FILE INDEX

CASE NO.: CWA-10-2005-00124

ATTORNEY: HILSMAN, D.

TECH. CONTACT:

CASE NAME: ROBERT E. KERIVAN, PRESIDENT AND BRIDGEVIEW VINEYARDS, INC.
Cave Junction, Oregon

DESCRIPTION	DATE SIGNED	DATE FILED
ADMINISTRATIVE COMPLAINT	03/24/05	03/25/05
COMMENT LETTER	04/12/05	04/15/05
LTR TO RHC FROM BARRY SNITKIN (COMMENT LTR)	04/13/05	04/18/05
LTR TO RHC FROM DEBBIE LUKAS (COMMENT LTR)	04/12/05	04/18/05
LTR TO RHC FROM KATHLEEN HUMPHREY (COMMENT LTR)	04/11/05	04/11/05
LTR TO RHC FROM GERALDINE DAVIDSON(COMMENT LTR)		04/18/05
LTR TO RHC FROM TOM SIEWERT(COMMENT LTR)	04/15/05	05/19/05 4 cdk
ANSWER TO ADMINISTRATIVE COMPLAINT	04/22/05	04/25/05
LTR FRM CALJ BIRO TO MR. GREENWOOD OFFERING ADR	04/29/05	05/03/05
LTR FRM CALJ BIRO TO MS. HILSMAN OFFERING ADR	04/29/05	05/03/05
LTR TO RC FROM MR/MS ZILLER (COMMENT LTR.)	05/01/05	05/03/05
EMAIL MESSAGE FROM D. HILSMAN TO MS. BEALE ACCEPTING ADR.	05/09/05	05/09/05
ORDER INITIATING ALTERNATIVE DISPUTE RESOLUTION PROCESS AND APPOINTING NEUTRAL	05/10/05	05/11/05
LTR TO RHC FROM TOM SIEWERT(COMMENT LTR)	05/13/05	05/16/05
LTR TO RHC FROM LYNDA VANDERLINDEN(COMMENT LTR)	05/07/05	05/18/05
JOINT STATUS REPORT	07/15/05	07/15/05
REPORT RECOMMENDING CONTINUATION OF ALTERNATIVE DISPUTE RESOLUTION PROCESS	07/09/05	07/21/05
SECOND JOINT STATUS REPORT	08/09/05	08/09/05
REPORT RECOMMENDING CONTINUATION OF ALTERNATIVE DISPUTE RESOLUTION PROCESS	08/11/05	08/16/05

FILE INDEX

CASE NO.: CWA-10-2005-0124

ATTORNEY: HILSMAN, D.

TECH. CONTACT:

CASE NAME: ROBERT E. KERIVAN, AND BRIDGEVIEW VINEYARDS, INC.
Cave Junction, Oregon

DESCRIPTION	DATE SIGNED	DATE FILED
REPORT RECOMMENDING TERMINATION OF ALTERNATIVE DISPUTE RESOLUTION PROCESS	09/27/05	09/29/05
ORDER OF DESIGNATION	09/28/05	09/30/05
INITIAL PERHEARING ORDER	10/03/05	10/05/05
ORDER GRANTING MOTION FOR EXTENSION OF TIME	11/10/05	11/15/05
COMPLAINTANT'S MOTION FOR EXTENSION OF TIME TO FILE CONSENT AGREEMENT AND FINAL ORDER	11/09/05	11/09/05
CONSENT AGREEMENT AND FINAL ORDER	12/20/05	12/20/05
CPY CHK #132795 AMT $11,000.00	01/17/06	01/23/06

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

Reply To
Attn Of: ETPA-083

25 MAR 2005

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Robert E. Kerivan, President
Bridgeview Vineyards, Inc.
4210 Holland Loop Road
PO Box 609
Cave Junction, OR 97523

Re: Robert E. Kerivan and Bridgeview Vineyards, Inc.
Administrative Complaint
Docket No. CWA-10-2005-0124

Dear Mr. Kerivan:

Enclosed is a copy of an Administrative Complaint that the U.S. Environmental Protection Agency (EPA) has filed against you pursuant to Section 309(g)(2)(B) of the Clean Water Act (Act), 33 U.S.C. § 1319(g)(2)(B). In the Complaint, EPA alleges that you unlawfully discharged dredged and/or fill material into waters of the United States without a permit in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). EPA proposes that a penalty of $25,000 be assessed against you for the violations alleged.

As described more fully in the Complaint, you have the right to request a hearing to contest the factual allegations and/or the penalty proposed in the Complaint. A copy of the Consolidated Rules of Practice in 40 C.F.R. Part 22 (Part 22 Rules), which govern this proceeding, is enclosed. Please note the requirements for filing an Answer in §§22.15 and 22.17. If you wish to contest the allegations and/or the penalty proposed in the Complaint, then within 30 days of receipt of the enclosed Complaint, you must file an Answer with the EPA Regional Hearing Clerk at the following address:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Mail Stop ORC-158
Seattle, Washington 98101

If you do not file an Answer within 30 days, you may be held in default. If a default order is entered against you, then each allegation in the Complaint will be deemed to be admitted as true and you will have waived the right to a hearing or to be notified of any EPA proceedings that occur before a civil penalty may be imposed. Upon default, the Presiding Officer may find you liable for the full civil penalty proposed in the Complaint.

You have the right to be represented by an attorney at any stage of the proceedings, including any informal discussions with EPA. If you have any questions, would like to discuss a settlement of this matter through an informal conference, or would like to receive an extension of the 30-day deadline to file an Answer in order to discuss settlement of this case, please have your attorney contact Deborah Hilsman, Assistant Regional Counsel, at (206) 553-1810.

Sincerely,

Michelle Pirzadeh, Director
Office of Ecosystems, Tribal and Public Affairs

Enclosures

cc:
Clarence Greenwood, Esq.
Don Borda, U.S. Army Corps of Engineers, Portland District
Anne Haus, Oregon Division of State Lands

RECEIVED

05 MAR 25 PM 12: 10

HEARINGS CLERK
EPA--REGION 10

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	
Robert E. Kerivan and Bridgeview Vineyards, Inc.,	)	ADMINISTRATIVE COMPLAINT
Josephine County, Oregon	)	
Respondents.	)	Docket No. CWA-10-2005-0124

STATUTORY AUTHORITY

1. This Complaint is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 309(g) of the Clean Water Act ("the Act"), 33 U.S.C. § 1319(g). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 10, who in turn has redelegated this authority to the Director of the Office of Ecosystems, Tribal and Public Affairs ("Complainant").

2. Pursuant to Section 309(g)(2)(B) of the Act, and in accordance with 40 C.F.R. Part 22, the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination

or Suspension of Permits" ("Part 22 rules"), Complainant hereby proposes the assessment of a civil penalty against Robert E. Kerivan and Bridgeview Vineyards, Inc. ("Respondents") for the unlawful discharge of dredged and/or fill material into navigable waters in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a), without authorization by a U.S. Army Corps of Engineers ("Corps") permit as required by Section 404 of the Act, 33 U.S.C. § 1344. Complainant also hereby provides notice of Respondents opportunity to request a hearing on the proposed penalty assessment.

ALLEGATIONS

3. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of dredged or fill material into navigable waters of the United States, except in compliance with a permit issued by the Corps under Section 404 of the Act.

4. Respondent Robert E. Kerivan is an individual who, at the time of the alleged violation, was the owner and operator of Bridgeview Vineyards and Winery.

5. Respondent Bridgeview Vineyards, Inc. is a corporation incorporated in the State of Oregon.

6. Respondents are each a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

7. Upon information and belief, during November 2002, and at times more fully known to Respondents, Respondents and/or persons acting on their behalf, engaged in mechanized filling resulting in the discharge of dredged and/or fill material into a section of

Sucker Creek adjacent to Bridgeview Vineyards, at 4210 Holland Loop Road in Cave Junction, Josephine County, Oregon. This property is hereinafter referred to as "the Site." The Site lies adjacent to the lower end of Sucker Creek.

8. Sucker Creek is a tributary to the East Fork of the Illinois River. Sucker Creek and the East Fork of the Illinois River are "navigable waters" and "waters of the United States" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 232.2.

9. The Site also contains areas which meet the definition of "special aquatic site" under 40 C.F.R. § 230.3(q-l) of EPA's 404(b)(1) Guidelines for Specification of Disposal Sites of Dredged or Fill Material. The "special aquatic site" areas on the Site in which Respondents placed materials include, but are not limited to: (a) riffle and pool complexes of Sucker Creek located below the ordinary high water level; and (b) vegetated wetlands adjacent to and within the floodplain of Sucker Creek.

10. Upon information and belief, Respondents and/or persons acting on their behalf, used heavy equipment to place the fill material into the active channel and floodplains of Sucker Creek. The heavy equipment Respondents used to place fill material within Sucker Creek is a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

11. The fill material discharged by Respondents and/or persons acting on their behalf includes dirt, rock, and gravel, each of which constitutes a "pollutant" within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6).

12. By causing such fill material to enter waters of the United States, Respondents

engaged in the "discharge of pollutants" from a point source within the meaning of Sections 301 and 502(12) of the Act, 33 U.S.C. §§ 1311 and 1362(12).

13. Respondents' discharge of fill material was not authorized by any permit issued pursuant to Section 402 or 404 of the Act, 33 U.S.C. § 1312 or 1314, and Respondents are therefore in violation of Section 301 of the Act, 33 U.S.C. § 1311.

14. Each day the material remains in the waters of the United States without the required permit constitutes an additional day of violation of Section 301 of the Act, 33 U.S.C. § 1311.

15. Under Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, Respondents are liable for the administrative assessment of civil penalties in an amount not to exceed $11,000 per day per violation, up to a maximum of $157,500.

16. Pursuant to Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), EPA has consulted with the State of Oregon concerning this matter.

PROPOSED PENALTY

17. Based on the foregoing allegations, and pursuant to the authority of Section 309(g)(2)(B) of the Act, Complainant proposes that the Presiding Officer assess an administrative penalty against Respondents in the amount of $25,000. Complainant's proposed penalty is based on the applicable statutory penalty factors in Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3). These are: the nature, circumstances, extent, and gravity of the violation(s) and, with respect to Respondents' ability to pay, any prior history of such violations, the degree of

culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.

18. The nature, circumstances, extent, and gravity of the violation in this case is deemed to be moderate. Respondent used heavy equipment to move native materials from within the creek and adjacent floodplain/wetlands to create a 300-foot gravel berm that blocked flows from the channel and redirected them to a new channel that Respondents created through a former gravel bar. The removal and subsequent replacement of stream gravel materials and large boulders by heavy equipment to create the channel-blocking berm and form a new channel was done in a manner that caused both turbidity-laden return waters and fine sediments/gravels to be reintroduced into the stream. Intact riparian vegetation was also removed or buried during the channel relocation activities. Sucker Creek is used by Southern Oregon/Northern California coho salmon for spawning and was designated as critical habitat on May 5, 1999. Most west coast coho salmon enter rivers in October and spawn from November to December and occasionally into January. This constructed berm is an obstacle for migrating adult salmon that move through the stream system to spawn and may have resulted in smothering some existing coho salmon redds (nests) located downstream.

19. Respondents are culpable because they mechanically altered the stream channel of Sucker Creek without a Section 404 permit, even though Respondent Kerivan was aware of the requirement to obtain the permit prior to discharging fill material to waters of the United States.

20. Complainant is not aware of any history of prior federal violations by

Respondents.

21. Complainant has no evidence that Respondents enjoyed an economic benefit as a result of their failure to comply with the Act.

22. Respondents have presented no evidence to EPA that they are currently unable to pay the proposed penalty. Therefore, EPA presumes that Respondents are able to pay a penalty of $25,000. If Respondents submit information to rebut this presumption, Complainant will review this information to determine whether the proposed penalty is appropriate.

OPPORTUNITY TO REQUEST A HEARING

23. Respondents have the right to file an Answer requesting a hearing on any material fact contained in this Complaint or on the appropriateness of the penalty proposed herein. Upon request, the Presiding Officer may hold a hearing for the assessment of these civil penalties, conducted in accordance with the provisions of the Part 22 Rules and the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.* A copy of the Part 22 Rules accompanies this Complaint.

24. Respondents' Answer, including any request for hearing, must be in writing and must be filed with:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10
1200 Sixth Avenue, ORC-158
Seattle, Washington 98101

25. If Respondents request a hearing on this proposed penalty assessment, members of the public, to whom EPA is obligated to give notice of this proposed action, will have a right

under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B), to be heard and to present evidence on the appropriateness of the penalty assessment. If Respondents do not request a hearing, EPA will issue a final order assessing administrative penalties and any members of the public who commented on this proposed assessment during the thirty (30) day period following Respondents' receipt of this document will have an additional thirty (30) days to petition EPA to set aside the final order assessing administrative penalties and to request EPA to hold a hearing thereon.

FAILURE TO FILE AN ANSWER

26. To avoid a default order being entered pursuant to 40 C.F.R. § 22.17, Respondents must file a written Answer to this Complaint with the Regional Hearing Clerk within thirty (30) days after service of this Complaint, unless Respondents request and receive an extension of time to file the Answer.

27. In accordance with 40 C.F.R. § 22.15, Respondents' Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which Respondents have any knowledge. Respondents' Answer must also state: (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) the facts which Respondents intend to place at issue; and (3) whether a hearing is requested. Failure to admit, deny, or explain any material factual allegation contained herein constitutes an admission of the allegation.

INFORMAL SETTLEMENT CONFERENCE

28. Whether or not Respondents request a hearing, Respondents may request an informal settlement conference to discuss the facts of this case, the proposed penalty, and the possibility of settling this matter. To request such a settlement conference, Respondents should contact:

Deborah Hilsman
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 10
1200 Sixth Avenue, ORC-158
Seattle, Washington 98101
Telephone: (206) 553-1810
FAX: (206) 553-0163

29. Note that a request for an informal settlement conference does not extend the thirty (30) day period for filing a written Answer to this Complaint, nor does it waive Respondents' right to request a hearing.

30. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), shall affect Respondents' continuing obligation to comply with the Clean Water Act, with every term and condition of any applicable Corps permit, and with any separate compliance order issued to Respondents under Section 309(a) of the Act, 33 U.S.C. § 1319(a), concerning the violation alleged herein.

31. Respondents are advised that, after the Complaint is issued, the Consolidated Rules prohibit any ex parte (unilateral) discussion of the merits of any action with the EPA Regional Administrator, Environmental Appeals Board Member, Administrative Law Judge, or

any person likely to advise these officials in the decision of this case.

Dated this 21st day of March, 2005.

Michelle Pirzadeh, Director
Office of Ecosystems, Tribal and Public Affairs
EPA Region 10

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Administrative Complaint against Robert E. Kerivan and Bridgeview Vineyards, Inc., Docket No. CWA-10-2005-0124, was filed with the Regional Hearing Clerk, EPA Region 10, Seattle, Washington, and a true and correct copy of such Complaint, together with a copy of the Consolidated Rules of Practice at 40 C.F.R. Part 22, the Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings, and the Small Business Regulatory Enforcement and Fairness Act Information Sheet was placed in the United States mail, postage prepaid, certified mail, return receipt requested, on this 25 day of March, 2005, addressed to the following:

Robert E. Kerivan.
Bridgeview Vineyards, Inc.
4210 Holland Loop Road
PO Box 609
Cave Junction, OR 97523

March 25, 2005
Date

Melissa L. Whitaker

Gordon R. Lyford
P.O. Box 118
O'Brien, OR 97534

(541)596-2017

April 12, 2005

Carol Kennedy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10 (ORC-158)
1200 Sixth Avenue
Seattle, WA 98101

Subject: Public Notice Number ARU-05-01
Robert E. Kerivan and Bridgeview Vineyards Inc.

Dear Ms. Kennedy,

I fully support the assessment of a penalty of $25,000 that the USEPA is proposing against Mr. Kerivan for his violations of the Clean Water Act. In fact I would prefer to see a larger penalty assessed because of other anti-environmental actions taken by Mr. Kerivan that he has gotten away with. Environmental laws were enacted precisely to prevent people such as Mr. Kerivan and his ilk from acting as they see fit.

You should be aware that Mr. Kerivan is one of the most active environmental criminals in the Illinois Valley. The subject violation is only one of many, a few of his other transgressions include the following:

During the summer of 1998 the Oregon State Police cited Bridgeview owner Robert Kerivan for the crime of unpermitted removal-fill in waters of the State. The Division of State Lands sued Mr. Kerivan, and had him arrested, for removing materials from a stream bed (located on his own farm) without first getting a permit from the agency. The case stems from Mr. Kerivan removing gravel and rocks from Sucker Creek. Mr. Kerivan used a bulldozer to extend a work platform across the stream and used a backhoe to excavate approximately 168 cubic yards of rock and gravel from the stream. He then transported the material to repair riprap and to surface a

road on his property. Oregon Administrative Rules give DSL the jurisdiction to require permits for "fill and removal" activities. This 1998 case also involved trespassing onto Carol Ingram's (his neighbor across Sucker Creek) property with Mr. Kerivan's bulldozer which resulted in a lawsuit. The trespass involved crossing Sucker Creek with heavy equipment that was operated and parked on Mrs. Ingram's property against her wishes. The trespass was not terminated until Mrs. Ingram called the authorities while holding Mr. Kerivan's forces at bay with a fire arm.

It should also be noted that in 2003 Mr. Kerivan was a plaintiff in a failed lawsuit against the Oregon Water Resources Department in an attempt to undermine in-stream water rights that benefit native salmon. In the failed lawsuit Mr. Kerivan, and his coconspirators, asserted that if the in-stream water use continues, their ability to withdraw water from Sucker Creek will be adversely affected during low water periods. In other words Mr. Kerivan wants to deprive endangered salmon of their life sustaining water so that he can hog it for his own use. Mr. Kerivan's greed and ignorance, in his own mind, places his own interest above the common good of law abiding citizens.

Mr. Kerivan clearly has an anti-environmental and anti-American philosophy and life style. You need to make an example out of Mr. Kerivan to protect my rights and the rights of all citizens to life, liberty and the pursuit of happiness. If the rule of law is not enforced against Mr. Kerivan in this egregious case, then all citizens have lost a portion of their endowed rights.

Sincerely,

Gordon R. Lyford

Gordon R. Lyford

April 13, 2005

RECEIVED
05 APR 18 AM 11:47
HEARINGS CLERK
EPA--REGION 10

Carol Kennedy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10 (ORC-158)
1200 Sixth Avenue
Seattle, WA 98101

Subject Public Notice Number ARU-05-01
Robert E. Kerivan and Bridgeview Vineyards Inc.

Dear Ms. Kennedy,

I understand and completely support the assessment of a penalty of $25,000 that the US EPA is proposing against Mr. Kerivan for his violations of the Clean Water Act. In fact, because of other anti-environmental actions taken by Mr. Kerivan, I would prefer to see a larger penalty assessed. Environmental laws were enacted precisely to prevent people, such as Mr. Kerivan, from acting as they see fit in order to protect our clean waters for the greater good of all Americans.

Mr. Kerivan is one of the most vocal and active environmental criminals in the Illinois Valley. I am sure you are aware of the many other transgressions by Mr. Kerivan.

Mr. Kerivan's greed and ignorance, in his own mind, places his own interest above the common good of law abiding citizens.

Mr. Kerivan clearly believes that usage of water and streams by one individual (himself) is more important than the usage of these resources by all other Americans. He clearly has an anti-environmental and anti-American philosophy and life style. In order to protect my rights and the rights of all citizens, you need to make an example out of Mr. Kerivan. If the rule of law is not enforced against Mr. Kerivan in this egregious case, then he sill simply violate the laws of our great country again and again.

Sincerely,

Barry Snitkin

Barry Snitkin
POB 2565
Cave Junction, OR 97523

RECEIVED April 12, 2005

05 APR 18 AM 11:47

HEARINGS CLERK
EPA--REGION 10

Carol Kennedy Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10 (ORC-158)
1200 Sixth Avenue
Seattle, WA 98101

Subject: Public Notice Number ARU-05-01
Robert E. Kerivan and Bridgeview Vineyards Inc.

Dear Ms. Kennedy,

I fully support the $25,000 penalty that the EPA is proposing against Mr. Kerivan for violating Section 301(a) of the Clean Water Act, 33 USC sec 1362(7). Robert E. Kerivan and Bridgeview Vineyards discharged dredge and or fill material into the active channel and flood plains of Sucker Creek while constructing a berm in November 2002. This is an activity that should not be allowed. It at least bears restrictions and requires at least a permit, as Sucker Creek supports salmon and other aquatic species. Sucker Creek is a tributary to the wild and scenic Illinois River. Sucker Creek faces the cumulative impacts from logging, mining, the fatal Port Orford cedar (a primary riparian tree) root rot disease, road failures, landslides, and irrigation (legal and illegal). It offers popular swimming holes, recreational opportunities such as camping and hiking, wildlife habitat, forest and riparian habitat, and is visible to all that visit the Oregon Caves National Monument.

As a resident of the Illinois Valley, as well as a land owner, I believe he deserves a larger penalty for violations of environmental laws. He has no respect for neighbors, water quality, wildlife, and quality of life in the Illinois Valley. We support efforts by the State and EPA for the recovery of native fisheries, including in-stream water rights. We want to see Sucker Creek run clean again, all year.

The law must be upheld and enforced against Mr. Kerivan to prevent further crimes such as this. There are many residents who believe that they can do whatever they want on their land without consequences. Please show that this is not so. Many people think it is acceptable to run heavy equipment through the river. Mr. Kerivan will continue his destructive behavior if it goes without punishment. He is also setting an example for many others who have no respect for community protection or environmental laws.

Please assess Mr. Kerivan with the maximum penalty.

Sincerely,

Debbie Lukas
PO Box 2093
Cave Junction, OR 97523
(541)592-3386

RECEIVED
05 APR 18 AM 11:47
HEARINGS CLERK
EPA--REGION 10

Carol Kennedy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10 (ORC-158)
1200 Sixth Avenue
Seattle, WA 98101

April 11, 2005

Subject: Public Notice Number ARU-05-01
Robert E. Kerivan and Bridgeview Vineyards Inc.

Dear Ms. Kennedy,

As an Illinois Valley resident, I fully support the fine against Mr. Kerivan for violations of the Clean Water Act. It is especially important that laws be enforced out here in the valley where Mr. Kerivan and his peers seem to think they are beyond the reach of the law.

Sucker Creek is particularly endangered and it is demoralizing to see some large landowners use their power to destroy rather than defend it. Only laws with sharp teeth will prevent flagrant abuses in the future.

It is unfortunate that Mr. Kerivan has acted in this manner, but he has, all while quite aware of the law and its potential consequences. It seems clear he believed he would get away with it. How many of his peers are paused for similar actions? How might they be deterred from treating streams like sewers by watching stiff penalties enforced against one of their own?

I urge you to hold offenders responsible. I wish their consciences would prevent them from cavalierly abusing the watershed, but in the absence of self-policing, we must rely on the law.

Thank you for your work in protecting all the people and creatures who rely on clean water: all of us.

Sincerely,

Kathleen Humphrey

Kathleen Humphrey
9545 Takilma Road
Cave Junction, OR 97523

RECEIVED
05 APR 18 AM 11:47
HEARINGS CLERK
EPA--REGION 10

Carol Kennedy Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10 (ORC-158)
1200 Sixth Ave.\Seattle, WA 98101

Subject: Public Notice Number ARU-05-01
Robert E. Kerivan and Bridgeview Vineyards Inc.

Dear Ms. Kennedy,

Thank you for a moment of your time to address the on-going problem at Bridegeview Vineyards Inc.

Mr. Kerivan's has had total disregard, for the well being of Sucker Creek, his neighbors, downstream and across the river. His flagrant violations of the laws are a matter that should be addressed with the upmost urgency.

The $25,000 fine will hardly begin to cover to costs of restoration. I feel that Mr. Kerivan should be assessed the maximum penalty, and be required to aid in the restoration. This would be an educational opportunity for the Kerivans and the employees that aided in this violation.

Constructively Yours

Geraldine Davidson

Geraldine Davidson
Box 1747
Cave Junction Or 97523
541.592.3060

RECEIVED

05 APR 19 AM 10:46

HEARINGS CLERK
EPA--REGION 10

April 15, 2005

Carol Kennedy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10 (ORC-158)
1200 Sixth Avenue
Seattle, WA 98101

Subject: Public Notice Number ARU-05-01 Robert E. Kerivan and Bridgeview Vineyards Inc.

Dear Ms. Kennedy,

I support completely the penalty of $25,000 that the EPA is proposing against Mr. Kerivan for his violations of the Clean Water Act. While it is true that we have hard economic times in the Illinois Valley, nonetheless it is still vital that we take care of the high quality of natural resources that we have, for without those we have NO economy. This individual has been a continued violator of environmental regulations, and nasty neighbor for this valley as well.

In this time when environmental regulations that have benefited our nation are being gutted and ignored, it's important that those laws we do have to help maintain our quality of life and land be inforced whenever and wherever possible. Mr. Kerivan needs to know that his actions cannot go unpunished. Please uphold the law and assess the fine to Mr Kerivan.

Thank you,

Tom Siewert

B L A C K | H E L T E R L I N E LLP
ATTORNEYS AND COUNSELORS AT LAW

CLARENCE H. GREENWOOD
E-mail: chg@bhlaw.com

April 22, 2005

File No.: K218-12

VIA FAX AND U.S. EXPRESS MAIL

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, ORC-158
Seattle, WA 98101

Reference: Administrative Complaint In Re Robert E. Kerivan, et al.
CYA-10-2005-0124

Dear Sirs:

Enclosed are two copies of the Answer of Robert E. Kerivan and Bridgeview Vineyards, Inc. to the Administrative Complaint that was mailed to us on March 25, 2005.

We are mailing this answer by United States Express Mail and faxing a copy to Deborah E. Hilsman, Assistant Regional Counsel.

We reserve the right to amend the answer once we have more information as to the basis for the allegation regarding blocking of migrating fish; water turbidity and damage to redds.

We request full discovery rights to allow Respondent to prepare for the formal hearing.

Although we are filing this answer, Respondent is willing to sit down with the EPA, as outlined in paragraphs 2 and 3 of the March 25, 2005 letter signed by Deborah E. Hilsman. Respondent would prefer to avoid litigation by resolving this matter informally. Respondent is also wishing to complete the repair and maintenance project as provided for in the Galli proposal, which was designed to complete the unfinished repair and maintenance and

restore the site to the conditions that existed prior to the high water in 1996-97 and 1997-98 to the degree possible.

Sincerely yours,

Clarence Greenwood

Clarence H. Greenwood

CHG:mah
Enclosures
H:\Client\K218-12\EPA\hrg officer Ltr01.doc

cc w/encs: Deborah Hilsman, Esq.
Mr. Robert E. Kerivan

RECEIVED

05 APR 25 AM 10: 50

HEARINGS CLERK
EPA--REGION 10

In the Matter of:	)	
	)	
Robert E. Kerivan	)	
And Bridgeview Vineyards, Inc.,	)	ADMINISTRATIVE ANSWER
	)	
Josephine County, Oregon	)	Docket No. CWA-10-2005-0124
	)	
Respondents.	)	

STATUTORY AND FACTUAL ALLEGATIONS

1.

Regarding Paragraph 1, Respondent is without knowledge to admit or deny the same.

2.

Regarding Paragraph 2, Respondent is without knowledge to admit or deny the legal conclusions contained therein. Respondent denies that any violation of 33 USC § 1311 occurred, or that a permit from the U.S. Army Corps of Engineers was required for the activity undertaken by Respondent.

3.

Regarding Paragraph 3 of the Complaint, it states a conclusion of law to which Respondent does not need to respond.

4.

Respondent admits Paragraphs 4, 5, and 6.

5.

Regarding Paragraph 7 of the Complaint, Respondent admits that on or about November 8, 2002, Respondent engaged in the repair and maintenance of existing diking and riprap on its farm (vineyard); the repair and maintenance of existing farm roads on the farm and in upland soil conservation to halt continuing erosion of upland roads and fields. Respondent denies all other allegations contained in Paragraph 7.

6.

Regarding Paragraph 8, Respondent admits that Sucker Creek runs into the East Fork of the Illinois River, but due to lack of sufficient information, denies that Sucker Creek constitutes "navigable waters" and "waters of the United States" within the meaning of 33 USC § 1362(7) and 40 CFR § 232.2.

7.

Respondent denies Paragraphs 9-15.

8.

Regarding Paragraph 16, Respondent is without knowledge to admit or deny the same.

9.

Respondent denies the allegations of fact set forth in Paragraphs 17, 18, 19, and 22.

AFFIRMATIVE PLEADINGS OF FACT

For its affirmative pleadings of fact, Respondent alleges as follows:

10.

Respondent's property is a farm and has been a farm for a long time. The property is zoned exclusive farm use property under Oregon law and under the Josephine County Comprehensive Plan.

11.

Respondent's property lies on the south side of Sucker Creek in main. It lies in the 100-year flood plain.

12.

In 1964, the property was completely flooded. As a result, the owners at that time, working with the United States Department of Agriculture ("USDA") made substantial upland conservation plans to protect the farmland from future damage by Sucker Creek.

13.

The upland conservation practice project designed at that time was the construction of a long dike (approximately one-half mile long), fortifying that dike with large riprap; and the construction of a barb or barbs to prevent Sucker Creek from moving south. This upland soil conservation project was funded under a cost share program with USDA.

14.

The project was constructed in the early 1970s before the enactment of the Clean Water Act. The diking, riprap and barbs exist to this day, and are the reason the Respondent's property farm has not been ruined by continual flooding and erosion by Sucker Creek. The features installed at that time are the reason the property is suitable for a vineyard use.

15.

Respondent has owned the property since 1982. It is a vineyard which is an agricultural use. The vineyard has trellis, three and one-half mile of vineyard roads, drip irrigation system and frost protection irrigation system.

16.

Respondent's property is a prior converted cropland.

17.

Respondent's property has approximately three and one-half miles of farm roads. These farm roads are necessary and essential to the operation of the vineyard.

18.

Two of these roads were along the southern side of Sucker Creek. One of the roads ran across the southern bank of Sucker Creek as it existed prior to 1997. This farm road was used by crawler tractors which were used to maintain the push up irrigation dam that was installed and removed annually to allow the irrigation of the vineyard as well as the frost protection in the vineyard from until 1996. The crawler tractor was also used to maintain the riprap, diking, and vineyard roads from time-to-time as they needed repair.

19.

The second vineyard road was on top of the upland bank on the south side of Sucker Creek as it existed prior to 1997. It runs along vineyard block 500. Prior to the winters of 1996-97 and 1997-98 this road was roughly 150 feet south of the water bearing channel of Sucker Creek. The area north of this road was a wildlife buffer and wood lot with over 200 trees that were between 75 and 125 years old.

20.

Sucker Creek is a free flowing intermittent stream. It commences at the Oregon caves and runs for roughly 19 miles. It has a steep gradient. It is a flash stream in the sense that it can go from 150 cfs to over 16,000 cfs in a very short time (i.e., a matter of hours).

21.

The winters of 1996-97 and 1997-98 were heavy precipitation winters in Josephine County. Severe stream flashes occurred on Sucker Creek during these winters.

22.

These flashes caused Sucker Creek to rise and wash out an artificial gravel berm pushed up by the owner of property on the north side of Sucker Creek above Respondent's property. This gravel washed down and plugged the Sucker Creek channel, causing existing Sucker Creek to shift to a secondary channel.

23.

The secondary channel was south of the original channel. As a result, Sucker Creek commenced eroding the toe of the protective diking (placed in the early 1970s); undermining the toe of the riprap placed in the 1970s to protect the diking and undercutting the farm road used to move crawler tractors.

24.

In the spring of 1998, Respondent developed a plan to repair and maintain the existing dike; riprap, vineyard roads and halt the erosion of upland area of the vineyard.

25.

The plan was implemented in August 1998. Shortly after the repair and maintenance project commenced, it was stopped by Oregon State Police. Respondent Kerivan

was arrested for violating Oregon's removal fill law because he commenced the repair without obtaining a removal fill permit.

26.

Criminal proceeding occurred which resulted in Respondent Kerivan being acquitted of violating Oregon's removal fill law in April 2001. The acquittal was based on the Josephine County Circuit Court determining that the repairs Respondent was pursuing were exempt from permitting. Oregon's removal fill law contains exemption from permitting patterned on the like exemptions set forth in 33 USC § 1334f(1).

27.

Respondent then returned to the need to repair their property. Oregon's officials continued to threaten Respondent's repair efforts. They issued a press release so stating and asserting the acquittal of Mr. Kerivan was an erroneous ruling by Judge Coon.

28.

As a result, Respondent sued Oregon's officials in a civil proceeding and obtained an injunction against the Oregon State Division of State Lands and State Police which allowed Respondent to proceed with the repairs.

29.

Although the court ruled in favor of Respondent in July 2002, the final order and injunction was delayed by the Oregon officials until early November 2002. They did so by filing a motion to stay the injunction, pending appeal.

30.

The motion to stay was denied and the injunction issued against the state officials in early November 2002 barring Oregon's officials from taking any actions whatsoever against

Respondent, so Respondent's repair and maintenance of the diking, riprap and farm roads could proceed.

31.

During this period from August 1998 through October 2002, Sucker Creek had continued to damage Respondent's property. The entire lower southern bank was eroded away. The farm road on the bank was undermined and washed away. The stream undercut the upland destroying most of the 150 foot buffer area Respondent had previously maintained between vineyard block 500 and the Sucker Creek stream channel. A wood lot and over 200 old trees were undercut and washed downstream. Roughly 10 acres of upland washed away. By November 2000, Sucker Creek (especially during high water events) was curling back behind the dike and riprap and undermining the second vineyard road located on the upland bank next to vineyard block 500.

32.

In ruling on the Oregon Attorney General's motion for a stay of the injunction, Judge Gerald Neufeld, conducted a site visit. He concluded at the end of the site visit the repair and maintenance concerns of Respondent were immediate and necessary to prevent further damage to the existing diking, riprap and farm roads; particularly, the vineyard road on upland bank.

33.

To prevent further damage, Respondent engaged in emergency repairs on or about November 8, 2002 (within a week of the injunction being issued). These repairs did not involve any equipment being placed in the water, nor the placing of any dirt, rocks or other pollutants in the flowing water. All equipment was located on dry upland areas of Respondent's property.

The repairs were conducted when Sucker Creek was at normal levels and before winter rains had commenced.

34.

The flow of Sucker Creek was not interrupted in any manner by the repair and maintenance work. Culverts, with more than sufficient capacity to carry the full flow of Sucker Creek at non-flash levels, were hand-carried and placed to ensure the continued flow of the creek at all times so migrating fish could pass. Large riprap was placed over the culverts to hold them in place.

35.

The remainder of the repair work was performed on the dry upland portion of Respondent's property. There Respondent removed the gravel plug that was blocking the normal Sucker Creek channel. In removing the plug, no gravel or silt was placed in the flowing water at any time, nor was the gravel removed to the level of Sucker Creek. Course gravel was removed to within six inches of the normal water level of Sucker Creek during non-flash conditions.

36.

When the repair was complete, Sucker Creek flowed through the same channel as before the repair. The only difference was there was an additional unplugged northerly channel that excess water could flow through, in a flash event.

37.

No water flowed through the unplugged channel for several days. The first water flowed only after it rained in the Greyback Mountain water shed. When rains caused Sucker Creek to rise by more than six inches from its normal level, water for the first time, in five years,

returned to the unplugged channel. When it did so, there was no turbidity. The water was pure and clear.

38.

When the Oregon state officials who were enjoined from interfering learned of the repairs they telephoned Jim Housman. As a result, EPA, without contacting Respondent entered onto Respondent's property. EPA issued a cease and desist order on November 29, 2002. This order was subsequently amended on June 25, 2004. Respondent has complied to the best of its knowledge with all requirements in the amended order.

39.

EPA has ignored all these affirmative facts in asserting its authority to regulate Respondent's statutorily exempt farm repair and maintenance activity that Josephine County Circuit Court Judge Gerald Neufeld found was necessary and immediately needed to prevent further needless damage to Respondent's farm.

40.

FIRST AFFIRMATIVE DEFENSE

As a First Affirmative Defense, Respondent states the EPA's assertion of a penalty is based on repair and maintenance activity occurring on the dry upland areas of Respondent's property. Dry upland gravely areas that have not been inundated for five plus years are not navigable waters. Nor are such lands wetlands (the soil is not a wetland soil type). Because all of the repair and maintenance activity occurred on dry upland, the Clean Water Act jurisdiction over "navigable waters" as defined in 33 USC § 1362(7) is inapplicable.

41.

SECOND AFFIRMATIVE DEFENSE

Respondent's farm is a prior converted cropland (see affirmative allegations above). Prior converted croplands are not "waters of United States." 33 CFR § 328.3(a)(8). The repair and maintenance activities occurred on dry upland. EPA has exceeded its jurisdiction in ignoring this fact.

42.

THIRD AFFIRMATIVE DEFENSE

Respondent asserts the repair and maintenance activities of their property are exempt from permitting under 33 USC § 1344(f)(1). Specifically, the alleged violations were "upland soil and water conservation practices" related to normal farming activities and "minor drainage repair". These activities are exempt from Section 404 permitting requirement, as set forth in 33 USC § 1344(f)(1)(A) and the regulatory exemptions set forth in 40 CFR § 232.3(c)(1). The repair work was also done for purpose of maintenance, and/or emergency reconstruction of recently damaged parts of currently serviceable structures (i.e., diking and riprap), and are therefore, exempt under 33 USC § 1344(f)(1)(B), and the regulatory exemptions set forth in 40 CFR § 232.3(c)(2). Finally, the repair work was done for the purpose of repairing and maintaining farm roads, and exempt under 33 USC § 1344(f)(1)(E), and the regulatory exemptions set forth in 40 CFR § 232.3(c)(6).

EPA has engaged in unlawful conduct and a violation of Respondent's statutory rights in refusing to apply the exemptions to necessary and reasonable farm repairs.

43.

FOURTH AFFIRMATIVE DEFENSE

Respondent asserts the November 2002 emergency repair and maintenance activity is a permitted activity under 33 USC § 1344(e), including, but not limited to, nationwide general authorizations Nos. 2 and 13, making an individual permit for minor drainage repairs unnecessary.

44.

FIFTH AFFIRMATIVE DEFENSE

Respondent contests the assessment of penalties in the Complaint because they are punitive in nature and violate Respondent's Constitutional rights, including, but not limited to rights afforded to Respondent under the Due Process Clause of the U.S. Constitution; the Equal Protection Clause of the U.S. Constitution, and the Excessive Fines Clause of the Constitution of the United States, Amendment VIII.

45.

In the event EPA decides to assert a penalty, Respondent states that the statutory factors contained in 33 USC § 1319(g)(3) do not warrant the excessive amount of penalty assessed. In conducting the emergency repairs, Respondent did not place equipment in the water of Sucker Creek, did not place any gravel or fine silt in the water of Sucker Creek; did not block or interrupt migratory fish or place any material where fish eggs (i.e., redds) may have been laid. Respondent specifically denies the allegation that any existing Coho salmon or salmon nests were "smothered."

46.

Respondent denies any culpability in doing the emergency repairs because at all times, the repair work performed was exempt from Section 404 permit requirement under 33 USC § 1344(f)(1) or 33 USC § 1344(e). Finally, Respondent cooperated fully with the EPA's investigation, at all times and has fully complied with the EPA orders including the amended order dated June 25, 2004.

REQUEST FOR A HEARING

47.

Pursuant to 40 CFR § 22.15(c), Respondent requests a hearing and an opportunity to brief fully the issues raised by the complaint and the answer.

DATED this 22nd day of April, 2005.

Clarence H. Greenwood, OSB No. 79250
Attorney for Respondent

H:\Client\K218-12\Pldgs\Answer.doc

CERTIFICATE OF SERVICE

I hereby certify that I served and filed the foregoing **ADMINISTRATIVE ANSWER** on:

Deborah Hilsman, Esq.
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 10
1200 Sixth Avenue, ORC-158
Seattle, WA 98101
Fax: (206) 553-0163

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10
1200 Sixth Avenue, ORC-158
Seattle, WA 98101

■ by mailing, via first class mail, a true copy thereof in a sealed, first-class postage prepaid envelope, addressed to the address shown above and deposited in the United States Mail at Portland, Oregon on the date set forth below.

□ by causing a true copy thereof to be hand-delivered to said attorney(s) in person on the date set forth below.

□ by sending a true copy thereof via overnight courier in a sealed, prepaid envelope, addressed to said attorney's address as shown above on the date set forth below.

■ by faxing a true copy thereof to said attorney's facsimile number as shown above.

DATED this 22nd day of April, 2005.

BLACK HELTERLINE LLP

By: Clarence Greenwood
Clarence H. Greenwood OSB No. 79250

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

Mail Code 1900L

April 29, 2005

Chief
Administrative Law Judge

Clarence H. Greenwood, Esquire
Black Helterline LLP
1900 Fox Tower
805 Southwest Broadway
Portland, OR 97205-2359

Re: Robert E. Kerivan & Bridgeview Vineyards, Inc.
Docket No. CWA-10-2005-0124

Dear Mr. Greenwood:

This Office, the Office of Administrative Law Judges, offers an Alternative Dispute Resolution (ADR) process to facilitate the settlement of cases. Please inform my legal staff assistant, Maria Whiting-Beale by **May 13, 2005**, as directed below, whether you accept or decline this offer to participate in ADR in an effort to settle the above cited case. The ADR process will be conducted pursuant to the Dispute Resolution Act of 1990, 5 U.S.C. §§ 571-583, by a Judge of this Office serving as a neutral. The process will be entirely voluntary and completely confidential; both these points, together with general procedures, are reviewed below.

Voluntary ADR will be used in a case only if both EPA and Respondent accept ADR; the choice to use or not to use ADR does not prejudice either party. If ADR is utilized, either party may terminate the ADR process at any time.

Confidential The ADR process will be conducted in a confidential manner, in accord with Section 584 of the Dispute Resolution Act of 1990. The Judge who serves as the neutral will not disclose to anyone the contents of any of the parties' ADR communications.

Procedures A Judge in this Office will serve as a neutral mediator. The ADR Judge will ordinarily begin by arranging a telephone conference with the parties to establish procedures. The specific role the ADR Judge will play will be determined after consultation with the parties. This Office has access to videoconferencing equipment and, with the consent of the parties, where deemed appropriate, the neutral may employ such equipment in the ADR process.

Authorization to Commit For the ADR process to be effective, the persons communicating with the neutral must either have authority to commit his or her side to a settlement, or have ready access to somebody with such authority.

Duration Unless terminated earlier by either party, the ADR process will continue for 60 days from the date of the case assignment to the ADR Judge; after that time, if no settlement has been reached, the case will be assigned to another Judge to commence the litigation process.

Follow Up At the termination of the ADR process, I will send the parties a questionnaire to elicit their views and experience with the process. The contents of individual questionnaires will be kept confidential and will be made available to the neutrals and others only in a composite format.

Again, please inform Maria Whiting-Beale by **May 13, 2005**, whether you accept or decline the ADR process that I have described. It is preferred that you inform Ms. Whiting-Beale by e-mail at: Whiting-Beale.Maria@epa.gov or by letter sent via facsimile to (202) 565-0044. However, you may inform her by calling this Office, **(202) 564-6271**, and leaving a message for her, or by letter *received in this Office on or before the due date*. The mailing address **if sent by mail is:** U.S. EPA, Office of Administrative Law Judges, Mail Code 1900L, 1200 Pennsylvania Avenue, NW, Washington, DC 20460-2001. **For hand-delivery by Federal Express or another delivery service** which x-rays packages as a routine security procedure, the address is: U.S. EPA, Office of Administrative Law Judges, 1099 14th Street, N.W., Suite 350, Washington, DC 20005.

Your e-mail, fax, letter or phone message must state: (1) your name, (2) the name of the party you represent, (3) the name(s) of the respondent(s) named in the complaint, (4) the docket number, and (5) whether you want ADR or do not want ADR. You may also inform Ms. Whiting-Beale as to whether another party in the case accepts or declines ADR, if that party has requested that you convey that information on that party's behalf. In that event, your e-mail, fax letter or phone message must state, in addition: (1) the name and telephone number of the person who requested you to convey the message, (2) the name of the party represented by that person, and (3) whether that party wants ADR or does not want ADR.

If you have another party in the case convey a message that you want ADR, then you should confirm, on or before the due date stated herein, that this Office has received the message.

If no response is received in this Office by the deadline from you or another party on your behalf, it will be assumed that you **do not** wish to participate in ADR and the case will be assigned immediately to a Judge for litigation. **Absolutely no extension of the deadline for deciding whether you wish to participate in ADR will be granted.** However, the

ADR described above may be available later in the litigation process upon joint motion of all parties to initiate ADR, granted at the sole discretion of the presiding litigation Judge.

Very truly yours,

Susan L. Biro
Chief Administrative Law Judge

cc: Deborah Hilsman, Esquire
Carol D. Kennedy, Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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05 MAY -3 AM 8:41
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Mail Code 1900L

April 29, 2005

Chief
Administrative Law Judge

Deborah Hilsman, Esquire
Assistant Regional Counsel
U.S. EPA
1200 Sixth Avenue, ORC-158
Seattle, WA 98101

Re: Robert E. Kerivan & Bridgeview Vineyards, Inc.
Docket No. CWA-10-2005-0124

Dear Ms. Hilsman:

This Office, the Office of Administrative Law Judges, offers an Alternative Dispute Resolution (ADR) process to facilitate the settlement of cases. Please inform my legal staff assistant, Maria Whiting-Beale by **May 13, 2005**, as directed below, whether you accept or decline this offer to participate in ADR in an effort to settle the above cited case. The ADR process will be conducted pursuant to the Dispute Resolution Act of 1990, 5 U.S.C. §§ 571-583, by a Judge of this Office serving as a neutral. The process will be entirely voluntary and completely confidential; both these points, together with general procedures, are reviewed below.

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Follow Up At the termination of the ADR process, I will send the parties a questionnaire to elicit their views and experience with the process. The contents of individual questionnaires will be kept confidential and will be made available to the neutrals and others only in a composite format.

Again, please inform Maria Whiting-Beale by **May 13, 2005**, whether you accept or decline the ADR process that I have described. It is preferred that you inform Ms. Whiting-Beale by e-mail at: Whiting-Beale.Maria@epa.gov or by letter sent via facsimile to (202) 565-0044. However, you may inform her by calling this Office, **(202) 564-6271**, and leaving a message for her, or by letter *received in this Office on or before the due date*. The mailing address **if sent by mail is:** U.S. EPA, Office of Administrative Law Judges, Mail Code 1900L, 1200 Pennsylvania Avenue, NW, Washington, DC 20460-2001. **For hand-delivery by Federal Express or another delivery service** which x-rays packages as a routine security procedure, the address is: U.S. EPA, Office of Administrative Law Judges, 1099 14th Street, N.W., Suite 350, Washington, DC 20005.

Your e-mail, fax, letter or phone message must state: (1) your name, (2) the name of the party you represent, (3) the name(s) of the respondent(s) named in the complaint, (4) the docket number, and (5) whether you want ADR or do not want ADR. You may also inform Ms. Whiting-Beale as to whether another party in the case accepts or declines ADR, if that party has requested that you convey that information on that party's behalf. In that event, your e-mail, fax letter or phone message must state, in addition: (1) the name and telephone number of the person who requested you to convey the message, (2) the name of the party represented by that person, and (3) whether that party wants ADR or does not want ADR.

If you have another party in the case convey a message that you want ADR, then you should confirm, on or before the due date stated herein, that this Office has received the message.

If no response is received in this Office by the deadline from you or another party on your behalf, it will be assumed that you **do not** wish to participate in ADR and the case will be assigned immediately to a Judge for litigation. **Absolutely no extension of the deadline for deciding whether you wish to participate in ADR will be granted.** However, the

ADR described above may be available later in the litigation process upon joint motion of all parties to initiate ADR, granted at the sole discretion of the presiding litigation Judge.

Very truly yours,

Susan L. Biro
Chief Administrative Law Judge

cc: Clarence H. Greenwood, Esquire
Carol D. Kennedy, Regional Hearing Clerk

Gloria & Bob Ziller
<blarneycastle@earthlink.net>

05/01/2005 10:40 AM

To: Carol Kennedy/R10/USEPA/US@EPA
cc:
Subject: Public Notice Number ARU-05-01

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05 MAY -3 PM 12: 12
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EPA--REGION 10

May 01, 2005

Carol Kennedy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10 (ORC-158)
1200 Sixth Avenue
Seattle, WA 98101

Subject: Public Notice Number ARU-05-01
Robert E. Kerivan and Bridgeview Vineyards Inc.

We fully support the $25,000 penalty that the EPA is proposing against Mr. Kerivan for violating Section 301(a) of the Clean Water Act, 33 USC sec 1362(7). Robert E. Kerivan and Bridgeview Vineyards discharged dredge and or fill material into the active channel and flood plains of Sucker Creek while constructing a berm in November 2002. This is an activity that should not be allowed or condoned. At a minimum, it bears restrictions and requires at least a permit, as Sucker Creek supports salmon and other aquatic species. Sucker Creek is a tributary to the wild and scenic Illinois River. Sucker Creek faces the cumulative impacts from logging, mining, the fatal Port Orford cedar (a primary riparian tree) root rot disease, road failures, landslides, and irrigation (legal and illegal). It offers popular swimming holes, recreational opportunities such as camping and hiking, wildlife habitat, forest and riparian habitat, and is visible to all that visit the Oregon Caves National Monument.

As a resident of the Illinois Valley, as well as land owners here, we believe he deserves a larger penalty for violations of environmental laws. He has no respect for neighbors, water quality, wildlife, and quality of life in the Illinois Valley. We support efforts by the State and EPA for the recovery of native fisheries, including in-stream water rights. We want to see Sucker Creek run clean again, all year.

The law must be upheld and enforced against Mr. Kerivan to prevent further crimes such as this. There are many residents who believe that they can do whatever they want on their land without consequences. Please show them that this is not so. Many people think it is acceptable to run heavy equipment through the river. Mr. Kerivan will continue his destructive behavior if it goes without punishment. He is also setting an example for many others who have no respect for community protection or environmental laws.

Please assess Mr. Kerivan with the maximum penalty.

Thank you so much,
Gloria and Bob Ziller
P.O. Box 419
O'Brien, Oregon
97534

Maria Whiting-Beale/DC/USEPA/US@EPA

05/09/2005 05:02 AM

To: Carol Kennedy/R10/USEPA/US@EPA
cc:
Subject: Fw: Kerivan Docket No. CWA-10-2005-0124

----- Forwarded by Maria Whiting-Beale/DC/USEPA/US on 05/09/05 08:06 AM -----

Deborah Hilsman/R10/USEPA/US@EPA

05/08/05 08:54 PM

To: Maria Whiting-Beale/DC/USEPA/US@EPA
cc: CHG@bhlaw.com
Subject: Kerivan Docket No. CWA-10-2005-0124

Ms. Whiting-Beale:

My name is Deborah E. Hilsman and I represent Complainant EPA Region 10 in the administrative enforcement case filed against Respondents Robert E. Kerivan and Bridgeview Vineyards, Inc., Docket No. CWA-10-2005-0124. This email message responds to Judge Biro's April 29, 2005 letter offering the parties the opportunity to participate in Alternative Dispute Resolution (ADR). Complainant, EPA Region 10, accepts the offer to participate in the ADR process. As indicated above, Respondents' counsel, Clarence Greenwood is being copied on this response. Please contact me with any questions at 206-553-1810. Thank You.

Deborah E. Hilsman
Assistant Regional Counsel

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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	
Robert E. Kerivan and	)	**Docket No. CWA-10-2005-0124**
Bridgeview Vineyards, Inc.,	)	
	)	
Respondent	)	

ORDER INITIATING ALTERNATIVE DISPUTE RESOLUTION PROCESS AND APPOINTING NEUTRAL

Pursuant to the request of the parties, Judge Barbara A. Gunning, is hereby designated as a neutral to initiate and conduct such processes as may facilitate a settlement of this proceeding.

The following procedures shall apply:

1. The Alternative Dispute Resolution (ADR) process will be conducted in a confidential manner. The Judge who serves as the neutral will not disclose to anyone the contents of any of the parties' ADR communications.

2. For the ADR process to be effective, the persons communicating with the neutral must either have authority to commit his or her side to a settlement, or have ready access to someone with such authority.

3. Unless terminated earlier at the request of either party, the ADR process shall automatically terminate on **July 11, 2005**. An extension of up to 60 days may be granted by the undersigned upon request of the ADR neutral, but in no event shall ADR continue for longer than 4 months. At that time, if no settlement has been reached, the case will be remanded to the litigation Judge to proceed with the litigation process in an expedited manner.

4. A party requesting termination of this process shall so advise the assigned neutral Judge either orally or in writing. The neutral Judge shall forward the request to the Chief Administrative Law Judge. The dispute resolution process initated by this Order shall terminate upon order of the Chief Administrative Law Judge.

5. At the termination of the ADR process, the parties will be sent a questionnaire to elicit their views and the experience with the process. The contents of individual questionnaires will be kept confidential and will be made available to the neutrals and others only in a composite format.

Susan L. Biro
Chief Administrative Law Judge

Dated: May 10, 2005
Washington, DC

In the Matter of Robert E. Kerivan and Bridgeview Vineyards, Inc., Respondent
Docket No. CWA-10-2005-0124

CERTIFICATE OF SERVICE

I certify that the foregoing **Order Initiating Alternative Dispute Resolution Process And Appointing Neutral**, dated May 10, 2005, was sent this day in the following manner to the addressees listed below.

Maria Whiting-Beale
Legal Staff Assistant

Dated: May 10, 2005

Original And One Copy By Pouch Mail to:

Carol D. Kennedy
Regional Hearing Clerk
U.S. EPA
1200 Sixth Avenue
Seattle, WA 98101

Copy by Pouch Mail to:

Deborah Hilsman, Esquire
Assistant Regional Counsel
U.S. EPA
1200 Sixth Avenue, ORC-158
Seattle, WA 98101

Copy by Regular Mail to:

Clarence H. Greenwood, Esquire
Black Helterline LLP
1900 Fox Tower
805 Southwest Broadway
Portland, OR 97205-2359

May 13, 2005

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05 MAY 16 PM 2:21
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Carol Kennedy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10 (ORC-158)
1200 Sixth Avenue
Seattle, WA 98101

Subject: Public Notice Number ARU-05-01 Robert E. Kerivan and Bridgeview Vineyards Inc.

Dear Ms. Kennedy,

Recently I sent you a letter regarding the issue listed above. I would like to withdraw my letter from consideration in this incident. While I do still believe in maintaining the integrity of the natural resources of this valley, I realize in retrospect that I do not have adequate information regarding this issue to provide informed input. I had been asked to write the letter in support of the fine by friends, and I should have been more discerning. I apologize for any difficulty this may cause you

Sincerely,

Tom Siewert

RECEIVED

05 MAY 18 PM 12: 13

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EPA--REGION 10

LYNDA VANDERLINDEN
8025 TAKILMA RD.
CAVE JUNCTION, OR 97523

May 7, 2005

Carol Kennedy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10 (ORC-158)
1200 Sixth Ave.
Seattle, WA 98101

Re: Docket No. CWA-10-2005-0124; Public Notice ARU-05-01
Robert E. Kerivan and Bridgeview Vineyards

Dear Ms. Kennedy:

The respondent in the above matter showed me a fistful of what can only be described as hate mail thinly disguised as "Public Comment". As most of the letters came from my neighbors, he asked if I knew them and what could possibly have motivated them. The only commentor he recognized was Barry Snitkin (staff member of the Siskiyou Regional Education Project [SREP], an activist group headquartered within walking distance of my home in the alternative lifestyle community of Takilma).

Having lived here for more than 20 years, I know them to all be affiliated with SREP (as well as the Sierra Club, Klamath Siskiyou Wild, Siskiyou Audobon, et.al.). SREP began as EarthFirst! (and is still actively involved, including holding the EF! Cave Junction post office box) and have protested and litigated so many forest, mining and agricultural activities here in the Illinois Valley that I've lost count. Nothing happens here without their stamp of approval and they are always first in line to cause grief for anyone who tries to make an honest living. They are take-no-prisoners radicals who recently fired their director (article enclosed) for suggesting SREP was not against all logging and might be willing to compromise in salvage logging of the Biscuit Fire (the forest for which they have long been collecting donations and grant monies to "protect").

SREP has wreaked economic havoc with their boiler-plate letter writing and "action alert" campaigns, especially if they foresee dollar signs down the road for themselves. They have an enviable networking system in place that used to involve simply having members sign on to the same pre-printed letter and then overwhelming the agency d'jour with a blizzard of complaints. I see that while using the same self-righteous, unsubstantive language, typeface and key words (anti-American, criminal, greedy, anti-environmental, punish him, penalize him, etc.), they have at least advanced to the point of doing a mix in each letter. I'll bet the envelopes all had the same stamp.

I really must address just a couple of their comments:

1. "...total disregard for the neighbor across the river" (identified in another letter as Carol Ingram). Ms. Ingram, a SREP affiliate, was the one who originally pulled a gun on Kerivan's unarmed worker and called DSL which, as you are fully aware, is how this all began. Ms. Ingram was found to be in error as to her property line (there was no trespass) and as you also know, DSL lost their case three times in court. It is common knowledge that it was due to the Injunction from further DSL harrassment that the EPA became involved. The statements of fact in the Lyford letter are completely false.

2. The "failed lawsuit" against OWRD in which Kerivan was one of many plaintiffs (oops!, make that "coconspirators") was actually about Oregon Water Trust (in conlusion with SREP) buying up water rights that hadn't been used for well over five years, which should have already made them defunct and unpurchasable. These rights were senior to several upstream agricultural operators, not just Kerivan, and a concerted effort was being made to shut down these farmers and ranchers. The suit was brought not to (as alleged) kill fish and hog water, but in an effort to protect their businesses.

What the letters omitted, however, is SREP's long-standing vendetta against Kerivan and "his ilk" for taking a winning stance against SREP's petition to list the Illinois River Winter Steelhead and coho as endangered. In the late 1980's and early 1990's, SREP had managed to run willy-nilly throughout our valley listing just about everything that grew, had legs, wings or fins - all without the knowledge of us "common folk" until after they were in the Federal Register. When a public hearing was held (outside the Illinois Valley) regarding listing our steelhead, several mainstream citizens attended. In an "enough is enough" action, we decided to fight the listing - not because we're fish haters, but because we truly did not believe they warranted it. Mr. Kerivan kindly let us host a fundraiser at his winery to hire a competent fish biologist to conduct a scientific study. When our group fell short of the biologist's fee, Mr. Kerivan and another citizen made up the difference. We prevailed, and SREP views your action against Mr. Kerivan as the ultimate "Get Even", especially after failing to make trouble for him with the IRS.

Should they operate true to form now that you have given them "standing", the next step will be a lawsuit either against you, Mr. Kerivan, or both (e.g., Headwaters v. Talent Irrigation District). Litigation pays well if you are a so-called "environmental" group. By the way, SREP is also affiliated with Headwaters and both can churn out a lawsuit in the blink of an eye.

I have in front of me a copy of EPA's Part 232 (exempt activities). A reasonable person would decipher these to mean Mr. Kerivan's activities were exempt from permitting (not that I bear any hope that the "Office of Ecosystems" intends to be reasonable). There were no pollutants involved (and why something that is already there but gets moved all of a sudden become a "pollutant" is a mystery to me). Section 232.3(c)(1)(ii)(B) mentions activities that "take place outside the waters of the United States" as being exempt. Mr. Kerivan did not work in the water. Incidentally, are there such waters and where might they be? I believe it was in 2003 I noticed Josephine County placing rip-rap on the upper end of Sucker Creek. Were they required to obtain a permit and, if so, did they?

It certainly makes one wonder why the Watershed Council bestowed their 2001 Watershed Friendly Steward award to Mr. Kerivan, given his "anti-environmental and anti-American philosophy and life style".

I, too, sent you a comment letter in support of Mr. Kerivan dated April 11 (same time frame as those you forwarded to him). Why was it not included in the packet?

In closing, it truly makes me sad to realize that our own government enables those who would stop all natural resource and commercial agricultural production to have so much power. Those who actually produce something and pay hefty taxes are punished for being the true conservationists, while the tax-exempt groups who really rake in the dough in the name only of the environment are treated like the fourth arm of government.

Sincerely,

Lynda Vanderlinden

Lynda Vanderlinden

Encl

cc: Stephen L. Johnson,
Administrator, EPA

Siskiyou Project board members vote to oust director Don Smith

By Jeff Duewel
of the Daily Courier

TAKILMA — Don Smith is no longer the executive director of the Siskiyou Regional Education Project, a 21-year-old environmental group based near Cave Junction.

Board President David Johns, a Portland State University professor of politics, said the six-person board met with Smith this week.

"The board simply decided it wanted to make a change," Johns said.

"We're extremely appreciative of the work he's done. It was just a board decision."

The Siskiyou Regional Education Project members have fought to stop logging and mining on the Siskiyou National Forest to protect the area since 1983, through education, activism and litigation.


SMITH

The group has an annual budget of about $300,000 and a staff of eight people, said Smith, who took over as executive director in 2003.

Johns said Julie Norman, who previously was active with the group Headwaters, will serve as interim director for the Siskiyou Project.

A search for a new long-term executive director begins Monday, he said.

Responding to the Biscuit Fire and salvage plans has taken up much of Smith's time. Before the fire, the Siskiyou Project had been campaigning to create a Siskiyou Wild Rivers national monument.

"I came to town to shape up the organization and spearhead the effort to beat back the Biscuit project," Smith said. "Along the way I stepped on some toes, especially amongst some environmentalists."

Smith guessed that his statements about making compromises and that the Siskiyou Project was not against all logging may have had something to do with the dismissal. Johns said that wasn't the case.

"I don't have any bitterness, I know these things happen," Smith said. "Organizations like the Siskiyou Project preserve the very things that make this a great place to live."

❑ ❑ ❑

Reach reporter Jeff Duewel at 474-3720, or jduewel@thedailycourier.com

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05 JUL 15 PM 5:01
HEARINGS CLERK
EPA--REGION 10

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:	)	DOCKET NO. CWA-10-2005-0124
Robert E. Kerivan Bridgeview Vineyards, Inc.	)	JOINT STATUS REPORT
Josephine County, OR Respondents	)	

As requested during the Alternative Dispute Resolution (ADR) conference call on June 17, 2005, the parties hereby file this Joint Status Report.

The parties have not yet reached a settlement in this matter; however, on Thursday, July 13th, counsel for Respondent transmitted a good faith settlement proposal to counsel for Complainant that may well result in the settlement. Counsel for Complainant has forwarded Respondent's settlement offer to EPA management but has not yet received authorization to respond and the EPA manager involved in this case is unavailable until next week. Unfortunately, counsel for Complainant will be out of the office next week until July 26th at which time she will be able to provide EPA's formal response to the settlement offer.

The parties therefore jointly request that the deadline for terminating Alternative Dispute Resolution be extended for another 60 days to allow the parties to complete settlement negotiations and finalize a settlement agreement, if possible. The parties will file another status report within 30 days.

Respectfully submitted this 15th day of July, 2005

Deborah E. Hilsman
Assistant Regional Counsel

Clarence H. Greenwood
Counsel for Respondent

In the Matter of: Robert E. Kerivan, et al.
Docket No. CWA-10-2005-0124

CERTIFICATE OF SERVICE

I hereby certify that a copy of **JOINT STATUS REPORT** was sent to the following persons in the manner specified on the date below:

Original with exhibits, and one true and correct copy, less confidential exhibits, by hand delivery;

Carol Kennedy, Regional Hearing Clerk
US Environmental Protection Agency, Region 10
1200 Sixth Avenue, Mail Stop ORC -158
Seattle, Washington 98101

One true and correct copy hand delivered to:

Deborah E. Hilsman, Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue, Mail Stop ORC -158
Seattle, Washington 98101

One true and correct copy by FAX and Pouch Mail to:

The Honorable Barbara Gunning
Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Projection Agency
Mail Code 1900L
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

One true and correct copy by FAX and first class mail:

Clarence Greenwood
Black Helterline
1900 Fox Tower
805 Southwest Broadway
Portland, Oregon 97205-3359

Dated: July 15, 2005

Sara Bent
Environmental Protection Agency

RECEIVED
05 JUL 21 AM 11:51
HEARINGS CLERK
EPA--REGION 10

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	
ROBERT E. KERIVAN and	)	DOCKET NO. CWA-10-2005-0124
BRIDGEVIEW VINEYARDS, INC.,	)	
	)	
Respondents	)	

REPORT RECOMMENDING CONTINUATION
OF ALTERNATIVE DISPUTE RESOLUTION PROCESS

The Chief Administrative Law Judge's Order of May 10, 2005 provides that this alternative dispute resolution (ADR) process terminates July 11, 2005. The recommendation of this Report is that the ADR process be continued for another month, to August 11, 2005.

This continuation of the ADR process is recommended because the parties' negotiations have developed the possibility of a settlement, but additional time is needed if a settlement is to be actually concluded.[1]

Accordingly, the undersigned will continue to serve as a Neutral in this case and will file another report with the Chief Administrative Law Judge by August 11, 2005, unless otherwise directed by her.

Barbara A. Gunning
Administrative Law Judge

Dated: July 19, 2005

Approved: _____
Susan L.Biro
Chief Administrative Law Judge

Dated: 7/19/05

[1]A joint status report from the parties is due **August 9, 2005.**

In the ADR Matter of *Robert E. Kerivan and Bridgview Vineyards, Inc.*., Respondent.
Docket No. CWA-10-2005-0124

CERTIFICATE OF SERVICE

I certify that the foregoing **Report Recommending Continuation of Alternative Dispute Resolution Process**, dated July 19, 2005, was sent this day in the following manner to the addressees listed below.

Mary Angeles
Legal Staff Assistant

Original and One Copy by Pouch Mail to:

Carol D. Kennedy
Regional Hearing Clerk
U.S. EPA - Region X
1200 Sixth Avenue
Seattle, WA 98101

Copy by Pouch Mail to:

Deborah Hilsman, Esq.
Assistant Regional Counsel
U.S. EPA - Region X
1200 Sixth Avenue
Seattle, WA 98101

Copy by Regular Mail to:

Clarence H. Greenwood, Esq.
Black Helterline, LLP
1900 Fox Tower
805 Southwest Broadway
Portland, OR 97205-2359

Dated: July 19, 2005
Washington, D.C.

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05 JUL 21 AM 11:51
HEARINGS CLERK
EPA--REGION 10

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	
ROBERT E. KERIVAN and	)	DOCKET NO. CWA-10-2005-0124
BRIDGEVIEW VINEYARDS, INC.,	)	
	)	
Respondents	)	

REPORT RECOMMENDING CONTINUATION OF ALTERNATIVE DISPUTE RESOLUTION PROCESS

The Chief Administrative Law Judge's Order of May 10, 2005 provides that this alternative dispute resolution (ADR) process terminates July 11, 2005. The recommendation of this Report is that the ADR process be continued for another month, to August 11, 2005.

This continuation of the ADR process is recommended because the parties' negotiations have developed the possibility of a settlement, but additional time is needed if a settlement is to be actually concluded.[1]

Accordingly, the undersigned will continue to serve as a Neutral in this case and will file another report with the Chief Administrative Law Judge by August 11, 2005, unless otherwise directed by her.

Barbara A. Gunning
Administrative Law Judge

Dated: July 19, 2005

Approved: _____
Susan L.Biro
Chief Administrative Law Judge

Dated: 7/19/05

[1] A joint status report from the parties is due **August 9, 2005.**

In the ADR Matter of *Robert E. Kerivan and Bridgview Vineyards, Inc.*., Respondent.
Docket No. CWA-10-2005-0124

CERTIFICATE OF SERVICE

I certify that the foregoing **Report Recommending Continuation of Alternative Dispute Resolution Process**, dated July 19, 2005, was sent this day in the following manner to the addressees listed below.

Mary Angeles
Legal Staff Assistant

Original and One Copy by Pouch Mail to:

Carol D. Kennedy
Regional Hearing Clerk
U.S. EPA - Region X
1200 Sixth Avenue
Seattle, WA 98101

Copy by Pouch Mail to:

Deborah Hilsman, Esq.
Assistant Regional Counsel
U.S. EPA - Region X
1200 Sixth Avenue
Seattle, WA 98101

Copy by Regular Mail to:

Clarence H. Greenwood, Esq.
Black Helterline, LLP
1900 Fox Tower
805 Southwest Broadway
Portland, OR 97205-2359

Dated: July 19, 2005
Washington, D.C.

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05 AUG -9 PM 1:45

HEARINGS CLERK
EPA--REGION 10

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:	)	DOCKET NO. CWA-10-2005-0124
Robert E. Kerivan Bridgeview Vineyards, Inc.	)	SECOND JOINT STATUS REPORT
Josephine County, OR Respondents	)	

As requested in the July 19, 2005 Report Recommending Continuation of Alternative Dispute Resolution Process, the parties hereby file this Second Joint Status Report.

The parties have reached a settlement-in-principle in this case. A draft Consent Agreement and Proposed Final Order has been forwarded to EPA management for concurrence. Once that concurrence is received counsel for EPA will forward the document to counsel for Respondents for review and comment. Counsel for EPA anticipates that the draft document will be provided to counsel for Respondents by August 10th. Robert E. Kerivan will be out of the country from August 13, 2005 through September 1, 2005. The parties will endeavor to finalize and obtain signatures on the Consent Agreement as quickly as possible; however, it will be at least 40 days after the parties have signed the Consent Agreement, before the Regional Administrator can sign the Final Order.

Several third parties commented on the $25,000 penalty EPA proposed in the complaint when notice of filing of the complaint was published in April 2005. Therefore, in accordance with 40 C.F.R. § 22.45(c)(4)(i), EPA must provide to each commenter, by certified mail, return receipt requested, a copy of the Consent Agreement and Proposed Final Order. Pursuant to 40 C.F.R. § 22.45(c)(4)(ii), EPA must allow the commenters at least 30 days after their receipt of the Consent Agreement and Proposed Final Order to petition the Regional Administrator to set aside the Consent Agreement. If none of the commenters petition the Regional Administrator to set aside the Consent Agreement, the Final Order will be signed and filed by the Regional Administrator at the end of the 30 day period. If any commenter timely petitions the Regional Administrator to set aside the Consent Agreement, then EPA must follow the procedures set forth in 40 C.F.R. § 22.45(c) (4) before a Final Order can be filed resolving the case.

The parties respectfully request that the Court take into consideration the additional time needed for providing notice of the settlement to the commenters and any subsequent proceedings that may follow, when reporting to the Chief Administrative Law Judge on August 11, 2005.

Respectfully submitted this 9th day of August, 2005

Deborah E. Hilsman
Assistant Regional Counsel

Clarence H. Greenwood
Counsel for Respondent

In the Matter of: Robert E. Kerivan, et al.
Docket No. CWA-10-2005-0124

CERTIFICATE OF SERVICE

I hereby certify that a copy of **SECOND JOINT STATUS REPORT** was sent to the following persons in the manner specified on the date below:

Original ~~with exhibits~~ mw, and one true and correct copy,
by hand delivery;

Carol Kennedy, Regional Hearing Clerk
US Environmental Protection Agency, Region 10
1200 Sixth Avenue, Mail Stop ORC -158
Seattle, Washington 98101

One true and correct copy hand delivered to:

Deborah E. Hilsman, Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue, Mail Stop ORC -158
Seattle, Washington 98101

One true and correct copy by FAX and Pouch Mail to:

The Honorable Barbara Gunning
Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Projection Agency
Mail Code 1900L
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

One true and correct copy by FAX and first class mail:

Clarence Greenwood
Black Helterline
1900 Fox Tower
805 Southwest Broadway
Portland, Oregon 97205-3359

Dated: August 9, 2005

Melissa L. Whitaker
Melissa Whitaker
Environmental Protection Agency

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05 AUG 16 AM 8:40
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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of

ROBERT E. KERIVAN and BRIDGEVIEW VINEYARDS, INC.,	)	DOCKET NO. CWA-10-2005-0124
Respondents	)	

REPORT RECOMMENDING CONTINUATION
OF ALTERNATIVE DISPUTE RESOLUTION PROCESS

The Report approved July 19, 2005 provides that this alternative dispute resolution (ADR) process terminates August 11, 2005. The recommendation of this Report is that the ADR process be continued for a final month, to September 11, 2005.

This continuation of the ADR process is recommended because the parties' negotiations have made substantial progress toward a settlement, but additional time is needed if a settlement is to be actually concluded. In a status report filed August 9, 2005, the parties requested that the ADR process be continued.

Accordingly, the undersigned will continue to work as a Neutral in this case and will file another report with the Chief Administrative Law Judge by September 11, 2005, unless otherwise directed by her.

Barbara A. Gunning
Administrative Law Judge

Dated: August 11, 2005

Approved: _____
Susan L.Biro
Chief Administrative Law Judge

Dated: 8-11-05

In the ADR Matter of *Robert E. Kerivan and Bridgview Vineyards, Inc.*., Respondent.
Docket No. CWA-10-2005-0124

CERTIFICATE OF SERVICE

I certify that the foregoing **Report Recommending Continuation of Alternative Dispute Resolution Process**, dated August 11, 2005, was sent this day in the following manner to the addressees listed below.

Mary Angeles
Legal Staff Assistant

Original and One Copy by Pouch Mail to:

Carol D. Kennedy
Regional Hearing Clerk
U.S. EPA - Region X
1200 Sixth Avenue
Seattle, WA 98101

Copy by Pouch Mail to:

Deborah Hilsman, Esq.
Assistant Regional Counsel
U.S. EPA - Region X
1200 Sixth Avenue
Seattle, WA 98101

Copy by Regular Mail to:

Clarence H. Greenwood, Esq.
Black Helterline, LLP
1900 Fox Tower
805 Southwest Broadway
Portland, OR 97205-2359

Dated: August 11, 2005
Washington, D.C.

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05 SEP 29 AM 11:18
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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	
ROBERT E. KERIVAN and	)	**DOCKET NO. CWA-10-2005-0124**
BRIDGEVIEW VINEYARDS, INC.,	)	
	)	
Respondents	)	

REPORT RECOMMENDING TERMINATION
OF ALTERNATIVE DISPUTE RESOLUTION PROCESS

The Report of August 11, 2005 provides that this alternative dispute resolution (ADR) process terminates September 11, 2005. The recommendation of this Report is that the ADR process be terminated, and also that the case be assigned to another Judge until it is finally concluded.

The reason for recommending termination of the ADR process is that the parties have reached an agreement to settle this matter and Complainant reported on September 27, 2005 that the parties shortly plan to file a Consent Agreement and Final Order. The reason for recommending assignment of the case to another Judge is simply a precaution in the event that problems arise in concluding the settlement agreement.

The parties are commended for their success in negotiating their agreement. The undersigned further expresses her appreciation to the parties for the courtesy and candor with which they participated in the ADR process.

Barbara A. Gunning
Administrative Law Judge
Dated: September 27, 2005

Approved: _____
Susan L. Biro
Chief Administrative Law Judge

Dated: 9/27/05

In the ADR Matter of *Robert E. Kerivan and Bridgview Vineyards, Inc.*., Respondent.
Docket No. CWA-10-2005-0124

CERTIFICATE OF SERVICE

I certify that the foregoing **Report Recommending Termination of Alternative Dispute Resolution Process**, dated September 27, 2005, was sent this day in the following manner to the addressees listed below.

Mary Angeles
Legal Staff Assistant

Original and One Copy by Pouch Mail to:

Carol D. Kennedy
Regional Hearing Clerk
U.S. EPA - Region X
1200 Sixth Avenue
Seattle, WA 98101

Copy by Pouch Mail to:

Deborah Hilsman, Esq.
Assistant Regional Counsel
U.S. EPA - Region X
1200 Sixth Avenue
Seattle, WA 98101

Copy by Regular Mail to:

Clarence H. Greenwood, Esq.
Black Helterline, LLP
1900 Fox Tower
805 Southwest Broadway
Portland, OR 97205-2359

Dated: September 27, 2005
Washington, D.C.

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

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BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	
	)	
Robert E. Kerivan and	)	**Docket No. CWA-10-2005-0124**
Bridgeview Vineyards, Inc.,	)	
	)	
	)	
Respondent	)	

Order of Designation

Chief Administrative Law Judge Susan L. Biro, Environmental Protection Agency, Washington, DC, is hereby designated as the Administrative Law Judge to preside in this proceeding under Section 309(g) of the Clean Water Act, 33 U.S.C. §1319(g) and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits 40 CFR Part 22.

Susan L. Biro
Chief Administrative Law Judge

Dated: September 28, 2005
Washington, DC

In the Matter of Robert E. Kerivan and Bridgeview Vineyards, Inc., Respondent
Docket No. CWA-10-2005-0124

CERTIFICATE OF SERVICE

I certify that the foregoing **OrderOf Designation**, dated September 28, 2005, was sent this day in the following manner to the addressees listed below:

Maria Whiting-Beale

Maria Whiting-Beale
Legal Staff Assistant

Dated: September 28, 2005

Original And One Copy By Pouch Mail To:

Carol D. Kennedy
Regional Hearing Clerk
U.S. EPA
1200 Sixth Avenue
Seattle, WA 98101

Copy By Pouch Mail To:

Deborah Hilsman, Esquire
Assistant Regional Counsel
U.S. EPA
1200 Sixth Avenue, ORC-158
Seattle, WA 98101

Copy By Regular Mail To:

Clarence H. Greenwood, Esquire
Black Helterline, LLP
1900 Fox Tower
805 Southwest Broadway
Portland, OR 97205-2359

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:	)	
	)	
ROBERT E. KERIVAN AND BRIDGEVIEW VINEYARDS, INC.,	)	**DOCKET No. CWA-10-2005-0124**
	)	
	)	
Respondent.	)	

INITIAL PREHEARING ORDER

As you have been previously notified, I am designated to preside over this proceeding. This proceeding will be governed by the applicable statute(s) as well as the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits (the "Rules of Practice") (40 C.F.R. Part 22). The parties are advised to familiarize themselves with both the applicable statute(s) and the Rules.

The record indicates that on September 27, 2005, the Neutral Judge reported that the parties were in the process of finalizing their Consent Agreement and Final Order. Therefore, the parties are hereby **ORDERED**, to file the fully executed Consent Agreement and Final Order memorializing their settlement no later than **Novermber 25, 2005**, with a copy contemporaneously sent to the undersigned ***by facsimile and mail***.

FAILURE TO SUBMIT THE CONSENT AGREEMENT IN A TIMELY MANNER MAY RESULT IN ENTRY OF AN ORDER OF DISMISSAL WITH PREJUDICE OR DEFAULT, AS APPROPRIATE, WITHOUT FURTHER NOTICE.

Susan L. Biro
Chief Administrative Law Judge

Dated: October 3, 2005
Washington, D.C.

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:	)	
	)	
ROBERT E. KERIVAN AND BRIDGEVIEW VINEYARDS, INC.,	)	**DOCKET No. CWA-10-2005-0124**
	)	
	)	
Respondent.	)	

INITIAL PREHEARING ORDER

As you have been previously notified, I am designated to preside over this proceeding. This proceeding will be governed by the applicable statute(s) as well as the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits (the "Rules of Practice") (40 C.F.R. Part 22). The parties are advised to familiarize themselves with both the applicable statute(s) and the Rules.

The record indicates that on September 27, 2005, the Neutral Judge reported that the parties were in the process of finalizing their Consent Agreement and Final Order. Therefore, the parties are hereby **ORDERED**, to file the fully executed Consent Agreement and Final Order memorializing their settlement no later than **Novermber 25, 2005**, with a copy contemporaneously sent to the undersigned ***by facsimile and mail***.

FAILURE TO SUBMIT THE CONSENT AGREEMENT IN A TIMELY MANNER MAY RESULT IN ENTRY OF AN ORDER OF DISMISSAL WITH PREJUDICE OR DEFAULT, AS APPROPRIATE, WITHOUT FURTHER NOTICE.

Susan L. Biro
Chief Administrative Law Judge

Dated: October 3, 2005
Washington, D.C.

In the Matter of Robert E. Kerivan and Bridgeview Vineyards, Inc., Respondent
Docket No. CWA-10-2005-0124

CERTIFICATE OF SERVICE

I certify that the foregoing **Initial Prehearing Order**, dated October 3, 2005, was sent this day in the following manner to the addressees listed below:

Maria Whiting-Beale
Legal Staff Assistant

Dated: October 4, 2005

Original And One Copy By Pouch Mail To:

Carol D. Kennedy
Regional Hearing Clerk
U.S. EPA
1200 Sixth Avenue
Seattle, WA 98101

Copy By Pouch Mail To:

Deborah Hilsman, Esquire
Assistant Regional Counsel
U.S. EPA
1200 Sixth Avenue, ORC-158
Seattle, WA 98101

Copy By Regular Mail To:

Clarence H. Greenwood, Esquire
Black Helterline, LLP
1900 Fox Tower
805 Southwest Broadway
Portland, OR 97205-2359

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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:	)	
	)	
ROBERT E. KERIVAN AND BRIDGEVIEW VINEYARDS, INC.,	)	**DOCKET No. CWA-10-2005-0124**
	)	
	)	
Respondent.	)	

ORDER GRANTING MOTION FOR EXTENSION OF TIME

By Motion dated November 9, 2005, Complainant moved for an extension of time to file the Consent Agreement and Final Order. The Motion indicated that the Respondent takes no position on the Motion.

The Motion is hereby, **GRANTED**, as set forth below:

Good cause exists for the granting of the Motion in that it is in the interest of the parties and judicial economy for the parties to settle this matter on mutually agreeable terms rather than litigate the matter to conclusion. The Motion indicates that the parties have reached an agreement in principle and have executed a Consent Agreement which has been sent to persons who previously submitted comments on Complainant's proposed penalty in this case pursuant to 33 U.S.C. § 1319(g)(4)(C) and 40 C.F.R. § 22.45(c)(4)[1]. Service on all such commentators has not been perfected and Complainant requests additional time for this purpose. In that a hearing in this case has yet to be scheduled, no prejudice will result from a brief delay. Therefore, the Complainant shall have until **December 22, 2005** to file the fully executed Consent Agreement and Final Order.

Susan L. Biro
Chief Administrative Law Judge

Dated: November 10, 2005
Washington, D.C.

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[1] Section § 1319(g)(4)(C), 33 U.S.C. provides that in cases where no hearing is held before issuance of a final order assessing an administrative penalty, persons who commented on the proposed penalty may petition the EPA Administrator to set aside such order and hold a hearing. Rule 22.45(c)(4) of the Consolidated Rules of Procedure (40 C.F.R. § 22.45(c)(4)), requires the Agency to send each commentator, by certified mail, a copy of the consent agreement so as to notify the commentators of the proposed final penalty.

In the Matter of Robert E. Kerivan and Bridgeview Vineyards, Inc., Respondent
Docket No. CWA-10-2005-0124

CERTIFICATE OF SERVICE

I certify that the foregoing **Order Granting Motion For Extension Of Time**, dated November 10, 2005, was sent this day in the following manner to the addressees listed below:

Maria Whiting-Beale
Legal Staff Assistant

Dated: November 10, 2005

Original And One Copy By Pouch Mail To:

Carol D. Kennedy
Regional Hearing Clerk
U.S. EPA
1200 Sixth Avenue
Seattle, WA 98101

Copy By Pouch Mail To:

Deborah Hilsman, Esquire
Assistant Regional Counsel
U.S. EPA
1200 Sixth Avenue, ORC-158
Seattle, WA 98101

Copy By Regular Mail To:

Clarence H. Greenwood, Esquire
Black Helterline, LLP
1900 Fox Tower
805 Southwest Broadway
Portland, OR 97205-2359

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EPA--REGION 10

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	Docket No. CWA-10-2005-0124
Robert E. Kerivan and Bridgeview Vineyards, Inc.	)	COMPLAINANT'S MOTION FOR EXTENSION OF TIME TO FILE CONSENT AGREEMENT AND FINAL ORDER
Respondents.	)	

Complainant respectfully requests that the time be extended for the parties to file a Consent Agreement and Final Order in the matter referenced above. For the reasons set forth below, Complainant requests that the deadline be extended from the November 25, 2005 date established in the October 3, 2005 Initial Prehearing Order to a new deadline of December 22, 2005.

As a result of alternative dispute resolution, the parties signed a Consent Agreement and Proposed Final Order on October 3, and October 5, 2005. On October 6, 2005, copies of the Consent Agreement and Proposed Final Order (proposed CAFO) were mailed by certified mail - return receipt requested to seven persons who had previously commented on Complainant's proposed penalty against Respondents. The purpose of the mailings was to provide the commenters with the opportunity to petition to set aside the proposed CAFO as required under

Section 309(g)(4)(C) of the Clean Water Act, 33 U.S.C. § 1319(g)(4)(C), and 40 C.F.R. § 22.45(c)(4). Complainant received return receipts from five of the commenters documenting that they had received their copies of the proposed CAFO between October 11th and October 17th.

Last week, the U.S. Postal Service returned the envelopes addressed to the remaining two commenters indicating that the envelopes were unclaimed. Postal Service notations on the two envelopes indicate that the Postal Service attempted delivery and/or left notices to the addressees on October 11th, October 18th and October 28th, before returning the envelopes to EPA. Because the last two commenters may have been out of town during that period of time or may otherwise have had good reason for failing to claim the envelopes from the post office, Complainant would like to mail the returned envelopes to the two commenters again, but this time by first class mail. Complainant would instruct the two commenters that if they choose to petition the Regional Administrator to set aside the proposed CAFO, EPA must receive that petition within 35 days of the date of the cover letter. This would allow the last two commenters five days for mail service and 30 days to review the proposed CAFO and submit any petition to set aside the proposed CAFO to EPA.

Complainant has contacted Respondents' counsel concerning this motion. Counsel indicates that Respondents will neither consent to or object to Complainant's request for more time; their interest is to get this matter completed and final as soon as possible and if the agency feels it needs to do this, then they are neutral concerning this motion.

Complainant will provide notice to Respondents and this Court immediately, should the Regional Administrator receive any petitions to set aside the proposed CAFO from any of the

commenters. Complainant will then proceed under the procedures set forth in 40 C.F.R. § 22.45(c)(4) to address any such petitions.

Respectfully submitted this 9th, day of November, 2005.

Deborah E. Hilsman
Assistant Regional Counsel
U.S. EPA Region 10

CERTIFICATE OF SERVICE

I certify that the original and one copy of the foregoing "Complainant's Motion for Extension of Time to File Consent Agreement and Final Order" was delivered to the Regional Hearing Clerk and a copy was sent to the following persons, in the manner specified, on the date below:

A true and correct copy by facsimile and pouchmail:

Hon. Susan Biro
Chief Administrative Law Judge
Office of the Administrative Law Judges
U.S. Environmental Protection Agency
Ariel Rios Building
Mail Code 1900L
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

A true and correct copy by facsimile and first class mail:

Clarence H. Greenwood
Black Helterline
1900 Fox Tower
805 Southwest Broadway
Portland, OR 97205-3359

A true and correct copy by hand delivery:

Deborah E. Hilsman
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Mail Stop ORC-158
Seattle, Washington 98101

11.9.05
Date

Melissa Whitaker
U.S. EPA Region 10

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05 DEC 20 PM 4:47
HEARINGS CLERK
EPA—REGION 10

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	
	)	
Robert E. Kerivan and Bridgeview Vineyards, Inc.,	)	CONSENT AGREEMENT AND FINAL ORDER
	)	
	)	Docket No. CWA-10-2005-0124
Josephine County, Oregon	)	
	)	
Respondents.		

I. AUTHORITY

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") by Section 309(g) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g). The Administrator has delegated the authority to issue the Final Order contained in Part IV of this CAFO to the Regional Administrator of EPA, Region 10.

1.2. Pursuant to Section 309(g)(1) and (g)(2)(B) of the CWA and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA hereby issues, and Respondents Robert E. Kerivan and Bridgeview Vineyards, Inc., hereby consent to, the issuance of the Final Order contained in Part IV of this CAFO.

.....

.....

II. PRELIMINARY STATEMENT

2.1. On March 25, 2005, EPA initiated this proceeding against Robert E. Kerivan and Bridgeview Vineyards, Inc. ("Respondents") pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), by filing a Complaint against Respondents for the assessment of an administrative penalty.

2.2. The complete factual and jurisdictional basis for proposing the assessment of a civil penalty is set forth in the Complaint which is incorporated herein by reference.

2.3. On April 22, 2005, Respondents filed their Administrative Answer to the Complaint.

2.4. Respondents strenuously deny they violated the Clean Water Act. The factual and legal basis for Respondents' denial of liability for any Clean Water Act violation is set forth in the Administrative Answer which is incorporated herein by reference.

2.5. Shortly after the Administrative Answer was filed, the parties agreed to enter EPA's Alternative Dispute Resolution process. As a result of information exchanged during settlement negotiations, EPA and Respondents have agreed to resolve this matter by compromise and settlement which this CAFO is intended to document.

2.6. On November 29, 2002, EPA had issued a compliance order to Respondents alleging that Respondents had violated the CWA at Bridegview Vineyards & Winery. After discussions with Respondents and inspections of the site, EPA amended the compliance order on June 24, 2004. On September 9, 2004, EPA sent further instructions regarding its amended order. By letter dated September 13, 2004, Respondents reported to EPA that they had conducted activity to fully comply with EPA's amended order as clarified by the September 9, 2004 instructions. On October 22, 2004, Respondents submitted an amendment to the September 13, 2004 letter that included 28 pictures of the compliance activities. Assuming that the documentation

(including photographs) Respondents submitted to EPA on October 22, 2004 is accurate, EPA agrees that Respondents have complied with the terms of the amended compliance order.

III. CONSENT AGREEMENT

The parties to this action hereby stipulate as follows:

3.1. Respondents admit to EPA's jurisdiction for purposes of this proceeding under Section 309(g) of the CWA and 40 C.F.R. Part 22 of documenting the settlement and entry of the CAFO as a Final Order.

3.2. For purposes of settling this case under 40 C.F.R. § 22.18(b)(2), Respondents neither admit nor deny the specific factual allegations contained in the Complaint. For the reasons set forth in paragraph 2.4 above, Respondents deny that they violated the Clean Water Act.

3.3. Respondents agree to pay ELEVEN THOUSAND DOLLARS ($11,000) upon this CAFO becoming a Final Order. This payment is a payment in settlement of Respondents' liability for Federal civil penalties for all CWA violations alleged in the Complaint arising from Respondents' emergency repairs to Respondents' property in November and December of 2002. Although Respondents do not agree with EPA's characterization of this payment, Respondents agree that for purposes of settlement they will not contest EPA's characterization of the payment as a penalty as set forth below.

3.4. Pursuant to Section 309(g) of the CWA, 33 U.S.C. §1319(g), considering the nature, circumstances, extent, and gravity of the alleged violations, EPA has determined an appropriate penalty to settle this action is ELEVEN THOUSAND DOLLARS ($11,000).

3.5. Respondents consent to the issuance of the Final Order recited herein and to payment of ELEVEN THOUSAND DOLLARS ($11,000).

3.6. Penalty payment shall be made within thirty (30) days of the effective date

of this CAFO by cashier's check or certified check, payable to the order of "U.S. Treasury" and shall be mailed to the following address:

U.S. Environmental Protection Agency
Region 10
P.O. Box 371099M
Pittsburgh, PA 15251

Respondents shall note on the check the title and docket number of this case. Respondents may also pay the penalty by wire transfer in accordance with instructions provided by EPA.

3.7. Respondents shall serve photocopies of the check or documentation of the wire transfer described above on the Regional Hearing Clerk and Complainant at the following two addresses:

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

Yvonne Vallette
U.S. Environmental Protection Agency
Oregon Operations Office
811 SW 6th Avenue, 3rd Floor
Portland, Oregon 97204

3.8. Should Respondents fail to pay the penalty assessed by this CAFO in full by its due date, Respondents may be subject to a civil action to collect the assessed penalty under the CWA. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

3.9. Should Respondents fail to pay any portion of the penalty assessed by this CAFO in full by its due date, Respondents shall also be responsible for payment of the following amounts:

a. 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 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 contained herein, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the effective date of the Final Order contained herein.

b. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), should Respondents fail to pay on a timely basis the amount of the penalty assessed by the Final Order contained herein, Respondents 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 twenty percent (20%) of the aggregate amount of Respondents' penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

3.10. The penalties described in paragraphs 3.4 of this CAFO shall represent civil penalties assessed by EPA and shall not be deductible for purposes of federal taxes.

3.11. Except as described in paragraph 3.9 of this CAFO, each party shall bear their own costs in bringing or defending this action.

3.12. Respondents waive any right to contest the allegations or to appeal the Final Order once it becomes final. If any of the commenters listed in Exhibit A to the CAFO petition to set aside this CAFO under 40 C.F.R. § 22.45(c)(4) and as a result, EPA withdraws this CAFO or a Presiding Officer orders that this CAFO be set aside, then this waiver will be void and Respondents shall have the right to contest the allegations in the Complaint to the same extent and with the same rights as if Respondents had not signed this CAFO.

3.13. The provisions of this CAFO shall bind Respondents and their agents,

servants, employees, successors, and assigns.

3.14. The parties represent that they are duly authorized to execute this CAFO and that the person signing this CAFO on each of their behalf is duly authorized to bind them to the terms of this CAFO.

3.15 The parties acknowledge that they negotiated this settlement under Federal Rule of Evidence 408 and that this consent agreement does not contain an admission of liability.

STIPULATED AND AGREED:

ROBERT E. KERIVAN and
BRIDGEVIEW VINEYARDS, INC.

Robert E. Kerivan

ROBERT E. KERIVAN, as an individual and
as President of Bridgeview Vineyards, Inc.

Dated: October 3, 2005

U.S. ENVIRONMENTAL PROTECTION AGENCY

Deborah E. Hilsman

DEBORAH E. HILSMAN
Assistant Regional Counsel

Dated: October 5, 2005

IV. FINAL ORDER

4.1. 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 settlement.

4.2. This CAFO constitutes a compromise and settlement by EPA and Respondents of all EPA's claims for civil penalties pursuant to the Clean Water Act for the particular violations alleged in the Complaint. 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 and regulations and permits issued thereunder.

4.3. 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 Oregon Department of State Lands has been given the opportunity to consult with EPA regarding the assessment of an administrative penalty against Respondents.

4.4. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), in April 2005, EPA 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. In response to the Complaint filed on March 25, 2005, EPA received comments from the seven persons listed in Exhibit A to this CAFO. A copy of the Consent Agreement and Proposed Final Order was provided to each commenter, by certified mail, return receipt requested as required by 40 C.F.R. § 22.45(c)(4)(i). More than 30 days has elapsed since the commenters received the copy of the Consent Agreement and Proposed Final Order and EPA has received no petitions to set aside the Consent Agreement contained herein.

4.5. This Final Order shall become effective upon filing.

SO ORDERED this 27th day of June, 2005.

L. MICHAEL BOGERT
Regional Administrator
U.S. Environmental Protection Agency
Region 10

EXHIBIT A

LIST OF COMMENTERS

Gordon R. Lyford
P.O. Box 118
O'Brien, OR 97534

Barry Snitkin
POB 2565
Cave Junction, OR 97523

Debbie Lucas
PO Box 2093
Cave Junction, OR 97523

Kathleen Humphrey
9545 Takilma Road
Cave Junction, OR 97523

Geraldine Davidson
Box 1747
Cave Junction, OR 97523

Lynda Vanderlinden
8025 Takilma Rd.
Cave Junction, OR 97523

Gloria and Bob Ziller
P.O. Box 419
O'Brien, OR 97534

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Robert E. Kerivan and Bridgeview Vineyards, Inc., DOCKET NO.: CWA-10-2005-0124,** was filed with the Regional Hearing Clerk on December 20, 2005.

On December 20, 2005 the undersigned certifies that a true and correct copy of the document was delivered to:

Deborah Hilsman, Esquire
US Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Seattle, WA 98101

Honorable Susan L. Biro
Chief Administrative Law Judge
Office of the Administrative Law Judges
U.S. Environmental Protection Agency
Ariel Rios Building
M/C 1900L
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

COMMENTERS

Gordon R. Lyford
P.O. Box 118
O'Brien, OR 97534

Barry Snitkin
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Debbie Lucas
P.O. Box 2093
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Kathleen Humphrey
9545 Takilma Road
Cave Junction, OR 97523

Geraldine Davidson
Box 1747
Cave Junction, OR 97523

Lynda Vanderlinden
8025 Takilma Rd.
Cave Junction, OR 97523

Gloria and Bob Ziller
P.O. Box 419
O'Brien, OR 97534

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 December 20, 2005, to:

Clarence H. Greenwood, Esq.
Black Helterline
1900 Fox Tower
805 Southwest Broadway
Portland, OR 97205-3359

Robert E. Kerivan, President
Bridgeview Vineyards, Inc.
4210 Holland Loop Road
PO Box 609
Cave Junction, OR 97523

DATED this 20th day of December 2005.

Carol Kennedy

Carol Kennedy
Regional Hearing Clerk
EPA Region 10

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EPA--REGION 10

Clarke American.
1-800-694-1888

Y3660508

HOME VALLEY BANK
110 SW 4TH Street
P.O. Box 617
Grants Pass, OR 97528

132795

96-638/1232

Remitter
BRIDGEVIEW VINEYARDS, INC

DATE JAN 17 2006

Pay to the order of *********U.S TREASURY********** $*11,000.00*

HOME VALLEY BANK 11,000

Dollars

THIS CHECK MAY BE INVALID AFTER 90 DAYS
UNDER ORS 73.0312

Cashier's Check

Docket CWA-10-2005-0124
consent agreement and Final order

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