hill Crest Loop
Astoria, Oregon, 97103-8425

RE: REQUEST FOR INFORMATION AND CONSENT FOR ACCESS Pursuant to Clean Water Act section 308, 33 U.S.C. § 1318

Dear Mr. Kelly:

The U.S. Environmental Protection Agency (EPA) has been notified of an alleged violation of the Clean Water Act (CWA), 33 U.S.C. § 1251, involving the unauthorized discharge of dredged and/or fill material into waters of the United States associated with the Klaskanine River. The alleged violations include placement of fill material below the ordinary high water mark of the Klaskanine River. The unauthorized work was conducted within Section 13, Township 7 North, Range 09 West, Willamette Meridian; subject property (Tax Lot# 01000) located near 37868 Olney Cutoff Road, in Clatsop County, Oregon (Site).

The CWA prohibits the discharge of dredged and/or fill material into wetlands, and navigable waters of the United States, except as authorized by a permit issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344, by the U.S. Army Corps of Engineers (Corps). The Corps' records do not identify a permit or an application for this work activity. The Corp's Portland District Regulatory program has referred this matter to EPA for potential investigation and resolution.

The EPA is sending you this letter to gather information regarding your involvement with the alleged violations of the CWA. Pursuant to EPA's authority under section 308 of the CWA, 33 U.S.C. § 1318, you are required to respond to the enclosed information request (Enclosure 1).

Please read the instructions and definitions in the enclosures carefully before preparing your response. Answer each question as clearly and completely as possible. Your response to this request must be accompanied by a certificate that is signed and dated by you or the person who is authorized by you to respond to the request. The certification must state that the response is complete and contains all information and documentation available to you that is responsive to the request. A Statement of Certification is included with this letter (Enclosure 2).

Printed on Recycled Paper

Please submit your response within 30 calendar days of receipt of this letter to:

Yvonne Vallette, Enforcement Specialist
U.S. Environmental Protection Agency, Region 10
Oregon Operations Office
805 SW Broadway, Ste. 500
Portland, Oregon 97204

In accordance with 40 CFR § 2.203(a), you are hereby notified that you may assert a business confidentiality claim covering part or all of the information requested above in the manner described by 40 CFR § 2.203(b). Information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures, set forth in 40 CFR part 2, subpart B. If no confidentiality claims accompany the information when it is received by EPA, the information may, without further notice to you, be made available to the public. EPA's regulations addressing this subject appear in 40 CFR part 2, subpart B, and 41 Federal Register 36,902 through 36,924 (September 1, 1976), as amended.

The Small Business Regulatory Enforcement and Fairness Act, section 222, provides small businesses with the opportunity to submit comments on regulatory enforcement at the time of an Agency enforcement activity. The attached information sheet provides information on this right, as well as information on compliance assistance that may be available to you (Enclosure 3). The Small Business Ombudsman may be reached at 1-800-368-5888.

Failure to provide all the information requested in this letter or to explain adequately the basis for such failure, or the making of any false material statement or representation in response to this Information Request, may constitute a violation of section 308 of the CWA, and may result in an enforcement action and the imposition of civil and/or criminal penalties or fines pursuant to section 309 of the CWA, 33 U.S.C. § 1319, and Title 18 of the United States Code, 18 U.S.C. § 1001. Please be further advised that provision of false, fictitious, or fraudulent statements or representations may subject you to criminal penalties under Title 18 of the United States Code, 18 U.S.C. § 1001, and/or section 309(c)(4) of the CWA, 33 U.S.C. § 1319(c)(4).

If you have any questions concerning this investigation or other matters related to this request, please contact Yvonne Vallette at (503) 326-2716 or vallette.yvonne@epa.gov. If you have any legal questions concerning EPA's civil investigation, please have your attorney contact Ashley Palomaki, Assistant Regional Counsel at (206) 553-8582 or palomaki.ashley@epa.gov. Thank you in advance for your prompt attention to this matter.

Sincerely,

Edward J. Kowalski
Director

Printed on Recycled Paper

Enclosures

(1) Information Request
(2) Statement of Certification
(3) Information Sheet (U.S. EPA Small Business Resources)

cc: Mr. Brian Zabel
Portland District – U.S. Army Corps of Engineers

Ms. Lori Warner-Dickerson
Oregon Department of State Lands

Mr. Joe Warwick
Oregon State Police

Printed on Recycled Paper

ENCLOSURE 1

INFORMATION REQUEST

This information is requested pursuant to Section 308(a) of the Clean Water Act ("CWA") (33 U.S.C. § 1318(a)).

Instructions

1. Answer Each Question Completely. You are required to provide a separate answer to each question and subpart set forth in this Information Request. Please provide responses to all the questions in this Information Request. If you are unable to answer a question in a detailed and complete manner, or if you are unable to provide any of the information or documents requested, state the reason for your inability to do so. Incomplete, evasive, or ambiguous answers shall constitute failure to respond to this Information Request and may subject you to the penalties set out in the cover letter.

2. Number Each Answer. Number each answer with the number of the question to which it corresponds.

3. Submit Supporting Documents. Any documents relied upon or used by you to answer any of the questions in the request must be copied and submitted to EPA with your response. All documents must contain a notation indicating the question they respond to.

4. Provide the Best Information Available. You must provide responses to the best of your ability, even if the information sought was never put down in writing or if the written documents are no longer available. You must seek out information that may be known to agents or persons that you authorized to act on your behalf. Submission of cursory responses when other responsive information is available to you will be considered non-compliance with this Information Request. If your responses are qualified in any manner, please explain.

5. Supplemental Information and Notification. If information or documents not known or not available to you as of the date of submission of your response to this request should later become known or available to you, you must supplement your response to EPA. Moreover, should you find, at any time after the submission of your response, that any portion of the submitted information is false or misrepresents the truth, you must notify the EPA of this fact as soon as possible and provide a corrected response.

Definitions

The following definitions shall apply to this request:

1. The term "you" shall mean the addressee(s) of this request. The term "you" also includes the addressee's company or other business entity (if any), its officers, directors, managers, employees, contractors, trustees, partners, successors, assigns, and agents.

Printed on Recycled Paper

2. The term "person" shall have the same definition as in section 502(5) of the CWA (33 U.S.C. §1362): an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.

3. The term "identify" means, with respect to a natural person, 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.

4. The term "identify" means, with respect to a corporation, partnership, or other association or business entity (including a sole proprietorship), its full name, address, legal form (*e.g.* corporation, partnership, *etc.*), organization, if any, and a brief description of its business.

5. The term "identify" means, with respect to a document, to provide its customary business description, its date, its number, if any (e.g., invoice or purchase order number), and the substance or subject matter. In lieu of identifying a document, attaching a copy of such document to your response is sufficient.

6. The term "document" and "documents" means all information in any reproducible form, including, but not limited to, writings, maps, drawings, graphs, charts, photographs, phono-records, tapes, computer disks, and other data compilations from which information can be obtained or translated through any means into usable form, including information stored on computer hard drives.

7. The terms "dredged material," "discharge of dredged material," "fill material," and "discharge of fill material" shall have the same definitions as in 33 C.F.R. §323.2.

8. The term "Site" means the property on which the alleged violations occurred, and all adjacent property to which you have claim of title or operation. In this case, the "Site" refers to certain dredged and/or fill material placed into waters of the United States, including below the ordinary high water level of the Klaskanine River, on property located within Section 13, Township 7 North, Range 09 West, Willamette Meridian; subject property (#1000) located near 37868 Olney Cutoff Road, Astoria, Clatsop County, Oregon (Site).

9. The term "waters of the United States" shall have the same definition as in 33 C.F.R. Part 328.

10. The term "wetlands" shall have the same definition as in 33 C.F.R. §328.3(b).

11. The term "work activity" means any and all construction, excavation, diversion, clearing, grading, ditching, ponding, sidecasting, filling, dredging, and the placement or movement of native river bed material, dredge spoil, rock, sand, gravel, concrete, garbage or any other fill material, dredged material, or other pollutant within the meaning of section 502(6) of the CWA, 33 U.S.C. §1362(6).

Printed on Recycled Paper

12. The terms "and" and "or" shall be construed either conjunctively or disjunctively as necessary to bring within the scope of this request any information which might otherwise be construed to be outside its scope.

13. All terms not defined herein shall have their ordinary meaning, unless such terms are defined in the CWA, 33 U.S.C. 1251, or in the regulations found at 33 C.F.R. parts 323 and 328, in which case the statutory or regulatory definitions shall apply.

Questions

1. Identify and describe all "work activity" conducted at the "Site" during the last 5 years. For each discrete activity, include in your description the following information:

   a. location of the work activity (by legal description, survey, map, etc.);

   b. approximate commencement and completion dates of the work activity;

   c. approximate acreage, linear feet, height/depth disturbed and approximate volume (cubic yards) of materials excavated and/or discharged;

   d. identify the person(s) authorizing the work activity;

   e. identify the person(s) performing the work activity;

   f. identify the machinery and equipment used to perform the work activity and identify their ownership and whether the machinery or equipment was rented by you or operated by another person authorized by you;

   g. identify the purpose of the project or the proposed project;

   h. consideration you paid for the work activity and identify the person(s) receiving such consideration; and

   i. any permits or approvals authorizing the work activity.

2. Define on a map or survey all locations where any work activity has occurred within the last 10 years on the Site or on the portions of the Klaskanine River or the South Fork or North Fork of the Klaskanine River that you either conducted or authorized.

3. Describe the type of business(es) operating at the Site and the year(s) of operation.

4. Describe all current and future plans for work activity by you or other person(s) at the Site.

Printed on Recycled Paper

5. Provide copies of any and all correspondence, authorizations, or permits obtained from any Federal, State, or local government agency authorizing development of the Site or pertaining, in any way, to the discharges of dredged or fill material described above.

6. Prior to commencement of dredging and/or fill work at the Site, have you ever applied for a CWA Section 404 permit for any project, including Nationwide and/or General Permits (NWPs and/or GPs), or a Oregon Department of State Lands Fill/Removal authorization? If so, provide an account of the dates the permits were requested and whether the permits were issued.

7. If you have not applied for a permit, provide a detailed explanation of your reasons for not obtaining CWA Section 404 permit prior to beginning the dredging and/or filling activities at the Site.

8. Specify the name and contact information for the current owner of the Site. Identify the date and means by which the Site was conveyed to you and provide proof of ownership (e.g. deed). If ownership has changed since the first placement of dredged or fill material on the Site, describe the chain of ownership.

9. Identify and submit copies of all contracts, work assignments, invoices, requests for proposals, or bills, between you and any another company or person related to any work activities identified in response to question 1.

10. Provide any additional information that may be relevant to resolving this matter including any resource surveys or assessments done at the Site.

Printed on Recycled Paper

ENCLOSURE 2

STATEMENT OF CERTIFICATION

Ronald L. Kelly

I certify that the foregoing responses and information submitted were prepared under my direction or supervision and that I have personal knowledge of all matters set forth in the responses and accompanying information. I certify that under penalty of perjury pursuant to 28 U.S.C. § 1746, the responses are true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

By_____
(Signature)

_____
(Title)

_____
(Date)

Printed on Recycled Paper

ENCLOSURE 3

Office of Enforcement and Compliance Assurance (2201A)
EPA-300-B-15-001 May 2015

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.

Small Business Programs
www.epa.gov/smallbusiness
EPA's Office of Small Business Programs (OSBP) advocates and fosters opportunities for direct and indirect partnerships, contracts, and sub-agreements for small businesses and socio-economically disadvantaged businesses.

EPA's Asbestos Small Business Ombudsman
www.epa.gov/sbo or 1-800-368-5888
The EPA Asbestos and Small Business Ombudsman (ASBO) serves as a conduit for small businesses to access EPA and facilitates communications between the small business community and the Agency.

EPA's Compliance Assistance Homepage
www2.epa.gov/compliance
This page is a gateway industry and statute-specific environmental resources, from extensive web-based information to hotlines and compliance assistance specialists.

EPA's Compliance Assistance Centers
www.assistancecenters.net
EPA's Compliance Assistance Centers provide information targeted to industries with many small businesses. They were developed in partnership with industry, universities and other federal and state agencies.

Agriculture
www.epa.gov/agriculture/

Automotive Recycling
www.ecarcenter.org

Automotive Service and Repair
ccar-greenlink.org/ or 1-888-GRN-LINK

Chemical Manufacturing
www.chemalliance.org

Construction
www.cicacenter.org or 1-734-995-4911

Education
www.campuserc.org

Food Processing
www.fpeac.org

Healthcare
www.hercenter.org

Local Government
www.lgean.org

Metal Finishing
www.nmfrc.org

Paints and Coatings
www.paintcenter.org

Printing
www.pneac.org

Ports
www.portcompliance.org

Transportation
www.tercenter.org

U.S. Border Compliance and Import/Export Issues
www.bordercenter.org

EPA Hotlines, Helplines and Clearinghouses
www2.epa.gov/home/epa-hotlines
EPA sponsors many free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements. Some examples are:

Clean Air Technology Center (CATC) Info-line
www.epa.gov/ttn/catc or 1-919-541-0800

Superfund, TRI, EPCRA, RMP and Oil Information Center
www.epa.gov/superfund/contacts/infocenter/index.htm or 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 and hazardous substance spills - www.nrc.uscg.mil or 1-800-424-8802

Pollution Prevention Information Clearinghouse (PPIC) - www.epa.gov/opptintr/ppic or 1-202-566-0799

Safe Drinking Water Hotline - www.epa.gov/drink/hotline/index.cfm or 1-800-426-4791

Printed on Recycled Paper

Small Business Resources

Stratospheric Ozone Protection Hotline
www.epa.gov/ozone/comments.htm or 1-800-296-1996

Toxic Substances Control Act (TSCA) Hotline
tsca-hotline@epa.gov or 1-202-554-1404

Small Entity Compliance Guides
http://www.epa.gov/sbrefa/compliance-guides.html
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
http://www.epa.gov/sbo/rsbl.htm
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/statetools
The Locators provide state-specific contacts, regulations and resources covering the major environmental laws.

State Small Business Environmental Assistance Programs (SBEAPs)
www.epa.gov/sbo/507program.htm
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
www.epa.gov/tribalportal/
The Portal provides access to information on environmental issues, laws, and resources related to federally recognized tribes.

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 two such policies that may apply to small businesses:

EPA's Small Business Compliance Policy
www2.epa.gov/enforcement/small-businesses-and-enforcement
This Policy offers small businesses special incentives to come into compliance voluntarily.

EPA's Audit Policy
www2.epa.gov/compliance/epas-audit-policy
The Policy provides incentives to all businesses that voluntarily discover, promptly disclose and expeditiously correct their noncompliance.

Commenting on Federal Enforcement Actions and Compliance Activities
The Small Business Regulatory Enforcement Fairness Act (SBREFA) established a SBREFA Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. If you believe that you fall within the Small Business Administration'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, call the SBREFA Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247).

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 it enforces, including the right to take emergency remedial or emergency response 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.

Printed on Recycled Paper