

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Jeffrey Kopf 9/30/14
Name of Case Attorney Date

in the ORC (RAA) at 918-1113
Office & Mail Code Phone number

Case Docket Number CWA-01-2014-0025

Site-specific Superfund (SF) Acct. Number _____

This is an original debt This is a modification

Name and address of Person and/or Company/Municipality making the payment

Gloucester Marine Railways Corp.
81 Rocky Neck Avenue
Gloucester, MA 01930

Total Dollar Amount of Receivable \$ 20,000 Due Date: 10/30/14

SEP due? Yes No Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

- 1st \$ _____ on _____
- 2nd \$ _____ on _____
- 3rd \$ _____ on _____
- 4th \$ _____ on _____
- 5th \$ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
in the Financial Management Office

Phone Number _____



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
5 Post Office Square, Suite 100
Mail Code: OES04-4
BOSTON, MASSACHUSETTS 02109-3912**

September 30, 2014

Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region I
5 Post Office Square, Suite 100
Mail Code: ORA18-1
Boston, MA 02109-3912

BY HAND

RECEIVED

SEP 30 2014

EPA ORC WS
Office of Regional Hearing Clerk


Re: In the Matter of: Gloucester Marine Railways Corporation,
Docket No. CWA-01-2014-0025
Consent Agreement and Final Order

Dear Ms. Santiago,

Enclosed for filing, please find a Consent Agreement and Final Order (CAFO) both initiating and settling the matter referenced above.

Thank you for your attention to this matter.

Sincerely,


Jeffrey Kopf
Senior Enforcement Counsel
U.S. EPA, Region 1

Enclosure

cc: Shephard S. Johnson, Shephard S. Johnson, Jr. & Associates, P.C.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

_____)
)
In the Matter of:)
)
Gloucester Marine Railways)
Corporation,)
81 Rocky Neck Avenue)
Gloucester, MA 01930)
)
Respondent)
_____)

Docket No. CWA-01-2014-0025

CONSENT AGREEMENT AND
FINAL ORDER FOR CLASS II
CIVIL PENALTY UNDER
CLEAN WATER ACT

RECEIVED

SEP 30 2014

EPA ORC WS
Office of Regional Hearing Clerk

The Regional Administrator of the United States Environmental Protection Agency, Region 1 ("EPA") issues this Consent Agreement and Final Order ("CAFO") to Gloucester Maine Railways Corporation ("GMRC" or "Respondent"). EPA alleges that Respondent violated Sections 301(a) and 308 of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1311(a) and 1318. The parties agree to resolve this action by the issuance of this CAFO as provided under 40 C.F.R. § 22.13(b) and 22.18(b)(2) of EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," 40 C.F.R. Part 22 ("Part 22").

I. DESCRIPTION OF VIOLATIONS

1. EPA alleges that Respondent: (1) discharged process water containing pollutants into navigable waters of the United States without authorization, in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a); (2) discharged stormwater associated with industrial activity into navigable waters of the United States without authorization, in

CONSENT AGREEMENT AND FINAL ORDER
In re: Gloucester Marine Railways Corp.
Docket No. CWA-01-2014-0025

US EPA, REGION 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a); and, (3) failed to apply for a National Pollutant Discharge Elimination System (“NPDES”) permit, in violation of Sections 308(a) and 402(p) of the CWA, 33 U.S.C. §§ 1318(a) and 1342(p).

Statutory and Regulatory Authority

2. EPA takes this action under the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g). Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1) and 40 C.F.R. § 22.38(b), EPA has notified the Commonwealth of Massachusetts of this action.

General Allegations

Discharge of Pollutants

3. The CWA is designed to restore and maintain the chemical, physical, and biological integrity of the nation’s waters. 33 U.S.C. § 1251(a). To accomplish these objectives, Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into navigable waters except in compliance with the terms and conditions of a permit issued pursuant to Section 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344, and EPA’s implementing regulations, found at 40 C.F.R. Part 122.

4. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), authorizes the Administrator of EPA to issue NPDES permits for the discharge of pollutants into navigable waters in compliance with the CWA.

5. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines “person” to include “an individual, corporation, [or] partnership.”

6. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines “discharge of a

pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

7. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, *inter alia*, solid waste, chemical wastes, rock, sand, and industrial waste discharged into water.

8. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” to include “any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged.”

9. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “the waters of the United States, including the territorial seas.” The term “waters of the United States” includes, among other things: (i) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; (ii) all inter-state waters; (iii) tributaries to such waters; and (iv) wetlands adjacent to such waters or their tributaries. 40 C.F.R. § 122.2.

Stormwater Permits

10. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), authorizes the Administrator of EPA to require the owner or operator of any point source to provide such information as the Administrator may reasonably need to carry out the objectives of the CWA, which includes, among other things, the development and issuance of NPDES permits.

11. Pursuant to Sections 308 and 402 of the CWA, 33 U.S.C. §§ 1318 and 1342, EPA promulgated storm water discharge regulations at 40 C.F.R. § 122.26.

12. Forty C.F.R. § 122.26(b)(13) defines “stormwater” to include stormwater runoff,

snow melt runoff, and surface runoff and drainage.

13. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and implementing regulation 40 C.F.R. § 122.26(a)(1)(ii), require that facilities discharging stormwater associated with industrial activity obtain a permit. Under 40 C.F.R. § 122.26(c)(1), dischargers of stormwater associated with industrial activity must apply for an individual NPDES permit or seek coverage under a general permit.

14. Forty C.F.R. § 122.26(b)(14)(ii) specifies that facilities “engaging in industrial activity” includes facilities classified under Standard Industrial Classification (“SIC”) code 373 (boat and ship building and repair).

15. On September 29, 1995, EPA issued an NPDES Stormwater Multi-Sector General Permit for Industrial Activities” (“1995 MSGP”). 73 Fed. Reg. 56,527 (Sept. 29, 2008). EPA reissued the Multi-Sector General Permit for Industrial Activities on October 30, 2000 (“2000 MSGP”), 65 Fed. Reg. 64746, and reissued it again on September 29, 2008 (“2008 MSGP”). The 2008 MSGP became effective on the date of issuance. 73 Fed. Reg. 56,572 (Sept. 29, 2008).

16. The 2008 MSGP (the “Permit”) contains terms and conditions designed to ensure the implementation of practices to minimize the pollutants in stormwater discharges associated with industrial activity.

17. Under the 2008 MSGP, a facility discharging stormwater associated with industrial activity is required to submit a Notice of Intent (“NOI”) to be covered under the Permit, prepare and implement a Stormwater Pollution Prevention Plan (“SWPPP”),

conduct inspections, conduct monitoring and sampling, and meet other eligibility requirements.

18. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), provides for the assessment of penalties for violations of Sections 301 and 308 of the CWA.

Violations

Unauthorized Process Water and Stormwater Discharges and Failure to Apply for Stormwater Permit Coverage

19. GMRC is a Massachusetts for-profit corporation incorporated under the laws of the state of Massachusetts, with its principal place of business located at 81 Rocky Neck Avenue, Gloucester, Massachusetts.

20. GMRC is a “person,” as defined at Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

21. GMRC owns and operates a full-service shipyard at 81 Rocky Neck Avenue, Gloucester, Massachusetts (“the Facility”).

22. GMRC controls all daily business and industrial operations at the Facility, and otherwise meets the definition of an “operator” of the Facility, as defined at 40 C.F.R. § 122.2 and under the 2000 and 2008 MSGPs.

23. The Facility is approximately 3.3 acres in size, paved and contains several wharfs, two marine railways, a travel lift, a maintenance shop, fueling operations and associated support facilities. Five one-story sheds and a fuel pad are located in the central area of the property. The marine railways extend out into Smith Cove on concrete pads. The

southeastern portion of the Facility contains slips for docking boats.

24. Respondent maintains, repairs, and/or retrofits marine vessels. The Facility is classified under SIC codes 3731 (Ship Building and Repairing) and 3732 (Boat Building and Repairing) and is within Sector R of the 2008 MSGP.

25. Since at least October 1, 2008, GMRC conducted "industrial activity," within the meaning of 40 C.F.R. § 122.26(b)(14)(ii) at the Facility.

26. At times, during certain wet weather events, stormwater from the Facility flowed into a catch basin which leads into Outfall 001 and discharged into Smith Cove.

27. At all times relevant to the allegations in this Complaint, Respondent conducted activities associated with the operation of a boatyard such as pressure washing of vessels, cleaning, repairing, and painting of boat and ship hulls on wharf and marine railways. The pressure washing involved directing a high pressure stream of water at the vessel's hull while the boat was located on a travel-lift, or railway cradles or other structures.

28. Until a water recycling system was installed at the travel-lift in the summer of 2011, some process water during boat hull pressure washing activities discharged into Smith Cove.

29. Until the travel-lift water recycling system was utilized for the marine railway cradles in the summer of 2012, some process water during marine railway boat and ship hull pressure washing activities discharged into Smith Cove.

30. Smith Cove opens into Gloucester Harbor which opens into the Atlantic Ocean.

31. Smith Cove, Gloucester Harbor and the Atlantic Ocean constitute "waters of the United States," as defined by 40 C.F.R. § 122.2, and, thereby, "navigable waters," as

defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

32. The process water and stormwater discharges from the Facility resulted in the “discharge of pollutants,” as defined at Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

33. Outfall 001 constitutes a “point source” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

34. From at least October 1, 2008 through July 1, 2012, GMRC conducted activities in association with the operation of a boatyard that resulted in the discharge of process waters to waters of the United States, in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

35. From at least October 1, 2008 through November 14, 2012, GMRC conducted activities in association with the operation of a boatyard that resulted in the discharge of “stormwater associated with industrial activity,” as defined at 40 C.F.R. § 122.26(b)(14)(ii), to waters of the United States, without a permit, in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

36. As the “owner” and “operator” of the Facility, GMRC was required to obtain NPDES permit coverage for the industrial activity at the Facility and to comply with all requirements and conditions for operation under the CWA, its regulations, and the applicable permit.

37. GMRC did not apply for coverage under the MSGP until November 15, 2012.

38. From at least October 1, 2008 through November 14, 2012, GMRC failed to apply for an individual permit or submit a Notice of Intent (“NOI”) for coverage under the 2008

MSGP, in violation of Section 308 of the CWA, 33 U.S.C. § 1318.

II. CONSENT AGREEMENT

39. EPA and Respondent agree that settlement of this cause of action is in the public interest and that entry of this CAFO without further litigation is the most appropriate means of resolving this matter. Therefore, before taking any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

40. Respondent admits the jurisdictional allegations set forth in Section I above and hereby waives any defenses it might have as to jurisdiction and venue.

41. Respondent neither admits nor denies the factual or non-jurisdictional allegations contained in Section I above.

Waiver of Rights

42. Respondent waives the right to a hearing under Sections 309(g)(2)(B) of the CWA, 33 U.S.C. §§ 1319(g)(2)(B), and to any appeal of the Final Order in this matter under Sections 309(g)(8)(B) of the CWA, 33 U.S.C. §§ 1319(g)(8)(B). Respondent consents to the issuance of a Final Order without further adjudication.

Penalty

43. EPA proposes, and Respondent consents to, the assessment of a civil penalty of TWENTY THOUSAND DOLLARS (\$20,000) for all violations contained in this CAFO.

Payment Terms

44. In agreeing to the penalty described in paragraph 43 above, EPA has taken into account the statutory penalty factors at Sections 309(g)(3) of the CWA, 33 U.S.C.

§ 1319(g)(3), including Respondent's ability to pay the proposed penalty.

45. Respondent shall pay a total penalty of \$20,000, plus interest (calculated at 3%) on any penalty payment amounts not paid within 30 days of the effective date of the CAFO, pursuant to 31 U.S.C. § 3717 and 31 C.F.R. § 901.9(b), for violations of Sections 301 and 308 of the CWA, 33 U.S.C. §§ 1311 and 1318.

46. Respondent shall make the payments in the following manner:

- a. \$20,000 shall be due within 30 calendar days of the effective date of this CAFO;
- b. Respondent shall make this payment by cashier's or certified check, payable to "Treasurer, United States of America," referencing the title and docket numbers of the action (*"In the Matter of: Gloucester Marine Railways Corporation, Docket No. CWA-01-2014-0025*). The payment shall be mailed via regular U.S. Postal Service mail, to:

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

47. Respondent shall note the case name and respective docket number (*"In the Matter of Gloucester Marine Railways Corporation," Docket No. CWA-01-2014-0025*) in cover letters accompanying the payments and shall provide copies of the checks and letters to:

Wanda I. Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code ORA18-1
Boston, MA 02109-3912

and

Jeffrey Kopf, Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code OES04-4
Boston, MA 02109-3912

48. The penalty provided for herein is a penalty within the meaning of 26 U.S.C. § 162(f) and is not tax deductible for purposes of federal, state, or local law.

Supplemental Environmental Project ("SEP")

49. Respondent shall complete the following SEP, as described in Attachment 1, which the parties agree is intended to secure significant environmental benefits. Respondent will implement an Environmental Compliance Promotion SEP to raise awareness in the maritime community of the CWA requirements that apply to boatyards, marinas, and private boat owners. The SEP will include an outreach component that will target the 15 marinas and boatyards, five yacht clubs, and more than 1,200 mooring holders in Cape Ann, as described in Attachment 1. The SEP shall be completed according to the Schedule in Attachment 1 of this CAFO.

50. Respondent will spend at least \$30,000 on the SEP.

51. **SEP Completion Report.** Respondent shall submit an SEP Completion Report within 60 days of completion of the SEP. The SEP Completion Report shall contain the

following information:

- a. detailed description of the SEP as implemented;
- b. a list of itemized costs for implementing the SEP; and
- c. a certification by Respondent that the SEP has been fully implemented pursuant to the provisions of this CAFO;

52. **SEP Update Report.** Respondent shall submit one written Update Report by May 1, 2015 to EPA outlining progress towards implementation of the SEP.

53. Respondent agrees that failure to submit the reports required by Paragraph 51 and 52 shall be deemed a violation of this CAFO, and Respondent shall become liable for stipulated penalties pursuant to Paragraph 56 below.

54. Respondent shall submit all notices, submissions, and reports required by this CAFO to Lisa Thuot by First Class mail or any other commercial delivery service at the following address:

Lisa Thuot
US EPA Region 1
5 Post Office Square, Suite 100
Mailcode OES04-4
Boston, MA 02109-3912

55. After receipt of the SEP Completion Report described in Paragraph 51 above, EPA will notify Respondent in writing: (a) that EPA concludes that the SEP has been completed satisfactorily; (b) that EPA has determined that the project has not been completed satisfactorily and is specifying a reasonable schedule for correction of the SEP or the SEP Completion Report; or (c) that EPA has determined that the SEP does not

comply with the terms of this CAFO and is seeking stipulated penalties in accordance with Paragraph 56 herein. If EPA notifies Respondent pursuant to sub-paragraph 55(b) that the SEP itself or the SEP Completion Report does not comply with the requirements of this CAFO, Respondent shall make such corrections to the SEP and/or modify the SEP Completion Report in accordance with the schedule specified by EPA. If EPA notifies Respondent pursuant to sub-paragraph 55(c) that the SEP itself does not comply with the requirements of this CAFO, Respondent shall pay stipulated penalties to EPA in accordance with Paragraph 56 herein.

56. Stipulated Penalties and Review of Delays.

- (a) **Stipulated Penalties.** In the event that Respondent fails to complete the SEP in accordance with the terms of this CAFO, Respondent shall be liable for a stipulated penalty as provided herein, unless Respondent demonstrates, and EPA agrees, that Respondent made good faith and timely efforts to complete the project and certifies, with supporting documentation, that at least 90 percent of the amount of money that was required to be spent was expended on the SEP, in which case Respondent shall not be liable for any stipulated penalty. If Respondent demonstrates it made good faith and timely efforts to complete the project but spent less than 90 percent of the amount of money required to be spent for the SEP under this CAFO, Respondent shall pay a stipulated penalty to the United States in the amount equal to the difference between the amount of money which was supposed to be spent on the project and the actual amount spent

on the project, plus interest on this difference from the date the Final Order becomes final under Paragraph 67 of this CAFO. In the event that EPA does not agree that the SEP has been satisfactorily completed and that the Respondent has made a good faith, timely effort to implement the SEP, EPA may assess a stipulated penalty in an amount not to exceed thirty-thousand dollars (\$30,000.00), and EPA will notify Respondent of this finding and the amount of any such stipulated penalty in its written notification provided to Respondent under Paragraph 55 above. In the event that Respondent fails to submit the SEP Completion Report required by Paragraph 51, or fails to submit the Update Report required by Paragraph 52, Respondent shall pay a stipulated penalty in the amount of \$100 for each day after the SEP Completion Report or Update Report was originally due until the date that the report is submitted.

- i. The determination of whether the SEP has been satisfactorily completed and whether Respondent has made good faith, timely efforts to implement the SEP shall be in the sole discretion of EPA as set forth in this Paragraph 56.
- ii. Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity, except as otherwise determined through any review of a delay undertaken by the parties pursuant to this Paragraph 56.

iii. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of Paragraphs 46 and 47 above. Interest and late charges shall be paid as stated in Paragraph 60.

(b) **Review of Delays.** If any event occurs which causes or may cause delays in the completion of the SEP as required under this CAFO, Respondent shall notify EPA in writing, by certified mail, return receipt requested, not more than 10 days after the delay or Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondent to prevent or minimize the delay, and the timetable by which those measures will be implemented. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular incident involved and constitute a waiver of the Respondent's right to request an extension of its obligation under this CAFO based on such incident.

i. If the parties agree that the delay or anticipated delay in compliance with this CAFO has been or will be caused by circumstances beyond the control of Respondent, the time for

performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the parties shall stipulate to such extension of time.

- ii. In the event that EPA does not agree that a delay in achieving compliance with the requirements of this CAFO has been or will be caused by circumstances beyond the control of the Respondent, EPA will notify Respondent in writing of its decision and any delays in the completion of the SEP shall not be excused.
- iii. The burden of demonstrating to EPA that any delay is caused by circumstances entirely beyond the control of the Respondent shall rest with the Respondent. Increased costs or expenses associated with the implementation of actions called for by this CAFO shall not in any event, be a basis for changes in this CAFO or extensions of time under this Paragraph 56. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps, unless Respondent demonstrates that such compliance date or dates would necessarily be delayed.
- iv. If the parties agree that compliance with any portion of the SEP cannot be completed due to circumstances beyond the control of Respondent, the SEP may be modified or another SEP

project may be proposed by Respondent, subject to the approval of EPA. Any such additional SEP shall be in compliance with the requirements of EPA's SEP Policy as determined by EPA. In such event, the parties shall

- v. stipulate to such modification and execute a CAFO effecting such change.
- vi. Stipulated penalties shall not accrue for any delays approved by EPA under this Paragraph 56.

57. Respondent certifies that as of the date of this Consent Agreement, Respondent is not required to perform the SEP by any federal, state or local law or regulation, nor is Respondent required to perform the SEP under any grant or agreement with any governmental or private entity, as injunctive relief in this or any other case, or in compliance with state or local requirements. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP

58. Respondent certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from

funding as statutorily ineligible). For the purposes of this certification, the term “open federal financial assistance transaction” refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

59. Respondent agrees that any public statement, oral or written, in print, film, electronic, or other media, made by Respondent or by the third party implementer of the SEP, making reference to the SEP shall include the following language: “This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the Clean Water Act against Gloucester Marine Railways Corporation.”

General Provisions

60. Pursuant to Sections 309(g)(9) of the CWA, 33 U.S.C. §§ 1319(g)(9), a failure by the Respondent to pay the penalty assessed by this CAFO in full by its due date shall subject Respondent to a civil action to collect the assessed penalty, plus interest at current prevailing rates, from the date when this CAFO becomes final. The rate of interest assessed shall be at the rate set forth in 31 C.F.R. § 901.9(b), promulgated under 31 U.S.C. § 3717. Any person who fails to pay on a timely basis the amount of an assessed penalty shall be required to pay, in addition to such amount and interest, attorney’s fees, 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 of the aggregate amount of such person's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

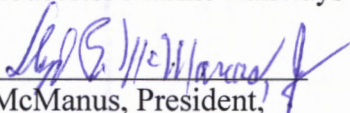
61. The Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, successors, or assigns.

62. The Final Order does not constitute a waiver, suspension, or modification of the requirements of Sections 301 and 308 of the CWA, 33 U.S.C. §§ 1311 and 1318, or any regulations promulgated thereunder, and does not affect the right of the EPA Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law. Payment of the penalty pursuant to this Consent Agreement resolves only Respondent's liability for federal civil penalties for the alleged violations and facts herein.

63. Except as described in paragraph 60 of this Consent Agreement, each party shall bear its own costs and attorney's fees in connection with the action resolved by this CAFO.

64. The undersigned representative of Respondent certifies that he is fully authorized by GMRC to enter into the terms and conditions of this CAFO and to execute and legally bind GMRC to it.

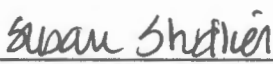
FOR Gloucester Marine Railways Corporation



Lloyd McManus, President,
Gloucester Marine Railways Corporation

Date: 8/22/14

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:



Susan Studlien, Director
Office of Environmental Stewardship
U.S. EPA, Region 1

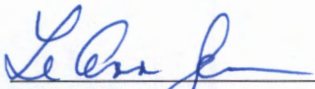
Date: 09/05/14

III. FINAL ORDER

65. EPA has provided a thirty-day opportunity for public notice and comment on this proposed CAFO, pursuant to Sections 309(g)(4)(A) of the CWA, 33 U.S.C. §§ 1319(g)(4)(A), and 40 C.F.R. § 22.45(b).

66. The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order.

67. Respondent is hereby ordered to comply with the terms of the above Consent Agreement, which will become final thirty (30) days from the date it is signed by the Regional Judicial Officer unless a petition to set aside the order is filed by a commenter pursuant to Section 309(g)(4)(C) of the CWA, 33 U.S.C. 1319(g)(4)(C) and 40 C.F.R. Part 22.



LeAnn Jensen
Acting Regional Judicial Officer
U.S. EPA, Region 1

Date: 9/30/14

Attachment 1

Supplemental Environmental Project: Environmental Compliance Promotion Project

SCOPE OF WORK

Gloucester Marine Railways Corporation (“Respondent”) hereby agrees to undertake the following Supplemental Environmental Project (“SEP”) in connection with the settlement of the enforcement action described in this Consent Agreement and Final Order (Docket No. CWA-01-2014-0025).

A. **Background Information.**

Gloucester, Massachusetts has a unique maritime history and was largely developed around its fishing industry, which had a fleet of locally built schooners reaching back to the late 19th century. Keeping fishing vessels in good working order requires preventing the buildup of algae and barnacles on the bottom of vessels. The first United States manufactured copper-based bottom paint for ships was invented in Gloucester in 1863 at Tarr and Wonson Paint Manufacturing. It is the mission of Maritime Gloucester, a working waterfront museum on Gloucester Harbor, to inspire students and visitors to value maritime science, maritime heritage and maritime environmental stewardship. Respondent will provide funds to Maritime Gloucester (who will be third party implementers of the SEP) to prepare targeted outreach materials and make presentations to yacht clubs, marinas, ship yards, and mooring holders which will emphasize the importance of Clean Water Act (“CWA”) compliance as described in more detail below.

B. **Environmental Issues.**

Historically, yacht clubs, marinas, ship yards, and individual boat owners have power-washed boat bottoms without capturing the contaminated process water resulting from such activities. As a result, paint chips, often containing toxic metals such as copper have washed into Smith Cove and Gloucester Harbor. In addition, facilities subject to EPA’s Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity, Sector Q: Water Transportation (which can include marinas) and Sector R: Ship and Boat Building or Repair Yards have not always been aware of the requirement to apply for permit coverage and have not always implemented best management practices to minimize the impacts of stormwater discharges from their facilities.

C. **Project.**

Respondent is responsible for completion of the SEP described below. Although Respondent is using a third-party implementer (Maritime Gloucester) to develop and implement the project, Respondent remains responsible for its full implementation:

- Respondent shall provide a check to Maritime Gloucester within 30 days of the Effective Date of this CAFO for \$30,000 to complete the environmental compliance promotion program described below.
- Maritime Gloucester will develop and implement an environmental compliance outreach program that will target 15 marinas and boatyards, five yacht clubs and the 1,200 mooring holders in Cape Ann (Rockport, Gloucester, Manchester and Essex).
- A one page “take away” handout will be distributed to these target audiences.
- Maritime Gloucester will also develop and distribute to yacht clubs, marinas and mooring holders a one page handout for selecting anti-fouling paint, the impacts such paint can have on surface waters, and other water quality issues.
- The environmental compliance outreach material will be professionally printed and distributed at the Conference described below, and mailed to target audiences who could not attend the Conference, including all mooring holders in Cape Ann.
- Respondent shall submit to EPA for review copies of all materials to be publicly distributed before they are sent out for final printing.
- Maritime Gloucester will host a conference (“Conference”) which will include presentations on CWA compliance requirements including implementing stormwater best management practices at facilities subject to EPA’s Multi-Sector General Permit for Industrial Activities (“MSGP”). The conference will also include presentations on technologies, management approaches, and experiences associated with boatyard activities potentially impacting stormwater and water quality. Respondent will provide a copy of the sign-in sheet of attendees to the Conference with the SEP Completion Report required to be submitted to EPA under the CAFO.
- Maritime Gloucester will publicize the Conference and seek to generate pre and post Conference press opportunities regarding this event.
- Maritime Gloucester will NOT charge a fee to attendees for attending this Conference.
- Maritime Gloucester will augment the compliance outreach material with a specially developed web page on the Maritime Gloucester website.

D. **Costs.**

\$30,000

E. **Environmental Benefits.**

Such a focused environmental outreach campaign is likely to lead to decreased amounts of unauthorized process water and contaminated stormwater from entering Smith Cove and Gloucester Harbor as businesses and personal watercraft owners involved in boat washing better understand their obligations under the CWA.

F. **Schedule.**

1. Respondent shall provide the check for \$30,000 to Maritime Gloucester for implementation of the SEP within 30 days of the Effective Date of the CAFO.
2. The SEP shall be completed within 1 year of the Effective Date of the CAFO.

In the Matter of: Gloucester Marine Railways Corporation
Docket No. CWA 01-2014-0025

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent to the following persons, in the manner specified on the date below:


Original and one copy,
hand-delivered:

Ms. Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region I (ORA18-1)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Copy, by certified mail,
Return Receipt Requested:

Shephard S. Johnson, Jr.
Shephard S. Johnson, Jr. & Associates, P.C
628 Pleasant Street, Suite 428
New Bedford, MA 02740

Dated: September 30, 2014



Jeffrey Kopf
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