



ADVOCATES for the **West**
P.O. Box 1612 | Boise, ID 83701

May 8, 2017

Via Certified Mail, Return Receipt Requested

Donald G. Smith
P.O. Box 144
Riggins, Idaho 83549

**Re: Sixty-Day Notice Of Intent To Sue For Clean Water Act Violations By
Suction Dredge Mining On Salmon River Without A Permit**

Dear Mr. Smith:

I write on behalf of my client, the Idaho Conservation League (“ICL”), to provide you with notice of ICL’s intent to initiate a federal court lawsuit against you to enforce provisions of the federal Clean Water Act (“CWA”), 33 U.S.C. §§ 1311 & 1342, for suction dredge mining and discharging pollutants in the Salmon River, Idaho, without obtaining a required National Pollutant Discharge Elimination System (“NPDES”) permit, in violation of the CWA.

Unless you take the steps necessary to remedy these CWA violations, including by obtaining any required NPDES permit(s) before engaging in any further suction dredge mining on the Salmon River in Idaho and by complying with the terms of the permit(s), ICL intends to file suit in U.S. District Court following the expiration of the 60-day statutory notice period, seeking injunctive relief, civil penalties, and other relief for your past and ongoing CWA violations, and for any additional similar violations identified subsequently.

ICL’s Commitment to Improving Water Quality

Since 1973, the Idaho Conservation League has been Idaho’s voice for clean water, clean air, and wilderness—values that are the foundation of Idaho’s extraordinary quality of life. ICL works to protect these values through public education, outreach, advocacy, and policy development. As Idaho’s largest state-based conservation organization, it represents around 25,000 supporters, many of whom have a deep personal interest in protecting and restoring water quality throughout the rivers and streams of Idaho, including the Salmon River, through Clean Water Act enforcement and other means.

ICL has staff, members, and supporters who live, recreate, and/or work in and around the Salmon River, including near and downstream of your suction dredge mining operations and pollutant discharges near Riggins, Idaho, addressed below. ICL staff, members, and supporters frequently visit, recreate, and engage in activities in this area and in areas downstream which are impacted by your suction dredge mining and discharges.

NPDES Permitting for Suction Dredge Mining in Idaho

Under the Clean Water Act, the “discharge of any pollutant by any person” to navigable waters is unlawful unless authorized by and in compliance with a NPDES permit. 33 U.S.C. § 1311(a); 33 U.S.C. § 1342. The term “pollutant” is defined in the CWA to include “*dredged spoil*, solid waste, . . . heat, wrecked or discarded equipment, *rock, sand*, cellar dirt and industrial, municipal, and agricultural waste discharged to water.” 33 U.S.C. § 1362(6) (emphases added). Operating a suction dredge to suck up riverbed material and then discharging some or all of that material to water constitutes the discharge of turbid wastewater including sediment and other CWA-regulated pollutants and, thus, requires a valid NPDES permit and compliance with the terms of that permit.

The NPDES permit program in Idaho is administered by the U.S. Environmental Protection Agency (EPA). To facilitate NPDES permitting in parts of Idaho, EPA adopted a “general” NPDES permit in 2013 for small suction dredge mining operations, defined as suction dredges with intake nozzles of five inches in diameter or less and with equipment rated at 15 horsepower or less. The general NPDES permit places conditions on the discharge of rock and sand from each mining operation, including best management practices and prohibited areas, to protect water quality and aquatic resources. To obtain coverage under the general NPDES permit, a person must submit a Notice of Intent to EPA seeking coverage for eligible mining operations.¹

The general NPDES permit is available for persons suction dredging only in “open” water bodies in Idaho; “closed” areas include nationally protected areas, tribal reservations, designated wild and scenic rivers, endangered species habitat areas, withdrawn rivers, state protected rivers, and sediment-impaired streams.² The Salmon River is a closed water body, because of the presence of threatened and endangered species of salmon and steelhead habitat, so the general permit is not available. A person seeking to suction dredge in the Salmon River, must submit an application to EPA for an “individual” NPDES permit, and must obtain the permit and comply with its terms.³ Like the general permit, an individual permit places conditions on the discharge of rock and sand from each mining operation to protect water quality and aquatic resources, and may include best management practices and monitoring and reporting among other requirements.

¹ Information about the general permit is available from EPA at:
<http://yosemite.epa.gov/r10/water.nsf/NPDES+Permits/idsuction-gp>

² A map of “closed” streams is available at:
https://www3.epa.gov/region10/pdf/permits/npdes/id/ssdm_excluded_map.pdf

³ Information about NPDES permitting in EPA region 10 (which includes Idaho) is available from EPA at:
<https://yosemite.epa.gov/r10/WATER.NSF/NPDES+Permits/Permits+Homepage>

EPA Region 10 NPDES permitting contacts are available at:
<https://yosemite.epa.gov/r10/water.nsf/NPDES+Permits/NPDES+Subject+Contacts>

Clean Water Act Violations

Based on reasonable investigation and publicly available information, ICL is informed and believes that you have violated, are continuing to violate, and will foreseeably continue to violate, Section 301 of the Clean Water Act, 33 U.S.C. § 1311(a), by suction dredge mining and discharging sediment and other pollutants to the Salmon River without a NPDES permit.

Every year, beginning in 2000, you have applied for and received a “letter permit” or an individual stream channel alteration permit from the Idaho Department of Water Resources to suction dredge in Idaho. More recently, you have filed an Exploration Location Certificate (L500008) with the Idaho Department of Lands for a dredge site on the Salmon River downstream of Riggins, Idaho. You conducted suction dredge mining in the Salmon River under this Exploration Location Certificate from July 24 through September 30, 2012, and from August 1 through August 28, 2013. ICL is informed and reasonably believes that you operated a suction dredge(s) (and/or owned or controlled operating suction dredges) and unlawfully discharged pollutants to the Salmon River without a required NPDES permit on one or more days during each of these periods in 2012 and 2013.

ICL may later discover additional days on which you operated, owned, and/or controlled a dredge that discharged pollutants to the Salmon River or any other Idaho water bodies without an NPDES permit.

Your CWA violations are likely to continue. You have applied for a riverbed mineral lease (application number E500022) to secure the exclusive right to mine a 1-mile stretch of the Salmon River approximately 1 mile north of Riggins, Idaho. ICL has been informed that the Idaho Department of Lands intends to issue this lease in advance of the summer 2017 operating season. Pursuant to your lease application and associated joint applications, you have stated that you intend to operate a suction dredge(s) to mine the underwater portions of this 1-mile reach for the duration of the 5 year lease. However, ICL is informed that you have neither applied for nor received a NPDES permit authorizing the discharge of pollutants to the Salmon River for these operations. In light of this, ICL believes that you will continue to suction dredge mine without a valid NPDES permit, in violation of the CWA.

ICL further notes that your past and ongoing violations of the CWA are willful, knowing, and deliberate. You have been notified multiple times of your legal obligation to obtain a NPDES permit to suction dredge mine in Idaho (including by IDWR in the letter permits issued to you, by IDL during the riverbed mineral lease application process, and by the EPA). Yet you have never obtained a NPDES permit for suction dredge mining on the Salmon River or anywhere else in Idaho, and you have not applied for a NPDES permit to authorize discharges from dredging in the future.

Penalties and Injunctive Relief

Your actions violate Section 301 of the Clean Water Act, 33 U.S.C. § 1311(a), and subject you to imposition of statutory penalties as well as other liability. Section 309 of the CWA, 33 U.S.C. § 1319(d), adjusted by 40 C.F.R. § 19.4 and 81 Fed. Reg. 43091 (Jul. 1, 2016),

provides for imposition of civil penalties of up to \$37,500.00 per day per violation that occurred prior to August 1, 2016, and up to \$51,570 per day per violation that occurred on August 1, 2016 and after. Each day you have conducted and continue to conduct suction dredge mining in the Salmon River and/or other Idaho rivers and streams without a valid NPDES permit, you are liable for penalties under Section 309.

As provided under the CWA's citizen suit enforcement provision, 33 U.S.C. § 1365, ICL is authorized to file federal court litigation against you for these violations of the CWA, and any similar violations ICL later discovers, following expiration of the 60-day notice period. 33 U.S.C. § 1365(b). The court may award injunctive relief as well as the statutory penalties noted above. In addition, ICL may recover its reasonable attorney fees and litigation costs incurred in prosecuting the action against you. *See* 33 U.S.C. §§ 1319(d) & 1365(a), (b) & (d).

Party Giving Notice

The full name, address, and telephone numbers of the party giving notice is:

Idaho Conservation League
Att'n: Jonathan Oppenheimer
P.O. Box 844
Boise, ID 83701
208.345.6933

Conclusion

If you continue dredging in Idaho without obtaining and complying with the terms of a valid NPDES permit, ICL intends file a Clean Water Act suit against you. If any information in this letter is inaccurate, you should inform us immediately.

We are providing this letter not only to comply with the CWA statutory notice requirement, 33 U.S.C. §1365(b), but also in the hope of preventing your ongoing and future violations of the Clean Water Act. One of the principal purposes of the CWA notice requirement is to allow the parties to discuss resolution of claims short of litigation. During the 60-day notice period, Jonathan Oppenheimer at ICL (contact info below) or I will be available to discuss alternative remedies and actions that might be taken to assure compliance in the future with the CWA.

Respectfully,



Bryan Hurlbutt, Staff Attorney
ADVOCATES FOR THE WEST
P.O. Box 1612
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208.342.7024 x206

Attorney for Idaho Conservation League

CC Via Certified Mail, Return Receipt Requested:

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