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EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. CWA-10-2008-0058
)	
ROBIN S. BEHRENS,)	
CHARLES E. KRAMER, AND)	CONSENT AGREEMENT AND
C.E. KRAMER CRANE &)	FINAL ORDER
CONTRACTING, INC.,)	
)	
Respondents,)	
)	
Bonner County, Idaho.)	

I. AUTHORITIES

1.1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA" or "Complainant") by Section 309(g)(2)(B) of the Clean Water Act ("CWA" or "Act"), 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 in turn has re delegated this authority to the Regional Judicial Officer.

1.3. Pursuant to Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment

CONSENT AGREEMENT AND
FINAL ORDER - 1

Docket No. CWA-10-2008-0058

U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 900 (ORC-158)
Seattle, Washington 98101
(206) 553-1796

1 of Civil Penalties,” 40 C.F.R. Part 22, EPA hereby issues; and Robin S. Behrens, Charles E.
2 Kramer, and C.E. Kramer Crane & Contracting, Inc. (collectively “Respondents”) hereby agree
3 to issuance of, the Final Order contained in Part V of this CAFO.

4 **II. PRELIMINARY STATEMENT**

5 2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this CAFO
6 commences this proceeding which will conclude when the Final Order contained in Part V of
7 this CAFO becomes effective.

8 2.2. Part III of this CAFO contains a concise statement of the factual basis for the
9 alleged violations of the CWA, together with specific provisions of the CWA that Respondents
10 have alleged to have violated.

11 **III. ALLEGATIONS**

12 3.1. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of
13 pollutants into waters of the United States by any person, except as authorized by a permit issued
14 pursuant to Section 402 or 404 of the Act, 33 U.S.C. §§ 1342 or 1344. The unpermitted
15 discharge of any pollutant from a point source constitutes a violation of Section 301(a) of the
16 Act, 33 U.S.C. § 1311(a). Section 502(12), 33 U.S.C. § 1362(12), defines the term “discharge of
17 any pollutant” to include “any addition of any pollutant to navigable waters from any point
18 source.” “Navigable waters” are defined as “waters of the United States.” 33 U.S.C. § 1362(7).
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20 3.2. Respondents are “persons” within the meaning of Sections 301(a) and 502(5) of
21 the Act, 33 U.S.C. §§ 1311(a) and 1362(5).
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1 3.3. Robin S. Behrens owns, possesses, or controls real property near Ponderay, in
2 Bonner County, Idaho; and located within Section 11, Township 57 North, Range 2 West, Boise
3 Meridian ("Site"). The Site is adjacent to Lake Pend Oreille.

4 3.4. The Site contains wetlands within the meaning of 33 C.F.R. § 328.4(8)(b); the
5 wetlands meet the criteria for jurisdictional wetlands in the 1987 "Federal Manual for Identifying
6 and Delineating Jurisdictional Wetlands."

7 3.5. Lake Pend Oreille is a "navigable water" within the meaning of Section 502(7) of
8 the Act, 33 U.S.C. § 1362(7), and "waters of the United States" within the meaning of 40 C.F.R.
9 § 232.2.

10 3.6. The Site's wetlands are adjacent to Lake Pend Oreille within the meaning of 33
11 C.F.R. § 328.4(8)(c), and therefore, are jurisdictional waters of the United States under the Act.

12 3.7. On or about September 8 and October 31, 2005, at times more fully known to
13 Respondents, Robin S. Behrens directed Charles E. Kramer and C.E. Kramer Crane &
14 Contracting, Inc. to place fill material into approximately 0.5 acre of wetlands at the Site.

15 3.8. Upon information and belief, Respondents used heavy equipment to place the fill
16 material into the Site's wetlands. The heavy equipment used to fill these waters is a "point
17 source" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

18 3.9. The fill material that Respondents caused to be discharged included, among other
19 things, dirt and rock, each of which constitutes a "pollutant" within the meaning of Section
20 502(6) of the Act, 33 U.S.C. § 1362(6).

1 3.10. By causing such fill material to enter waters of the United States, Respondents
2 engaged in the "discharge of pollutants" from a point source within the meaning of Sections 301
3 and 502(12) of the Act, 33 U.S.C. §§ 1311 and 1362(12).

4 3.11. Respondents' discharges of dredged and/or fill material was not authorized by any
5 permit issued pursuant to Section 402 or 404 of the Act, 33 U.S.C. §§ 1312 or 1314.

6 3.12. Respondents' discharge of pollutants into waters of the United States at the Site
7 without a permit constitutes a violation of Section 301 of the Act, 33 U.S.C. § 1311.

8 3.13. On or about May 15, 2006, Respondents fully complied with a U.S. Army Corps
9 of Engineers' order to remove the unauthorized fill, restore hydrology, and restore the plant
10 vegetation in the wetlands at the Site.

11 3.14. Each day the authorized fill material remained in place without the required
12 permit constituted a day of violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

13 3.15. In accordance with Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B),
14 and 40 C.F.R. Part 19, Respondents are liable for civil penalties not to exceed \$11,000 per day
15 for each day during which the violation continued, up to a maximum of \$157,500.

16 **IV. CONSENT AGREEMENT**

17 4.1. Respondents stipulate that EPA has jurisdiction over the subject matter alleged in
18 this CAFO.

19 4.2. Respondents neither admit nor deny the specific factual allegations contained in
20 Part III of this CAFO.

21 4.3. As required under Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), EPA has
22 taken into account the nature, circumstances, extent, and gravity of the alleged violations as well
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1 as Respondents' economic benefit of noncompliance, ability to pay, and other relevant factors.
2 After considering all of these factors, EPA has determined and Respondents agree that an
3 appropriate penalty to settle this action is in the amount of FORTY THOUSAND DOLLARS
4 (\$40,000). This penalty amount has been agreed upon in consideration of the statutory penalty
5 factors identified in Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3).

6 4.4. Respondents' consent to the issuance of the Final Order set forth in Part V, below,
7 and agree to pay the total civil penalty set forth in Paragraph 4.3 within 30 days of the effective
8 date of this Final Order.

9 4.5. Payment under this CAFO shall be made by cashier's check or certified check,
10 payable to the order of "Treasurer, United States of America" and delivered to the following
11 address:
12

13 U.S. Environmental Protection Agency
14 Fines and Penalties
15 Cincinnati Finance Center
16 PO Box 979077
17 St. Louis, MO 63197-9000

18 Respondents shall note on the check the title and docket number of this case.

19 4.6. Respondents shall serve photocopies of the check described in Paragraph 4.5 on
20 the Regional Hearing Clerk and the EPA Region 10 Office of Compliance and Enforcement at
21 the following addresses:

22 Regional Hearing Clerk
23 U.S. Environmental Protection Agency
24 Region 10
25 1200 Sixth Avenue, Suite 900 (ORC-158)
Seattle, Washington 98101

1 U.S. Environmental Protection Agency
2 Idaho Operations Office
3 Attn: John Olson
4 1435 North Orchard Street
5 Boise, Idaho 83706

6 4.7. If Respondents fail to pay the penalty assessed by this CAFO in full by the due
7 date set forth in Paragraph 4.3, Respondents may be subject to a civil action to collect the
8 assessed penalty under the CWA, together with interest, fees, costs, and additional penalties
9 described below. In any collection action, the validity, amount, and appropriateness of the
10 penalty shall not be subject to review.

11 4.8. If Respondents fail to pay any portion of the penalty assessed by this CAFO in
12 full by the due date set forth in Paragraph 4.4, Respondents shall be responsible for payment of
13 the amounts described below:

14 4.8.1. Interest: Pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9),
15 any unpaid portion of the assessed penalty shall bear interest at a rate established by the
16 Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the
17 Final Order set forth in Part V, below, provided, however, that no interest shall be
18 payable on any portion of the assessed penalty that is paid within 30 days of the effective
19 date of the Final Order.

20 4.8.2. Attorneys Fees, Collection Costs, Nonpayment Penalty: Pursuant to
21 Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), if Respondents fail to pay on a
22 timely basis the amount of the penalty set forth in Paragraph 4.3, Respondents shall pay
23 (in addition to any assessed penalty and interest) attorneys fees and costs for collection
24 proceedings and a quarterly nonpayment penalty for each quarter during which such
25

1 failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty
2 percent (20%) of the aggregate amount of Respondents' penalties and nonpayment
3 penalties which are unpaid as of the beginning of such quarter.

4 4.9. The penalty described in Paragraph 4.3, including any additional costs incurred
5 under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be
6 deductible for purposes of federal taxes.

7 4.10. This CAFO shall not relieve Respondents of their obligation to comply with all
8 applicable provisions of federal, state, or local law; nor shall the CAFO be construed to be a
9 ruling on, or determination of, any issue related to any federal, state, or local permit.

10 4.11. Respondents, or the undersigned representatives of the Respondents, certify that
11 they are fully authorized to enter into the terms and conditions of this CAFO and to bind
12 Respondents to this document. This CAFO may be executed in multiple counterparts, each of
13 which shall be deemed to have the same force and effect as an original. A facsimile signature
14 shall be treated as an original.

15 4.12. Except as described in Subparagraph 4.8.2, above, each party shall bear its own
16 costs in bringing or defending this action.

17 4.13. Respondents expressly waive any rights to contest the allegations and to appeal
18 the Final Order set forth in Part V, below.

19 4.14. The provisions of this CAFO shall bind Respondents and their officers, directors,
20 agents, servants, employees, successors, and assigns.

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**CONSENT AGREEMENT AND
FINAL ORDER - 7**

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(206) 553-1796**

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2 4.15. The above provisions are STIPULATED AND AGREED upon by Respondents
3 and EPA.

4
5 **FOR RESPONDENTS**

6 DATED:

7
8 2-25-08

ROBIN S. BEHRENS:



Robin S. Behrens

10 CHARLES E. KRAMER

11
12 _____
Charles E. Kramer

13
14 C.E. KRAMER CRANE & CONTRACTING, INC.

15
16 _____
17 For C.E. Kramer Crane & Contracting, Inc.

18 **FOR COMPLAINANT**

19 DATED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

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21 _____
22 Ankur K. Tohan
Assistant Regional Counsel
For Complainant

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4.15. The above provisions are STIPULATED AND AGREED upon by Respondents and EPA.

FOR RESPONDENTS

DATED: ROBIN S. BEHRENS:

Robin S. Behrens

CHARLES E. KRAMER

3/10/08

Charles E. Kramer

Charles E. Kramer

C.E. KRAMER CRANE & CONTRACTING, INC.

3/10/08

Charles E. Kramer

PRESIDENT
For C.E. Kramer Crane & Contracting, Inc.

FOR COMPLAINANT

DATED: U.S. ENVIRONMENTAL PROTECTION AGENCY:

3/11/08

Ankur K. Tohan

Ankur K. Tohan
Assistant Regional Counsel
For Complainant

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V. FINAL ORDER

It is hereby ordered and adjudged as follows:

5.1. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondents are hereby ordered to comply with the foregoing terms of the settlement.

5.2. This CAFO shall constitute a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III, above. 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, the CWA regulations, and/or any CWA permits.

5.3. In accordance with Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the Idaho Department of Water Resources has been given an 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 Act, 33 U.S.C. § 1319(g)(4)(A), EPA has published public notice of its intent to assess an administrative penalty against Respondents and invited public comment in accordance with 40 C.F.R. § 22.45. More than forty 40 days have elapsed since the issuance of this public notice, and EPA has received no petitions to set aside this Consent Agreement or Final Order.

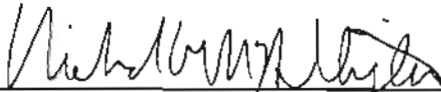
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2 5.5. This Final Order shall become effective upon filing.
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5 SO ORDERED this 25th day of April, 2008.
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9 RICHARD G. McALLISTER
10 Regional Judicial Officer
11 U.S. Environmental Protection Agency
12 Region 10
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CONSENT AGREEMENT AND
FINAL ORDER - 10

Docket No. CWA-10-2008-0058

U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 900 (ORC-158)
Seattle, Washington 98101
(206) 553-1796

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Robin S. Behrens, Charles E. Kramer, and C.E. Kramer Crane & Contracting, Inc., DOCKET NO.: CWA-10-2008-0058** was filed with the Regional Hearing Clerk on April 25, 2008.

On April 25, 2008 the undersigned certifies that a true and correct copy of the document was delivered to:

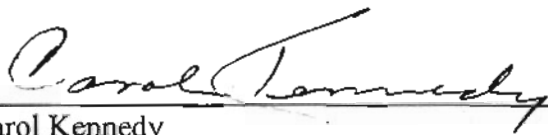
Ankur Tohan, Esquire
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on April 25, 2008, to:

Robin S. Behrens
883 Grand Vista Way
Grand Junction, CO 81506

Charles E. Kramer
C.E. Kramer Crane & Contracting, Inc.
HCR-01, Box 437
Naples, ID 83847

DATED this 25th day of April 2008.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10