



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



Reply to: ETPA-083

May 15, 2008

**SENT VIA CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

Chantell and Michael Sackett  
P. O. Box 425  
Nordman, ID 83848-0368

Re: ***In the Matter of Chantell and Michael Sackett***  
**Amended Administrative Compliance Order,**  
**EPA Docket No. CWA-10-2008-0014**

Dear Mr. and Ms. Sackett:

With this letter, the U.S. Environmental Protection Agency (EPA) is issuing an amended administrative compliance order ("Amended Compliance Order") that supersedes and replaces the order issued to you on November 26, 2007. The Amended Compliance Order is issued pursuant Sections 308 and 309(a) of the Clean Water Act, 33 U.S.C. §§ 1318 and 1319(a). EPA is issuing this order in connection with the unauthorized placement of fill material into wetlands at your property located at 1604 Kalispell Bay Road near Kalispell Creek, Bonner County, Idaho ("Site").

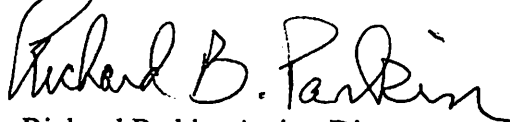
It has become apparent that the amended dates for compliance detailed in my letter to you dated May 1, 2008, may not result in successful establishment of re-vegetated wetland species at the Site because of the short growing season in northern Idaho. Please note that this Amended Compliance Order removes the obligation that wetland vegetation be re-planted at the Site by July 1, 2008. In addition, the Amended Compliance Order extends the date for removal of fill material and replacement of original wetland soils to October 31, 2008 (ahead of the winter season when removal of fill material and replacement of wetland soils would be infeasible). Since replanting will not be required in the 2008 growing season, there is no need to require the immediate removal of fill material. This Amended Compliance Order will account for the ecological constraints in northern Idaho and will also remove the need for immediate judicial resolution of EPA's motion to dismiss the complaint (Case No. CV-08-0185-EJL) you filed on April 28, 2008.

Successful compliance with the Amended Compliance Order does not preclude EPA from bringing a formal enforcement action for penalties or further injunctive relief

to address the Clean Water Act violations associated with your property located at the Site. Please also be aware that failure to comply with the Amended Compliance Order may subject you to civil penalties of up to \$32,500 per day for each violation, administrative penalties of up to \$11,000 per day for each day during which the violation continues or a civil action in Federal court for injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. §1319.

Should you have any questions concerning this matter, please have your attorney contact Mr. Ankur Tohan directly at 206-553-1796.

Sincerely,



Richard Parkin, Acting Director,  
Office of Ecosystems, Tribal, and Public Affairs

cc: H. Reed Hopper, Pacific Legal Foundation  
Damien Schiff, Pacific Legal Foundation  
Leslie Weatherhead, Witherspoon, Kelley, Davenport & Toole  
Greg Taylor, ID Dept. of Water Resources  
Beth Reinhart, U.S. Army Corps of Engineers

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8 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
9 REGION 10  
10 1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101

11 In the Matter of:

12 CHANTELL AND  
13 MICHAEL SACKETT

14 Bonner County, Idaho

15 Respondents.  
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) DOCKET NO. CWA-10-2008-0014  
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) AMENDED COMPLIANCE ORDER  
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18 The following FINDINGS AND CONCLUSIONS are made and ORDER issued pursuant  
19 to the authority vested in the Administrator of the United States Environmental Protection  
20 Agency ("EPA") by sections 308 and 309(a) of the Clean Water Act ("the Act"), 33 U.S.C. §§  
21 1318 and 1319(a). This authority has been delegated to the Regional Administrator, Region 10,  
22 and has been duly redelegated to the undersigned Director of the Office of Ecosystems, Tribal  
23 and Public Affairs. This AMENDED COMPLIANCE ORDER ("Order") supersedes and  
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AMENDED COMPLIANCE ORDER - 1  
DOCKET NO. CWA-10-2008-0014

U.S. Environmental Protection Agency  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101  
(206) 553-1796

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1 replaces the Compliance Order issued under Docket Number CWA-10-2008-0014 to  
2 Respondents on November 26, 2007.

### 3 **I. FINDINGS AND CONCLUSIONS**

4 1.1 Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of  
5 pollutants into waters of the United States by any person, except as authorized by a permit issued  
6 pursuant to section 402 or 404 of the Act, 33 U.S.C. §§ 1342 or 1344. The unpermitted  
7 discharge of any pollutant from a point source constitutes a violation of section 301(a) of the  
8 Act, 33 U.S.C. § 1311(a). Section 502(12), 33 U.S.C. § 1362(12), defines the term "discharge of  
9 any pollutant" to include "any addition of any pollutant to navigable waters from any point  
10 source." "Navigable waters" are defined as "waters of the United States." 33 U.S.C. § 1362(7).

11 1.2 Respondents Chantell and Michael Sackett (hereinafter collectively  
12 "Respondents") are "persons" within the meaning of Sections 301(a) and 502(5) of the Act, 33  
13 U.S.C. §§ 1311(a) and 1362(5).

14 1.3 Respondents own, possess, or control real property identified as 1604 Kalispell  
15 Bay Road near Kalispell Creek, Bonner County, Idaho; and located within Section 12, Township  
16 60 North, Range 5 West, Boise Meridian ("Site"). The Site is adjacent to Priest Lake, and  
17 bounded by Kalispell Bay Road on the north and Old Schneider Road on the south.  
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19 1.4 The Site contains wetlands within the meaning of 40 C.F.R. § 230.3(t) and 33  
20 C.F.R. § 328.3(b); and the wetlands meet the criteria for jurisdictional wetlands in the 1987  
21 "Federal Manual for Identifying and Delineating Jurisdictional Wetlands."  
22

23 1.5 The Site's wetlands are adjacent to Priest Lake within the meaning of 40 C.F.R. §  
24 230.3(s)(7) and 33 C.F.R. § 328.3(a)(7). Priest Lake is a "navigable water" within the meaning  
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1 of section 502(7) of the Act, 33 U.S.C. § 1362(7), and “waters of the United States” within the  
2 meaning of 40 C.F.R. § 232.2.

3 1.6 In April and May, 2007, at times more fully known to Respondents, Respondents  
4 and/or persons acting on their behalf discharged fill material into wetlands at the Site.  
5 Respondents filled approximately one half acre.

6 1.7 Upon information and belief, Respondents and/or persons acting on their behalf  
7 used heavy equipment to place the fill material into the wetlands. The heavy equipment used to  
8 fill these waters is a “point source” within the meaning of section 502(14) of the Act, 33 U.S.C. §  
9 1362(14).

10 1.8 The fill material that Respondents and/or persons acting on their behalf caused to  
11 be discharged included, among other things, dirt and rock, each of which constitutes a  
12 “pollutant” within the meaning of section 502(6) of the Act, 33 U.S.C. § 1362(6).

13 1.9 By causing such fill material to enter waters of the United States, Respondents  
14 have engaged, and are continuing to engage, in the “discharge of pollutants” from a point source  
15 within the meaning of sections 301 and 502(12) of the Act, 33 U.S.C. §§ 1311 and 1362(12).

16 1.10 Respondents’ discharges of dredged and/or fill material was not authorized by any  
17 permit issued pursuant to section 402 or 404 of the Act, 33 U.S.C. §§ 1312 or 1314.

18 1.11 Respondents discharge of pollutants into waters of the United States at the Site  
19 without a permit constitutes a violation of section 301 of the Act, 33 U.S.C. § 1311.

20 1.12 As of the effective date of this Order, the fill material referenced in Paragraph 1.6  
21 above remains in place.  
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1 1.13 Each day the fill material remains in place without the required permit constitutes  
2 an additional day of violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

3 1.14 Taking into account the seriousness of this violation and Respondents' good faith  
4 efforts to comply with applicable requirements, the schedule for compliance contained in the  
5 following Order is reasonable and appropriate.

## 6 II. ORDER

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8 Based upon the foregoing FINDINGS AND CONCLUSIONS and pursuant to sections  
9 308 and 309(a) of the Clean Water Act, 33 U.S.C. §§ 1318 and 1319(a), it is hereby ORDERED  
10 as follows:

11 2.1 In compliance with the Clean Water Act, Respondents shall remove all  
12 unauthorized fill material placed within wetlands located at Section 12, Township 60 North,  
13 Range 5 West, Boise Meridian ("Site"). The removed fill material is to be moved to a location  
14 approved by the EPA representative identified in Paragraph 2.8. To the maximum extent  
15 practicable, the Site shall be restored to its original, pre-disturbance topographic condition with  
16 the original wetlands soils that were previously removed from the Site. Acceptable reference  
17 topographic conditions exist on wetlands immediately adjacent to and bordering the Site.

18 2.2 Compliance activities described under Paragraph 2.1 must be completed no later  
19 than **October 31, 2008**.

20 2.3 At least 48 hours prior to commencing compliance activity on the Site,  
21 Respondents shall provide verbal notification to the EPA representative identified in Paragraph  
22 2.8.  
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1           2.4    Within 7 days of completion of the compliance activities under Paragraph 2.1,  
2 Respondents shall notify, in writing, the EPA representative identified in Paragraph 2.8. The  
3 written notification shall include photographs of Site conditions prior to and following  
4 compliance with this Order.

5           2.5    Upon receipt of the notification referenced under Paragraph 2.4, EPA may  
6 schedule an inspection of the Site by EPA or its designated representative

7           2.6    Respondents shall provide and/or obtain access to the Site and any off-Site areas  
8 to which access is necessary to implement this Order; and shall provide access to all records and  
9 documentation related to the conditions at the Site and the restoration activities conducted  
10 pursuant to this Order. Such access shall be provided to EPA employees and/or their designated  
11 representatives, who shall be permitted to move freely at the site and appropriate off-site areas in  
12 order to conduct actions that EPA determines to be necessary.

13           2.7    EPA encourages Respondents to engage in informal discussion of the terms and  
14 requirements of this Order. Such discussions should address any questions Respondents have  
15 concerning compliance with this Order. In addition, Respondents are encouraged to discuss any  
16 allegations herein which Respondents believe to be inaccurate or requirements which may not be  
17 attainable and the reasons why. Alternative methods to attain the objectives of this Order may be  
18 proposed. If acceptable to EPA, such proposals may be incorporated into amendments to this  
19 Order at EPA's discretion. After compliance with the requirements of this Order, Respondents  
20 are also encouraged to contact the EPA representative identified in Paragraph 2.8 to discuss  
21 restoration of the Site to its pre-disturbance, vegetative condition.

22           2.8    All submissions and notifications required by this Order shall be sent to:  
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1 John Olson  
2 U.S. EPA, Idaho Operations Office  
3 1435 North Orchard Street  
4 Boise, ID 83706  
5 Phone: (208) 378-5756  
6 Fax: (208) 378-5744.

7 2.9 Prior to the completion of the terms of this Order, Respondents shall provide any  
8 successor in ownership, control, operation, or any other interest in all or part of the Site, a copy  
9 of this Order at least 30 days prior to the transfer of such interest. In addition, Respondents shall  
10 simultaneously notify the EPA representative identified in Paragraph 2.8 in writing that the  
11 notice required in this Section was given. No real estate transfer or real estate contract shall in  
12 any way affect Respondent's obligation to comply fully with the terms of this Order.

13 2.10 This Order shall become effective on the date it is signed.

### 14 **III. SANCTIONS**

15 3.1 Notice is hereby given that violation of, or failure to comply with, the foregoing  
16 Order may subject Respondents to (1) civil penalties of up to \$32,500 per day of violation  
17 pursuant to section 309(d) of the Act, 33 U.S.C. § 1319(d), and 40 C.F.R. Part 19; (2)  
18 administrative penalties of up to \$11,000 per day for each violation, pursuant to section 309(g) of  
19 the Act, 33 U.S.C. § 1319(g), and 40 C.F.R. Part 19; or (3) civil action in federal court for  
20 injunctive relief, pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b).

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1           3.2.    Nothing in this Order shall be construed to relieve Respondents of any applicable  
2 requirements of federal, state, or local law. EPA reserves the right to take enforcement action as  
3 authorized by law for any violation of this Order, and for any future or past violation of any  
4 permit issued pursuant to the Act or of any other applicable legal requirements, including, but  
5 not limited to, the violations identified in Part I of this Order.  
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8                   Dated this 15<sup>th</sup> day of May, 2008

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11                   RICHARD PARKIN, Acting Director  
12                   Office of Ecosystems, Tribal and Public Affairs  
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