

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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HEARINGS CLERK
EPA--REGION 10

In the Matter of:)
)
)
)
Kramer Marine, Inc.)
Hope, Idaho)
)
Respondent)
)
_____)

DOCKET NO. CWA-10-2011-0002
CONSENT AGREEMENT AND
FINAL ORDER

1. 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 311(b)(6)(B)(i) of the Clean Water Act (Act), as amended by the Oil Pollution Act of 1990. 33 U.S.C. § 1321(b)(6)(B)(i).

1.2. The Administrator has delegated this authority to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer.

1.3. In accordance with Section 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, EPA issues and Kramer Marine, Inc. (Respondent) agrees to issuance of the Final Order in Part 5 of this CAFO.

2. 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 in Part 5 of this CAFO becomes effective.

2.2. A concise statement of the factual bases for the alleged violations and specific references to the Act's provisions and implementing regulations Respondent is alleged to have violated appears in Part 3 of this CAFO.

3. ALLEGATIONS

3.1. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil or a hazardous substance into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or the environment of the United States.

3.2. "Navigable waters" are defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1.

3.3. "Oil" is defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), as oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

3.4. Quantities of oil that may be harmful to the public health or welfare or the environment of the United States are defined to include discharges that cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines, or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.
40 C.F.R. § 110.3.

3.5. Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), and 40 C.F.R. Part 19 authorize EPA to assess a civil penalty not to exceed \$37,500 against any owner, operator, or person in charge of an onshore facility from which oil or a hazardous substance is discharged in violation of Section 311(b)(3).

3.6. Respondent Kramer Marine, Inc., a corporation organized under the laws of the State of Idaho, is a “person” within the meaning of Section 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7).

3.7. Respondent is the “owner or operator,” within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), of a marina located on Highway 200 in Hope, Idaho (Facility).

3.8. The Facility is an “onshore facility” within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10).

3.9. The Facility is located adjacent to Ellisport Bay, which is part of Lake Pend Oreille. Ellisport Bay and Lake Pend Oreille are navigable waters of the United States.

3.10. On August 12, 2009, Respondent spilled approximately 80 gallons of diesel fuel from the 400-gallon fuel tank of a tugboat into Ellisport Bay. The spill resulted from a crane accident that occurred at the Facility during a lift operation of the tugboat from Ellisport Bay.

3.11. Respondent’s August 12, 2009 discharge of oil from the Facility caused a sheen upon the surface of Ellisport Bay and adjoining shorelines.

3.12. Cleanup of the August 12, 2009 diesel spill was completed by August 17, 2009.

3.13. Respondent’s August 12, 2009 discharge of oil from the Facility into or upon navigable waters of the United States and adjoining shorelines in a quantity that may be harmful, as determined by 40 C.F.R. § 110.3, violated Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3).

4. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations in Part 3 of this CAFO.

4.2. Respondent neither admits nor denies the factual allegations in Part 3 of this CAFO.

4.3. EPA has determined and Respondent agrees that an appropriate penalty to settle this action is THIRTEEN-THOUSAND FIVE-HUNDRED DOLLARS (\$13,500). This penalty amount has been determined in consideration of the statutory penalty factors identified in Section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8).

4.4. Respondent agrees to pay the civil penalty set forth in Paragraph 4.3 within thirty (30) days of the effective date of the Final Order in Part 5 of this CAFO.

4.5. Payment under this CAFO must be made by cashier's check or certified check, payable to "Environmental Protection Agency" and bearing the notation "OSLTF-311."

Payment sent by the U.S. Postal Service must be addressed to:

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

Payment sent by express mail via a non-U.S. Postal Service carrier must be addressed to:

U.S. Bank
Government Lockbox 979077
U.S. E.P.A. Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

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

4.6. Respondent must serve photocopies of the check described above on the Regional Hearing Clerk and EPA at the following two addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900
Mail Stop ORC-158
Seattle, Washington 98101

Ms. Kimberly Ogle
Unit Manager, NPDES Compliance Unit
1200 Sixth Avenue, Suite 900
Mail Stop OCE-133
Seattle, Washington 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 the penalty and accrued interest shall become immediately due and owing. Such failure may subject Respondent to a civil action to collect the assessed penalty under the Act, 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 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H), any unpaid portion of the assessed penalty shall bear interest at the 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 in Part 5 of this CAFO.

4.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H), should Respondent fail to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondent must 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 Respondent's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter.

4.8. The penalty set forth 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.

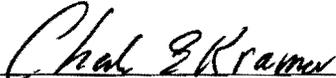
4.10. Except as described in Subparagraph 4.7.2, each party shall bear its own costs in bringing or defending this action.

4.11. Respondent expressly waives any right to contest the allegations in Part 3 and waives any right to appeal the Final Order in Part 5 of this CAFO.

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 Complainant EPA Region 10.

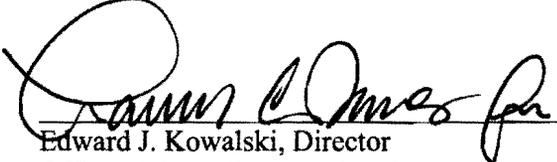
FOR RESPONDENT KRAMER MARINE, INC.



Charles E. Kramer
President
Kramer Marine, Inc.

Dated: 10/8/10

FOR COMPLAINANT



Edward J. Kowalski, Director
Office of Compliance and Enforcement
U. S. Environmental Protection Agency Region 10

Dated: 10/5/10

5. FINAL ORDER

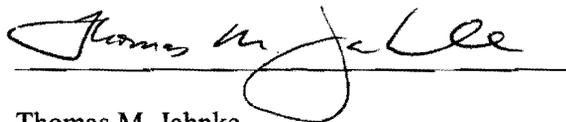
5.1. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement in the Consent Agreement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act for the violations alleged in Part 3. 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 relief 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 Act and regulations promulgated or permits issued thereunder.

5.3. In accordance with Section 311(b)(6)(B)(i) and (b)(6)(C)(i) of the Act, 33 U.S.C. §§ 1321(b)(6)(B)(i) and (b)(6)(C)(i), this CAFO assesses a Class I civil penalty and is not subject to a public notice and comment requirement.

5.4. This Final Order shall become effective upon filing.

SO ORDERED this 8th day of November, 2010.



Thomas M. Jahnke
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: Kramer Marine, Inc.**, DOCKET NO.: CWA-10-2011-0002 was filed with the Regional Hearing Clerk on November 8, 2010.

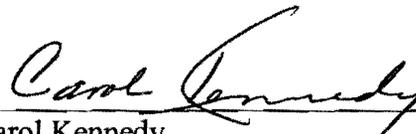
On November 9, 2010 the undersigned certifies that a true and correct copy of the document was delivered to:

Kim Owens, Esquire
US Environmental Protection Agency
Suite 900
1200 Sixth Avenue, ORC-158
Seattle, WA 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 November 9, 2010, to:

Kramers Marine, Inc.
46820 Highway 200
Hope, ID 83836-9680

DATED this 9th day of November 2010.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10