

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In The Matter Of:</b>	)	<b>Docket No. CWA-05-2013-0019</b>
	)	
<b>Dann R. Kraatz,</b>	)	<b>Proceeding to Assess a Class II Civil Penalty</b>
<b>Martha J. Kraatz</b>	)	<b>under Section 309(g) of the Clean Water Act,</b>
<b>and</b>	)	<b>33 U.S.C. § 1319(g)</b>
<b>DRKF, Inc.</b>	)	
<b>Respondents.</b>	)	
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**CONSENT AGREEMENT AND FINAL ORDER**

1. Complainant, the Director of the Water Division, United States Environmental Protection Agency, Region 5 (“EPA”), and Dann R. Kraatz, Martha J. Kraatz and DRKF, Inc. (“Respondents”) have agreed to the settlement of this action before the filing of a complaint. Therefore, this action is simultaneously commenced and concluded under Rules 22.13(b) and 22.18(b) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* found at 40 C.F.R. §§ 22.13(b) and 22.18(b).
2. EPA institutes this civil administrative proceeding for the assessment of a civil penalty pursuant to the authority granted in Clean Water Act (“CWA”), 33 U.S.C. § 1319(g)(1)(A).
3. The Administrator of EPA has delegated this authority to the Regional Administrator of EPA Region 5, who has duly redelegated this authority to the Water Division Director, EPA Region 5.
4. Respondents consent to the entry of this Consent Agreement and Final Order (“CAFO”), all of the conditions of this CAFO, and the assessment of the civil penalty as outlined in this CAFO.

5. EPA and Respondents agree that the settlement of this matter pursuant to 40 C.F.R. § 22.13(b) is in the public interest and that the entry of this CAFO without engaging in litigation is the most efficient means of resolving this matter.

### **STATUTORY AND REGULATORY BACKGROUND**

6. To restore and maintain the integrity of the nation's water, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into navigable waters of the United States by any person, except in compliance with, *inter alia*, a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344.

7. Section 404 of the CWA, 33 U.S.C. § 1344, authorizes the Secretary of the Army, acting through the Chief of Engineers, U.S. Army Corps of the Engineers ("Corps"), to issue permits for the discharge of dredged or fill material into navigable waters.

8. Section 502(6) of the CWA 33 U.S.C. § 1362(6), defines the term "pollutant" to mean, *inter alia*, dredged spoil, solid waste, sewage, garbage, sewage sludge, biological materials, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.

9. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines the term "discharge of pollutant" to mean any addition of any pollutant to navigable waters from any point source.

10. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines the term "navigable waters" to mean the waters of the United States.

11. 40 C.F.R. § 230.3(s) defines "waters of the United States" to include all waters which are, were, or may be used in interstate or foreign commerce, tributaries thereof, and wetlands adjacent to such waters.

12. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines the term “point source” to mean any discernible, confined, and discrete conveyance from which pollutants are or may be discharged.

13. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the Administrator to assess a Class II civil penalty under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), after consultation with the State, when the Administrator finds, on the basis of any information available, that a person has violated Section 301 of the CWA, 33 U.S.C. § 1311.

### ALLEGATIONS

14. Dann R. Kraatz, Martha J. Kraatz, and DRKF, Inc. (collectively, “Respondents”), are each a “person” as defined under Section 502 of the Act, 33 U.S.C. § 1362.

15. Respondents Dann R. Kraatz and Martha J. Kraatz own and control the property.

16. This matter concerns a property located in Section 27, Township 14 South, Range 1 West, Town of Ullin, Pulaski County, State of Illinois (“the Kraatz Site”).

17. The Kraatz Site is located on a 47.26-acre parcel (**Exhibit 1**). The parcel borders wetlands on a portion of the Cypress Creek National Wildlife Refuge to the south and east. The southeast corner of the parcel borders the Cache River. A ditch (the “Hill Ditch”) on the east side of the Kraatz Site drains directly into the Cache River.

18. The Cache River is a “water of the United States” and “navigable water” as those terms are defined by 40 C.F.R. § 230.3(s) and 33 U.S.C. § 1362(7), respectively.

19. On July 24, 2009, and on August 18, 2009, the United States Army Corps of Engineers (“Corps”) inspected the Kraatz Site referenced in Paragraph 16, above. Using the procedures established in the 1987 Wetlands Delineation Manual and the Midwest Regional

Supplement, the following was observed and identified on approximately 19.24 acres of the

Kraatz Site:

i. Direct observation of dominant hydrophytic vegetation consisting of the following plant species: *Fraxinus pennsylvanica* (Green ash-FACW); *Acer rubrum* (Red maple-FAC); *Ulmus Americana*(American elm-FACW-); *Quercus bicolor* (Swamp white oak-FACW+); *Quercus palustris* (Pin oak-FACW); *Taxodium distichum* (Cypress,sp.-OBL); *Salix nigra* (Willow-FACW); *Betula nigra* (River birch-FACW); *Sagittaria latifolia* (Arrowhead-OBL); *Eleocharis R.* (Spike rush-FACW); *Polygonum sp.* (Knotweed); *Ambrosia L.* (Giant Ragweed-FACU); *Arundinaria Michx.* (Cane sp.-FACW); *Lobelia cardinalis L.* (Cardinal Flower-OBL); *Carex L.* (Sedges sp.-FACW,OBL); and, *Mimulus L.* (Monkeyflower-OBL).

ii. Direct observation of a depleted soil matrix (F3) in all soil samples examined. At depths between 4 inches to 20 inches, soil profiles are described as grey (5YR 5/1) with many distinct yellowish brown (5YR 5/8 - 5YR 4/4) redox. Soils were classified onsite as frequently flooded Bonnie silt loam (334) and Birds silt loam (108), both hydric soils.

iii. Direct primary indicators of hydrology were: direct observation of surface water saturation and ponding throughout the site (A1); direct visual observation of a high water table occurring less than 10 inches from the surface (A2); water marks showing discoloration and stains on the bark of woody vegetation throughout the site (B1); sediment deposits of thin layers of silt and organic materials accumulating over the surface (B2); water stained leaves that have turned grayish and blackish in color due to prolonged inundation (B9), direct observation of living reptiles (turtles) and amphibians (frogs) and oxidized root channels within the upper 12 inches of the soil profiles examined (C3).

iv. Secondary indicators of hydrology included the presence of crayfish burrows as indicated by chimney-like mounds of excavated mud (C8), and visual drainage patterns (B10).

20. The area described in Paragraph 19 is a “wetland” as that term is defined by 40 C.F.R. § 230.3(t).

21. The wetland described in Paragraph 19 is a “water of the United States” and a “navigable water” as those terms are defined by 40 C.F.R. § 230.3(s) and 33 U.S.C. § 1362(7), respectively.

22. On or about May 1, 2009 and continuing through December 1, 2009, Respondents Dann R. Kraatz, and DKRF, Inc., and/or those acting on behalf of Respondents Dann R. Kraatz, and DKRF, Inc., used various machinery, including bulldozers and excavators, to discharge dredged and fill materials into wetlands at the Kraatz Site referenced in Paragraph 19.

23. The machinery referenced in Paragraph 22 constitutes a "point source" within the meaning of the definition set forth in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

24. The discharged dredged and fill material referenced in Paragraph 22, constitutes "pollutants" within the meaning of the definitions set forth in Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

25. The placement of the material in the wetlands referenced in Paragraph 22 constitutes a "discharge of pollutants" within the meaning of the definition set forth in Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

26. At no time relevant to the violations alleged herein did Respondents possess a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, authorizing the discharge of pollutants at the Kraatz Site.

27. Each day pollutants were discharged at the Kraatz Site without a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, constitutes a day of violation of Section 301 of the CWA, 33 U.S.C. § 1311.

28. United States Department of Interior Fish and Wildlife personnel completed partial restoration of the affected wetlands at the Kraatz Site May 18-24, 2012. Since the pollutants were discharged at the Kraatz Site, the wetlands have been and are still recovering. At this time, EPA does not believe active restoration activities by the Respondents are warranted.

**TERMS OF SETTLEMENT**

**Assessment and Payment of Penalty**

29. Based upon the penalty factors set forth in Section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA and Respondents agree to settle this matter for a civil penalty of \$25,000.

30. For the purposes of this proceeding, and pursuant to 40 C.F.R. §§ 22.18(b) and (c), Respondents: (1) admit that EPA has jurisdiction over the subject matter set forth in this CAFO; and (2) neither admit nor deny the facts set forth in this CAFO.

31. For purposes only of allegations and agreements made herein, upon execution of this CAFO, Respondents waive any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO, including any right to request a judicial or administrative hearing on any issue of law or fact set forth in this CAFO, including, but not limited to, their right to request a hearing under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and their right to appellate review of the CAFO found at Section 309(g)(8)(B) of the CWA, 33 U.S.C. § 1319(g)(8)(B).

32. Within thirty (30) days of the effective date of this CAFO Respondents shall pay the \$25,000 civil penalty by:

- a. For checks sent by U.S. Postal Service, send a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

**\* The check must note Respondents' names, the docket number of this CAFO and the billing document number**

- b. For checks sent by express mail (non-U.S. Postal Service), send a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, Missouri 63101

**\* The check must note Respondents' names, the docket number of this CAFO and the billing document number**

- c. For electronic funds transfer, send the transfer payable to "Treasurer, United States of America," to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read: "D68010727 Environmental Protection Agency"

**\* In the comment or description field of the electronic funds transfer, state Respondents' names, the docket number of this CAFO and the billing document number.**

- d. For Automated Clearinghouse (ACH) also known as REX or remittance express, and ACH electronic funds transfer, send the amount payable to "Treasurer, United States of America," to:

US Treasury REX/Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22-checking

**\* In the comment area of the electronic funds transfer, state Respondents' names, the docket number of this CAFO and the billing document number.**

e. For on-line payment, go to [www.pay.gov](http://www.pay.gov). Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

33. This civil penalty is not tax deductible for federal tax purposes.

34. A transmittal letter stating Respondents' names, complete address, and the case docket number must accompany the payment. Respondents shall simultaneously and separately send notice of such payment, including a copy of the check, to each of the following three persons at the address indicated:

Regional Hearing Clerk  
U.S. EPA Region 5  
77 West Jackson Blvd. (E-19J)  
Chicago, IL 60604-3590

David Schulenberg  
Water Division  
U.S. EPA Region 5  
77 West Jackson Blvd. (WW-16J)  
Chicago, IL 60604-3590



Catherine Garypie  
Office of Regional Counsel  
U.S. EPA Region 5  
77 West Jackson Blvd. (C-14J)  
Chicago, IL 60604-3590

35. Respondents' failure to pay the assessed civil penalty in accordance with the provisions of this CAFO will result in the referral of this matter to the United States Department of Justice for collection in accordance with Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review. In addition to any unpaid balance and interest on this penalty, Respondents shall also be required to pay attorneys' fees and costs for collection proceedings and a quarterly nonpayment penalty. This nonpayment penalty shall be in an amount equal to 20% of the aggregate amount of Respondents' penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

36. Notwithstanding any other provisions of this CAFO, interest shall accrue on any amount overdue under the terms of this CAFO at an annual rate calculated in accordance with 40 C.F.R. § 13.11.

#### **OTHER MATTERS**

37. This CAFO settles EPA's claims for civil penalties for the violations alleged above.

38. Nothing in this CAFO relieves Respondents of the duty to comply with the CWA or other federal, state or local laws, statutes or regulations.

39. Respondents certify that they are complying fully with Section 301 of the CWA, 33 U.S.C. § 1344.

40. Nothing in this CAFO is intended to, nor shall be construed to, operate in any way to resolve any criminal liability of Respondents arising from the violations alleged in this CAFO. Notwithstanding any other provision of this CAFO, EPA expressly reserves any and all rights to bring an enforcement action pursuant to the Section 504 of the CWA, 33 U.S.C. § 1364, or other statutory authority should EPA find that the Site is presenting an imminent and substantial endangerment to the health or welfare of persons. EPA also expressly reserves the right to take any action authorized under Section 309 of the CWA, 33 U.S.C. § 1319 for any matters other than the violations alleged in this CAFO and to enforce compliance with this CAFO.

41. This CAFO binds both parties, their officers, directors, employees, successors, and assigns to this action. The representative of each party signing this CAFO certifies that he or she has authority to enter into the terms of this CAFO and bind that party to it.

42. Each party agrees to bear its own costs and fees, including attorneys' fees, in this action.

43. Pursuant to 40 C.F.R. § 22.38, the State of Illinois was notified of this proceeding and the other terms of this settlement.

44. The effective date of this CAFO is the date that the CAFO is filed in the office of the Regional Hearing Clerk, after having been signed by the Regional Administrator or her designated representative and subjected to the requirements of Section 309(g)(4)(C) of the CWA, 33 U.S.C. § 1319(g)(4)(C).

45. This CAFO constitutes the entire agreement between the parties.

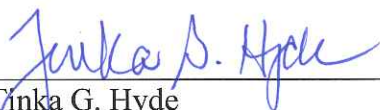
**CONSENT AGREEMENT AND FINAL ORDER**

**In the Matter of:   Dann R. Kraatz,  
                          Martha J. Kraatz  
                          and DRKF, Inc.**

**Docket No.**

FOR EPA:

Dated: August 23, 2013

  
\_\_\_\_\_  
Tinka G. Hyde  
Director, Water Division  
U.S. Environmental Protection Agency, Region 5

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                          Martha J. Kraatz  
                          and DRKF, Inc.**

**Docket No.           CWA-05-2013-0019**

**FOR RESPONDENTS:**

Dated: 08/08/2013

Dann R. Kraatz  
Dann R. Kraatz

Dated: 8/8/2013

Martha J. Kraatz  
Martha J. Kraatz

Dated: 8/8/2013

DRKF, Inc.   Dann R. Kraatz  
DRKF, Inc.   Martha J. Kraatz



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**Docket No.  
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**FINAL ORDER**

This CAFO is hereby approved. The Respondents are hereby ORDERED to comply with all of the terms of the CAFO effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This CAFO disposes of this matter pursuant to 40 C.F.R. § 22.18(c).

By: \_\_\_\_\_  
Susan Hedman  
Regional Administrator  
United States Environmental Protection Agency  
Region 5

Dated: \_\_\_\_\_

**CWA-05-2013-0019**

**EXHIBIT 1**

**Map**



**Exhibit 1: General Site Location**  
**Dann R. Kraatz, Martha J. Kraatz & DRKF, Inc.**  
**Town of Ullin, Pulaski County, Illinois**



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                          Martha J. Kraatz  
                          and DRKF, Inc.**

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**CERTIFICATE OF SERVICE**

I certify that the foregoing "Consent Agreement and Final Order", dated \_\_\_\_\_, 2013, was sent this day in the following manner to the addressees listed below:

Original and One Copy by hand delivery to:

LaDawn Whitehead  
Regional Hearing Clerk  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Copy by Overnight Delivery to:

The Honorable Susan L. Biro, Chief Administrative Law Judge  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Ave., N.W.  
Washington, DC 20005

Copy by E-mail and Regular Mail to:

Dann R. Kraatz,  
Martha J. Kraatz  
DRKF, Inc.  
1855 State Road 146 East  
Anna, IL 62906

\_\_\_\_\_  
Date

\_\_\_\_\_  
Charles Rodriguez, Student Aide