

RECEIVED

16 NOV 30 AM 11:17

HEARINGS CLERK
EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Alaska Boat Company, LLC

Respondent.

)
) DOCKET NO. CWA-10-2016-0116
)
)

) **CONSENT AGREEMENT AND**
) **FINAL ORDER**
)
)

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA” or “Complainant”) by Section 309(g)(2)(B) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g)(2)(B).

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 309(g)(1) and (2)(B) of the CWA, 33 U.S.C. § 1319(g)(1) and (2)(B), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and the Alaska

Boat Company, LLC (“Respondent”) agrees to issuance of, the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. On June 20, 2016, Complainant filed an administrative complaint against Respondent alleging violations of the CWA. Following the filing of the Complaint and Respondent’s answer, filed July 25, 2016, Complainant and Respondent (collectively the “Parties”) have reached agreement that settlement of this matter is in the public interest, and that entry of this CAFO without further litigation or adjudication of any issue of fact or law is the most appropriate means of resolving this matter.

2.2. In settlement of this matter Respondent asserts that Outfall D4 and the area that drains to Outfall D4 is under the exclusive control of the landlord from which Respondent leases its property. By entering into this CAFO Respondent is not representing that it has any authority or responsibility over ISGP compliance with respect to Outfall D4.

2.3. In accordance with 40 C.F.R. § 22.18(b), this proceeding will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.4. The Administrator has delegated the authority to sign consent agreements between EPA and the party against whom a Class II penalty is proposed to be assessed pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”).

III. ALLEGATIONS

3.1. Parts II and III of the Complaint filed in the above captioned matter on June 20, 2016, contain a concise statement of the factual and legal basis for Respondent's alleged violations of the Clean Water Act Industrial Section General Permit ("ISGP") issued by the state of Washington, together with the specific provisions of the CWA and the implementing regulations that Respondent is alleged to have violated, and are incorporated herein by reference.

3.2. Respondent maintains that catchbasin D4 drains stormwater from an area that it does not lease or control and therefore that it has no authority with respect to ISGP compliance in the area drained by catchbasin D4.

Violation 1
(Violation of Section S9.C of the ISGP; One Count)

3.3. Section S9.C.1 of the ISGP sets forth minimum requirements for documents that are required to be maintained onsite, including documentation of compliance with ISGP permitting requirements. Pursuant to section S9.C.3 of the ISGP, records and documents required to be maintained onsite shall be made immediately available upon request.

3.4. Respondent is alleged to have violated section S9.C of the ISGP by failing to maintain a complete copy of the SWPPP onsite and available for inspection. Violations of section S9.C of the ISGP are enforceable under section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Violation 2
(Violations of Sections S3.A.6 and S3.B of the ISGP; Six Counts)

3.5. Section S3.B of the ISGP establishes minimum content and completeness requirements for SWPPPs including up-to-date facility description and information, a site map that identifies facility scale or distances and the location of stormwater drainage and discharge

structures, a description of BMPs selected for implementation and a sampling plan and procedures for identifying pollutants for monitoring and analysis. Section S3.A.6 of the ISGP requires that a SWPPP be signed and certified consistent with section G2 of the ISGP.

3.6. Respondent is alleged to have committed five separate and distinct violations of section S3.B of the ISGP because its SWPPP failed to address the following requirements: (1) a site map that identified the scale or relative distances between significant structures and drainage systems (section S3.B.1.a); (2) a site map that identified each stormwater drainage area and discharge point (section S3.B.1.d); (3) a facility assessment that included a description of facility, an inventory of facility activities and equipment and an inventory of materials that contribute to or have the potential to contribute pollutants to stormwater (section S3.B.2); (4) a description of each BMP selected to eliminate or reduce the potential to contaminate stormwater and prevent violations of water quality standards (S3.B.3); and (5) a sampling plan that identifies points of discharge and documentation of why each discharge point is not sampled (section S3.B.5). Respondent is also alleged to have violated section S3.A.6 of the ISGP by failing to certify the SWPPP. Violations of sections S3.A.6 and S3.B of the ISGP are enforceable under section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Violation 3
(Violations of Section S3.B.4.b.i.2 of the ISGP; Two Counts)

3.7. Section S3.B.4 of the ISGP requires that permittees select and implement BMPs to eliminate or reduce the potential to contaminate stormwater and prevent violations of water quality standards. Section S3.B.4.b.i of the ISGP requires the selection and implementation of operational source control BMPs intended to control the sources of pollutants from a facility to

eliminate or reduce contamination of stormwater. Section S3.B.4.b.i.2 of the ISGP requires implementation of good housekeeping measures including the vacuuming of paved surfaces to remove accumulated pollutants a minimum of once per calendar year quarter.

3.8. Respondent is alleged to have committed two separate and distinct violations of section S3.B.4.b.i.2 of the ISGP by (1) failing to vacuum the boatyard during the third quarter of 2013 (section S3.B.4.b.i.2.a); and (2) failing to vacuum the boatyard during the fourth quarter of 2013 (section S3.B.4.b.i.2.a). Violations of section S3.B.4 of the ISGP are enforceable under section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Violation 4
(Violations of Section S3.B.4.b.i.3 of the ISGP; One Count)

3.9. Section S3.B.4 of the ISGP requires that permittees select and implement BMPs to eliminate or reduce the potential to contaminate stormwater and prevent violations of water quality standards. Section S3.B.4.b.i of the ISGP requires the selection and implementation of operational source control BMPs intended to control the sources of pollutants from a facility to eliminate or reduce contamination of stormwater. Section S3.B.4.b.i.3 of the ISGP requires preventative maintenance that includes frequent inspection and immediate cleanup of spills and leaks to prevent the discharge of pollutants.

3.10. On December 4, 2014, Respondent is alleged to have violated section S3.B.4.b.i.3 of the ISGP by not immediately cleaning up oil sheens on the concrete pier in the proximity of drain D2 and in proximity to outfall D4. Violations of section S3.B.4.b.i.3 of the ISGP are enforceable under section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Violation 5
(Violations of Section S3.B.4.b.i.4 of the ISGP; One Count)

3.11. Section S3.B.4 of the ISGP requires that permittees select and implement BMPs to eliminate or reduce the potential to contaminate stormwater and prevent violations of water quality standards. Section S3.B.4.b.i of the ISGP requires the selection and implementation of operational source control BMPs intended to control the sources of pollutants from a facility to eliminate or reduce contamination of stormwater. Section S3.B.4.b.i.4 of the ISGP requires spill prevention measures to prevent spills that include storing all chemical liquids, fluids and petroleum products on an impervious surface that is surrounded with a containment berm or dike.

3.12. On December 4, 2014, Respondent is alleged to have violated section S3.B.4.b.i.4 of the ISGP by storing outside in areas without secondary containment a 55-gallon drum of used oil, numerous paint cans and three 55-gallon drums of antifreeze. Violations of section S3.B.4.b.i.4 of the ISGP are enforceable under section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Violation 6
(Violations of Section S4.B.1 of the ISGP; Thirty-Nine Counts)

3.13. Section S4.B.2 of the ISGP requires that a permittee sample each location where it discharges stormwater associated with industrial activity. Section S4.B.1 of the ISGP requires that each discharge location be sampled at least once per quarter.

3.14. Respondent is alleged to have committed thirty-nine separate and distinct violations of section S4.B.1 of the ISGP by failing to conduct quarterly sampling for stormwater discharges over a period of thirteen calendar-year quarters between the third quarter of 2011 and

the third quarter of 2014. Violations of section S4.B.1 of the ISGP are enforceable under section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Violation 7
(Violations of Section S7.A.1 and S7.C.1.f of the ISGP; Twenty-two Counts)

3.15. Section S7.A.1 of the ISGP requires that a permittee conduct and document visual inspections of the facility each month. Section S7.C.1.f of the ISGP requires that each inspection report prepared for a facility be signed and certified, pursuant to section G2 of the ISGP, by a responsible corporate officer of at least the level of vice president or a duly authorized representative of the facility.

3.16. Respondent is alleged to have committed eight separate and distinct violations of section S7.A.1 of the ISGP by failing to conduct and document monthly visual site inspections over the seven-month period from March 2014 to November 2014. Respondent is also alleged to have committed fourteen separate and distinct violations of section S7.C.1.f of the ISGP by failing to certify the monthly inspection reports dated January 2013 to February 2014 consistent with the requirements of section G2 of the ISGP. Violations of Sections S7.A.1 and S7.C.1.f of the ISGP are enforceable under section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Violation 8
(Violations of Section S6.C.1 of the ISGP; Thirty-seven Counts)

3.17. In Appendix 4 of the ISGP Ecology established sampling requirements for fecal coliform, lead and phosphorus applicable to Respondent. Section S6.C.1, Table 5 of the ISGP

requires that Respondent sample for fecal coliform, lead and phosphorus at least once per calendar-year quarter.

3.18. Respondent is alleged to have committed thirty-seven separate and distinct violations of section S6.C.1 of the ISGP by failing to conduct required quarterly sampling for fecal coliform, lead and phosphorus over a period of thirteen calendar-year quarters between the third quarter of 2011 and the third quarter of 2014. Violations of section S6.C.1 of the ISGP are enforceable under section 309(g) of the CWA, 33 U.S.C. § 1319(g).

**Violation 9
(Violations of Section S5.A.3 and S8 of the ISGP; Seven Counts)**

3.19. Section S5.A.3 of the ISGP requires a permittee to implement corrective actions pursuant to section S8 of the ISGP for exceedances of the benchmarks for copper or zinc. Section S8.B requires that a Level One corrective action be completed for any benchmark exceeded in a quarter by no later than the DMR due date for the quarter in which the benchmark was exceeded. Section S8.C requires that a Level Two corrective action be completed if a benchmark for a single pollutant parameter is exceeded two quarters in a calendar year. A Level Two corrective action shall be completed as soon as possible but no later than August 31 of the following calendar year. Section S8.D requires that a Level Three corrective action be completed if a benchmark for a single pollutant parameter is exceeded three quarters in a calendar year. A Level Three corrective action shall be completed as soon as possible but no later than September 30 of the following calendar year.

3.20. Respondent is alleged to have committed seven separate and distinct violations of sections S5.A.3 and S.8 of the ISGP by failing to implement or to timely implement required

corrective action measures. Violations of sections S5.A.3 and S.8 of the ISGP are enforceable under section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Violation 10
(Violations of Section S9.A.4 of the ISGP; Four Counts)

3.21. Section S9.A.4 of the ISGP identifies the specific due dates for the required quarterly submission of DMRs as May 15, August 14, November 14 and February 14. All permit reports, including DMRs, are required to be certified pursuant to section G2 of the ISGP.

3.22. Respondent is alleged to have committed four separate and distinct violations of section S9.A.4 of the ISGP by: (1) failing to sign and date the DMR for the fourth quarter of 2012; (2) failing to timely prepare and submit the DMR for the third quarter of 2013; (3) failing to timely prepare and submit the DMR for the fourth quarter 2013; and (4) failing to timely prepare and submit the DMR for the first quarter of 2014. Violations of section S9.A.4 of the ISGP are enforceable under section 309(g) of the CWA, 33 U.S.C. § 1319(g).

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations of this CAFO.

4.2. Respondent neither admits nor denies the other factual allegations and legal conclusions contained in this CAFO.

4.3. As required by Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA has taken into account the nature, circumstances, extent, and gravity of the alleged violations as well as Respondent's economic benefit of noncompliance, ability to pay, and other relevant factors.

After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$43,000.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within 30 days of the effective date of the Final Order contained in Part V of this CAFO.

4.5. Payment under this CAFO must be made by a cashier's check or certified check payable to the order of "Treasurer, United States of America" and delivered to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondents must note on the check the title and docket number of this action.

4.6. Respondent must serve photocopies of the check described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Steven Potokar
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

4.7. If Respondent fails to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty under the CWA, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.7.1. Interest. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order set forth in Part V, provided however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

4.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondent shall pay (in addition to any assessed penalty and interest) attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20% of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.8. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.10. The undersigned representatives of Respondent also certify that, as of the date of Respondent's signature of this CAFO, Respondent has corrected the violation(s) alleged in Part III above.

4.11. Except as described in Subparagraph 4.7.2, above, each party shall bear its own costs in bringing or defending this action.

4.12. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.


4.13. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

Nov 18 2016

FOR RESPONDENT Alaska Boat Company, LLC:



DATED:

FOR COMPLAINANT:

EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

4.10. The undersigned representatives of Respondent also certify that, as of the date of Respondent's signature of this CAFO, Respondent has corrected the violation(s) alleged in Part III above.

4.11. Except as described in Subparagraph 4.7.2, above, each party shall bear its own costs in bringing or defending this action.

4.12. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

4.13. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

Nov 18 2016

FOR RESPONDENT Alaska Boat Company, LLC:



DATED:

11/28/2016

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondents are ordered to comply with the terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO resolves only those causes of action alleged in Part III above. This CAFO does not waive, extinguish, or otherwise affect Respondents' obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

5.3. In accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the Washington State Department of Ecology has been given the opportunity to consult with EPA regarding the assessment of the administrative civil penalty against Respondents.

5.4. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA has issued public notice of and provided reasonable opportunity to comment on its intent to assess an administrative penalty against Respondents. More than 40 days have elapsed since issuance of this public notice and EPA has received no petition to set aside the Consent Agreement contained herein.

5.5. This Final Order shall become effective upon filing.

SO ORDERED this 30th day of November, 2016.



M. SOCORRO RODRIGUEZ
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Alaska Boat Company, LLC, Docket No.: CWA 10-2016-0116** was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Alex Fidis
U.S. EPA, Region 10
Office of Regional Counsel
1200 - 6th Avenue
MS: ORC-113
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Douglas Morrison
Environmental Law Northwest
P.O. Box 6786
Bellevue, WA 98008
doug@nwenvlaw.com

DATED this 30th day of November, 2016


Signature

Candace Smith
Acting Regional Hearing Clerk
EPA Region 10