

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

IN RE:

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

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

Facility Address:

1449 Key Highway  
Baltimore, Maryland 21230

CONSENT AGREEMENT

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**I. STATUTORY AUTHORITY**

1. This Consent Agreement, ("CA"), and the accompanying Final Order, ("FO"), (collectively "CAFO"), are entered into by the Director of the Office of Enforcement, Compliance and Environmental Justice, United States Environmental Protection Agency Region III, ("Complainant" or "EPA), and The General Ship Repair Corporation, General Ship Repair Company, Inc., and Lynco, Inc., (collectively "Respondents"), pursuant to Sections 309(g)(2)(B) and 311(b)(6) of the Clean Water Act, as amended, ("CWA"), 33 U.S.C. §§ 1319(g)(2)(B) and 1321(b)(6), Section 3008(a) and (g) of the Resource Conservation and Recovery Act, as amended, ("RCRA"), 42 U.S.C. § 6928(a) and (g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, ("Consolidated Rules")

**II. PRELIMINARY STATEMENTS**

2. On June 29, 2009, Complainant issued a Complaint and Notice of Opportunity for Hearing, and on November 9, 2010, Complainant issued an Amended Complaint and Notice of Opportunity for Hearing, Docket No. CWA/RCRA-03-2009-0135. The Amended Complaint is incorporated by reference as if fully set forth herein.
3. The Amended Complaint alleged that Respondents violated the regulations promulgated in accordance with:
  - A. Section 311(j) of the CWA, 33 U.S.C. § 1321(j);
  - B. Section 402 of the CWA, 33 U.S.C. § 1342; and
  - C. Maryland's federally authorized Hazardous Waste Management Program which operates in lieu of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e. The provisions of Maryland's

current authorized Hazardous Waste Management Regulations are set forth in the Code of Maryland Regulations, ("COMAR"), Title 26, Subtitle 13 et seq., and are enforceable by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

4. EPA notified the State of Maryland, through the Maryland Department of the Environment, of its intent to commence this administrative action against Respondents in accordance with Section 309(a) of the CWA, 33 U.S.C. § 1319(a), and Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
5. EPA provided public notice and an opportunity to comment on the Amended Complaint in accordance with Sections 309(g)(4)(A) and 311(b)(6) of the CWA, 33 U.S.C. §§ 1319(g)(4)(A) and 1321(b)(6), prior to issuing the Final Order, and received no comments thereto.
6. For purposes of this CAFO, Respondents admit the jurisdictional allegations of the Amended Complaint.
7. For purposes of this CAFO, Respondents agree not to contest EPA's jurisdiction to execute this Consent Agreement, the issuance of the Final Order, or the enforcement thereof.
8. For purposes of this CAFO, Respondents hereby expressly waive their rights to a hearing under Sections 309(g) and 311(b)(6) of the CWA, 33 U.S.C. §§ 1319(g) and 1321(b)(6), and Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), on any issue of law or fact in the Amended Complaint.
9. For purposes of this CAFO, Respondents hereby expressly waive any right to contest the allegations set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
10. Respondents neither admit nor deny the specific factual allegations contained in this CAFO, except as provided in paragraphs 6.
11. Each party to this CAFO shall pay its own costs and attorneys' fees associated with this proceeding under Docket No. CWA/RCRA-03-2009-0135.
12. The provisions of this CAFO shall be binding upon Complainant and Respondents, including the officers, directors, employees, successors and assigns of the Respondents.
13. Respondents certify to EPA by their signatures herein that they are presently in compliance with the specific regulatory sections and subsections of the CWA and RCRA referenced in the claims and allegations herein.
14. This CAFO shall not relieve Respondents of their obligations 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.

### **III. EPA FINDINGS OF FACT AND CONCLUSIONS OF LAW**

15. The General Ship Repair Corporation, General Ship Repair Company, Inc., and Lynco, Inc., (collectively "Respondents"), are Maryland corporations with their principal offices at 1449 Key Highway, Baltimore, Maryland, 21230.
16. Each Respondent is a person within the meaning of:

- A. Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2;
  - B. Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), 40 C.F.R. § 260.10, Code of Maryland Regulations (COMAR) 26.13.01.03.B; and
  - C. Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
17. Respondents are the owners and/or operators of the facility located at 1449 Key Highway, Baltimore, Maryland 21230, which is adjacent to the northwest branch of the Patapsco River.
  18. The Respondents' facility is a ship, tug and barge repair facility that operates year round in multiple shifts.
  19. Respondents are the "owners" and/or "operators" of the facility as those terms are defined at COMAR 26.13.01.03.B.
  20. Respondents are the "owner or operator" of the facility, (hereinafter "Key Highway facility"), as that term is defined at Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2.
  21. On May 19, 2008, a team of inspectors from EPA's Office of Enforcement, Compliance and Environmental Justice conducted a multi-media inspection of the Key Highway facility.
  22. Section 311(j)(1) of the CWA, 33 U.S.C. § 1321(j)(1), provides that the President shall issue regulations, *inter alia*, "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from vessels and from onshore and offshore facilities, and to contain such discharges . . .".
  23. On December 11, 1973, EPA promulgated Oil Pollution Prevention regulations set forth at 40 C.F.R. Part 112 to implement Section 311(j)(1) of the CWA, 33 U.S.C. § 1321(j)(1). Such regulations took effect on January 10, 1974.
  24. Pursuant to 40 C.F.R. § 112.1(b), with certain exceptions not relevant here, regulations set forth at 40 C.F.R. Part 112 apply to owners or operators of non-transportation-related onshore or offshore facilities engaged in, *inter alia*, storing or consuming oil or oil products, and which, due to their location, could reasonably be expected to discharge oil in harmful quantities within the meaning of 40 C.F.R. Part 110, into or upon the navigable waters of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1, or the adjoining shorelines.
  25. "Oil" is defined in Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 112.2 to include any kind of oil in any form, including petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes other than dredged spoil.
  26. 40 C.F.R. § 110.3(b) defines "harmful quantity" for purposes of Section 311 of the CWA, 33 U.S.C. § 1321, to include discharges that "cause a film or sheen upon . . . the surface of the water or adjoining shorelines."
  27. Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), defines "discharge" to include any spilling, leaking, pumping, pouring, emitting, or dumping other than federally permitted discharges pursuant to a permit under 33 U.S.C. § 1342.

28. For purposes of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), "navigable water" is defined by 40 C.F.R. §§ 110.1 and 112.2 to include, among other things, tributaries to waters that could be used for industrial purposes or interstate commerce.
29. On May 19, 2008, the Key Highway facility had the capacity to store greater than 1,320 gallons of oil in the following containers:
  - A. One metal storage tank with an estimated capacity of 1,000 gallons near the facility property line;
  - B. One metal storage tank with an estimated capacity of 500-600 gallons outside the northwest corner of the fabrication shop;
  - C. Four smaller tanks with estimated capacities 250 gallons each near the facility property line; and
  - D. Approximately 13-20 drums with capacities of 55 gallons in a storage box and marked with labels indicating use as storage for "oily water" and "oily waste" (7 of these drums were full at the time of inspection).
30. The Key Highway facility is an "onshore facility" within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.
31. The Key Highway facility is a "non-transportation" facility within the meaning of 40 C.F.R. § 112.2, Appendix A thereto.
32. The Key Highway facility is engaged in storing or consuming oil or oil products.
33. Pursuant to 40 C.F.R. § 112.3(a), owners or operators of onshore facilities that became operational before August 16, 2002, and that could reasonably be expected to discharge oil in harmful quantities, as described in 40 C.F.R. Part 110, into or upon the navigable waters of the United States or adjoining shorelines, shall prepare a Spill Prevention Control and Countermeasure ("SPCC") Plan and maintain and amend such Plan as necessary.
34. The Key Highway facility has been in operation as an onshore facility within the meaning of 40 C.F.R. Part 112 since prior to August 16, 2002.
35. The Key Highway facility is adjacent to the northwest branch of the Patapsco River which empties into the Chesapeake Bay.
36. The Patapsco River and the Chesapeake Bay, are both navigable waters of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 112.2.
37. Due to their locations, the oil storage tanks and drums at the Key Highway facility can be expected to discharge oil in harmful quantities within the meaning of 40 C.F.R. Part 110 into or upon the navigable waters of the United States or adjoining shorelines.
38. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from a point source to waters of the United States except in compliance with, among other things, a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

39. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.
40. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.1 and 122.26 provide that facilities that have "storm water discharges associated with industrial activity" are "point sources" subject to NPDES permitting requirements under Section 402(a) of the Act, 33 U.S.C. § 1342(a).
41. RCRA establishes a comprehensive program to be administered by the Administrator of EPA for regulating the generation, transportation, treatment, storage, and disposal of hazardous waste. 42 U.S.C. §§ 6901 et seq.
42. Pursuant to its authority under RCRA, EPA has promulgated regulations at 40 C.F.R. Parts 260 through 273 applicable to hazardous waste generators, transporters, and treatment, storage and disposal facilities. These regulations generally prohibit treatment, storage and disposal of hazardous waste without a permit or "interim status." They prohibit land disposal of certain hazardous wastes, and provide detailed requirements to govern the activities of those who are lawfully permitted to store, treat and dispose of hazardous waste.
43. Under Section 3006 of RCRA, 42 U.S.C. § 6926, state hazardous waste programs may be authorized by EPA to operate in lieu of the federal hazardous waste program. The requirements of the authorized state hazardous waste management programs apply in lieu of federal RCRA regulations to persons who generate, treat, store, transport or dispose of hazardous wastes in a state which has received authorization to administer a state hazardous waste program.
44. Where a Respondent has violated RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, the regulations promulgated thereunder at 40 C.F.R. Parts 260-266, 268, and 270 or 273, or COMAR, Title 26, Subtitle 13 et seq., Section 3008(a) of RCRA authorizes EPA to take enforcement action. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes the assessment of a civil penalty against any person who violates any requirement of Subtitle C of RCRA.
45. On February 11, 1985, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A, the State of Maryland was granted final authorization to administer its hazardous waste management program set forth at the COMAR, Title 10, Subtitle 51 et seq. in lieu of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e. Through this final authorization, the provisions of the Maryland Hazardous Waste Management Regulations (Original Authorized Program) became requirements of RCRA Subtitle C and are, accordingly, enforceable by EPA on and after that date pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a). A revised Maryland hazardous waste management program set forth at COMAR, Title 26, Subtitle 13 (Revised Authorized Program) was authorized by EPA on July 31, 2001, with further changes authorized on July 26, 2004, and accordingly, the provisions of the Revised Authorized program are enforceable by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).
46. To the extent that factual allegations or legal conclusions in this CAFO are based on provisions of Maryland's final authorized hazardous waste management program, those provisions are cited as authority for such allegations or conclusions, with the corresponding federal regulatory provisions cited as reference. Factual allegations or legal

conclusions based solely on the provisions of the federal hazardous waste management program cite those federal provisions as authority for such allegations or conclusions.

47. Respondents' Key Highway facility is a "facility" as that term is defined at COMAR 26.13.01.03B.
48. Respondents are "generators" of and have been engaged in the "storage" in "containers" of materials that are "solid wastes" and "hazardous wastes" at a "facility" as those terms are defined at COMAR 26.13.01.03.B.

#### COUNT I

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

49. The allegations contained in Paragraphs 1 through 48 of this Consent Agreement are incorporated herein by reference.
50. At the time of the inspection on May 19, 2008, Respondents had the capacity to store more than 1,320 gallons of oil in above-ground storage tanks at the Key Highway facility.
51. At the time of the inspection on May 19, 2008, the Key Highway facility was subject to the spill prevention control and counter-measure plan requirements (SPCC) of 40 C.F.R. §§ 112.1-112.7.
52. At the time of the inspection on May 19, 2008, Respondents had not prepared an SPCC plan for their Key Highway facility, as required by 40 C.F.R. § 112.3(a).
53. At the time of the inspection on May 19, 2008, Respondents had not implemented an SPCC plan for their Key Highway facility, as required by 40 C.F.R. § 112.3(a).
54. Respondents' failure to comply with 40 C.F.R. § 112.3(a) by preparing and implementing an SPCC plan for their Key Highway facility constitutes a violation of the CWA for which a civil penalty may be assessed pursuant to Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii).

#### COUNT II

##### (CWA - Storm Water)

55. The allegations contained in Paragraphs 1 through 54 of this Consent Agreement are incorporated herein by reference.
56. Respondents' Key Highway facility discharges storm water directly into the Patapsco River and through municipal storm sewers into the Patapsco River, which is a "water of the United States," as that term is defined at 40 C.F.R. § 122.2.
57. Respondents, through the Vice President of General Ship Repair, filed a Notice of Intent as an application for coverage of the Key Highway facility under Maryland's General Discharge Permit No. 01MA For Discharges From Marinas.
58. On August 26, 2003, Respondents were subsequently issued General Permit No. 02MA For Discharges From Marinas ("Permit") by the State of Maryland for their Key Highway facility.
59. The Permit contains certain terms and conditions, *inter alia*, the requirement that

Respondents develop a Storm Water Pollution Prevention Plan, under Section B of Part V of the Permit, with the minimum contents listed in Section C of Part V of the Permit.

60. Among the minimum contents of a Storm Water Pollution Prevention Plan listed in Section C of Part V of the Permit are the following requirements:

- A. "Inventory of Exposed Materials. An inventory of the types of materials handled at the site that potentially may be exposed to precipitation." Permit V(C)(4).
- B. "Risk Identification and Summary of Potential Pollution Sources. A narrative description of the potential pollutant sources from the following activities, if applicable: loading and unloading operations; outdoor storage activities; outdoor manufacturing or processing activities (i.e., abrasive blasting, sanding, painting); and onsite waste disposal practices." Permit V(C)(7).
- C. Each facility covered under the Permit shall develop a description and implementation schedule of Storm Water Management Controls appropriate for the facility and shall implement the described Storm Water Management Controls. The following list includes some the areas where Storm Water Management Controls are to be described, scheduled and implemented under the Permit V(C)(8).
  1. "Material Storage Areas. All stored and containerized materials (fuels, paints, solvents, waste oil, antifreeze, batteries) must be plainly labeled and stored in a protected, secure location away from drains. The plan must describe measures that prevent or minimize contamination of the storm water runoff from such storage areas. . . . Above-ground storage tanks, drums, and barrels permanently stored outside must be delineated on the site map with a description of the containment measures in place to prevent leaks and spills. . . . Those facilities where abrasive blasting is performed must specifically include a discussion on the storage and disposal of spent abrasive materials generated at the facility." Permit V(C)(8)(a)(iii).
  2. "Engine Maintenance and Repair Areas. The plan must describe measures that prevent or minimize contamination of the storm water runoff from all areas used for engine maintenance and repair." Permit V(C)(8)(a)(iv).
  3. "Material Handling Areas. The plan must describe measures that prevent or minimize contamination of the storm water runoff from material handling operations and areas (i.e., fueling, paint and solvent mixing, disposal of process wastewater streams from vessels)." Permit V(C)(8)(a)(v).
  4. "General Yard Area. The plan must include a schedule for routine yard maintenance and cleanup. Scrap metal, wood, plastic, miscellaneous trash, paper, glass, industrial scrap, insulation, welding rods, packaging, etc., must be routinely removed from the general yard area." Permit V(C)(8)(a)(vi).
  5. "Preventative Maintenance. A preventative maintenance program shall involve timely inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators and sediment traps to ensure

that oil, spent abrasives, paint chips, and solids will be intercepted and retained prior to entering the storm drainage system) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems.” Permit V(C)(8)(b).

6. “Spill Prevention and Response Procedures. Areas where potential spills, which can contribute pollutants to storm water discharges, can occur, and their accompanying drainage points, shall be identified clearly in the storm water pollution prevention plan. . . . Procedures for cleaning up spills shall be identified in the plan and made available to appropriate personnel.” Permit V(C)(8)(c).

7. “Inspections. Qualified facility personnel shall be identified to inspect designated equipment and areas of the facility on a monthly basis. The following areas shall be included in all inspections: pressure washing area; blasting, sanding, and painting areas; material storage areas; engine maintenance and repair areas; material handling areas; bilge water treatment areas and general yard area. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of the inspections shall be maintained.” Permit V(C)(8)(d).

D. “Employee Training. Employee training programs shall inform personnel, responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible at all levels for storm water management, of the components and goals of the storm water pollution prevention plan. . . . The pollution prevention plan shall identify how often training will take place, but in all cases training must be held at least twice per calendar year. Employee training must, at a minimum, address the following areas when applicable to a facility: used oil management; spent solvent management; proper disposal of spent abrasives; proper disposal of vessel wastewaters; spill prevention and control; fueling procedures; general good housekeeping practices; proper painting and blasting procedures; and used battery management.” Permit V(C)(9).

E. “Record-keeping and Internal Reporting Procedures: Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan.” Permit V(C)(10).

F. “Non-Storm Water Discharges. The plan shall include a certification that the discharge has been tested or evaluated for the presence of non-storm water discharges, other than those authorized in Part I Section B of this permit or flows from fire fighting systems. The certification shall include the identification of potential significant sources of non-storm water at the site, a description of the results of any test and/or evaluation for the presence of non-storm water discharges, the evaluation criteria or testing method used, the date of any testing and/or evaluation, and the on-site drainage points that were directly observed during the test.” Permit V(C)(11).

G. “Sediment and Erosion Control. The plan shall identify areas that, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be



used to limit erosion. The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those which control the generation or source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan, which shall provide those measures the permittee determines to be reasonable and appropriate, shall be implemented and maintained. . . . Appropriate measures may include vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention/retention devices.” Permit V(C)(12).

H. “Comprehensive Site Compliance Evaluation. A site inspection shall be conducted annually by appropriate responsible personnel to verify that the description of potential pollutant sources required under Part V Section C2 is accurate, the drainage map has been updated to reflect current conditions, and the controls to reduce pollutants identified in the storm water pollution prevention plan are being implemented and are adequate. Records documenting significant observations made during the site inspection shall be retained as part of the storm water pollution prevention plan for three years.” Permit V(C)(13).

61. At the time of the inspection on May 19, 2008, Respondents failed to have an appropriate Storm Water Pollution Prevention Plan at their Key Highway facility as required by the Permit.
62. At the time of the inspection on May 19, 2008, Respondents’ Storm Water Pollution Prevention Plan did not include the lead acid batteries and hazardous waste storage in the Inventory of Exposed Materials as required by the Permit V(C)(4).
63. At the time of the inspection on May 19, 2008, Respondents’ Storm Water Pollution Prevention Plan did not include a narrative description of dry dock operations, hazardous waste storage areas, lead acid battery storage areas, and areas used for loading/dispensing diesel that are a potential source of pollutants as required by the Permit V(C)(7).
64. At the time of the inspection on May 19, 2008, Respondents’ Storm Water Pollution Prevention Plan did not include a description or implementation schedule for Storm Water Management Controls for hazardous waste storage areas and lead acid battery storage areas nor did it include a specific discussion of the storage and disposal of spent abrasive blasting materials as required by the Permit V(C)(8)(a)(iii).
65. At the time of the inspection on May 19, 2008, Respondents were not implementing the Storm Water Management Controls described in the Storm Water Pollution Prevention Plan for all paint stored at their facility as required by the Permit V(C)(8)(a)(iii).
66. At the time of the inspection on May 19, 2008, Respondents’ Storm Water Pollution Prevention Plan did not include a description or implementation schedule for Storm Water Management Controls for Engine Maintenance and Repair Areas as required by the Permit V(C)(8)(a)(iv).
67. At the time of the inspection on May 19, 2008, Respondents’ Storm Water Pollution Prevention Plan did not include a description or implementation schedule for Storm Water Management Controls for Material Handling Areas utilized for paint mixing on the pier and the loading/dispensing of diesel fuel as required by the Permit V(C)(8)(a)(v).

68. At the time of the inspection on May 19, 2008, Respondents' Storm Water Pollution Prevention Plan did not include a description or implementation schedule for Storm Water Management Controls for the General Yard Area as required by the Permit V(C)(8)(a)(vi).
69. At the time of the inspection on May 19, 2008, Respondents' Storm Water Pollution Prevention Plan did not include a description or implementation schedule for the timely inspection and maintenance of storm water management devices and other preventative maintenance of facility equipment and systems as required by the Permit V(C)(8)(b).
70. At the time of the inspection on May 19, 2008, Respondents' Storm Water Pollution Prevention Plan did not clearly identify where potential spills could occur that contribute pollutants to storm water nor did it identify procedures for cleaning up spills as required by the Permit V(C)(8)(c).
71. For the time period beginning at least as early as the start of 2005 until the time of the inspection on May 19, 2008, Respondents' did not have a record of monthly inspections as required by the Permit V(C)(8)(d).
72. At the time of the inspection on May 19, 2008, Respondents' Storm Water Pollution Prevention Plan did not identify how often employee training on implementing storm water pollution plan activities occurs as required by the Permit V(C)(9).
73. At the time of the inspection on May 19, 2008, Respondents were not documenting inspections and maintenance activities and incorporating records of these activities into the Storm Water Pollution Prevention Plan as required by the Permit V(C)(10).
74. At the time of the inspection on May 19, 2008, Respondents' Storm Water Pollution Prevention Plan did not include a certification that the discharge has been tested or evaluated for the presence of non-storm water discharges other than those authorized by the Permit or flows from fire fighting systems as required by the Permit V(C)(11).
75. At the time of the inspection on May 19, 2008, Respondents' Storm Water Pollution Prevention Plan did not identify areas that have a high potential for significant soil erosion nor did it identify measures used to limit erosion as required by the Permit V(C)(12).
76. For the time period beginning at least as early as the start of 2005 until the time of the inspection on May 19, 2008, Respondents' Storm Water Pollution Prevention Plan did not contain records documenting significant observations from the Annual Comprehensive Site Compliance Evaluations for the previous three years as required by the Permit V(C)(13).
77. Respondents' failure to comply with the Permit requirements, listed above in paragraph 60, through an appropriate Storm Water Pollution Prevention Plan, constitutes a violation of Section 402 of the CWA, 33 U.S.C. § 1342, for which a penalty may be assessed pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d).

COUNT III  
(RCRA - Hazardous Waste Determinations)

78. The allegations contained in Paragraphs 1 through 77 of this Consent Agreement are incorporated herein by reference as though fully set forth at length.

79. COMAR 26.13.03.02 (40 C.F.R. § 262.11) provides that a person who generates a solid waste must determine if that waste is a hazardous waste using the methods set forth therein.
80. Respondents generate "solid waste," at the Key Highway facility as that term is defined by COMAR 26.13.02.02, RCRA Section 1004(27), 42 U.S.C. § 6903(27), and 40 C.F.R. §§ 260.10, 261.2.
81. Respondents are and, at all times relevant to this Consent Agreement, have been a "generator" as that term is defined by COMAR 26.13.01.03.B (29)(40 C.F.R. § 260.10).
82. As persons who generate solid waste, Respondents are required, at all times relevant to this Consent Agreement, by COMAR 26.13.03.02 (40 C.F.R. § 262.11), to determine if the solid wastes they generate are hazardous wastes using the methods prescribed by COMAR 26.13.03.02 (40 C.F.R. § 262.11(a) and (b)).
83. At the time of the inspection on May 19, 2008, Respondents stored outside at the Key Highway facility five (5) partially full five-gallon containers in poor condition, a partially full rusted one-gallon can and a partially full crushed one-gallon can. At the time of the inspection, Respondents could not identify the contents of the containers or cans.
84. At all times relevant to this Consent Agreement, Respondents failed to perform hazardous waste determinations, pursuant to COMAR 26.13.03.02 (40 C.F.R. § 262.11), on the five containers and two cans of solid wastes it generated and stored at the Key Highway facility on May 19, 2008.
85. On May 19, 2008, Respondents' failure to perform hazardous waste determinations on the five containers and two cans of solid wastes it generated at the Key Highway facility violated COMAR 26.13.03.02 (40 C.F.R. § 262.11) for which a penalty can be assessed pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g).

#### **IV. CIVIL PENALTY**

86. Based on the foregoing and having taken into account the penalty factors set forth at Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and the penalty factors set forth at Sections 309(g)(3) and 311(b)(8) of the CWA, 33 U.S.C. §§ 1319(g)(3) and 1321(b)(8), Complainant has determined that the total appropriate civil penalty for the violations alleged in the Amended Complaint is \$62,855.00, which shall be paid within THIRTY (30) calendar days of the effective date of this CAFO by Respondents and in accordance with paragraphs 88 and 89 of this CAFO.
87. The penalty factors were applied to the particular facts and circumstances of this case with specific reference to EPA's Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act, August 1998, Interim Clean Water Act Settlement Penalty Policy, March 1, 1995, RCRA Civil Penalty Policy, June 2003, and the Civil Monetary Penalty Adjustment Rule, 40 C.F.R. Part 19.
88. Payment of the civil penalty amount of \$48,250.00 for Counts II and III, above, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:
- A. All payments by Respondents shall reference their names and addresses and the Docket Number of this action (Docket No. CWA/RCRA-03-2009-0135);

- B. All checks shall be made payable to "United States Treasury;"
- C. All payments made by check and sent by regular mail shall be addressed and mailed to:

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

The Customer Service contact for the above method of payment is Natalie Pearson at 314-418-4087.

- D. All payments made by check and sent by overnight delivery service shall be addressed and sent to:

U.S. Environmental Protection Agency, Fines and Penalties  
U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

The Customer Service contact for the above method of payment is Natalie Pearson at 314-418-4087.

- E. All electronic wire transfer payments shall be directed to:

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"

The Federal Reserve Bank of New York Customer Service phone number for the above method of payment is 212-720-5000.

- F. All payments through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury  
REX Cashlink ACH Receiver  
57 Rivertech Ct.  
Riverdale, MD 20737

ABA = 051036706  
Transaction Code 22 - checking  
Environmental Protection Agency  
Account 310006  
CTX Format

The Customer Service contact for the above method of payment is 866-234-5681.

- G. There is an on-line payment option available through the Department of the Treasury. This payment option can be accessed from: [www.pay.gov](http://www.pay.gov). Enter sfo 1.1 in the search field and complete all required fields in the form.
- H. At the same time that any payment is made, Respondents shall mail copies of any corresponding check, or written notification confirming any electronic wire transfer, to:

Lydia Guy  
Regional Hearing Clerk (3RC00)  
U.S. Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

And

T. Chris Minshall  
Assistant Regional Counsel (3EC00)  
U.S. Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

89. Payment of the civil penalty amount of \$14,605.00 for Count I, above, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:

- A. All payments by Respondents shall reference their names and addresses, Docket Number of this action (Docket No. CWA/RCRA-03-2009-0135), and "Oil Spill Liability Trust Fund - 311";
- B. All checks shall be made payable to "Environmental Protection Agency;"
- C. All payments made by check and sent by regular mail shall be addressed and mailed to:

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

The Customer Service contact for the above method of payment is Natalie Pearson at 314-418-4087.

- D. All payments made by check and sent by overnight delivery service shall be addressed and sent to:

U.S. Environmental Protection Agency, Fines and Penalties  
U.S. Bank  
1005 Convention Plaza

Mail Station SL-MO-C2GL  
St. Louis, MO 63101

The Customer Service contact for the above method of payment is Natalie Pearson at 314-418-4087.

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ABA = 021030004  
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SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

The Federal Reserve Bank of New York Customer Service phone number for the above method of payment is 212-720-5000.

- F. All payments through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury  
REX Cashlink ACH Receiver  
57 Rivertech Ct.  
Riverdale, MD 20737

ABA = 051036706  
Transaction Code 22 - checking  
Environmental Protection Agency  
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Assistant Regional Counsel (3EC00)  
U.S. Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

90. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below.
91. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a CAFO begins to accrue on the date that a copy of the CAFO is mailed or hand-delivered to Respondents. However, EPA will not seek to recover interest on any amount of such civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
92. In accordance with 40 C.F.R. § 13.11(b), costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue.
93. A late payment penalty of six percent (6%) per year will be assessed monthly on any portion of a civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on a debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
94. Respondents agree not to deduct for federal tax purposes the civil monetary penalty specified in this CAFO.

#### **V. CERTIFICATIONS**

95. Respondents certify to Complainant by the signatures hereto, to the best of Respondents' knowledge and belief, that Respondents and the facility currently are in compliance with all relevant provisions of the current authorized Maryland Hazardous Waste Management Regulations, RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, and CWA, 33 U.S.C. §§ 1251 et seq., for which violations are alleged in this CAFO.

#### **VI. EFFECT OF SETTLEMENT**

96. Payment of the penalty specified in paragraph 86, in the manner set forth in paragraphs 88 and 89, shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under CWA and RCRA, for the specific violations alleged in Counts I through III. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

#### **VII. RESERVATION OF RIGHTS**

97. This CAFO resolves only the civil claims for monetary penalties for the specific violations alleged in the CAFO. EPA reserves the right to commence action against any

person(s), including Respondents, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. EPA also reserves any rights and remedies available to it under CWA and RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

### **VIII. FULL AND FINAL SATISFACTION**

98. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, and Sections 309 and 311 of the CWA, 33 U.S.C. §§ 1319 and 1321, for the specific violations alleged in this CAFO. This CAFO constitutes the entire agreement and understanding of the parties regarding settlement of all claims pertaining to specific violations alleged herein and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this CAFO.

### **IX. PARTIES BOUND**

99. This CAFO shall apply to and be binding upon the EPA, Respondents, Respondents' officers and directors (in their official capacity) and Respondents' successors and assigns. By his or her signature below, the person signing this CA on behalf of Respondents acknowledges that he or she is fully authorized to enter into this CAFO and to bind the Respondents to the terms and conditions of this CAFO.

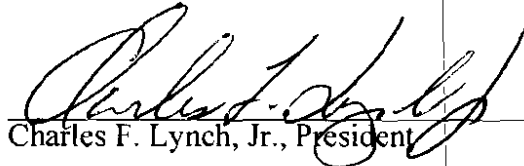
### **X. EFFECTIVE DATE**

100. This CAFO shall become final and effective 30 days after it is lodged with the Regional Hearing Clerk.

For Respondents:

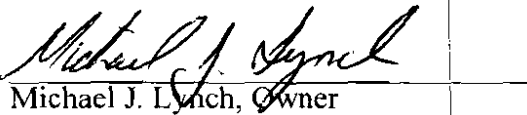
THE GENERAL SHIP REPAIR CORPORATION

11/29/2010  
Date

  
Charles F. Lynch, Jr., President

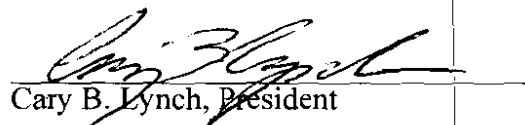
GENERAL SHIP REPAIR COMPANY, INC.

11/29/10  
Date

  
Michael J. Lynch, Owner

LYNCO, INC.

11-29-10  
Date


  
Cary B. Lynch, President



For Complainant:

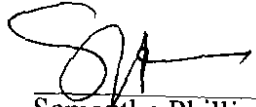
U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION III

12/16/2010  
Date

  
T. Chris Minshall, Assistant Regional Counsel

Accordingly, I hereby recommend that the Regional Administrator or his designee, the Regional Judicial Officer, issue the Final Order attached hereto.

12/21/10  
Date

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

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

IN RE:

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

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

Facility Address:

1449 Key Highway  
Baltimore, Maryland 21230

**FINAL ORDER**

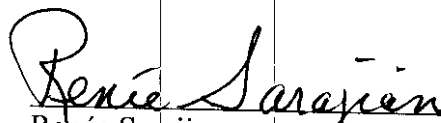
Complainant, the Director of the Office of Enforcement, Compliance and Environmental Justice, U.S. Environmental Protection Agency, Region III, and Respondents, The General Ship Repair Corporation, General Ship Repair Company, Inc., and Lynco, Inc. have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based on the representations of the parties set forth in the Consent Agreement, I have determined that the penalty assessed herein is based upon a consideration of the factors set forth in Section 3008(a) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(a)(3), EPA's June 2003 *RCRA Civil Penalty Policy*, the factors set forth in Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA's 1995 *Interim Clean Water Act Settlement Penalty Policy*, the factors set forth in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), EPA's 1998 *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act*, and the Consolidated Rules of Practice. **IT IS HEREBY ORDERED** that Respondents pay a penalty of **SIXTY TWO THOUSAND, EIGHT HUNDRED AND FIFTY FIVE DOLLARS (\$62,855.00)** in accordance with the foregoing Consent Agreement. Payment shall be made in the manner set

forth in the foregoing Consent Agreement. Payment shall reference Respondents' names and address as well as the EPA Docket Number of this Final Order (Docket No. CWA/RCRA-03-2009-0135).

The effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

12/29/10  
Date

  
Renée Sarajian  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region III