

**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

NPDES TRACKING NO. NYR00D162

Respondent.

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

**CONSENT AGREEMENT  
AND  
FINAL ORDER**

DOCKET NO. CWA-02-2016-3402

**I. PRELIMINARY STATEMENT**

Complainant, the United States Environmental Protection Agency ("EPA"), having issued Complaint Number CWA-02-2016-3402 on March 1, 2016, against GMD Shipyard Corp. ("Respondent"), and

Complainant and Respondent having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of 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 agreed, and ordered as follows:

**II. PROCEDURAL AND FACTUAL BACKGROUND**

1. EPA initiated this proceeding for the assessment of a civil penalty, pursuant to Section 309(g) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g).
2. The Complaint alleges that Respondent is liable for violating Section 301 of the CWA, 33 U.S.C. § 1311, for failing to comply with the terms of the New York State Department of Environmental Conservation's State Pollutant Discharge Elimination System Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity, GP-0-06-002, Permit No. NYR00D162, issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, at the dry dock at the facility that Respondent operates.

3. EPA notified the State of New York regarding this action and offered an opportunity for the State of New York to confer with EPA on the proposed penalty assessment, pursuant to 40 C.F.R. Part 22.
4. This action was publicly noticed. No public comment was received.
5. Respondent requested informal settlement discussions.
6. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint and that the Complaint states a claim upon which relief can be granted against Respondent. Respondent hereby waives any defenses it might have as to jurisdiction and venue, admits the factual and legal allegations contained in the Complaint and consents to the terms of this Consent Agreement and Final Order, but in so consenting to the factual and legal allegations does not waive any defenses it may have to any such factual or legal allegations not based on jurisdiction and not based on failure to state a claim.
7. Respondent hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint.

### **III. TERMS OF SETTLEMENT**

Pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), and 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. § 22.18, it is hereby agreed by and between the parties, and Respondent voluntarily and knowingly agrees as follows:

8. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), the nature of the violations, Respondent's agreement to perform a Supplemental Environmental Project ("SEP") and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of twenty-seven thousand dollars (\$27,000.00).
9. For purposes of settlement, Respondent consents to the issuance of this Consent Agreement and consents to the payment of the civil penalty cited in the foregoing Paragraph as well as to the performance of a SEP (described in greater detail at III.B below).
  - A. **Civil Penalty**
10. No later than forty-five (45) days after the date of issuance of the executed Final Order signed by the Regional Administrator, U.S. EPA Region 2, Respondent shall pay the penalty of twenty-seven thousand dollars (\$27,000.00) by cashier's or certified check, payable to the "Treasurer of the United States of America," identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. This check shall be mailed to:

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

Respondent shall also send copies of this payment to each of the following:

Douglas McKenna, Chief  
Water Compliance Branch  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency - Region 2  
290 Broadway, 20<sup>th</sup> Floor  
New York, New York 10007-1866

and

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

Payment must be received at the above address no later than forty-five (45) calendar days after the date of signature of the Final Order (at the end of this document). The date by which payment must be received shall hereafter be referred to as the "due date."

- a. Failure to pay the penalty in full according to the above provisions will result in a referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
- b. Further, if the payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each 30 day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.
- c. In addition, pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if payment is not received by the due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly nonpayment penalty is 20% of the aggregate amount of penalties and quarterly nonpayment penalties which are unpaid as of the beginning of such quarter.

- d. Respondent also may be required to pay attorneys' fees and costs for collection proceedings in connection with nonpayment.
11. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from the Respondent's federal or state taxes.

**B. Supplemental Environmental Project**

12. The following two-part SEP shall be completed by Respondent, which the parties agree is intended to secure significant environmental or public health protection and improvement:

- a) Respondent shall implement the SEP by using B20 biodiesel blend fuel ("B20 biodiesel") in the diesel powered machines operated at the GMD Shipyard Corp. dry dock facility, which is located at Brooklyn Navy Yard Bldg. #595, 63 Flushing Avenue, Unit #276 in Brooklyn, New York 11205 ("Facility"). For the purposes of this Consent Agreement, B20 biodiesel blend fuel is defined as containing twenty percent biodiesel and eighty percent ultra-low sulfur diesel ("ULSD") petroleum fuel. Biodiesel is defined as an alternative fuel made from virgin vegetable oil or used vegetable oil. ULSD is defined as diesel fuel with a sulfur content of less than or equal to 15 parts per million ("ppm").
- b) Respondent shall remove a diesel engine from one crane at the Facility and convert the crane to operate on electric power only. The removed diesel engine will be scrapped by drilling a hole in the engine block through at least one of the cylinders.

13. **SEP Cost and Documentation:** The Fair Market Value ("FMV") for the SEP is \$67,101.38 (Paragraph 12(a) valued at \$34,092.34 and Paragraph 12 (b) valued at \$33,009.04).

- a) Respondent shall arrange to purchase sufficient B20 biodiesel so that the documented price differential between the USLD normally purchased and the additional cost of B20 biodiesel equals or exceeds the FMV of \$34,092.34. The B20 biodiesel shall be purchased whenever reasonably available and used in a timely manner.
- b) Respondent shall remove a diesel engine from a crane and convert it to operate on electric power at a cost that equals or exceeds \$33,009.04, composed of the cost of new equipment such as power cables, switches, and welding tools, as well as labor and storage costs.
- c) The SEP shall continue for at least one year from the effective date of this Consent Agreement, and until such time as the FMV has been reached. Respondent shall provide quarterly documentation to the EPA of the FMV of the expenditures made in connection with the SEP. The SEP Completion Report shall be due by the end of the quarter after the SEP has been completed.

14. **Certification:** With regard to the SEP, Defendant certifies the truth and accuracy of each of the following:
- a. That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimates that the total cost to implement the two-part SEP is \$67,101.38;
  - b. That, as of the date of executing this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;
  - c. That the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Consent Agreement;
  - d. That Respondent has not received and will not receive credit for the SEP in any other enforcement action;
  - e. That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;
  - f. Respondent certifies under penalty of law that it would have agreed to perform a comparably valued, alternative project other than a diesel emissions reduction SEP, if EPA were precluded by law from accepting a diesel emissions reduction Supplemental Environmental Project; and
  - g. Respondent certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.
15. **Federal Tax:** For Federal Income Tax purposes Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.
16. **SEP Completion Report:** Respondent shall submit a SEP Completion Report to EPA by the end of the quarter following SEP completion. The SEP Completion Report shall contain the following information:
- a. A detailed description of the SEP as implemented, including, but not limited to: documentation pertaining to the prevailing cost of ULSD fuel that Respondent would normally purchase for use by the Facility; documentation of the price Respondent paid for B20 biodiesel that it purchased and used during the same period of time; a calculation of the cost differential between the ULSD and the B20 biodiesel, with evidence that a minimum of \$34,092.34 cost differential was spent on B20 biodiesel that was used by Respondent at the Facility; documentation pertaining to the cost in removing the diesel engine from the crane and converting it to run on electric power only, including equipment, storage, and labor costs, with evidence that a minimum of \$33,009.04 was spent on the conversion process; and
  - b. Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Order.

17. Respondent agrees that failure to submit the SEP Completion Report required by Paragraph 16, above, shall be deemed a violation of this Consent Agreement and Order and Respondent shall become liable for stipulated penalties pursuant to Paragraph 24, below.
18. In itemizing FMV costs in the SEP completion report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP completion report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, receipts, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment has been made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.
19. Under no circumstances shall Respondent use federal grants, low-interest federal loans, or other forms of federal financial assistance or non-financial assistance to perform the SEP. Respondent agrees that use of such prohibited assistance shall be deemed a violation of this Consent Agreement and Order and Respondent shall become liable for stipulated penalties pursuant to Paragraph 24, below.
20. In all documents or reports, including, without limitation, any SEP reports, submitted to EPA pursuant to this Consent Agreement, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and complete by signing the following statement:

"I hereby certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment."
21. Respondent shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to EPA pursuant to this Consent Agreement for a term of five (5) years after the implementation of the SEP and shall provide the documentation of any such underlying research and data to EPA not more than ten (10) working days after a request for such information.
22. **Public Statements:** Any public statement, oral or written, in print, film, or other media, made by Respondent 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."

23. **EPA Acceptance of SEP Completion Report:**

- a. After receipt of the SEP Completion Report described in Paragraph 16 above, EPA will notify Respondent, in writing, regarding: (i) any deficiencies in the SEP Completion Report or, (ii) indicate that EPA concludes that the project has been completed satisfactorily; or, (iii) determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with Paragraph 24 below.
- b. If EPA elects to exercise option (a)(i) above, i.e., if the SEP Completion Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of completed SEP itself, EPA shall give Respondent the opportunity to object in writing to the notification of deficiency given pursuant to this Paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Completion Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be reasonable and final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any failure to comply with the terms of this Consent Agreement and Final Order. In the event the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 24 below.

24. **Stipulated Penalties:**

- a. In the event that Respondent fails to comply with any of the terms or provisions of this Consent Agreement relating to the performance of the SEP described in Paragraph 12 above and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in Paragraph 13 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
  - i. for failure to submit any Quarterly Report in accordance to Paragraph 13(c) above, Respondent shall pay a stipulated penalty in the amount of two hundred and fifty (\$250.00) dollars for each day until the report is submitted;
  - ii. for failure to submit the SEP Completion Report required by Paragraph 16 above, Respondent shall pay a stipulated penalty in the amount of five hundred (\$500) dollars for each day after the SEP Completion Report was due until the report is submitted;
  - iii. if the SEP is satisfactorily completed in accordance with Paragraph 12 above, but Respondent's SEP value of the expenses incurred is less than the agreed upon amounts, Respondent shall pay a stipulated penalty equal

- to the difference between the amount of eligible SEP costs incurred by the Respondent and \$67,101.38;
- iv. if the SEP is not satisfactorily completed in accordance with Paragraph 12 above; but (a) Respondent certifies, with supporting documentation, the amount of eligible SEP value and costs expended on the SEP, and (b) EPA determines that the Respondent made good faith and timely efforts to complete the project, then, Respondent shall pay a stipulated penalty that is the difference between the eligible SEP costs incurred by Respondent and \$67,101.38;
  - v. if Respondent halts or abandons work on the SEP as described in Paragraph 12 above, Respondent shall pay a stipulated penalty of \$1,000 and shall also pay the difference between eligible value of the SEP costs incurred and \$67,101.38.
- b. Respondent shall pay stipulated penalties within thirty (30) calendar days after receipt of written demand by EPA for such penalties. Payment of stipulated penalties shall be made payable to the "Treasurer of the United States of America." Respondent shall use the same methods of payment described in Paragraph 10 above.
  - c. Interest and late charges on stipulated penalties shall be paid as stated in Paragraph 10 above.
  - d. Respondent shall send proof of stipulated penalty payments as specified in Paragraph 10 above.
  - e. The EPA may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Consent Agreement.
  - f. Failure to pay the stipulated penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for Collection. Interest and late charges on stipulated penalties shall be paid as stated in Paragraph 10 above.

25. **Unexpected Circumstances Which Delay the Performance of a SEP:**

- a. If any event occurs which causes or may cause delays in the completion of the SEP as required under this Agreement, Respondent shall notify EPA in writing not more than ten (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 shall



constitute a waiver of Respondent's right to request an extension of its obligation under this Agreement based on such incident.

- b. If the parties agree that the delay or anticipated delay in compliance with this Agreement has been or will be caused by circumstances entirely 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.
- c. In the event that EPA does not agree that a delay in achieving compliance with the requirements of this Consent Agreement and Order has been or will be caused by circumstances beyond the control of Respondent, EPA will notify Respondent in writing of its decision and any delays in the completion of the SEP shall not be excused.
- d. The burden of proving that any delay is caused by circumstances beyond the control of Respondent shall rest with Respondent. Increased costs or expenses associated with the implementation of actions called for by this Agreement shall not, in any event, be a basis for changes in this Agreement or extensions of time under section (b) of this paragraph. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

#### IV. OTHER TERMS AND CONDITIONS

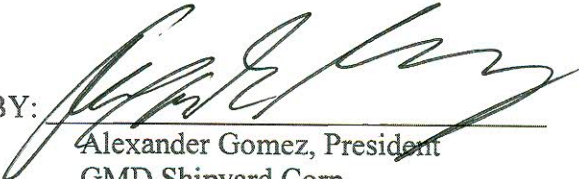
26. Respondent shall submit all notices and reports required by this Consent Agreement and Final Order by first class mail to:

Douglas McKenna, Chief  
Water Compliance Branch  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency - Region 2  
290 Broadway, 20<sup>th</sup> Floor  
New York, New York 10007-1866

27. Respondent knowingly and explicitly waives its right under Section 309(g) of the Act, 33 U.S.C. § 33 U.S.C. § 1319(g), to request or to seek any Hearing on or Judicial Review of the Complaints consolidated herein or on any of the allegations therein asserted, on this Consent Agreement or the Findings of Fact and Conclusions of Law set forth herein, or on the accompanying Final Order.
28. This Consent Agreement and Final Order shall apply to and be binding upon Respondent, as well as applying to and binding upon the Respondent's officers, directors, and employees, in their capacities as representatives of Respondent as well as on the Respondent's successors and assigns, including, but not limited to, Respondent's subsequent purchasers.

29. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law, nor waiver of any defense, objection or response the Respondent may assert in response to any claim that the agreement is violated.
30. This Consent Agreement and Order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval of the equipment or technology installed by Respondent, if any, in connection with the SEP undertaken pursuant to this Agreement.
31. This Consent Agreement and Final Order constitutes a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act for the violations alleged in the Complaint. Nothing in this Consent Agreement and Final Order is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent. Compliance with this Consent Agreement and Final Order shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.
32. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.
33. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this Consent Agreement and Order.
34. Respondent consents to service upon Respondent by a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.


RESPONDENT:

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

DATE: 09/22/16

COMPLAINANT:

BY: 

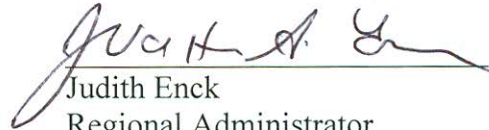
  
Dore LaPosta, Director  
Division of Enforcement and  
Compliance Assistance  
U.S. EPA, Region 2  
290 Broadway, 21st Floor  
New York, New York 10007-1866

DATE: 9/26/16

**V. FINAL ORDER**

The Regional Administrator of the U.S. Environmental Protection Agency Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA Region 2, New York, NY.

9/27/16  
Date

  
Judith Enck  
Regional Administrator  
United States Environmental  
Protection Agency-Region 2  
290 Broadway  
New York, NY 10007-1866

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
Region 2**

**IN THE MATTER OF:**

GMD Shipyard Corp.  
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**CONSENT AGREEMENT  
AND  
FINAL ORDER**

DOCKET NO. CWA-02-2016-3402

**CERTIFICATE OF SERVICE**

I certify that, on the date noted below, I served the foregoing fully executed Consent Agreement and Final Order, bearing the above-referenced docket number, in the following manner.

Copy by Certified Mail <u>Return Receipt Requested:</u>	Alexander Gomez, President GMD Shipyard Corp. Brooklyn Navy Yard Bldg. #595 63 Flushing Avenue, Unit #276 Brooklyn, New York 11205
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Original and One Copy <u>By Internal Mail (pouch):</u>	Regional Hearing Clerk U.S. Environmental Protection Agency 290 Broadway, 16 <sup>th</sup> floor New York, New York 10007-1866
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Date: September 28, 2016

  
Secretary