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**STATE OF WASHINGTON
KITSAP COUNTY SUPERIOR COURT**

THE STATE OF WASHINGTON,

Plaintiff,

v.

ANTHONY R. SMITH,

Defendant.

NO.

AFFIDAVIT OF PROBABLE CAUSE

JEFFREY HAYES declares under penalty of perjury of the laws of the State of Washington that the following is true and correct:

I am a Special Agent with the United States Environmental Protection Agency (hereinafter "EPA"), Criminal Investigation Division ("EPA-CID") located in Seattle, Washington. As a Special Agent for the U.S. EPA-CID, I am authorized to conduct investigations of environmental crimes occurring in the United States, including lands and waters within the State of Washington.

On the morning of October 2, 2013, I learned of a tugboat (subsequently identified as the "Chickamauga") that sank in Eagle Harbor Marina earlier that morning on Bainbridge Island, Washington and released diesel fuel to Puget Sound. Shortly after receiving the information regarding the sunken tugboat, I called Harbormaster Doug Crow ("Crow") of Eagle Harbor Marina, 5834 Ward Avenue NE, Bainbridge Island, WA. Crow identified the

1 owner of the "Chickamauga" as Anthony R. Smith ("Smith"). Crow told me that Smith piloted
2 the "Chickamauga" to Eagle Harbor Marina and moored the tugboat there sometime around
3 February 2013. Crow informed me that he lived aboard his own vessel which was moored
4 next to the "Chickamauga" from February 2013, until September 2013. Crow reported that he
5 had not seen Smith on the "Chickamauga" since sometime this past February or March of
6 2013. He informed me that Smith paid for the first and last month's moorage fees for the
7 "Chickamauga"; however, Smith failed to pay moorage fees for the other months the tugboat
8 was docked at Eagle Harbor Marina. Crow said he contacted Smith on the following dates in
9 an attempt to collect moorage fees that Smith owed Eagle Harbor Marina; March 26, 2013,
10 April 1, 2013, April 4, 2013, and April 25, 2013. Crow told me that a woman came to Eagle
11 Harbor Marina during April 2013, and left a check to pay Smith's moorage fees. He said the
12 check the woman provided for the moorage fees was rejected by the bank for non-sufficient
13 funds.

14 During the afternoon of October 2, 2013, I traveled to Eagle Harbor Marina to
15 investigate the sinking of the "Chickamauga". When I arrived at the scene I observed
16 personnel from the Washington Department of Ecology (WDOE), the U.S. Coast Guard
17 (USCG) and Global Diving and Salvage try to collect the oil and diesel fuel released from the
18 "Chickamauga". I learned from one of the responding personnel that approximately 200 to 300
19 gallons of petroleum products were released to Puget Sound when the "Chickamauga" sank.
20 As a walked along the dock where the "Chickamauga" sank I noted an extremely strong smell
21 of diesel fuel and I observed a rainbow sheen on the surface of the harbor.

22 During the afternoon of October 2, 2013, personnel from the WDOE and the USCG
23 spoke with Smith over the telephone. Smith informed the aforementioned personnel that he
24 was in Squaw Harbor, Alaska where he worked in the fishing industry. The personnel from the
25 WDOE and the USCG informed me that Smith estimated the "Chickamauga" had
26 approximately 400 gallons of diesel fuel and ten gallons of lube oil on-board when it sank.

1 On October 21, 2013, I received a telephone call from Smith, who claimed he was
2 currently in Sand Point, Alaska. When I asked Smith why he failed to pay moorage fees to
3 Eagle Harbor Marina for the "Chickamauga" he claimed that a company failed to pay him
4 money that he was owed. Smith told me he ran out of funds and almost went bankrupt because
5 the company failed to pay him and he had to file a lawsuit against them.

6 On the morning of October 31, 2013, I called James Hicks ("Hicks") of Aqua Dive
7 Services. Hicks told me that he received a call from Smith after the "Chickamauga" sank.
8 According to Hicks, Smith requested his help in dealing with his sunken tugboat. Hicks stated
9 that he recalled Smith's exact words during the telephone call; "Please help me. I can't afford
10 to pay Global" (Global Diving and Salvage was hired by the USCG to raise the
11 "Chickamauga"). Hicks told me that he had no formal arrangement or agreement with Smith
12 to remove the "Chickamauga" from Eagle Harbor Marina. According to Hicks, Smith told him
13 that money was not going to be a problem. He said Smith also told him that he (Smith) had
14 made arrangements with a male subject who was supposed to be paying the monthly moorage
15 fees for the "Chickamauga" to Eagle Harbor Marina. Smith told Hicks that the subject who
16 was supposed to pay the moorage fees was also supposed to check the condition of the
17 "Chickamauga" once a week while it was moored in the marina.

18 On the afternoon of November 5, 2013, I received a telephone call from Smith. During
19 the call Smith told me that he had a retired friend of his named "Skip" check the condition of
20 the "Chickamauga" once a week when it was moored at Eagle Harbor Marina. Smith claimed
21 that his friend Skip went to Eagle Harbor Marina after the "Chickamauga" sank. According to
22 Smith, someone on the dock at Eagle Harbor Marina told Skip the "Chickamauga" was "sitting
23 heavy in the water" the day before it sank and the person claimed they reported its condition to
24 Eagle Harbor Marina Harbormaster Doug Crow. Prior to concluding the telephone call, Smith
25 said he would provide me with Skip's contact information; however, he never sent this
26 information to me.

1 I telephonically interviewed Crow on November 6, 2013, and November 7, 2013.
2 During these interviews Crow told me that Smith's moorage application for the "Chickamauga"
3 included the name and telephone number of an emergency contact named "Skip." Crow
4 advised that he did not know how to spell Skip's last name. Crow told me that he has never
5 met Skip in-person and he did not recall ever seeing him at the marina. Crow explained that if
6 Skip ever came to Eagle Harbor Marina, he did not leave a note to report that he checked the
7 "Chickamauga." Crow told me that he did not see anyone on the "Chickamauga" during the
8 seven days before it sank and stated that he had never seen anyone check the condition of the
9 vessel during the time it was moored at Eagle Harbor Marina. Regarding his observations of
10 people on the "Chickamauga" Crow stated that he had "not seen anybody, period, down on this
11 boat" before it sank. When I asked Crow if he was warned that the "Chickamauga" was sitting
12 low in the water before it sank; he immediately responded, "No."

13 On November 12, 2013, I received a copy of the Eagle Harbor Marina moorage rental
14 application for the "Chickamauga" dated February 4, 2013. A review of the moorage rental
15 application identified Smith as the owner of the "Chickamauga." The aforementioned
16 application showed the emergency contact person listed for the "Chickamauga" is "Skip
17 Suttinier." I subsequently identified "Skip Suttinier" as Victor H. "Skip" Suttmeier
18 ("Suttmeier").

19 During the morning of November 19, 2013, I interviewed Suttmeier at his residence
20 located in Kirkland, WA. Suttmeier indicated that someone from Eagle Harbor Marina called
21 him when the "Chickamauga" sank. He stated that he did not know where the "Chickamauga"
22 was moored when he received the call that it went down. He stated that he did not know Smith
23 moved the "Chickamauga" to Bainbridge Island, WA until after he had moved the vessel there.
24 Suttmeier told me the "Chickamauga" was formerly moored at Commercial Marine in Seattle,
25 WA.

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1 Suttmeier said he never checked on the condition of the "Chickamauga" when it was
2 moored at Eagle Harbor Marina. He stated the last time he was at Eagle Harbor Marina was
3 approximately four years ago when he was passing through the area on his way to Port
4 Orchard, WA. According to Suttmeier, around the time the "Chickamauga" sank, Smith told
5 him that the "Chickamauga" had been sold and belonged to someone else. Suttmeier said that
6 Smith informed him that everything had been taken care of with the "Chickamauga" and that
7 the new owner of the vessel was in jail.

8 During the afternoon of December 16, 2013, I received vessel ownership information
9 from Derelict Vessel Removal Program Manager Melissa Ferris ("Ferris") of the Washington
10 Department of Natural Resources ("WDNR"). Ferris included an electronic copy of a letter,
11 bill of sale and check associated with the sale of the "Chickamauga" to Smith on October 9,
12 2009. A review of the information Ferris provided showed that Eric Davis ("Davis") of
13 Shoreline, WA sold the "Chickamauga" to Smith on October 9, 2009, for \$1,000.

14 On January 7, 2014, Crow provided information via e-mail message regarding his
15 attempts to contact Smith regarding the money that Smith owes Eagle Harbor Marina. Crow
16 wrote that Smith paid the first and last month's moorage fees which Eagle Harbor Marina
17 applied to the month of February 2013 and March 2013. Smith indicated that Eagle Harbor
18 Marina placed many telephone calls to Smith regarding the fees he owed until April 2013, but
19 Smith did not respond. Crow wrote that Eagle Harbor Marina did not call Smith after April
20 2013, because it was Crow's understanding that Smith was in Alaska. Crow also wrote that he
21 sent e-mail messages to Smith regarding the fees Smith owed Eagle Harbor Marina, but Smith
22 did not respond to his e-mail messages. Crow provided me with an itemized statement
23 showing that as of January 1, 2014, Smith owed Eagle Harbor Marina \$8,560.30 in moorage
24 and utility (electric) fees for the "Chickamauga".

25 Investigation determined Smith unlawfully obtained moorage services valued at over
26 \$5,000 by agreeing to pay, and then willfully failing to pay for those services rendered by

1 Eagle Harbor Marina for the "Chickamauga", in violation of RCW 9A.56.030, Theft in the
2 First Degree. Smith left the "Chickamauga" unattended at Eagle Harbor Marina for a period of
3 more than seven consecutive days when it sank, in violation of the Derelict Vessels Act,
4 RCW 79.100.110. The sinking of the vessel resulted in a discharge of polluting matter (diesel
5 fuel and lube oil) in waters of the state in violation of the Water Pollution Control Act,
6 RCW 90.48.080.

7 I certify (or declare) under penalty of perjury under the laws of the State of Washington
8 that the foregoing is true and correct.

9 DATED this 9th day of January, 2014 at Seattle, Washington.

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13 JEFFREY HAYES, Special Agent
14 U.S. Environmental Protection Agency
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