

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103**

IN RE:

THE GENERAL SHIP REPAIR
CORPORATION, GENERAL
SHIP REPAIR COMPANY INC., and
LYNCO, INC.
Respondents

DOCKET No. CWA/RCRA-03-2009-0135

AMENDED COMPLAINT AND NOTICE
OF OPPORTUNITY FOR HEARING

Facility Address:

1449 Key Highway
Baltimore, Maryland 21230

I. STATUTORY AUTHORITY

1. The following Complaint and Notice of Opportunity for Hearing are issued pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation, Termination or Suspension of Permits (Consolidated Rules of Practice), 40 C.F.R. Part 22, and the authority vested in the Administrator of the Environmental Protection Agency (EPA or Agency) under the authorities cited below.
2. This Administrative Complaint is issued under the authority vested in the Administrator of EPA by:
 - A. Section 311(b)(6) of the Clean Water Act, as amended, (CWA), 33 U.S.C. § 1321(b)(6). The authority to issue this Administrative Complaint has been delegated by the Administrator of EPA to the Regional Administrator of EPA, Region III, and further delegated to Complainant;
 - B. Section 3008(a) of the Resource Conservation and Recovery Act, as amended, (RCRA), 42 U.S.C. § 6928(a). The Administrator of EPA has delegated this authority under RCRA to the Regional Administrators of EPA, and this authority has been further to Complainant;
 - C. Section 309(g) of the CWA, 33 U.S.C. § 1319(g). The Administrator of EPA has delegated this authority under the CWA to the Regional Administrators of EPA, and this authority has been further delegated to Complainant.

II. NOTICE

3. EPA has given the Maryland Department of Environment prior notice of this proposed action in accordance with Section 309(a) of the CWA, 33 U.S.C. § 1319(a), and Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
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III. RESPONDENTS

4. The General Ship Repair Corporation, General Ship Repair Company, Inc., and Lynco, Inc., (collectively "Respondents"), are Maryland corporations with their principal offices at 1449 Key Highway, Baltimore, Maryland, 21230.
5. Each Respondent is a person within the meaning of:
 - A. Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2;
 - B. Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), 40 C.F.R. § 260.10, Code of Maryland Regulations (COMAR) 26.13.01.03.B; and
 - C. Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
6. Respondents are, and were at the time of the violations alleged in this Complaint, the owners and/or operators of the facility located at 1449 Key Highway, Baltimore, Maryland 21230, which is adjacent to the northwest branch of the Patapsco River.
7. The Respondents' facility is a ship, tug and barge repair facility that operates year round in multiple shifts.
8. Respondents are the "owners" and/or "operators" of the facility as those terms are defined at COMAR 26.13.01.03.B.
9. Respondents are the "owner or operator" of the facility, (hereinafter "Key Highway facility"), as that term is defined at Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2.
10. On May 19, 2008, a team of inspectors from EPA's Office of Enforcement, Compliance and Environmental Justice conducted a multi-media inspection of the Key Highway facility.

IV. CWA STATUTORY AND REGULATORY BACKGROUND

11. Section 311(j)(1) of the CWA, 33 U.S.C. § 1321(j)(1), provides that the President shall issue regulations, *inter alia*, "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from vessels and from onshore and offshore facilities, and to contain such discharges . . .".
12. On December 11, 1973, EPA promulgated Oil Pollution Prevention regulations set forth at 40 C.F.R. Part 112 to implement Section 311(j)(1) of the CWA, 33 U.S.C. § 1321(j)(1). Such regulations took effect on January 10, 1974.
13. Pursuant to 40 C.F.R. § 112.1(b), with certain exceptions not relevant here, regulations set forth at 40 C.F.R. Part 112 apply to owners or operators of non-transportation-related onshore or offshore facilities engaged in, *inter alia*, storing or consuming oil or oil products, and which, due to their location, could reasonably be expected to discharge oil in harmful quantities within the meaning of 40 C.F.R. Part 110, into or upon the navigable waters of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1, or the adjoining shorelines.
14. "Oil" is defined in Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), and 40 C.F.R.

- § 112.2 to include any kind of oil in any form, including petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes other than dredged spoil.
15. 40 C.F.R. § 110.3(b) defines “harmful quantity” for purposes of Section 311 of the CWA, 33 U.S.C. § 1321, to include discharges that “cause a film or sheen upon . . . the surface of the water or adjoining shorelines.”
 16. Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), defines “discharge” to include any spilling, leaking, pumping, pouring, emitting, or dumping other than federally permitted discharges pursuant to a permit under 33 U.S.C. § 1342.
 17. For purposes of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), “navigable water” is defined by 40 C.F.R. §§ 110.1 and 112.2 to include, among other things, tributaries to waters that could be used for industrial purposes or interstate commerce.
 18. The Key Highway facility has the capacity to store greater than 1,320 gallons of oil in the following containers:
 - A. One metal storage tank with an estimated capacity of 1,000 gallons near the facility property line;
 - B. One metal storage tank with an estimated capacity of 500-600 gallons outside the northwest corner of the fabrication shop;
 - C. Four smaller tanks with estimated capacities ranging from 150-500 gallons near the facility property line; and
 - D. Approximately 13-20 drums with capacities of 55 gallons in a storage box and marked with labels indicating use as storage for “oily water” and “oily waste” (7 of these drums were full at the time of inspection).
 19. The Key Highway facility is an “onshore facility” within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.
 20. The Key Highway facility is a “non-transportation” facility within the meaning of 40 C.F.R. § 112.2, Appendix A thereto.
 21. The Key Highway facility is engaged in storing or consuming oil or oil products.
 22. Pursuant to 40 C.F.R. § 112.3(a), owners or operators of onshore facilities that became operational before August 16, 2002, and that could reasonably be expected to discharge oil in harmful quantities, as described in 40 C.F.R. Part 110, into or upon the navigable waters of the United States or adjoining shorelines, shall prepare a Spill Prevention Control and Countermeasure (SPCC) Plan and maintain and amend such Plan as necessary.
 23. The Key Highway facility has been in operation as an onshore facility within the meaning of 40 C.F.R. Part 112 since prior to August 16, 2002.
 24. The Key Highway facility is adjacent to the northwest branch of the Patapsco River which empties into the Chesapeake Bay.
 25. All oil storage tanks and drums located at the Key Highway facility are due to the facility’s location in close proximity to the northwest branch of the Patapsco River which

empties into the Chesapeake Bay.

26. The Patapsco River and the Chesapeake Bay, are both navigable waters of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. §1362(7), and 40 C.F.R. § 112.2.
27. Due to their locations, the oil storage tanks and drums at the Key Highway facility can be expected to discharge oil in harmful quantities within the meaning of 40 C.F.R. Part 110 into or upon the navigable waters of the United States or adjoining shorelines.
28. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from a point source to waters of the United States except in compliance with, among other things, a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
29. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.
30. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.1 and 122.26 provide that facilities that have "storm water discharges associated with industrial activity" are "point sources" subject to NPDES permitting requirements under Section 402(a) of the Act, 33 U.S.C. § 1342(a).

V. RCRA STATUTORY AND REGULATORY BACKGROUND

31. RCRA establishes a comprehensive program to be administered by the Administrator of EPA for regulating the generation, transportation, treatment, storage, and disposal of hazardous waste. 42 U.S.C. §§ 6901 *et seq.*
32. Pursuant to its authority under RCRA, EPA has promulgated regulations at 40 C.F.R. Parts 260 through 273 applicable to hazardous waste generators, transporters, and treatment, storage and disposal facilities. These regulations generally prohibit treatment, storage and disposal of hazardous waste without a permit or "interim status." They prohibit land disposal of certain hazardous wastes, and provide detailed requirements to govern the activities of those who are lawfully permitted to store, treat and dispose of hazardous waste.
33. Under Section 3006 of RCRA, 42 U.S.C. § 6926, state hazardous waste programs may be authorized by EPA to operate in lieu of the federal hazardous waste program. The requirements of the authorized state hazardous waste management programs apply in lieu of federal RCRA regulations to persons who generate, treat, store, transport or dispose of hazardous wastes in a state which has received authorization to administer a state hazardous waste program.
34. Where a Respondent has violated RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, the regulations promulgated thereunder at 40 C.F.R. Parts 260-266, 268, and 270 or 273, or the authorized State of Maryland Hazardous Waste Management Regulations (MdHWMR) set forth at the Code of Maryland Regulations (COMAR), Title 26, Subtitle 13 *et seq.*, Section 3008(a) of RCRA authorizes EPA to take enforcement action. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes the assessment of a civil penalty against any person who violates any requirement of Subtitle C of RCRA.

35. On February 11, 1985, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A, the State of Maryland was granted final authorization to administer its hazardous waste management program set forth at the COMAR, Title 10, Subtitle 51 *et seq.* in lieu of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e. Through this final authorization, the provisions of MdHWMR (Original Authorized Program) became requirements of RCRA Subtitle C and are, accordingly, enforceable by EPA on and after that date pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a). A revised Maryland hazardous waste management program set forth at COMAR, Title 26, Subtitle 13 (Revised Authorized Program) was authorized by EPA on July 31, 2001, and accordingly, the provisions of the Revised Authorized program are enforceable by EPA on and after that date pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).
36. To the extent that factual allegations or legal conclusions in this Complaint are based on provisions of Maryland's final authorized hazardous waste management program, those provisions are cited as authority for such allegations or conclusions, with the corresponding federal regulatory provisions cited as reference. Factual allegations or legal conclusions based solely on the provisions of the federal hazardous waste management program cite those federal provisions as authority for such allegations or conclusions.
37. Respondents' Key Highway facility is a "facility" as that term is defined at COMAR 26.13.01.03B.
38. Respondents are "generators" of and have been engaged in the "storage" in "containers" of materials that are "solid wastes" and "hazardous wastes" at a "facility" as those terms are defined at COMAR 26.13.01.03.B.

VI. ADMINISTRATIVE COMPLAINT

COUNT I

(CWA - Spill Prevention Control and Counter-Measure Plan)

39. The allegations contained in Paragraphs 1 through 38 of this Complaint are incorporated herein by reference.
40. Upon information and belief, Respondents store more than 1,320 gallons of oil in above-ground storage tanks at the Key Highway facility.
41. The Key Highway facility is subject to the spill prevention control and counter-measure plan requirements (SPCC) of 40 C.F.R. §§ 112.1-112.7.
42. From at least the date of the inspection on May 19, 2008, Respondents had not prepared an SPCC plan for their Key Highway facility, as required by 40 C.F.R. § 112.3(a).
43. From at least the date of the inspection on May 19, 2008, Respondents had not implemented an SPCC plan for their Key Highway facility, as required by 40 C.F.R. § 112.3(a).
44. Respondents' failure to comply with 40 C.F.R. § 112.3(a) by preparing and implementing an SPCC plan for their Key Highway facility constitutes a violation of the CWA for which a civil penalty may be assessed pursuant to Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii).

COUNT II
(CWA - Storm Water)

45. The allegations contained in Paragraphs 1 through 44 of this Complaint are incorporated herein by reference.
46. Respondents' Key Highway facility discharges storm water directly into the Patapsco River and through municipal storm sewers into the Patapsco River, which is a "water of the United States," as that term is defined at 40 C.F.R. § 122.2.
47. Respondents, through the Vice President of General Ship Repair, filed a Notice of Intent as an application for coverage of the Key Highway facility under Maryland's General Discharge Permit No. 01MA For Discharges From Marinas.
48. On August 26, 2003, Respondents were subsequently issued General Permit No. 02MA For Discharges From Marinas ("Permit") by the State of Maryland for their Key Highway facility.
49. The Permit contains certain terms and conditions, *inter alia*, the requirement that Respondents develop a Storm Water Pollution Prevention Plan, under Section B of Part V of the Permit, with the minimum contents listed in Section C of Part V of the Permit.
50. Among the minimum contents of a Storm Water Pollution Prevention Plan listed in Section C of Part V of the Permit are the following requirements:
 1. "Inventory of Exposed Materials. An inventory of the types of materials handled at the site that potentially may be exposed to precipitation." Permit V(C)(4).
 2. "Risk Identification and Summary of Potential Pollution Sources. A narrative description of the potential pollutant sources from the following activities, if applicable: loading and unloading operations; outdoor storage activities; outdoor manufacturing or processing activities (i.e., abrasive blasting, sanding, painting); and onsite waste disposal practices." Permit V(C)(7).
 3. Each facility covered under the Permit shall develop a description and implementation schedule of Storm Water Management Controls appropriate for the facility and shall implement the described Storm Water Management Controls. The following list includes some the areas where Storm Water Management Controls are to be described, scheduled and implemented under the Permit V(C)(8).
 - A. "Material Storage Areas. All stored and containerized materials (fuels, paints, solvents, waste oil, antifreeze, batteries) must be plainly labeled and stored in a protected, secure location away from drains. The plan must describe measures that prevent or minimize contamination of the storm water runoff from such storage areas. . . . Above-ground storage tanks, drums, and barrels permanently stored outside must be delineated on the site map with a description of the containment measures in place to prevent leaks and spills. . . . Those facilities where abrasive blasting is performed must specifically include a discussion on the storage and disposal of spent abrasive materials generated at the facility." Permit V(C)(8)(a)(iii).

- B. "Engine Maintenance and Repair Areas. The plan must describe measures that prevent or minimize contamination of the storm water runoff from all areas used for engine maintenance and repair." Permit V(C)(8)(a)(iv).
 - C. "Material Handling Areas. The plan must describe measures that prevent or minimize contamination of the storm water runoff from material handling operations and areas (i.e., fueling, paint and solvent mixing, disposal of process wastewater streams from vessels)." Permit V(C)(8)(a)(v).
 - D. "General Yard Area. The plan must include a schedule for routine yard maintenance and cleanup. Scrap metal, wood, plastic, miscellaneous trash, paper, glass, industrial scrap, insulation, welding rods, packaging, etc., must be routinely removed from the general yard area." Permit V(C)(8)(a)(vi).
 - E. "Preventative Maintenance. A preventative maintenance program shall involve timely inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators and sediment traps to ensure that oil, spent abrasives, paint chips, and solids will be intercepted and retained prior to entering the storm drainage system) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems." Permit V(C)(8)(b).
 - F. "Spill Prevention and Response Procedures. Areas where potential spills, which can contribute pollutants to storm water discharges, can occur, and their accompanying drainage points, shall be identified clearly in the storm water pollution prevention plan. . . . Procedures for cleaning up spills shall be identified in the plan and made available to appropriate personnel." Permit V(C)(8)(c).
 - G. "Inspections. Qualified facility personnel shall be identified to inspect designated equipment and areas of the facility on a monthly basis. The following areas shall be included in all inspections: pressure washing area; blasting, sanding, and painting areas; material storage areas; engine maintenance and repair areas; material handling areas; bilge water treatment areas and general yard area. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of the inspections shall be maintained." Permit V(C)(8)(d).
4. "Employee Training. Employee training programs shall inform personnel, responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible at all levels for storm water management, of the components and goals of the storm water pollution prevention plan. . . . The pollution prevention plan shall identify how often training will take place, but in all cases training must be held at least twice per calendar year. Employee training must, at a minimum, address the following areas when applicable to a facility: used oil management; spent solvent management; proper disposal of spent abrasives; proper disposal of vessel wastewaters; spill prevention and control; fueling procedures; general good housekeeping practices; proper painting and blasting procedures; and used battery management." Permit

V(C)(9).

5. "Record-keeping and Internal Reporting Procedures: Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan." Permit V(C)(10).
6. "Non-Storm Water Discharges. The plan shall include a certification that the discharge has been tested or evaluated for the presence of non-storm water discharges, other than those authorized in Part I Section B of this permit or flows from fire fighting systems. The certification shall include the identification of potential significant sources of non-storm water at the site, a description of the results of any test and/or evaluation for the presence of non-storm water discharges, the evaluation criteria or testing method used, the date of any testing and/or evaluation, and the on-site drainage points that were directly observed during the test." Permit V(C)(11).
7. "Sediment and Erosion Control. The plan shall identify areas that, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion. The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those which control the generation or source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan, which shall provide those measures the permittee determines to be reasonable and appropriate, shall be implemented and maintained. . . . Appropriate measures may include vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention/retention devices." Permit V(C)(12).
8. "Comprehensive Site Compliance Evaluation. A site inspection shall be conducted annually by appropriate responsible personnel to verify that the description of potential pollutant sources required under Part V Section C2 is accurate, the drainage map has been updated to reflect current conditions, and the controls to reduce pollutants identified in the storm water pollution prevention plan are being implemented and are adequate. Records documenting significant observations made during the site inspection shall be retained as part of the storm water pollution prevention plan for three years." Permit V(C)(13).
51. At the time of the inspection on May 19, 2008, Respondents failed to have an appropriate Storm Water Pollution Prevention Plan at their Key Highway facility as required by the Permit.
52. At the time of the inspection on May 19, 2008, Respondents' Storm Water Pollution Prevention Plan did not include the lead acid batteries and hazardous waste storage in the Inventory of Exposed Materials as required by the Permit V(C)(4).
53. At the time of the inspection on May 19, 2008, Respondents' Storm Water Pollution Prevention Plan did not include a narrative description of dry dock operations, hazardous waste storage areas, lead acid battery storage areas, and areas used for loading/dispensing diesel that are a potential source of pollutants as required by the Permit V(C)(7).
54. At the time of the inspection on May 19, 2008, Respondents' Storm Water Pollution

Prevention Plan did not include a description or implementation schedule for Storm Water Management Controls for hazardous waste storage areas and lead acid battery storage areas nor did it include a specific discussion of the storage and disposal of spent abrasive blasting materials as required by the Permit V(C)(8)(a)(iii).

55. At the time of the inspection on May 19, 2008, Respondents were not implementing the Storm Water Management Controls described in the Storm Water Pollution Prevention Plan for all paint stored at their facility as required by the Permit V(C)(8)(a)(iii).
56. At the time of the inspection on May 19, 2008, Respondents' Storm Water Pollution Prevention Plan did not include a description or implementation schedule for Storm Water Management Controls for Engine Maintenance and Repair Areas as required by the Permit V(C)(8)(a)(iv).
57. At the time of the inspection on May 19, 2008, Respondents' Storm Water Pollution Prevention Plan did not include a description or implementation schedule for Storm Water Management Controls for Material Handling Areas utilized for paint mixing on the pier and the loading/dispensing of diesel fuel as required by the Permit V(C)(8)(a)(v).
58. At the time of the inspection on May 19, 2008, Respondents' Storm Water Pollution Prevention Plan did not include a description or implementation schedule for Storm Water Management Controls for the General Yard Area as required by the Permit V(C)(8)(a)(vi).
59. At the time of the inspection on May 19, 2008, Respondents' Storm Water Pollution Prevention Plan did not include a description or implementation schedule for the timely inspection and maintenance of storm water management devices and other preventative maintenance of facility equipment and systems as required by the Permit V(C)(8)(b).
60. At the time of the inspection on May 19, 2008, Respondents' Storm Water Pollution Prevention Plan did not clearly identify where potential spills could occur that contribute pollutants to storm water nor did it identify procedures for cleaning up spills as required by the Permit V(C)(8)(c).
61. For the time period beginning at least as early as the start of 2005 until the time of the inspection on May 19, 2008, Respondents' did not have a record of monthly inspections as required by the Permit V(C)(8)(d).
62. At the time of the inspection on May 19, 2008, Respondents' Storm Water Pollution Prevention Plan did not identify how often employee training on implementing storm water pollution plan activities occurs as required by the Permit V(C)(9).
63. At the time of the inspection on May 19, 2008, Respondents were not documenting inspections and maintenance activities and incorporating records of these activities into the Storm Water Pollution Prevention Plan as required by the Permit V(C)(10).
64. At the time of the inspection on May 19, 2008, Respondents' Storm Water Pollution Prevention Plan did not include a certification that the discharge has been tested or evaluated for the presence of non-storm water discharges other than those authorized by the Permit or flows from fire fighting systems as required by the Permit V(C)(11).
65. At the time of the inspection on May 19, 2008, Respondents' Storm Water Pollution Prevention Plan did not identify areas that have a high potential for significant soil erosion nor did it identify measures used to limit erosion as required by the Permit

V(C)(12).

66. For the time period beginning at least as early as the start of 2005 until the time of the inspection on May 19, 2008, Respondents' Storm Water Pollution Prevention Plan did not contain records documenting significant observations from the Annual Comprehensive Site Compliance Evaluations for the previous three years as required by the Permit V(C)(13).
67. Respondents' Storm Water Pollution Prevention Plan failed to contain the Permit requirements listed above in paragraph 50 and thereby, Respondents have violated Section 402 of the CWA, 33 U.S.C. § 1342, for which a penalty may be assessed pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d).

COUNT III
(RCRA - Hazardous Waste Determinations)

68. The allegations contained in Paragraphs 1 through 67 of the Complaint are incorporated herein by reference as though fully set forth at length.
69. COMAR 26.13.03.02 (40 C.F.R. § 262.11) provides that a person who generates a solid waste must determine if that waste is a hazardous waste using the methods set forth therein.
70. Upon information and belief, at all times relevant to this Complaint, Respondents generated "solid waste," at the Key Highway facility as that term is defined by COMAR 26.13.02.02, RCRA Section 1004(27), 42 U.S.C. § 6903(27), and 40 C.F.R. §§ 260.10, 261.2.
71. Respondents are and, at all times relevant to this Complaint, have been a "generator" as that term is defined by COMAR 26.13.01.03.B (29)(40 C.F.R. § 260.10).
72. As persons who generate solid waste, Respondents are required, at all times relevant to this Complaint, by COMAR 26.13.03.02 (40 C.F.R. § 262.11), to determine if the solid wastes they generated were hazardous wastes using the methods prescribed by COMAR 26.13.03.02 (40 C.F.R. § 262.11(a) and (b)).
73. At the time of the inspection on May 19, 2008, Respondents stored outside at the Key Highway facility five (5) partially full five-gallon containers in poor condition, a partially full rusted one-gallon can and a partially full crushed one-gallon can. At the time of the inspection, Respondents could not identify the contents of the containers or cans.
74. Upon information and belief, at all times relevant to this Complaint, Respondents failed to perform hazardous waste determinations, pursuant to COMAR 26.13.03.02 (40 C.F.R. § 262.11) on the five containers and two cans of solid wastes it generated and stored at the Key Highway facility on May 19, 2008.
75. On May 19, 2008, Respondents' failure to perform hazardous waste determinations on the five containers and two cans of solid wastes it generated at the Key Highway facility violated COMAR 26.13.03.02 (40 C.F.R. § 262.11) for which a penalty can be assessed pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g).

VII. PROPOSED CIVIL PENALTY CALCULATIONS

76. In accordance with 40 C.F.R. § 22.14(a)(4)(i), Complainant is proposing a total specific civil penalty of \$121,962.00 for Counts I to III, which are discussed below.
77. Based on the foregoing allegations, a penalty may be assessed pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and Section 3008(g) of RCRA, 42 U.S.C. §§ 6928(g).
78. In accordance with 40 C.F.R. § 22.14(a)(4)(ii), for each violation alleged in this Complaint there is an indication (where applicable) of the days of violation, a brief explanation of the severity of each violation, and a recitation of the statutory penalty authority applicable for each violation. This does not constitute a demand as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.
79. To the extent that facts or circumstances unknown to Complainant at the time of issuance of the Complaint become known after the issuance of the Complaint, such facts and circumstances may also be considered as a basis for calculating a specific civil penalty pursuant to 40 C.F.R. § 22.19(a)(4).

COUNT I

(CWA - Spill Prevention Control and Counter-Measure Plan)

80. Based on the foregoing allegations and pursuant to the authority of Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), and the Civil Monetary Penalty Inflation Adjustment Rule, ("Penalty Inflation Rule"), 40 C.F.R. Part 19 (Penalty Inflation Rule), Complainant proposes that the Regional Administrator assess an administrative penalty against Respondent in the amount of \$20,029.00.
81. Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), provides that any penalty to be assessed must take into account the seriousness of the violation(s), the economic benefit to the violator, if any, the degree of culpability, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other matters as justice may require.
82. As set forth in Count I, the Key Highway facility stores a large quantity of oil onsite in a number of different containers located in an environmentally-sensitive areas, that are ultimately connected to the Chesapeake Bay. A major oil spill in such an area would be extremely serious in terms of its impact on navigable waters.

COUNT II

(CWA - Storm Water)

83. Based on the foregoing allegations and pursuant to the authority of Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and the Penalty Inflation Rule, 40 C.F.R. Part 19, Complainant proposes that the Regional Administrator assess an administrative penalty against Respondents in the amount of \$100,000.00.
84. In determining the amount of any penalty assessed under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA is required to take into account the nature, circumstances, extent and gravity of the violation, or violations, and with respect to the violator, the 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 matters as justice may require. Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3).

85. As set forth in Count II, the Key Highway facility's storm water discharges ultimately enter the waters of the Chesapeake Bay. The failure to develop a Storm Water Pollution Prevention Plan in accordance with its Permit requirements further endangers the Chesapeake Bay since materials that are detrimental to the environment may be swept into the Chesapeake Bay by storm water discharges at the facility.

COUNT III

(RCRA - Hazardous Waste Determinations)

86. Based on the foregoing allegations, and pursuant to the authority of Section 3008(a)(1), (3) and (g) of RCRA, 42 U.S.C. § 6928(a)(1), (3), and (g) and the Penalty Inflation Rule, 40 C.F.R. Part 19, Complainant proposes that the Regional Administrator assess an administrative penalty against Respondent in the amount of \$1,933.00.
87. For the purpose of determining the amount of a RCRA civil penalty. RCRA Section 3008(a)(3), 42 U.S.C. § 6928(a)(3), requires EPA to take into account the seriousness of the violation and any good faith efforts by Respondents to comply with applicable requirements (i.e., the statutory factors). In developing a civil penalty, Complainant will take into account the particular facts and circumstances of this case with specific reference to the aforementioned statutory factors and EPA's June 2003 RCRA Civil Penalty Policy (RCRA Penalty Policy). This RCRA Penalty Policy provides a rational, consistent and equitable methodology for applying the statutory factors enumerated above to particular cases.
88. The performance of hazardous waste determinations is the initial trigger for the implementation of the RCRA regulations and the authorized Maryland Hazardous Waste Management Regulations at a facility for the safe handling and management of hazardous wastes. Respondents' failure to perform such determinations resulted in hazardous wastes not being identified as such and not being properly managed and handled at the facility, thereby, posing a substantial risk to human health and the environment. Additionally, the failure to perform such determinations poses a substantial potential for harm to the RCRA program which relies upon members of the regulated community, like Respondents, to identify hazardous wastes and institute those practices and procedures deemed necessary under RCRA for their safe handling, storage, treatment and/or disposal.
89. In addition to a gravity-based penalty and related adjustment factors for Count II, a penalty component may be added to reflect any economic benefit shown to have been gained by Respondents by failing to perform hazardous waste determinations on waste generated at the facility.

VIII. RCRA COMPLIANCE ORDER

90. Pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondents are hereby ordered to perform the Compliance Task listed in paragraph 91, below, upon the effective date of this Compliance Order. Pursuant to Section 22.37 of the Consolidated Rules of Practice, this Compliance Order shall automatically become a Final Order unless, no later than 30 days after this Compliance Order has been served, Respondents request a hearing as described in Section IX of this Complaint. The effective date of a Final Order issued pursuant to this Compliance Order shall be determined in accordance with Section 22.31(b) of the Consolidated Rules of Practice. If Respondents complete the Compliance Task prior to the effective date of this Compliance

Order, Respondents shall certify completion of the Compliance Task in accordance with paragraph 93, below. "Days" as used herein shall mean calendar days unless specified otherwise. Unless otherwise noted, references to the C.F.R. are to the edition (generally 1998) that has been incorporated by reference into the authorized Maryland Hazardous Waste Regulations, COMAR, Title 10, Subtitle 51 *et seq.* and Title 26, Subtitle 13.

91. Immediately begin performing hazardous waste determinations, pursuant to COMAR 26.13.03.02 and 40 C.F.R. § 262.11 on the solid wastes generated at the Key Highway facility.
92. Within one hundred and twenty (120) days of the effective date of the Compliance Order, submit to EPA a written statement, in the form set forth in paragraph 93, below, by a responsible corporate officer, as that term is defined in paragraph 93, below, certifying whether or not the requirement of this Compliance Order have been completed by Respondents.
93. Any notice, report, certification, data presentation, or other document submitted by Respondents pursuant to this Compliance Order which discusses, describes, demonstrates, supports any finding or makes any representation concerning Respondents' compliance or non-compliance with this Compliance Order shall be certified by a responsible corporate officer of Respondent. A responsible corporate officer means: (1) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or (2) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

The certification of the responsible corporate officer required above shall be in the following form:

I certify that the information contained in or accompanying this [type of submission] is true, accurate and complete. As to [the/those] identified portions of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission] and all attachments were prepared in accordance with a system designed to assure the qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature: _____
Name: _____
Title: _____

94. Any notification or submission required by this Compliance Order to be submitted to EPA, including, but not limited to, the aforementioned certification, shall be sent via certified mail/return receipt requested or overnight mail commercial delivery service to the attention of the following persons:

Luke Wolfgang (3EC10)
Office of Enforcement, Compliance and Environmental Justice
United States Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

For any questions regarding this Compliance Order, please contact Mr. Luke Wolfgang at (215) 814-2913. Legal questions can be directed to T. Chris Minshall, Assistant Regional Counsel, at (215) 814-2473.

IX. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Respondents may request, within thirty (30) days of receipt of this Complaint, a hearing before an EPA Administrative Law Judge on the Complaint and at such hearing may contest any material fact and the appropriateness of any penalty amount. To request a hearing, Respondent must file a written answer (Answer) within thirty (30) days of receipt of this Complaint. The Answer should comply with the requirements of 40 C.F.R. § 22.15. The Answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which the Respondents have any knowledge. Where Respondents have no knowledge of a particular factual allegation and so state, the allegation is deemed denied. The Answer shall also state: the circumstances or arguments which are alleged to constitute the grounds of any defense; the facts which Respondents dispute; the basis for opposing any proposed relief; and whether a hearing is requested.

If Respondents fail to file a written Answer or statement within thirty (30) days of receipt of this Complaint, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver of the right to a hearing. Failure to file a written Answer or statement may result in the filing of a Motion for Default Order and the possible issuance of a Default Order imposing the penalties proposed herein without further proceedings.

Any hearing requested by Respondents will be conducted in accordance with EPA's Consolidated Rules of Practice. Hearings will be held in a location to be determined at a later date pursuant to the Consolidated Rules of Practice at 40 C.F.R. § 22.21(d).

Respondent's Answer and all other documents that Respondent files in this action should be sent to the following address:

Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and a copy should be sent to T. Chris Minshall, Assistant Regional Counsel, the attorney assigned to represent EPA in this matter, at the following address:

U.S. EPA, Region III (3EC00)
1650 Arch Street
Philadelphia, PA 19103

X. SETTLEMENT CONFERENCE

EPA encourages settlement of the proceedings at any time after issuance of a Complaint if such settlement is consistent with the provisions and objectives of the CWA and RCRA. Whether or not a hearing is requested, Respondents may confer with Complainant regarding the allegations of the Complaint and the amount of the proposed civil penalty.

In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his delegatee. Settlement conferences shall not affect the requirement to file a timely Answer to the Complaint.

If you wish to arrange a settlement conference, please contact T. Chris Minshall, Assistant Regional Counsel, at (215) 814-2473, prior to the expiration of the thirty (30) day period following the receipt of this Complaint. Once again, however, such a request for a settlement conference does not relieve Respondents of the responsibility to file an Answer within thirty (30) days following receipt of this Complaint.

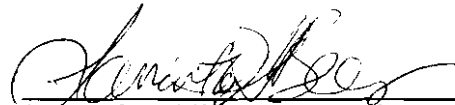
XI. SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS

The following Agency offices, and the staffs thereof, are designated as the trial staff to represent the Agency as a party in this case: the Region III Office of Enforcement, Compliance and Environmental Justice; the Region III Office of Regional Counsel; the Region III Hazardous Site Cleanup Division; the Region III Water Protection Division; and the EPA Assistant Administrator for Enforcement and Compliance Assurance. Commencing from the date of the issuance this Complaint until issuance of a final agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor the Regional Judicial Officer, may have an *ex parte* communication with the trial staff on the merits of any issue involved in this proceeding. Please be advised that the Consolidated Rules of Practice prohibit any unilateral discussion or *ex parte* communication of the merits of a case with the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, or the Regional Judicial Officer after issuance of a Complaint. See Consolidated Rules of Practice at § 22.8.

XII. PUBLIC NOTICE

Pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), and Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b) the Complainant is providing public notice of this proposed issuance of a Final Order assessing administrative penalties against Respondent. If a hearing is held on this matter, members of the public who submitted timely comments on this penalty proposal shall have the right under 309(g)(4)(A) and Section 311(b)(6) and of the Act to be heard and present evidence at the hearing. In addition, pursuant to Section 309(g)(1)(A), EPA has consulted with the State of Maryland regarding this action, and in addition will mail a copy of this document to the appropriate Maryland State official.

11/8/10
Date

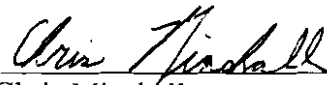

Samantha Phillips Beers, Director
Office of Enforcement, Compliance,
and Environmental Justice

NOV 10 2010 11:56
PHILADELPHIA, PA

CERTIFICATE OF SERVICE¹

I certify that on the date provided below, I hand-delivered the original and one copy of the Amended Administrative Complaint and Opportunity to Request a Hearing in the case captioned IN RE: THE GENERAL SHIP REPAIR CORPORATION, GENERAL SHIP REPAIR COMPANY INC., and LYNCO, INC. ("Complaint") to Lydia Guy, Regional Hearing Clerk, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, PA 19103-2029, and sent one copy of the signed original of the Amended Complaint by certified mail, return receipt requested, together with a copy of 40 CFR 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," to THE GENERAL SHIP REPAIR CORPORATION, GENERAL SHIP REPAIR COMPANY INC., and LYNCO, INC. at 1449 KEY HIGHWAY, BALTIMORE, MD 21230.²

Dated: 11/9/2010



Chris Minshall
U.S. EPA Region III

¹ The filing and service rules are set forth at 40 CFR § 22.5(a)(1) and (b), and a Certificate of Service for these actions is required by 40 CFR § 22.5(a)(3).

² Delivery to an Agency mail room is not equivalent to mailing at a US post office. However, a certification of delivery to an Agency mail room may be insufficient to satisfy the certification requirement of 40 CFR § 22.5(a)(3). The best practice would be for the signer of the certification to deposit the Complaint in a US mail box on the date stated in order to avoid any conflicts between the date on the Certificate of Service and the postmark on the mailing.