



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

290 BROADWAY

NEW YORK, NY 10007-1866

MAR - 1 2016

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7015 3010 0001 6837 6824

Mr. Alexander Gomez, President
GMD Shipyard Corp.
Brooklyn Navy Yard Bldg. #595
63 Flushing Avenue, Unit #276
Brooklyn, New York 11205

RE: Notice of Proceeding to Assess a Class II Civil Penalty
GMD Shipyard Corp., Brooklyn, New York
Docket No. CWA-02-2016-3402

Dear Mr. Gomez:

Enclosed is a Complaint which the United States Environmental Protection Agency ("EPA" or "Agency") is issuing to GMD Shipyard Corp. as a result of our determination that you have violated Sections 301 and 402 of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. §§ 1311 and 1342, in the operation of the dry dock facility known as GMD Shipyard Corp., located at Brooklyn Navy Yard Bldg. #595, 63 Flushing Avenue, Unit #276 in Brooklyn, New York. This Complaint is filed pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g). Upon consideration of the factors in Section 309(g)(3), the Complaint proposes that a penalty of **\$125,000** be assessed against you for these violations.

You have the right to a hearing to contest the factual allegations in the Complaint. If you admit the allegations, or if they are found to be true after you have had an opportunity for a hearing on them, you have the right to contest the penalty proposed in the Complaint. I have enclosed a copy of Consolidated Rules of Practice ("CROP"), found at 40 Code of Federal Regulations Part 22, which the EPA follows in cases of this kind. Please note the requirements for an Answer at Section 22.15 of the CROP. **If you wish to contest the allegations in the Complaint or the penalty proposed in the Complaint, you must file an Answer within thirty (30) days of your receipt of the enclosed Complaint to the EPA Regional Hearing Clerk at the following address:**

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, New York 10007-1866

If you do not file an Answer within thirty (30) days of receipt of this Complaint, you may be judged to have defaulted (See, §22.17 of the CROP). If a default order is entered against you, you may be ordered to pay the entire proposed penalty without further proceedings.

Regardless of whether you request a formal hearing, EPA encourages you to pursue the possibility of settlement by requesting an informal conference with the Agency concerning the alleged violations and

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REGIONAL HEARING
CLERK

the amount of the proposed penalty. Please note that a request for an informal conference does not substitute for a written Answer, or affect what you may choose to say in an Answer, nor does it extend the thirty (30) day deadline by which you must file an Answer.

The Agency also encourages you to propose and perform Supplemental Environmental Projects ("SEPs"), where appropriate, as part of any settlement. Enclosed is a copy of the 2015 Update to the EPA Supplemental Environmental Projects Policy (March 10, 2015) for your consideration.

You may represent yourself or be represented by an attorney at any stage of the proceedings, including any informal discussions and/or a formal hearing, whether in person or by telephone. Any hearing held in this matter will be conducted in accordance with the CROP.


If you have any questions or wish to discuss a settlement of this matter with the EPA by an informal conference, please immediately contact:

Lauren Fischer, Esq.
Assistant Regional Counsel
Water and General Law Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866
Telephone: (212) 637-3231
Fax: (212) 637-3202

For your information, I am enclosing an Information Sheet which may be helpful if you are a small business as defined at 13 C.F.R. § 121.201, in obtaining compliance assistance or if you wish to comment on this action to the Small Business and Agriculture Regulatory Enforcement Ombudsman and Regional Fairness Board.

Should you have any questions concerning this matter, please feel free to contact Ms. Lauren Fischer, Esq. at the phone number above or Ms. Justine Modigliani, Compliance Section Chief, at (212) 637-4268.

Sincerely,



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

1. Complaint
2. CROP
3. EPA Supplemental Environmental Projects Policy and SEP Brochure
4. Information for Small Business

cc: Joseph DiMura, P.E., Director, NYSDEC



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

MAR - 1 2016

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7015 3010 0001 6837 6831

Mr. Joseph DiMura, P.E., Director
Bureau of Water Compliance Programs
Division of Water
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-4500

RE: Notice of Proceeding to Assess a Class II Civil Penalty
GMD Shipyard Corp., Brooklyn, New York
Docket No. CWA-02-2016-3402

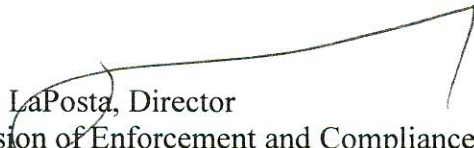
Dear Mr. DiMura:

Enclosed is a copy of the Complaint and Proposed Assessment of a Civil Penalty, which the United States Environmental Protection Agency ("EPA") has issued to GMD Shipyard Corp., pursuant to Section 309(g) of the Clean Water Act (Act), 33 U.S.C. § 1319(g). EPA has issued the Complaint to begin the process to administratively assess a civil penalty of \$125,000 against Respondent for violations of the Act.

Since the violations have occurred in the State of New York, EPA is offering you an opportunity to confer with us regarding the proposed assessment. You may confer with me at (212) 637-4000.

A copy of 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 (40 C.F.R. Part 22), is enclosed for your reference.

Sincerely,


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

- Enclosures
1. Complaint
 2. CROP

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CLERK

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

GMD Shipyard Corp.
Brooklyn Navy Yard Bldg. #595
63 Flushing Avenue, Unit #276
Brooklyn, New York 11205
SPDES Permit No. NYR00D162

Respondent.

Proceeding pursuant to Section 309(g) of the
Clean Water Act, 33 U.S.C. § 1319(g)

**PROCEEDING TO ASSESS A CLASS II
CIVIL PENALTY**

DOCKET No. CWA-02-2016-3402

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**ADMINISTRATIVE COMPLAINT
FINDINGS OF VIOLATION, NOTICE OF PROPOSED
ASSESSMENT OF AN ADMINISTRATIVE PENALTY, AND
NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

I. STATUTORY AND REGULATORY AUTHORITIES

1. This Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of an Administrative Penalty, and Notice of Opportunity to Request a Hearing (“Complaint”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“Administrator” or “EPA”) by Section 309(g)(2)(B) of the Clean Water Act (“Act” or “CWA”), 33 U.S.C. § 1319(g)(2)(B). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 2, who in turn has delegated it to the Director, Division of Enforcement and Compliance Assistance (“DECA”) of EPA, Region 2 (“Complainant”).
2. Pursuant to Section 309(g)(2)(B) of the Act, and in accordance with 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 (“CROP”), 40 C.F.R. Part 22, a copy of which is attached, Complainant hereby requests that the Regional Administrator assess a civil penalty against GMD Shipyard Corp. (“Respondent”), as a result of Complainant’s determination that the Respondent is in violation of Section 301 of the Act, 33 U.S.C. § 1311, for failing to comply with the terms of the New York State Department of Environmental Conservation’s (“NYSDEC”) State Pollutant Discharge Elimination System (“SPDES”) Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (“MSGP”), issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, at a facility that the Respondent operates.

II. APPLICABLE LEGAL REQUIREMENTS

1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person from a point source into navigable waters, except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342.
2. “Discharge of a pollutant” is defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12), to include any addition of any pollutant to navigable waters from any point source.
3. “Pollutant” is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), to include among other things, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged into water.
4. “Person” is defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), to include, among other things, an individual, corporation, partnership, association or municipality.
5. “Point source” is defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14), to include any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.
6. “Navigable waters” is defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), as the waters of the United States, including the territorial seas, and, at the time of the violations at issue here, “waters of the United States” was defined by 40 C.F.R. § 122.2, to include: all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; all interstate waters, including interstate “wetlands;” all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, “wetlands,” sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce, including tributaries thereto.
7. “Owner or operator” is defined by 40 C.F.R. § 122.2 as the owner or operator of any “facility or activity” subject to regulation under Section 402 of the CWA, 33 U.S.C. § 1342(a).
8. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), authorizes the Administrator to issue a National Pollutant Discharge Elimination System (“NPDES”) permit for the discharge of any pollutant, or combination of pollutants, notwithstanding the prohibition in Section 301(a) of the CWA, upon the condition that any such discharges will meet the requirements of the CWA and its implementing regulations.
9. The Administrator of EPA has promulgated regulations, 40 C.F.R. § 122.26(a)(1)(ii) and § 122.26(b)(14), which require operators to obtain a NPDES permit for stormwater discharges associated with industrial activity. The regulations at 40 C.F.R. § 122.26(b)(14) establish requirements for stormwater discharges associated with industrial activity.

10. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), allows any State, upon application to and approval by EPA, to directly administer the NPDES permitting program. EPA has authorized NYSDEC to directly administer the NPDES program in the State of New York. Accordingly, any person who will discharge pollutants from a point source to waters of the United States within New York State must first obtain a SPDES permit, and must comply with all of its terms.
11. Pursuant to Section 402(b) of the CWA, NYSDEC issued the SPDES MSGP, as defined by the present general permit number GP-0-12-001, which became effective on October 1, 2012, and expires on September 30, 2017. GP-0-12-001 replaced interim general permit number GP-0-11-009, which became effective on March 28, 2012, and expired on September 30, 2012. GP-0-11-009 replaced GP-0-06-002, which became effective on March 28, 2007, and expired on March 27, 2012.
12. Pursuant to 40 C.F.R. § 122.41(a), NPDES permittees must comply with all conditions of their permit, and any permit noncompliance constitutes a violation of the CWA.
13. Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), authorizes the Administrator, upon a finding that any person has violated, among other things, Section 301(a) of the Act, or has violated any permit condition or limitation implementing such section in a permit issued under Section 402 of the Act, to assess a civil penalty, and Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), as adjusted by 40 C.F.R. § 19.4, authorizes the assessment of a penalty of up to \$16,000 per day of violation, and not exceeding \$187,500.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Respondent GMD Shipyard Corp., is a corporation, formed under the laws of New York State, and is, therefore, a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
2. The Respondent operates the GMD Shipyard Corp. dry dock facility (“Site” or “Facility”), which is located at Brooklyn Navy Yard Bldg. #595, 63 Flushing Avenue, Unit #276 in Brooklyn, New York 11205. Therefore, the Respondent is an owner or operator within the meaning of 40 C.F.R. § 122.2.
3. Stormwater discharges from the Facility into the East River via outfall pipes and drainage structures. The East River is a traditionally navigable water of the United States, as that term is defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.
4. The Respondent’s operations at the Facility are classified by Standard Industrial Classification (“SIC”) Code 3731 (Ship Building and Repairing).
5. On March 12, 2008, the Respondent submitted a Notice of Intent (“NOI”) to gain coverage under the MSGP GP-0-06-002, and the NOI was received by the NYSDEC on March 14, 2008. The Facility subsequently gained coverage under SIC Code 3731, Sector R: Ship and Boat Building or Repairing Yards, of the MSGP, under SPDES ID No. NYR00D162. On December 21, 2012, the Respondent submitted a NOI to gain coverage under the NYSDEC SPDES MSGP GP-0-12-001, and the NOI was received by the NYSDEC on December 26, 2012.

6. On May 14, 2014, EPA conducted a Compliance Evaluation Inspection (“CEI” or “the Inspection”) at the Facility and EPA identified the following violations of the Facility’s MSGP:
 - a) Part I.B.1.a.(2).(j) of the MSGP states that the owner or operator must eliminate non-stormwater discharges not authorized by a SPDES permit. Non-stormwater discharges at the Facility that are not authorized by the MSGP or a SPDES permit at the Facility include the following, in violation of Part I.B.1.a.(2).(j) of the MSGP:
 - i. Sump pump and stripping pump discharges:
 1. At the time of the dry weather Inspection, EPA observed discharges at Dry Docks 1, 5 and 6 from stripping/sump pump Outfalls 002, 005 and 008 to the East River. At the time of the inspection, Dry Docks 5 and 6 contained vessels being serviced, spent grit, and waste.
 2. Part VIII.R of the MSGP states that the discharge of wastewater from pressure washing to remove marine growth from vessels must be permitted by a separate SPDES permit. According to the Facility representative, hydroblasting is conducted at the Facility. When hydroblasting is conducted on a dry dock, the resulting process wastewater is discharged to the East River via the sump pump and stripping pump outfalls.
 - ii. Main pumps at Dry Docks 1, 5 and 6 discharge non-stormwater to the East River via Outfalls 001 and 007. The main pump discharges contain East River water that has come into contact with grit, soil and waste berms on Dry Docks 5 and 6, a large spent grit and trash pile on Dry Dock 5, as well as any additional materials not removed from the dry docks prior to flooding.
 - b) EPA identified the following SWPPP elements that were not included in the Facility’s developed SWPPP, in violation of Part III.A of the MSGP:
 - i. The SWPPP failed to describe procedures for routine maintenance and cleaning of the dry dock to minimize the potential for pollutants in the stormwater runoff as required by Part VIII.R of the MSGP.
 - ii. Part VIII.R of the MSGP states that facilities that pressure wash vessels must include the following information in the SWPPP: measures to collect or contain the discharge from the pressure washing area, method for removal of the visible solids, methods of disposal of the collected solids, and location where the discharge will be released. According to the Facility representative, hydroblasting is conducted at the Facility and the SWPPP fails to contain any BMPs specific to hydroblasting.
 - c) The Facility failed to implement the SWPPP, in violation of Part III.A of the MSGP in the following ways:
 - i. Part III.C.7.e of the MSGP states that the SWPPP must describe the stormwater training program, training shall be conducted at least annually, and an annual signed and dated employee training log must be kept in the SWPPP. Section 6.0 of the Facility’s SWPPP states that all new employees receive eight-hour facility specific training and four-hour refresher training sessions are held annually for all spill response personnel. According to the Facility representative, health and safety training which includes spill training is conducted for new hires and refresher meetings are held Wednesday mornings. At the time of the Inspection, stormwater training records were not available and a training log was not located in the SWPPP.

- ii. Part III.C.7.g of the MSGP states that all SWPPPs developed under the MSGP shall ensure that waste, garbage and floatable debris are not discharged to receiving waters. Section 4.1.1 of the Facility's SWPPP states that the Facility will regularly pick up and dispose of garbage and waste materials. At the time of the Inspection, EPA observed the following garbage and waste materials at the Facility exposed to stormwater and in uphill locations to stormwater catch basins:
 - 1. Red garnet (used in mixing non-skid paint) spilled adjacent to a catch basin. The Facility representative stated that the paint was mixed at this location;
 - 2. Eleven (11) used paint cans and trash in an uncovered dumpster on Berth 9;
 - 3. Grit spilled on the ground at the vacuum blast equipment loading area on Berth 9;
 - 4. Grit spilled on the ground on Berth 9;
 - 5. Twenty (20) used paint cans on Berth 9;
 - 6. Large spent grit pile partially uncovered with adjacent spilled spent grit;
 - 7. Clam shell containing spent grit and trash on Berth 8;
 - 8. Blasting glass spilled on a catch basin on Berth 8; and
 - 9. An uncovered dumpster containing waste on Berth 8.
- iii. Part VIII.R of the MSGP states that the SWPPP must include a schedule for regularly cleaning storm systems to remove deposits of abrasive blasting debris and paint chips. Section 4.1.1 of the Facility's SWPPP states that the Facility will maintain dry and clean floors, ground surfaces, dry dock floors, and storm drains by using brooms, shovels, vacuum cleaners, and cleaning machines prior to and after ship docking. According to the Facility representative, the storm systems at the Facility have never been cleaned. At the time of the Inspection, EPA observed components of the storm system that were filled with debris as detailed below:
 - 1. Catch basin #6 was filled with sediment, located between Berths 8 and 9;
 - 2. Catch basin #7 contained pooling water and spent grit downhill from the spent grit pile on Berth 8;
 - 3. Catch basin #8 contained pooling water and brown foam on Berth 8;
 - 4. Catch basin #9 was filled with sediment, located on Berth 8;
 - 5. Catch basin #10 was covered with blasting glass on Berth 8;
 - 6. Catch basin adjacent to Dry Dock 1 was filled and covered with sediment; and
 - 7. According to the Facility Site Map located in the SWPPP, there are at least two (2) catch basins located underneath the spent grit pile on the south end of Berth #8. The Facility representative was unaware of any protection or coverings that have been installed on the catch basins.
- iv. Part VIII.R of the MSGP states that the SWPPP must describe procedures for cleaning the accessible areas of the dry dock prior to flooding. Section 4.3.1 of the Facility's SWPPP states that spent abrasive materials are collected and removed from graving docks, prior to flooding, and Section 3.2.2 of the SWPPP states that prior to flooding, the dry docks are inspected and cleaned to prevent contact of tidal water with potential pollutants. According to the Facility representative and observations obtained by EPA at the time of the Inspection, the following materials are not removed from the dry dock prior to flooding:
 - 1. At the time of the Inspection, EPA observed a pile of spent grit, soil, sediment, trash and other materials at the south end of Dry Dock 5. The pile was approximately 150 feet wide, 30 feet tall and 20 feet deep. According to the Facility representative, the pile has been at this location for over fifteen (15)

- years, the material is not removed when the dry dock is flooded, and the material is completely submerged with water when the dry dock is flooded.
2. At the time of the Inspection, EPA observed two (2) small piles of sediment and soil that contained trash, spent grit and other materials at the north ends of Dry Docks 5 and 6. According to the Facility representative, the piles are purposefully left there to act as berms and divert water that enters the dry docks through leaks in the caisson gates into drainage channels along the sides of the dry docks. According to the Facility representative, the material is not removed when the dry dock is flooded.
- v. Part VIII.R of the MSGP states that the SWPPP must describe procedures for the cleanup of oil, grease, or fuel spills occurring on the dry dock. Section 5.0 of the SWPPP describes spill response procedures. At the time of the Inspection, EPA observed the following petroleum product spill locations:
1. Stained ground adjacent to the hazardous waste storage area and exposed to stormwater;
 2. Pooling water containing oil sheens adjacent to the hazardous waste storage area and exposed to stormwater; and
 3. Pooling water containing an oil sheen adjacent to a stormwater catch basin on Berth 9.
- vi. Section 4.1.2 of the SWPPP states that the Facility will store chemical (paints and thinners) and petroleum product containers on containment systems and Section 4.3.2 of the SWPPP states that portable spill pallets and containment areas shall be used to store and mix paints. Section 4.1.2 of the SWPPP states that where feasible, containment of raw or waste material(s) will be covered, to prevent stormwater contact, and Section 4.3.4 of the SWPPP states that the Facility shall avoid contaminating storm water from outside material storage by using the following measures: storing material indoors; covering the area with a roof; covering the material with a temporary covering such as tarpaulins to prevent rain water accumulations; minimizing storm water runoff by enclosing areas or building a berm around the area. At the time of the Inspection, EPA observed the following chemicals, raw and waste materials stored outside, exposed to stormwater and not on a spill pallet and containment system:
1. Two (2) 55-gallon drums beyond the roof at the hazardous waste drum area;
 2. Twelve (12) 55-gallon drums southwest of hazardous waste drum area;
 3. Garnet red (used in mixing non-skid paint) spilled adjacent to a catch basin. The Facility representative stated that the paint was mixed at this location;
 4. Eleven (11) used paint cans and trash in a dumpster on Berth 9;
 5. Six (6) 55-gallon hydraulic oil drums on Berth 9;
 6. Grit spilled on the ground at the vacuum blast equipment loading area on Berth 9;
 7. Grit spilled on the ground on Berth 9;
 8. Twenty (20) used paint cans on Berth 9;
 9. Nineteen (19) paint cans with rust on Berth 9;
 10. Five (5) 55-gallon hydraulic oil drums on Berth 9;
 11. Two (2) 55-gallon gasoline drums adjacent to the mechanic shop;
 12. Large spent grit pile partially uncovered with adjacent spilled spent grit;
 13. Clam shell containing spent grit and trash on Berth 8; and
 14. Blasting glass spilled on a catch basin on Berth 8.

- vii. Section 4.2.3 of the SWPPP states the stormwater drainage system shall be inspected on a monthly basis. Inspection records document the structural condition of storm drains, evidence of past or recent spills, clean-up activities conducted to remove silt and material residues. At the time of the Inspection, the Facility representative had no knowledge that stormwater drainage system inspections were being conducted and no records of such inspections were available.

- d) Part III.C.6 of the MSGP requires that the Facility site map located in the SWPPP (“the Site Map”) contain the following elements that were missing in the Site Map provided at the time of the Inspection:
 - i. Approximate outline of drainage area to each outfall;
 - ii. Direction of stormwater flow using arrows to show which ways stormwater will flow;
 - iii. Locations of the potential pollutant sources;
 - iv. Locations where storage of waste is exposed to precipitation; and
 - v. Locations of the following stormwater conveyances:
 - 1. Catch basin #1 located southwest of the hazardous waste drum area;
 - 2. Three (3) drains adjacent to the sewage storage tank on Berth 9; and
 - 3. A catch basin adjacent to Dry Dock 1.

- e) Part III.E.1 of the MSGP requires amendments to the SWPPP whenever there is a change in operation at the Facility which may have an effect on the potential for the discharge of pollutants. The Facility failed to amend its SWPPP to reflect the following changes in its operation:
 - i. Damages sustained on October 29, 2012, due to the Hurricane Sandy storm surge and resulting changes in operations, including the utilization of two (2) sump pumps to replace damaged pumps;
 - ii. Changes to accommodate requirements of the most recent MSGP, which became effective on October 1, 2012;
 - iii. The Facility’s Site Map depicts a total of eight (8) drains in the garage, machine shop, pipe shop, tool shop and various other buildings at the Facility that are connected to the storm sewer system. However, these drains could not be located at the time of the Inspection, and according to the Facility representative there are no drains in the shop.
 - iv. The Facility’s Site Map depicts a proposed aboveground diesel storage tank location and a proposed contained fabric structure for indoor sandblasting that were not observed at the Facility during the Inspection;
 - v. Section 3.2.2 of the SWPPP states that during dry dock operations at the main yard, stormwater collects in the dry dock storm drain system and is pumped via the 8 inch force main to the combined sewer system where flow is conveyed to Newtown Creek Water Pollution Control Facility. However, observations at the time of the Inspection as well as the system depicted on the Facility Site Map demonstrate that water that enters the dry dock is discharged to the East River via the pumping systems;
 - vi. Section 3.2.3 of the SWPPP states that catch basins along the west side of Dry Dock 1 have been plated and are no longer functional. However, according to the Facility representative and observations at the time of the Inspection, the catch basins observed on-site were not plated and the Facility continues to conduct stormwater monitoring at Outfall 001;
 - vii. Section 4.2.5 of the SWPPP states that the Facility has an oil/water separator for pumping secondary containment areas. However, according to the Facility representative, there are no oil/water separators at the Facility; and

- viii. The Facility's Site Map depicts and describes stormwater catch basins at Outfall 003 and the Facility's 2012 NOI includes Outfall 003. However, according to the Facility representative, the area south and west of Dry Dock 3 at Berth 7 is not operated by GMD Shipyard Corp., the catch basins have been removed and the stormwater outfall (Outfall 003) has been closed. The Facility does not conduct monitoring at Outfall 003.
- f) Part IV.B.1.a.(2) of the MSGP states that all Quarterly Visual Monitoring samples must be collected from discharges resulting from a qualifying storm event, in accordance with Part IV.B.2.b.(1). Part IV.B.2.b.(1) of the MSGP states that a minimum of one grab sample must be taken from the stormwater discharge associated with industrial activity resulting from a storm event with at least 0.1 inch of precipitation and must be taken within the first 30 minutes of the discharge. According to Facility documentation, Quarterly Visual Monitoring was conducted on December 12, 2012, March 12, 2013, April 15, 2013, September 13, 2013, December 6, 2013 and February 20, 2014. The Facility failed to conduct Quarterly Visual Monitoring in violation of Part IV.B.1.a.(2) of the MSGP as follows:
- i. According to historical precipitation data from a weather station in New York City, the Brooklyn, NY area received 0.00 inches of precipitation on December 14, 2012 and April 15, 2013, 0.09 inches of precipitation on September 13, 2013 and 0.02 inches of precipitation on February 20, 2014. In addition, the Facility's Quarterly Visual Monitoring Form's document 0.03 inches of rain on December 14, 2012, 0.01 inches of rain on March 12, 2013, and 0.06 inches of rain on September 13, 2013; and
 - ii. According to Facility's Quarterly Visual Monitoring Forms, no grab samples were taken on all sample dates (December 14, 2012, March 12, 2013, April 15, 2013, September 13, 2013, December 6, 2013 and February 20, 2014) as indicated by the "no sample" under the Parameter Characteristics column.
- g) Part IV.B.1.a.(4) of the MSGP requires that all Quarterly Visual Monitoring Forms include documentation of observations of floating solids. At the time of the Inspection, all six (6) Quarterly Visual Monitoring Forms in the SWPPP on-site failed to include any such documentation.
- h) Part IV.B.1.a.(7) of the MSGP requires that Quarterly Visual Monitoring Forms include the certification statement provided in Part V.H of the MSGP. At the Inspection, all six (6) Quarterly Visual Monitoring Forms in the SWPPP on-site failed to include the required certification statement.
- i) Part IV.B.1.b.(1) of the MSGP states that the owner or operator must perform and document at least one dry weather flow inspection each year after at least three (3) consecutive days of no precipitation. According to Facility documentation, the Facility conducted Annual Dry Weather Flow Inspections on May 10, 2013 and May 13, 2014. According to historical precipitation data from a weather station in New York City, the Brooklyn, NY area received 1.54 inches of precipitation on May 8, 2013, 0.75 inches of precipitation on May 9, 2013, 0.79 inches of precipitation on May 10, 2014 and 0.02 inches of precipitation on May 11, 2014. Therefore, the Facility failed to perform dry weather flow inspections after at least three (3) consecutive days of no precipitation.
- j) Part IV.B.1.b.(2) of the MSGP requires that documentation of Annual Dry Weather Flow Inspections be maintained in a report format and that it include the inspection time and any non-authorized discharges. The two (2) Annual Dry Weather Flow Inspections available at

the time of the Inspection were documented in a table (not report) format, and the table failed to include the required inspection time and/or any non-authorized discharges.

- k) Parts IV.E.1 and IV.E.2.a of the MSGP requires that certain records be maintained for a period of at least five years. At the time of the Inspection, the following required records were unavailable:
- i. Comprehensive Site Compliance Inspection and Evaluation required at least annually by Parts IV.A and VIII of the MSGP for 2009, 2010, 2011, 2012 and 2013;
 - ii. Quarterly Visual Monitoring as required by Part IV.B.1.a of the MSGP for three (3) quarters in 2009, four (4) quarters in 2010, four (4) quarters in 2011, and three (3) quarters in 2012;
 - iii. Annual Dry Weather Flow Monitoring as required by Part IV.B.1.b of the MSGP for 2009, 2010, 2011 and 2012;
 - iv. Annual Certification Reports as required by Part IV.C.1 of the MSGP for 2009, 2010, 2011, and 2012;
 - v. Storm Event Data Forms as required by Part IV.B.2.c associated with Quarterly Visual Monitoring for three (3) quarters in 2009, four (4) quarters each year for 2010, 2011, 2012 and 2013 and one (1) quarter in 2014; and
 - vi. Part III.A of the MSGP states that a SWPPP shall be implemented by the owner or operator for each facility covered by the MSGP. Section 4.2.4 of the SWPPP states that the dry dock drainage system, shall be inspected on a weekly basis during dry dock activities. Dry Dock Drainage System inspection records were not available prior to January 2013.
- l) Part VIII.R of the MSGP requires that the performance and documentation of annual Comprehensive Site Compliance Evaluations addressing those areas contributing to stormwater discharges associated with industrial activity. At the time of the Inspection, the Facility failed to provide any documentation that the required evaluations had been performed.
7. On July 24, 2014, EPA issued the Respondent an Administrative Order, Docket No. CWA-02-2014-3050, which was mailed to the Respondent along with a copy of the CEI Report, and which ordered the Respondent to correct the above violations and come into compliance with the Act.
8. Based on the foregoing Findings of Fact and Conclusions of Law, the Respondent is liable for eight hundred and sixty-two (862) days of violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a), for violating the permit issued to the Respondent under Section 402 of the Act, 33 U.S.C. § 1342.

IV. NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

Based on the foregoing findings, and pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), and the Debt Collection Improvement Act of 1996, EPA, Region 2 hereby proposes to issue a Final Order Assessing Administrative Penalties (“Final Order”) to the Respondent assessing a penalty of **\$125,000**. EPA determined the proposed penalty after taking into account the applicable factors identified at Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3). EPA has taken account of the nature, circumstances, extent and gravity of the violations, and the Respondent’s prior compliance history, degree of culpability, economic benefit or savings accruing

to the Respondent by virtue of the violations, and the Respondent's ability to pay the proposed penalty. EPA may issue the Final Order Assessing Administrative Penalties thirty (30) days after the Respondent's receipt of this Notice, unless the Respondent files an Answer to this Complaint within that time and requests a Hearing on this Notice pursuant to the following section.

V. PROCEDURES GOVERNING THIS ADMINISTRATIVE ACTION

The rules of procedure governing this civil administrative litigation have been set forth in the CROP, 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint.

A. Answering The Complaint

Where the Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that the Respondent is entitled to judgment as a matter of law, the Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer to the Complaint, and such Answer must be filed within thirty (30) days after service of the Complaint. 40 C.F.R. § 22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2, is:

**Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, NY 10007-1866**

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a). The Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which the Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where the Respondent lacks knowledge of a particular factual allegation and so states in the Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that the Respondent disputes (and thus intends to place at issue in the proceeding), (3) the basis for opposing the proposed relief and (4) whether the Respondent requests a Hearing. 40 C.F.R. § 22.15(b).

Respondent's failure to affirmatively raise in the Answer facts that constitute or that might constitute the grounds of a defense may preclude the Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a Hearing.

B. Opportunity To Request A Hearing

If requested by the Respondent in its Answer, a Hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If however, the Respondent does not request a Hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a Hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c).

Any Hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A Hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of the CROP, at 40 C.F.R. §§ 22.21-22.26.

Should the Respondent request a Hearing, members of the public to whom EPA is obligated to give notice of this proposed action will have a right under Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), to be heard and to present evidence on the appropriateness of the penalty assessment. Should the Respondent not request a Hearing, EPA will issue a Final Order, and only members of the public who submit timely comment on this proposal will have an additional thirty (30) days to petition EPA to set aside the Final Order and to hold a Hearing thereon. EPA will grant the petition and will hold a Hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order.

C. Failure To Answer

If the Respondent fails in any Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If the Respondent fails to file a timely Answer to the Complaint [i.e. not in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)], the Respondent may be found in default upon motion by Complainant. 40 C.F.R. § 22.17(a). Default by the Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of the Respondent's rights to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by the Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by the Respondent without further proceedings thirty (30) days after the Default Order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such Final Order of Default against the Respondent, and to collect the assessed penalty amount, in federal court.

VI. INFORMAL SETTLEMENT CONFERENCE

Regardless of whether the Respondent requests a formal Hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, the Respondent may comment on the charges made in this Complaint and the Respondent may also provide whatever additional information it believes to be relevant to the disposition of this matter, including: (1) actions the Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to the amount of the proposed penalty, (3) the effect the proposed penalty would have on the Respondent's ability to continue in business and/or (4) any other special facts or circumstances the Respondent wishes to raise. Note that no penalty reduction will be made simply because an informal settlement conference is held.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, in response to any relevant information previously not known to Complainant that demonstrates that any of the findings herein are without merit, or that the proposed penalty is not warranted. The Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that the Respondent may have regarding this Complaint should be directed to:

Lauren Fischer, Esq.
Assistant Regional Counsel
Water and General Law Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866
Telephone: (212) 637-3231
Fax: (212) 637-3202

The parties may engage in settlement discussions regardless of whether the Respondent has requested a Hearing. 40 C.F.R. § 22.18(b)(1). The Respondent's request for a formal Hearing does not prevent the Respondent from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint.

A request for an informal settlement conference does not affect the Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written Consent Agreement. 40 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, a Final Order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3). In accepting the Consent Agreement, the Respondent waives any right to contest the allegations in the Complaint and waive any right to appeal the Final Order. 40 C.F.R. § 22.18(b)(2).

Entering into a settlement through the signing of such Consent Agreement and complying with the terms and conditions set forth in such Consent Agreement and Final Order would terminate this administrative litigation and these civil proceedings against the Respondent. Entering into a settlement agreement would not extinguish, waive, satisfy or otherwise affect the Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance, and EPA would retain authority to initiate a new enforcement action based on evidence of new or continued violations.

VII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

Instead of filing an Answer, the Respondent may choose to pay the total amount of the proposed penalty, **\$125,000**, within thirty (30) days after receipt of the Complaint, provided that the Respondent files with the Regional Hearing Clerk, Region 2 (at the address noted above), a copy of the check or other instrument of payment. 40 C.F.R. § 22.18(a). A copy of the check or other instrument of payment should be provided to the EPA attorney identified in Section VI above. Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "Treasurer, United States of America," in the full amount of the penalty assessed in this Complaint to the following addressee:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
Docket No. CWA-02-2016-3402

Wire transfers should be directed to the Federal Reserve Bank of New York

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".

Pursuant to 40 C.F.R. § 22.18(a)(3), if the Respondent elects to pay the full amount of the penalty proposed in the Complaint within thirty (30) days of receiving the Complaint, then, upon EPA's receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a Final Order pursuant to 40 C.F.R. § 22.18(a)(3). In accordance with 40 C.F.R. § 22.45(c)(3), no Final Order shall be issued until at least ten (10) days after the close of the comment period on this Complaint. Issuance of a Final Order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Further, pursuant to 40 C.F.R. § 22.18(a)(3), the making of such payment by the Respondent shall constitute a waiver of the Respondent's rights both to contest the allegations made in the Complaint and to appeal said Final Order to federal court. Such payment does not extinguish, waive, satisfy or otherwise affect the Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance, and EPA may initiate a new enforcement action based on evidence of new or continued violations.

VIII. FILING OF DOCUMENTS

The Answer and any Hearing Request and all subsequent documents filed in this action should be sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866


A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to:

Lauren Fischer, Esq.
Assistant Regional Counsel
Water and General Law Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866
Telephone: (212) 637-3231
Fax: (212) 637-3202

IX. GENERAL PROVISIONS

1. Respondent has a right to be represented by an attorney at any stage of these proceedings.
2. This Complaint does not constitute a waiver, suspension or modification of the requirements of the Act, regulations promulgated there under, or any applicable permit.
3. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309(g) of the Act will affect the Respondent's continuing obligation to comply with the Act, and with any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), for the violations alleged herein.

ISSUED THIS 1st DAY OF March, 2016.


Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
U. S. Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

GMD Shipyard Corp.
Brooklyn Navy Yard Bldg. #595
63 Flushing Avenue, Unit #276
Brooklyn, New York 11205
SPDES Permit No. NYR00D162

Respondent.

Proceeding pursuant to Section 309(g) of the
Clean Water Act, 33 U.S.C. § 1319(g)

**PROCEEDING TO ASSESS A CLASS
II CIVIL PENALTY**

DOCKET No. CWA-02-2016-3402

U.S. Environmental
Protection Agency-Region 2
2016 MAR 03 AM 7:51
REGIONAL HEARING
NEW YORK

CERTIFICATION OF SERVICE

I certify that on **MAR 03 2016**, I served the foregoing fully executed Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of an Administrative Penalty, and Notice of Opportunity to Request a Hearing, bearing the above referenced docket number, on the persons listed below, in the following manner:

Original and One Copy
By Hand:

Office of Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 2
290 Broadway, 16th floor
New York, New York 10007-1866


Copy by Certified Mail
Return Receipt Requested:

Mr. Alexander Gomez, President
GMD Shipyard Corp.
Brooklyn Navy Yard Bldg. #595
63 Flushing Avenue, Unit #276
Brooklyn, New York 11205

Copy by Certified Mail
Return Receipt Requested

Mr. Joseph DiMura, P.E., Director
Bureau of Water Compliance Programs
NYSDEC
625 Broadway
Albany, New York 12233-4500

Dated: 03/03/16


Branch Secretary
New York, New York