

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

2.3 Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of the CWA, together with the specific provisions of the CWA and implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1 The CWA prohibits the “discharge of any pollutant by any person” except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit. CWA § 301(a), 33 U.S.C. § 1311(a); CWA § 402, 33 U.S.C. § 1342.

3.2 The CWA defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source” and defines “navigable waters” to include “waters of the United States.” CWA § 502(7),(12), 33 U.S.C. § 1362(7),(12).

3.3 The CWA defines “point source” as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.” CWA § 502(14), 33 U.S.C. § 1362(14).

3.4 The CWA defines stormwater discharge associated with industrial activity (“industrial stormwater”) to include the discharge from any conveyance which is used for collecting and processing or raw materials storage areas at an industrial plant. Industrial stormwater is a pollutant. 33 U.S.C. § 1342(p); 40 C.F.R. §§ 122.26(a)(1)(ii), 122.26(b)(14).

3.5 Respondent Koontz-Wagner Custom Controls Holdings LLC (“KWCC”) is a limited liability company organized under the laws of the State of Indiana and authorized to do business in the

State of Idaho under the assumed business name “Koontz-Wagner Custom Controls,” and is a “person” within the meaning of the CWA. 33 U.S.C. § 1362(5).

3.6 Respondent KWCC operates a 10-acre facility located at 20394 Pinto Lane, Caldwell, Idaho (“Facility”). Respondent KWCC manufactures large steel custom enclosures and base tanks for electrical power generation equipment at the Facility. Businesses that manufacture and/or fabricate metal products are defined as engaging in industrial activity for purposes of the CWA. 40 C.F.R. § 122.26(b)(14)(xi).

3.7 At all times relevant to this CAFO, the Facility was owned and operated by IBI, LLC, a limited liability company organized under the laws of the State of Idaho, until June 21, 2013, when it was transferred to Respondent Dave and Tom of Idaho, LLC (f/k/a Dave & Tom, LLC), a limited liability company organized under the laws of the State of Idaho. Each IBI, LLC and Dave and Tom of Idaho, LLC, respectively, is a “person” within the meaning of the CWA. 33 U.S.C. § 1362(5).

3.8 Respondent KWCC is the surviving legal entity of a merger with IBI, LLC which became effective on January 1, 2014.

3.9 Stormwater is generated at areas of the Facility associated with raw material storage, heavy equipment storage, paints and painting equipment, liquid storage tanks, metal fabrication, equipment/vehicle maintenance, and raw steel collection.

3.10 An inspection of the Facility was conducted by EPA on June 17, 2013 and a Compliance Inspection Report was issued on June 28, 2013 (“June 2013 Inspection Report”). Stormwater generated at the Facility is collected in catch basins and conveyed via concrete trough, storm drain and underground piping system to the West End Drain. The pipe that discharges stormwater from the Facility to the West End Drain is a point source. 33 U.S.C. § 1362(14); 40 C.F.R. § 122.2. Industrial stormwater has been discharged from the Facility into the West End Drain from at least January 1, 2009.

3.11 The West End Drain is a tributary of and flows into the Boise River. The Boise River is a tributary of the Snake River, which is a tributary of the Columbia River. The Boise River, the Snake

River, and the Columbia River are “navigable waters” and “waters of the United States,” as defined in 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.

3.12 On November 16, 1990, the Administrator of EPA promulgated regulations for stormwater permit applications, pursuant to which IBI, LLC was required to apply for and obtain an NPDES permit before discharging industrial stormwater from the Facility into waters of the United States. 40 C.F.R. §§ 122.21, 122.26, 122.28.

3.13 IBI, LLC submitted a Notice of Intent for coverage under the Multi-Sector General NPDES permit on August 4, 2013 and coverage under the NPDES permit began on October 3, 2013.

3.14 On August 15, 2013, EPA issued a Notice of Violation based on its June 17, 2013 compliance inspection of the Facility.

3.15 None of the discharges set forth in paragraph 3.10 were authorized by an NPDES permit and, thus, violated Section 301(a) of the CWA, as a discharge of pollutants from a point source into navigable waters of the United States without an NPDES permit. 33 U.S.C. § 1311(a).

IV. CONSENT AGREEMENT

4.1 Respondents admit the jurisdictional allegations contained in this CAFO.

4.2 Respondents neither admit nor deny the specific factual allegations 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 Respondents’ economic benefit of noncompliance, ability to pay, and other relevant factors. After considering all of these factors, EPA has determined and Respondents agree that an appropriate penalty to settle the alleged violations is SIXTY-THREE THOUSAND NINE HUNDRED DOLLARS (\$63,900).

4.4 Respondents agree to pay the total civil penalty set forth in Paragraph 4.3 within thirty (30) days of the effective date of the Final Order.

4.5 Payment under this CAFO must be made by cashier's check, certified check, or Automated Clearinghouse. Checks shall be payable to the order of "Treasurer, United States of America" and delivered via United States mail 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 Respondents shall send notice of such payment, including a photocopy of the check described in Paragraph 4.5, to the Regional Hearing Clerk and EPA Compliance Officer at the following addresses:

Regional Hearing Clerk
U.S. EPA, Region 10
1200 Sixth Avenue, Suite 900
Mail Stop ORC-159
Seattle, WA 98101

Maria Lopez, Compliance Officer
U.S. EPA, Region 10
950 W. Bannock Street, Suite 900
Boise, Idaho 83702

4.7 If Respondents fail to pay the penalty assessed by this CAFO in full by the due date set forth in Paragraph 4.4, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondents 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 thirty (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 Respondents fail to pay on a timely basis the penalty set forth in Paragraph 4.2, Respondents 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 twenty percent (20%) of the aggregate amount of Respondents' 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 4.6, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

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

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

4.11 Respondents expressly waive any right to contest the allegations and waive any right to appeal the Final Order set forth in Part V.

4.12 The provisions of this CAFO shall bind Respondents and each of their respective agents, servants, employees, successors, and assigns.

4.13 The above provisions are STIPULATED AND AGREED upon by Respondents and EPA Region 10.

DATED:

8/21/14

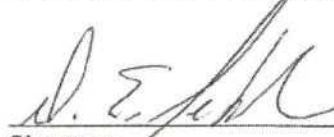
FOR KOONTZ-WAGNER CUSTOM
CONTROLS LLC:

Tracy Dioguarda
Signature
Print Name: Tracy Dioguarda
Title: Vice President & Secretary

DATED:

9-15-14

FOR DAVE AND TOM OF IDAHO, LLC:



Signature

Print Name: DAVE C. ERLESBACH

Title: MEMBER

DATED:

9/17/2014

FOR U.S. ENVIRONMENTAL PROTECTION
AGENCY:



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement

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 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 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 Idaho Department of Environmental Quality 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 September, 2014.


M. SOCORRO RODRIGUEZ
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in: **In the Matter of: Koontz-Wagner Custom Controls Holdings LLC; Dave and Tom of Idaho, LLC; Docket No. CWA-10-2014**, was filed, and served as follows, on the signature date below.

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

Alex Fidis, Office of Regional Counsel
U.S. EPA, Region 10
1200 6th Avenue, Suite 900
Mail Stop: ORC-158
Seattle, WA 98101

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

Heather Aley Austin
Thompson Hine LLP
3900 Key Center, 127 Public Square
Cleveland, Ohio 44114

David C. Higney
Grant Konvalinka & Harrison, PC
633 Chestnut Street
Suite 900, Republic Centre
Chattanooga, TN 37450-0900

30th day of Sept 2014 
Dated Candace H. Smith
Regional Hearing Clerk

EPA Region 10