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REG. REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO. CAA-10-2018-0303
	)	
BROOKS CAMP, LLC,	)	
	)	<b>CONSENT AGREEMENT</b>
Prudhoe Bay, Alaska	)	
	)	
Respondent.	)	
	)	

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**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d).

1.2. Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), 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 Brooks Camp, LLC. ("Respondent") agrees to issuance of, the Final Order attached to this Consent Agreement ("Final Order").

## **II. PRELIMINARY STATEMENT**

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of the CAA is proposed to be assessed.

2.3. EPA and the United States Department of Justice jointly determined, pursuant to 42 U.S.C. § 7413(d), that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty action.

2.4. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the CAA together with the specific provisions of the CAA and the implementing regulations that Respondent is alleged to have violated.

## **III. ALLEGATIONS**

### **A. STATUTORY AND REGULATORY BACKGROUND**

#### **i. New Source Performance Standards (“NSPS”)**

3.1. Pursuant to Section 111(b) of the CAA, 42 U.S.C. § 7411(b), EPA has promulgated New Source Performance Standards (“NSPS”) for specified categories of stationary sources of air pollutants that are “new sources.” A “new source” is defined as “a stationary source, the construction or modification of which is commenced after the publication of NSPS

regulations or proposed regulations that are applicable to such source.” 42 U.S.C. § 7411(a)(2). A “stationary source” is defined as including “buildings, structures, facilities or installations that emit or may emit any air pollutant.” 42 U.S.C. § 7411(a)(3). The term “modification” means “any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.” 42 U.S.C. § 7411(a)(4).

3.2. NSPS regulations apply to the owner or operator of any stationary source that contains an “affected facility,” the construction or modification of which is commenced after the date of publication of an NSPS (or, if earlier, the date of publication of any proposed standard) applicable to that facility. 40 C.F.R. § 60.1. “Affected facility” is defined, with reference to a stationary source, as any apparatus to which an NSPS is applicable. 40 C.F.R. § 60.2.

3.3. Section 111(e) of the CAA, 42 U.S.C. § 7411(e), prohibits the operation of any “new source” of air pollutants in violation of an NSPS applicable to such source. Thus, a violation of an NSPS requirement is a violation of Section 111(e) of the CAA.

3.4. EPA has promulgated general provisions for the NSPS at 40 C.F.R. Part 60, Subpart A (“NSPS Subpart A”), which contain general provisions that apply to the owner or operator of any stationary source subject to an NSPS. 40 C.F.R. § 60.1(a).

#### Standards of Performance for Stationary Spark Ignition Internal Combustion Engines

3.5. On January 18, 2008, EPA promulgated NSPS Subpart JJJJ – Standards of Performance for Stationary Spark Ignition Internal Combustion Engines, codified at 40 C.F.R. §§ 60.4230-60.4248, which apply to (1) owners and operators of stationary spark ignition (“SI”) internal combustion engines (“ICE”) that commence construction after June 12, 2006, where the stationary SI ICE are manufactured on or after July 1, 2008, for engines with a maximum engine power less than 500 horsepower (“HP”), and (2) owners and operators of

stationary SI ICE that are modified or reconstructed after June 12, 2006, and (3) any person that modifies or reconstructs any stationary SI ICE after June 12, 2006.

3.6. In accordance with 40 C.F.R. § 60.4246 and Table 3 of 40 C.F.R. Part 40, Subpart JJJJ, the general provisions in 40 C.F.R. Part 60, Subpart A, including 40 C.F.R. 60.8 regarding performance tests, apply to manufacturers, owners, and operators of stationary SI ICE subject to 40 C.F.R. Part 60, Subpart JJJJ.

3.7. In accordance with 40 C.F.R. §§ 60.4230(a)(6) and 60.4236(a), after July 1, 2010, owners or operators may not install a stationary SI ICE with a maximum engine power of less than 500 HP that does not meet the applicable requirements in 40 C.F.R. § 60.4233.

3.8. In accordance with 40 C.F.R. § 60.4233(d), owners and operators of stationary SI ICE with a maximum engine power greater than 19 kilowatts ("KW") (25 HP) and less than 75 KW (100 HP) (except gasoline and rich burn engines that use liquified petroleum gas ("LPG")) must comply with the emission standards in Table 1 to Subpart JJJJ for the owner or operator's emergency stationary SI ICE.

3.9. In accordance with 40 C.F.R. § 60.4243(b), if you are an owner or operator of a stationary SI ICE and must comply with the emission standards specified in 40 C.F.R. § 60.4233(d) or (e), you must demonstrate compliance by either (1) Purchasing an engine certified according to procedures specified in Subpart JJJJ, for the same model year and demonstrating compliance according to one of the methods specified in 40 C.F.R. § 60.4243(a) or (2) Purchasing a non-certified engine and demonstrating compliance with the emission standards specified in 40 C.F.R. § 60.4233(d) or (e) and according to the requirements specified in 40 C.F.R. § 60.4244, as applicable, and according to 40 C.F.R. § 60.4243(b)(2)(i) and (ii).

3.10. In accordance with 40 C.F.R. § 60.4245(b), for all stationary SI emergency ICE greater than 25 HP and less than 130 HP manufactured on or after July 1, 2008, that do not meet

the standards applicable to non-emergency engines, the owner or operator of must keep records of the hours of operation of the engine that is recorded through a non-resettable hour meter. The owner or operator must document how many hours are spent for emergency operation, including what classified the operation as emergency and how many hours are spent for non-emergency operation.

3.11. In accordance with 40 C.F.R. § 60.4243(b)(2)(i), if you are an owner or operator of a stationary SI ICE greater than 25 HP and less than or equal to 500 HP, you must keep a maintenance plan and records of conducted maintenance and must, to the extent practicable, maintain and operate the engine in a manner consistent with good air pollution control practice for minimizing emissions. In addition, you must conduct an initial performance test to demonstrate compliance.

**ii. National Emissions Standards for Hazardous Air Pollutants**

3.12. Sections 112(c), (d) and (k) of the CAA require EPA to publish a list of categories of “stationary sources” of hazardous air pollutants (“HAPs”), and to promulgate regulations establishing emission standards for major sources and certain area sources within those categories. 42 U.S.C. §§ 7412(c), (d) and (k). These standards are known as the National Emissions Standards for Hazardous Air Pollutants (“NESHAP”) for Source Categories, and are codified at 40 C.F.R. Part 63.

3.13. “Stationary source” under Section 112 of the CAA has the same meaning as the term has under Section 111(a)(3) of the CAA. 42 U.S.C. § 7412(a)(3). Section 112 of the CAA defines “major source” as any stationary source, or group of stationary sources, located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, more than 10 tons per year of any single HAP or 25 tons per year or

more of any combination of HAPs. 42 U.S.C. § 7412(a)(1). An “area source” is any source that is not a “major source.” 42 U.S.C. § 7412(a)(2).

3.14. HAPs are defined at 40 C.F.R. § 63.2 to mean pollutants listed in, or pursuant to, Section 112(b) of the CAA.

3.15. “New source” is defined as a stationary source the construction or reconstruction of which is commenced after the Administrator first proposes regulations under Section 112 establishing an emission standard applicable to such source. 42 U.S.C. § 7412(a)(4); see also 40 C.F.R. § 63.2.

3.16. “Existing Source” means any stationary source other than a new source. 42 U.S.C. § 7412(a)(10); see also 40 C.F.R. § 63.2.

3.17. EPA has promulgated general provisions for the NESHAPs at 40 C.F.R. Part 63, Subpart A (“NESHAP Subpart A”), which contain general provisions that apply as specified in the relevant NESHAP. 40 C.F.R. § 63.1(a)(4)(i). In particular, the regulation at 40 C.F.R. § 63.9(b) requires the affected source to submit an initial notification no later than 120 calendar days after the effective date of the relevant standard. In addition, the regulation at 40 C.F.R. § 63.9(h) requires the affected source to submit a notification of compliance status before the close of business on the 60th day following the completion of the relevant compliance demonstration activity specified in the relevant standard.

3.18. Pursuant to 40 C.F.R. § 63.4(a), no “owner or operator” shall operate any “affected source” in violation of an applicable NESHAP, except under an extension of compliance or exemption from compliance as provided in that section or in Section 112(i)(4) of the CAA, 42 U.S.C. § 7412(i)(4). An “affected source” is defined as a “collection of equipment, activities, or both within a single contiguous area and under common control that is included in a

section 112(c) source category or subcategory for which a section 112(d) standard or other relevant standard is established pursuant to section 112 of the [CAA].” 40 C.F.R. § 63.2.

NESHAP for Stationary Reciprocating Internal Combustion Engines

3.19. Pursuant to Sections 112(c) and (k) of the CAA, on June 15, 2004, EPA promulgated 40 C.F.R. Part 63, Subpart ZZZZ, (“RICE NESHAP”) for Stationary Reciprocating Internal Combustion Engines. 69 Fed Reg. 33,506. The RICE NESHAP applies to the owner or operator of a stationary reciprocating internal combustion engine located at a major or area source of HAP emissions.

3.20. The term “stationary reciprocating internal combustion engine” is defined at 40 C.F.R. § 63.6675 to mean, “any reciprocating internal combustion engine which uses reciprocating motion to convert heat energy into mechanical work and which is not mobile. Stationary RICE differ from mobile RICE in that a stationary RICE is not a non-road engine as defined at 40 C.F.R. § 1068.30, and is not used to propel a motor vehicle or a vehicle used solely for competition.”

3.21. In accordance with 40 C.F.R. § 63.6590(a), the affected source subject to the RICE NESHAP is any existing, new, or reconstructed stationary RICE located at a major or area source of HAP emissions, excluding stationary RICE being tested at a stationary RICE test cell/stand.

3.22. In accordance with 40 C.F.R. § 63.6590(a)(2)(iii), a stationary RICE located at an area source of HAP emissions is new if you commenced construction of the stationary RICE on or after June 12, 2006.

3.23. In accordance with 40 C.F.R. § 63.6590(a)(3)(iii), a stationary RICE located at an area source of HAP emissions is reconstructed if you meet the definition of reconstruction in 40 C.F.R. § 63.2 and reconstruction is commenced on or after June 12, 2006.

3.24. In accordance with 40 C.F.R. § 63.6590(c), an affected source that is a new or reconstructed stationary RICE located at an area source must meet the requirements of the RICE NESHAP by meeting the requirements of 40 C.F.R. Part 60, Subpart JJJJ, for spark ignition engines. No further requirements apply for such engines under the RICE NESHAP.

#### B. GENERAL ALLEGATIONS

3.25. Respondent is a corporation doing business in the state of Alaska. Respondent is a “person” as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

3.26. Respondent is the owner of the facility located at 75 Sag River Road in Prudhoe Bay, Alaska (“Facility”).

3.27. The Facility is a “stationary source” as that term is defined in Sections 111(a)(3) and 112(a)(3) of the Act, 42 U.S.C. §§ 7411(a)(3), 7412(a)(3).

3.28. The Facility is an “area source” of HAPs as that term is defined in the RICE NESHAP.

3.29. One stationary SI ICE at the Facility was installed in February 2014 (“Fire Back-Up Engine”).

3.30. The Fire Back-Up Engine has a power output rating of 29 kilowatts.

3.31. The Fire Back-Up Engine fires natural gas.

3.32. The Fire Back-Up Engine is an “emergency stationary RICE” and “emergency stationary internal combustion engine” as those terms are defined at 40 C.F.R. §§ 60.4248 and 63.6675.



3.33. The Fire Back-Up Engine commenced operation prior to February 28, 2014.

3.34. Therefore, the Fire Back-Up Engine is subject to 40 C.F.R. Part 60, Subpart JJJJ and the RICE NESHAP.

## C. VIOLATIONS

### i. New Source Performance Standards

#### Counts 1 through 2: Standards of Performance for Stationary Spark Ignition Internal Combustion Engines

3.35. At all times relevant to this Consent Agreement, the Fire Back-Up Engine has been subject to the emissions standards in 40 C.F.R. § 60.4233 and the compliance requirements in 40 C.F.R. § 60.4243.

3.36. At no time relevant to this Consent Agreement was the Fire Back-Up Engine certified to the emission standards in 40 C.F.R. § 60.4231(a) through (c).

3.37. Therefore, in accordance with 40 C.F.R. §§ 60.4243(b) and 60.8(a), the Fire Back-Up Engine was required to comply with the emissions standards in 40 C.F.R. § 60.4233, and an initial performance test on each of the engines was required to be conducted by no later than 180 days after engine startup to demonstrate compliance.

3.38. In accordance with 40 C.F.R. §§ 60.4243(b) and 60.8(a), Respondent was required to conduct an initial performance test on the Fire Back-Up Engine by no later than 180 days after February 28, 2014.

3.39. Respondent did not conduct an initial performance test on the Fire Back-Up Engine until February 6, 2018, in violation of 40 C.F.R. § 60.4243(b) and 40 C.F.R. § 60.8(a).

3.40. In accordance with 40 C.F.R. § 60.4245(b), for all stationary SI emergency ICE greater than 25 IIP and less than 130 HP manufactured on or after July 1, 2008, that do not meet the standards applicable to non-emergency engines, the owner or operator of must keep records

of the hours of operation of the engine that is recorded through a non-resettable hour meter. The owner or operator must document how many hours are spent for emergency operation, including what classified the operation as emergency and how many hours are spent for non-emergency operation.

3.41. Between February 1, 2014, and December 21, 2017, Respondent failed to keep records of the hours of operation of the Fire Back-Up Engine in violation of 40 C.F.R. § 60.4245(b).

**ii. National Emissions Standards for Hazardous Air Pollutants**

**Count 3: NESHAP for Stationary Reciprocating Internal Combustion Engines**

3.42. At all times relevant to this Consent Agreement, in accordance with 40 C.F.R. § 63.6590(c), the Fire Back-Up Engine must meet the requirements of the RICE NESHAP by meeting the requirements of 40 C.F.R. Part 60, Subpart JJJJ, for stationary SI ICE.

3.43. The allegations in Paragraphs 3.35 through 3.41 are incorporated by reference and realleged herein.

3.44. Between at least February 1, 2014, and February 6, 2018, Respondent failed to meet the requirements in 40 C.F.R. Part 60, Subpart JJJJ applicable to the Fire Back-Up Engine and therefore violated 40 C.F.R. § 63.6590(c).

**Enforcement Authority**

3.45. Under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$37,500 per day of violation for violations that occurred after December 6, 2013, through November 2, 2015. Under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$46,192 per day of violation for violations that occurred after November 2, 2015.

#### **IV. TERMS OF SETTLEMENT**

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. As required by Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), EPA has taken into account the size of the business, the economic impact of the penalty on the business, Respondent's full compliance history and good faith efforts to comply, the duration of the violations as established by any credible evidence, payment by Respondent of penalties previously assessed for the same violations, the economic benefit of noncompliance, the seriousness of the violations, and such other factors as justice may require. After considering these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$10,871 (the "Assessed Penalty").

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be 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, Missouri 63197-9000

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

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, 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 155  
Seattle, Washington 98101  
young.teresa@epa.gov

John Keenan  
U.S. Environmental Protection Agency  
Region 10, Mail Stop OCE-101  
1200 Sixth Avenue, Suite 155  
Seattle, Washington 98101  
keenan.john@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), to collect the Assessed Penalty under the CAA. In any collection action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall be responsible for payment of the following amounts:

a. Interest. Any unpaid portion of the Assessed Penalty shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of the Final Order, 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 contained herein.

b. Attorneys' Fees, Collection Costs, Nonpayment Penalty. Pursuant to 42 U.S.C. § 7413(d)(5), should Respondent fail to pay the Assessed Penalty and interest on a timely basis, Respondent shall also be required to pay the United States' enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

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

4.11. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violation(s) alleged in Part III.

4.12. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.13. For the purposes of this proceeding, Respondent expressly waives any right to contest the allegations contained in this Consent Agreement and to appeal the Final Order.

4.14. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.


4.15. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this Consent Agreement, and to any stated permit action.

4.16. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

September 26, 2018

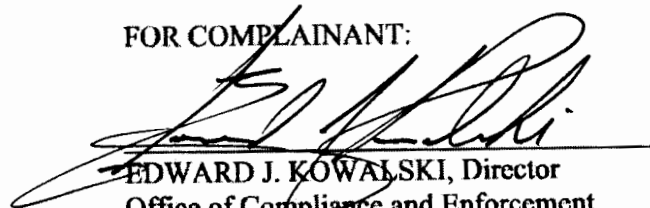
FOR RESPONDENT:

  
\_\_\_\_\_  
DAVID PFEIFFER, President  
Brooks Camp, LLC

DATED:

9/26/2018

FOR COMPLAINANT:

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

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO. CAA-10-2018-0303
	)	
Brooks Camp, LLC	)	<b>FINAL ORDER</b>
	)	
Prudhoe Bay, Alaska	)	
	)	
Respondent.	)	
	)	

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1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has re delegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under the CAA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order 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 Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CAA and regulations promulgated or permits issued thereunder and any applicable implementation plan requirements.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this 27 day of September, 2018.



RICHARD MEDNICK  
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: Brooks Camp, LLC, Docket No.: CAA-10-2018-0303**, 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:

Brett S. Dugan  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-113  
1200 Sixth Avenue, Suite 155  
Seattle, Washington 98101

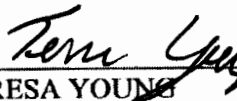
Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

David Pfeifer  
President  
Brooks Camp, LLC  
4300 B Street, Suite 308  
Anchorage, Alaska 99503

Rachel H. Cox, Esq.  
Stoel Rives LLP  
600 University Street, Suite 3600  
Seattle, Washington 98101

Teresa B. Clemmer, Esq.  
Bessenyey & Van Tuyn, LLC  
310 K Street, Suite 200  
Anchorage, AK 99501

DATED this 27 day of September 2018.

  
\_\_\_\_\_  
TERESA YOUNG  
Regional Hearing Clerk  
EPA Region 10