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HEARINGS CLERK  
EPA--REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: )  
) DOCKET NO. CWA-10-2014-0002  
)  
)  
WRANGELL OIL, INC., )  
Wrangell, Alaska, ) **CONSENT AGREEMENT AND**  
) **FINAL ORDER**  
)  
Respondent. )  
\_\_\_\_\_ )

**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”) 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 Sections 309(g)(1) and (2)(B) of the CWA, 33 U.S.C. §§ 309(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 Wrangell Oil, Inc. (“Respondent”) agrees to issuance of, the Final Order contained in Part V of this CAFO.

## II. PRELIMINARY STATEMENT

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

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10, has been delegated the authority to sign consent agreements between EPA and the party against whom a Class II penalty, pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), 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. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the “discharge of a pollutant” by any person into navigable waters of the United States except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

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

3.3. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, *inter alia*, solid waste, sewage, garbage, sewage sludge, rock, sand, biological materials, and industrial waste.

3.4. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “waters of the United States.” EPA’s regulations define “waters of the United States” to include waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; all interstate waters; and tributaries to those waters. 40 C.F.R. § 122.2.

3.5. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines the term “point source” to include any “pipe, ditch, channel, tunnel, or conduit...from which pollutants are or may be discharged.”

3.6. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines the term “person” to include, *inter alia*, an individual, corporation, partnership, or association.

3.7. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), specifies that an NPDES permit is required for any storm water discharge “associated with industrial activity.”

3.8. On September 28, 2007, EPA issued NPDES Permit AK-002945-9 (“Permit”) to Respondent, authorizing the discharge of treated storm water runoff, in accordance with the conditions and requirements set forth therein. The Permit became effective on March 1, 2008 and was set to expire on February 28, 2013. The Permit was administratively continued as of March 1, 2013.

3.9. Respondent is a corporation organized under the laws of Alaska and is therefore a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

3.10. At all times relevant to this action, Respondent was the owner and operator of the bulk petroleum fuel terminal facility (“Facility”), located at 1427 Peninsula Street, Wrangell, Alaska, 99929. The Facility sells heating oil and gasoline to local commercial and residential customers, and provides marine fueling services from a small Respondent-operated marina. The Facility’s tank farm consists of seven aboveground storage tanks with a maximum storage

capacity of 240,000 gallons. The tank farm is located within a secondary containment structure and has three catch basins to collect storm water and spills. The catch basins drain to the Facility's oil/water separator prior to discharge. There are also three storm water catch basins located in the loading and truck rack area which drain to the oil/water separator. The Facility's oil/water separator discharges via Outfall 001.

3.11. The Facility is a point source within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2. In the alternative, the Facility contains point sources.

3.12. At all times relevant to this action, Respondent was authorized to discharge pollutants from the Facility, pursuant to the Permit. The Permit authorizes discharge from Outfall 001 into Wrangell Harbor.

3.13. Wrangell Harbor is currently used, was used in the past, or may be susceptible to use in interstate and foreign commerce, and thus Wrangell Harbor is a "water of the United States" as defined in 40 C.F.R. § 122.2, and a "navigable water" as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

#### **Count 1: Failure to Conduct and Record Monitoring Pursuant to the Permit**

3.14. Part I.B.1., Table 1, of the Permit requires the permittee to limit and monitor discharges from Outfall 001. The monitoring requirements include visual sheen observations, monthly discharge flow measurements and other monthly and semiannual pollutant parameter sampling. Part III.F. of the Permit requires the permittee to maintain records of monitoring information. Part III.B. of the Permit requires the permittee to summarize the monitoring results monthly on the discharge monitoring report, EPA Form No. 3320-1, or equivalent, and submit reports quarterly to EPA.

3.15. Respondent submitted EPA Form No. 3320-1 once, in January 2010, indicating no discharge.

3.16. Respondent submitted information to EPA in June 2013 indicating no discharge in December 2008, and July 2009.

3.17. Respondent failed to sample discharges from November 1, 2008 through November 30, 2008, from January 1, 2009 through June 30, 2009, from August 1, 2009 through December 31, 2009, and from February 1, 2010 through March 31, 2013, in violation of the Permit.

3.18. Respondent failed to maintain monitoring records of discharge flow measurements and other monthly and semiannual pollutant parameter sampling from November 1, 2008 through November 30, 2008, from January 1, 2009 through June 30, 2009, from August 1, 2009 through December 31, 2009, and from February 1, 2010 through March 31, 2013, in violation of the Permit.

3.19. Respondent failed to submit Form No. 3320-1, or equivalent, to EPA from November 1, 2008 through December 31, 2009, and from February 1, 2010 through March 31, 2013, in violation of the Permit.

**Count 2: Failure to Develop a Quality Assurance Plan Pursuant to the Permit**

3.20. Part II.A. of the Permit requires the permittee to develop and implement a Quality Assurance Plan ("QAP") for all monitoring requirements of the Permit. The QAP must be developed and implemented within 120 days of the effective date of the Permit, and a copy of the QAP must be kept on site and made available to EPA upon request. The effective date of the Permit was March 1, 2008.

3.21. As of the EPA inspection in July 2012, Respondent had not developed a QAP.

3.22. Respondent failed to develop and implement a QAP from November 1, 2008 through March 31, 2013, in violation of the Permit.

**Count 3: Failure to Develop a Best Management Practices Plan Pursuant to the Permit**

3.23. Part II.B. of the Permit requires the permittee to develop and implement a Best Management Practices (“BMP”) Plan to prevent or minimize the generation and potential for release of pollutants from the Facility to waters of the United States. The BMP Plan must be developed and implemented within 120 days of the effective date of the Permit, and a copy of the BMP Plan must be kept on site and made available to EPA upon request. The effective date of the Permit was March 1, 2008.

3.24. As of the EPA inspection in July 2012, Respondent had not developed a BMP Plan.

3.25. Respondent failed to develop and implement a BMP Plan from November 1, 2008 through March 31, 2013, in violation of the Permit.

3.26. Under Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), EPA may assess an administrative penalty when EPA finds that “any person has violated any permit condition or limitation” in a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. Consequently, pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, Respondent may be liable for an administrative assessment of penalties for violations at the Facility in an amount not to exceed \$11,000 per day, up to a maximum of \$157,500, for each violation that occurred from March 15, 2004, through January 12, 2009, and for an amount not to exceed \$16,000 per day, up to a maximum of \$177,500, for each violation that occurred after January 12, 2009.

#### IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations contained in Part III of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in Part III of 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 FORTY-FIVE THOUSAND FIVE HUNDRED DOLLARS (\$45,500.00).

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within 30 calendar days of the effective date of the Final Order.

4.5. Payment under this CAFO must be made by cashier's check or certified check 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

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

4.6. Respondent must deliver via United States mail a photocopy of the check described in Paragraph 4.5 to 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-158  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

Rick Cool  
U.S. Environmental Protection Agency  
Region 10, Mail Stop OCE-133  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

4.7. If Respondent fails 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 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 the 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 that 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, 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. Except as described in Subparagraph 4.7.2., each party shall bear its own fees and costs in bringing or defending this action.

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

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

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

DATED:

9/25/13

FOR WRANGELL OIL, INC.:



Signature

Name: William B. Priddy

Title: President

DATED:

10/17/2013

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. Respondent is ordered to comply with the terms of the 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 does not waive, extinguish, or otherwise affect Respondent's 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 Alaska Department of Environmental Conservation has been given the opportunity to consult with EPA regarding the assessment of the administrative civil penalty against Respondent.

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 Respondent. 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 4<sup>th</sup> day of December, 2013.



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: Wrangell Oil, Inc., Docket No. CWA-10-2014-0002**, 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:

Kris Leefers  
U.S. Environmental Protection Agency  
Region 10, M/S: ORC-158  
1200 Sixth Avenue, Suite 900  
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:

William B. Privett  
Wrangell Oil, Inc.  
P.O. Box 776  
Wrangell, AK 99929

4<sup>th</sup> of December 2013 

Dated

Candace H. Smith  
Regional Hearing Clerk  
EPA Region 10

