

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, California 94105

IN THE MATTER OF:	)	DOCKET NO. MPRSA-09-2020- <i>0016</i>
	)	
Port of Oakland	)	
Oakland, California	)	<b>COMPLAINT, CONSENT AGREEMENT</b>
Respondent.	)	<b>AND FINAL ORDER</b>
	)	
	)	<i>Administrative Penalty Proceeding under</i>
	)	<i>Section 105(a) of the Marine, Protection,</i>
	)	<i>Research and Sanctuaries Act, 33 U.S.C. §</i>
	)	<i>1415(a), and 40 C.F.R. §§ 22.13(b) and</i>
	)	<i>22.18(b)(2).</i>

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**CONSENT AGREEMENT AND FINAL ORDER**

**I. AUTHORITY AND PARTIES**

1. This is a civil administrative penalty proceeding under Section 105(a) of the Marine, Protection, Research and Sanctuaries Act (MPRSA, the Act), 33 U.S.C. § 1415(a) and 40 C.F.R. Part 22 (*Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*).
2. Pursuant to Section 105(a) of the MPRSA, 33 U.S.C. § 1415(a), the Administrator of the United States Environmental Protection Agency (EPA) is authorized to assess administrative penalties against persons who violate Section 101(a)(1) of the Act, 33 U.S.C. § 1411(a)(1). The Administrator has delegated this authority to the Regional Administrator of the EPA Region 9, who in turn has delegated this authority to the Director of the Enforcement and Compliance Assurance Division, hereinafter "Complainant."
3. Respondent is the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners also known as the Port of Oakland.
4. This Consent Agreement and Final Order (CA/FO), which contains the elements of a complaint required by 40 C.F. R. § 22.14(a), simultaneously commences and concludes this penalty proceeding, as authorized by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

NOW THEREFORE, before the taking of any testimony, without adjudication of any issue of fact or law, and upon consent by the EPA and Respondent, it is hereby STIPULATED, AGREED,

AND ORDERED:

## **II. STATUTORY AND REGULATORY FRAMEWORK**

5. Pursuant to MPRSA Section 101(a)(1), it is unlawful for any person to transport from the United States any material for the purpose of dumping it into ocean waters except as authorized by a permit issued pursuant to the MPRSA. 33 U.S.C. § 1411(a)(1). Ocean waters are all those waters of the open seas lying seaward of the base line from which the territorial sea is measured, as provided for in the Convention on the Territorial Sea and the Contiguous Zone. MPRSA § 3, 33 U.S.C. § 1402.
6. Pursuant to Section 102(c) of the MPRSA, 33 U.S.C. § 1412(c), EPA Region 9 promulgated rules designating the San Francisco Deep Ocean Disposal Site (SF-DODS). 40 C.F.R. § 228.15(l)(3)(viii). These SF-DODS Site Use Regulations provide that the SF-DODS is intended to be a multi-user ocean disposal site to be used only for suitable dredged material generated from projects located in the San Francisco Bay region. Furthermore, the use of the disposal site must conform to Mandatory Conditions set forth at 40 C.F.R. § 228.15(l)(3)(viii)(A)(1-13).
7. The authorization for the dredging project which is the subject of this CA/FO, required that disposal operations conform to Mandatory Conditions set forth in the EPA SF-DODS Site Use Regulations at 40 C.F.R. § 228.15(l)(3)(vi). This section states that “Adherence to ...mandatory permit conditions...and any other condition(s) EPA or the Corps have required as part of the project authorization or permit, is a requirement for use of SF-DODS.”
8. The site use conditions for the dredging activities in question were transmitted on July 27, 2017 (“EPA Conditions for Use of the San Francisco Deep Ocean Disposal Site (SF-DODS): 2017 Episode 6 Maintenance Dredging of Port of Oakland Berths 24, 25/26, 57, 58 and 69”).
9. The site use conditions include mandatory condition B(7): “Within 24 hours of the completion of each disposal trip, data recorded from the primary disposal tracking system must be posted by a third party contractor to a World Wide Web (internet) site accessible by EPA Region 9, the San Francisco District USACE, and NOAA’s Gulf of the Farallones National Marine Sanctuary.”
10. The site use conditions also include mandatory condition B(12): “Within 60 days following the completion of ocean disposal operations, the permittee shall submit to the District Engineer and Regional Administrator a completion letter summarizing the total number of disposal trips and the overall volume (bin as well as *in situ*) of material disposed of at SF-DODS for the project, and whether any of this dredged material was excavated from outside the areas authorized for ocean disposal or was dredged deeper than authorized by the permit.”
11. Pursuant to MPRSA Section 105(a) and 40 C.F.R. §19.4, EPA may assess administratively a civil penalty of not more than \$194,457 for each violation, against any person who violates the Act, the regulations promulgated pursuant to the Act, or a permit issued pursuant to the

Act. 33 U.S.C. § 1415(a). In assessing a penalty, each day of a continuing violation, as well as the unauthorized dumping from each vessel, constitutes a separate offense. MPRSA § 105(c); 33 U.S.C. § 1415(c).

### **III. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS, AND CONCLUSIONS OF LAW**

12. Respondent is an instrumentality of a local unit of government and therefore a person within the meaning of the MPRSA § Section 3(e), 33 U.S.C. § 1402(e). Respondent's headquarters building is located at 530 Water Street, Oakland, California hereinafter the "Facility."
13. Respondent's contractor dredged 6,001 cubic yards of sediment from Berth #35 at the Port of Oakland on August 6-7, 2017, and disposed it at the SF-DODS.
14. The Army Corps of Engineers (Corps) issued USACE Permit 2014-0090S ("the Permit") to Respondent in 2014 for the dredging and disposal of material over 10 years at the Port of Oakland. The dredging episodes within the Permit were individually approved by the EPA as they arose.
15. Dredging at Berth #35 was not yet approved by the EPA and was therefore not authorized under the Permit.
16. Respondent's contractor failed to post tracking data to the internet within 24 hours of the completion of disposal trips during dredging at Berth #35 in August 2017.
17. Respondent failed to submit Close Out Reports following the completion Episodes 5, 6 and 7 of the 2017 Port of Oakland Maintenance Dredging within the 60-day window established in the SF-DODS Condition B(12).

### **IV. ALLEGED VIOLATIONS**

18. Respondent violated 33 U.S.C. § 1411(a)(1) by virtue of the fact that its contractor disposed of 6,001 cubic yards of dredged material at the SF-DODS without authorization.
19. Respondent violated 40 C.F.R. § 228.15(l)(3)(vi) by failing to ensure that its contractor posted tracking data to the internet within 24 hours of a violation on 2 occasions.
20. Respondent violated 40 C.F.R. § 228.15(l)(3)(vi) by failing to file project completion reports on 3 occasions within the timeframe specified in the SF-DOD Permit Conditions.

### **V. ADMINISTRATIVE PENALTY**

21. Based upon the facts alleged herein and upon those factors which the Complainant must consider pursuant to Section 105(a) of the MPRSA, 33 U.S.C. § 1415(a), including the seriousness of the violations, any good faith efforts by the Respondent to comply with

applicable requirements, and any economic benefit accruing to the Respondents, as well as such other matters as justice may require, the Complainant proposes that the Respondent be assessed, and the Respondent, in order to resolve this matter without further litigation, agrees to pay THREE HUNDRED THOUSAND DOLLARS (\$300,000), as the civil penalty for the violations alleged herein, within thirty (30) calendar days of the Effective Date, as defined in Section XI below, of this CA/FO.

22. Respondent shall make penalty payment by one of the options listed below:

a. Check Payment. Payment by a cashier's or certified check shall be made payable to "Treasurer, United States of America" and be mailed as follows:

i. *If by regular U.S. Postal Service Mail:*

U.S. Environmental Protection Agency  
Fines and Penalties  
PO BOX 979077  
St. Louis, MO 63197-9000

ii. *If by overnight mail:*

U.S. Environmental Protection Agency  
Government Lockbox 979077  
USEPA Fines and Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101

b. Automated Clearinghouse Payment: Payment by Automated Clearinghouse (ACH) via Vendor Express shall be made through the U.S. Treasury as follows:

U.S. Treasury REX/Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking

c. Fedwire: Payment by wire transfer to the EPA shall be made through the Federal Reserve Bank of New York as follows:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
(Field Tag 4200 of the Fedwire message should read: D 68010727)

Environmental Protection Agency)

- d. Online Payment: This payment option can be accessed from the information below

Go to [www.pay.gov](http://www.pay.gov)  
Enter "SFO Form Number 1.1." in the search field  
Open "EPA Miscellaneous Payments – Cincinnati Finance Center" form  
and complete required fields

Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. If clarification regarding a particular method of payment remittance is needed, contact the EPA Cincinnati Finance Center at (513) 487-2091.

23. To ensure proper credit, Respondent shall include the following transmittal information with the penalty payment: (i) Respondent's name (as appeared on the CA/FO), complete address, contact person, and phone number; (ii) the EPA case docket number; (iii) the EPA contact person (defined below); and (iv) the reason for payment.
24. Concurrent with the payment, Respondent shall send a true and correct copy of the payment and accompanying transmittal information to the following addresses:

Regional Hearing Clerk  
Office of Regional Counsel (ORC-1)  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

Brian Ross (EPA Contact Person)  
Water Division (WTR 2-4)  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

25. Respondent shall not, and shall not allow any other person to, deduct any penalties and interest paid under this CA/FO from federal, state, or local taxes.
26. Pursuant to 33 U.S.C. §1415(a), if Respondent fails to pay the assessed penalty, the EPA may request the U.S. Department of Justice to commence an action in the appropriate district court of the United States for such relief as may be appropriate.

## **VI. APPLICABILITY**

27. This CA/FO shall apply to and be binding on Respondent, Respondent's officers, directors, partners, agents, employees, contractors, successors and assigns. Action or inaction of any persons, firms, contractors, employees, agents, or corporations acting under, through, or for



Respondent shall not excuse any failure of Respondent to fully perform its obligations under this CA/FO. Changes in ownership, real property interest, or transfer of personal assets shall not alter Respondent's obligations under this CA/FO.

#### **VII. RESPONDENT'S ADMISSIONS AND WAIVERS**

28. In accordance with 40 C.F.R. § 22.18(b), for the purpose of this proceeding, Respondent:
- a. admits the jurisdictional allegations of the complaint;
  - b. neither admits nor denies specific factual allegations contained in the complaint;
  - c. consents to all conditions specified in this CA/FO and to the assessment of the civil administrative penalty set forth in Section V above;
  - d. waives any right to contest the allegations set forth in this CA/FO; and
  - e. waives its right to appeal this proposed Final Order.

#### **VIII. RESERVATION OF RIGHTS**

29. In accordance with 40 C.F.R. § 22.18(c), full payment of the penalty set forth in this CA/FO shall resolve Respondent's liability for MPRSA civil penalties for the violations and facts alleged in this CA/FO, and shall not in any case affect the right of the EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
30. This CA/FO is not a permit or modification of any existing permit issued pursuant to any federal, state, or local laws or regulations, and shall in no way relieve or affect Respondent's obligations under any applicable federal, state or local laws, regulations, or permits.

#### **IX. ATTORNEY FEES AND COSTS**

31. Unless otherwise specified, each party shall bear its own attorney fees and costs.

#### **X. NOTICES**

32. Respondent shall send all required submissions and any other written communications via email to each of the following individuals:

Brian Ross  
Life Scientist  
U.S. Environmental Protection Agency, Region 9  
Water Division  
[Ross.Brian@epa.gov](mailto:Ross.Brian@epa.gov)

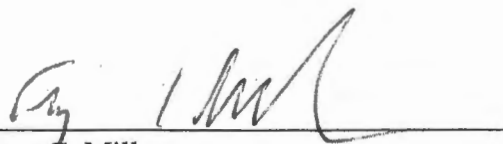
and

Julia Jackson  
Asst. Regional Counsel  
U.S. Environmental Protection Agency, Region 9  
Office of Regional Counsel  
Jackson.Julia@epa.gov

#### **XI. EFFECTIVE DATE AND TERMINATION**

33. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), the Effective Date of this CA/FO is the date that the Final Order, having been signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk with a copy to Respondent. This CA/FO shall terminate when Respondent has complied with the requirements of this CA/FO in full.

For Complainant the U.S. Environmental Protection Agency, Region 9

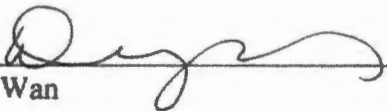


Amy C. Miller  
Director  
Enforcement and Compliance Assurance Division

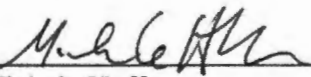
December 30, 2019  
Date



For Respondent

  
\_\_\_\_\_  
Danny Wan  
Executive Director

2/4/2020  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Michele Heffes  
Port Attorney

2/4/2020  
\_\_\_\_\_  
Date

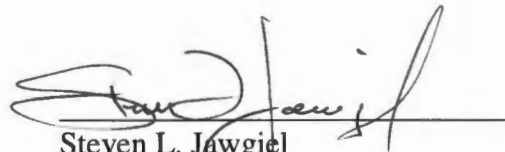
Port Resolution No. 20-01  
P.A.# 2020-38

THIS AGREEMENT SHALL NOT BE VALID  
OR EFFECTIVE FOR ANY PURPOSE UNLESS  
AND UNTIL IT IS SIGNED BY THE PORT ATTORNEY.

**FINAL ORDER**

It is Hereby Ordered that this Consent Agreement and Final Order (U.S. EPA Docket No. MPRSA-09-2020-<sup>0016</sup>) be entered and that Respondent shall pay a civil penalty in the amount of \$300,000 in accordance with the terms of this Consent Agreement and Final Order.

02/13/20  
Date

  
Steven L. Jawgiel  
Regional Judicial Officer  
U.S. EPA, Region IX

CERTIFICATE OF SERVICE

I hereby certify that the foregoing FINAL ORDER incorporating the CONSENT AGREEMENT in the matter of Port of Oakland (MPRSA-09-2020-<sup>0018</sup>) was filed with Regional Hearing Clerk and sent.

FIRST CLASS MAIL – CERTIFIED

Tracking Number: 70153010000038835093

Respondent

Daria Edgerly, Secretary of the Board  
Port of Oakland  
530 Water Street  
Oakland, CA 94607

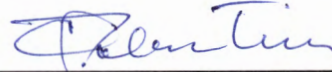
HAND DELIVERED

EPA Region IX Attorney

Julia Jackson, Attorney-Advisor  
United States Environmental Protection Agency  
Region IX – Office of Regional Counsel (ORC -2)  
75 Hawthorne Street  
San Francisco, CA 94105

2/14/20

\_\_\_\_\_  
Date

  
\_\_\_\_\_

FOR: Steven Armsey  
Regional Hearing Clerk  
U.S.EPA, Region IX

\_\_\_\_\_  
**In the Matter of: Port of Oakland  
Consent Agreement and Final Order**