

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, New York 10007

RECEIVED
 REGIONAL ADMINISTRATOR
 ENVIRONMENTAL PROTECTION AGENCY
 REGION 2
 NEW YORK, NY 10007

-----X		
IN THE MATTER OF	:	
	:	
Northeast Dredging Equipment	:	Consent Agreement
Company, LLC	:	and Final Order
Hillside, New Jersey	:	
	:	
Respondent.	:	
	:	
Proceeding pursuant to §105(a) of the	:	Docket Nos.
Marine Protection, Research and	:	
Sanctuaries Act, 33 U.S.C. §1415(a)	:	MPRSA-02-2015-6001
-----X	:	MPRSA-02-2015-6002
		MPRSA-02-2015-6003

I. Preliminary Statement

1. This is a civil administrative proceeding for the assessment of a civil penalty instituted pursuant to Section 105(a) of the Marine Protection, Research and Sanctuaries Act (“MPRSA” or “the Act”), 33 U.S.C. § 1415(a).
2. The following Findings of Fact are made and Order issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by the Act, 33 U.S.C. § 1401 *et. seq.*, and in particular by Section 105(a) of the Act, 33 U.S.C. § 1415(a). This authority has been duly delegated to the Regional Administrator of Region 2, EPA, and since further re-delegated to the Director, Clean Water Division of Region 2, EPA.
3. This Consent Agreement and Final Order is issued in accordance with 40 CFR §22.18(b) and (c) 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” (CROP), which sets forth procedures where the Parties agree to the settlement of an action, and allows for conclusion of administrative civil penalty assessment proceedings through the issuance of a consent agreement and final order.

4. The Parties agree that it is in the public interest to resolve the issues that form the basis for this action and avoid the costs and risks associated with litigation. Toward this end, the Parties have agreed to the following settlement.

II. Procedural Background

5. EPA, Region 2 (“Complainant”) issued a Complaint on October 8, 2014, entitled “Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing” (“Complaint”) against Northeast Dredging Equipment Company, LLC (“Respondent”) (Docket Number MPRSA-02-2015-6001, MPRSA-02-2015-6002, MPRSA-02-2015-6003). This Complaint is incorporated by reference herein.

6. The Complaint charged Respondent with violating Section 101(a) of MPRSA, 33 U.S.C. §1411(a) by failing to conduct discharge of dredged material in the Atlantic Ocean in a manner consistent with the Act.

III. Findings of Fact and Conclusion of Law

7. Respondent is a contractor for the U.S. Army Corps of Engineers, New York District (USACE-NYD) for the New York and New Jersey Harbor Channel Navigation Improvement 50’ Project (Arthur Kill Channels, Contract 13, S-AK-2).

8. The project contract involved deepening Contract Area 13 of the S-AK-2 project located in the Arthur Kill through the removal of 1.6 million cubic yards of material. Depending on the characteristics of the material removed, it was to be disposed of at several suitable locations, including the Historic Area Remediation Site (HARS), artificial reef sites, and at a state-approved upland remediation site.

9. Dredging at the S-AK-2 contract area began on February 17, 2012, without first holding the required Dredged Material Transport and Placement Meeting (DMTPM). As a result, the contractor did not have the required “HARS Placement Requirements for the S-AK-2 Federal Deepening Project.” The placement of dredged material at the HARS, without benefit of a contract-specific DMTPM, is a violation of Section 103 of the MPRSA as well as the terms and conditions of the USACE contract and the HARS Placement Requirements.

10. Trip #119 of the S-AK-2 contract resulted in an unauthorized shortdump of dredged material outside of the HARS, a violation of Section 103 of the MPRSA as well as the terms and conditions of the USACE contract.

11. Beginning on March 2, 2013, and continuing through early March 4, 2013, five scows loaded with material dredged from the S-AK-2 were transported to the HARS without adequate photographic evidence of the contents, in violation of Contract S-AK-2.

12. Based on the above findings, EPA finds Respondent to be in violation of Section 101(a) of the Act, 33 U.S.C. § 1411(a) for the discharge of material into ocean waters without authorization by the Secretary of the Army as provided by Section 103(a) of the Act, 33 U.S.C. § 1413(a).

13. Under Section 105(a) of the Act, 33 U.S.C. § 1415(a), Respondent is liable for the administrative assessment of civil penalties in an amount not to exceed \$70,000 for each violation.

IV. Consent Agreement

Based upon the foregoing Findings of Fact and Conclusions of Law, and pursuant to Section 105(a) of the Act, 33 U.S.C. § 1415(a), and the CROP (40 C.F.R. § 22.18), it is hereby agreed by and between the parties, and Respondent voluntarily and knowingly agrees as follows:

Jurisdiction

14. For the purpose of this proceeding, Respondent a) admits the jurisdictional allegations of the Findings of Fact and Conclusions of Law as applied to the activities; and b) neither admits nor denies the specific factual allegations contained in the Findings of Fact. Nothing contained in this Consent Agreement and Final Order shall be deemed an admission of liability, or of any violation of any applicable law, rule, statute, regulation, order, understanding, agreement, or contract of any kind. Neither this Consent Agreement and Final Order, nor any of their terms, nor any of the negotiations or proceedings connected with it shall be offered as evidence or received in evidence in any pending or future action or proceeding of any type whatsoever, except with regard to findings of jurisdiction. In addition, nothing in this Consent Agreement and Final Order shall be construed or interpreted by any governmental entity (Federal, State, or local) or private party as a determination as to a violation of any Federal, State, or local laws for the purpose of disqualifying the Respondent or its agents or contractors for any Federal, State, or local governmental permit or contract.

Payment of Civil Penalty

15. Pursuant to Section 105(a) of the Act and having taken into account the gravity of the violations, prior violations, and the demonstrated good faith of Respondent in attempting to achieve rapid compliance after notification of the violations, and any other factors that may be required by the Act, as well as Respondent's willingness to perform a Supplemental Environmental Project ("SEP") as detailed below, EPA has determined that a civil penalty in the amount of **\$100,000.00 (one hundred thousand dollars and zero cents)**, is appropriate in settlement of this case.

16. Respondent shall pay, by cashier's or certified check, the civil penalty in the amount of one hundred thousand dollars and zero cents payable to the "Treasurer, United States of America". The check shall be 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. Such check shall be mailed to:

EPA, Region 2 (Regional Hearing Clerk)
P.O. Box 360188M
Pittsburgh, Pennsylvania 15251

Respondent shall also send copies of such payment to:

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

and to:

Phyllis Feinmark, Esq.
Chief, Water and General Law Branch
Office of Regional Counsel
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, New York 10007.

17. Payment must be received at the above address on or before sixty (60) 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"). Failure to pay the 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 of the assessed penalty as well as, but not limited to, interest and attorney's fees.

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.

The penalty specified in Paragraph 16 above shall represent a civil penalty assessed by EPA and shall not be deductible from Respondent's federal or state income taxes.

Description of the Supplemental Environmental Project

18. Respondent shall complete the following SEP, which the parties agree is intended to secure significant environmental or public health protection and improvements. Northeast

Dredging is required to permanently dispose of the two 1972 main and hoist diesel engines from its Chesapeake 1000 floating crane, and replace them with modern Tier 3 or 4 diesel engines.

19. The Fair Market Value (FMV) for the SEP shall not be less than \$250,000.00. Respondent shall provide documentation to the EPA of the FMV of the expenditures made in connection with the SEP as part of the SEP Completion Report.

20. With regard to the SEP, Respondent 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 Defendant in good faith estimates that the cost to implement the SEP is \$250,000;
- 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 any other person or entity;
- f. That 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;
- g. That Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in paragraph 18;
- h. That Respondent would have agreed to perform a comparably valued, alternative project other than a diesel emissions reduction SEP, if the Agency were precluded by law from accepting a diesel emissions reduction SEP.

SEP Reports

21. Respondent shall submit a Workplan at least 7 calendar days prior to undertaking the SEP. The Workplan must be submitted to EPA at the following address:

Patricia Pechko
USEPA, Region 2
Dredging, Sediment and Oceans Section
290 Broadway, 24th Floor
New York, New York 10007

The SEP will be completed within (120) days of the final date of the CAFO unless weather/safety delays or unexpected circumstances occur. Delays should be documented and notification sent to EPA at the address below. Should unexpected delays occur during the 120 day completion time frame, Respondent will be expected to make every effort to

complete the project no later than the September 1, 2017. Under no circumstances will the SEP be completed no later than December 1, 2017.

22. Respondent shall submit a SEP Completion Report to EPA by not later than 60 days from the date of completion of replacement. The SEP Completion Report shall contain the following information:

- (a) A detailed description of the SEP as implemented; including, but not limited to:
 - Model name and serial number of new engines;
 - Date of completion of installation of new engines;
 - Documentation of the scrapping which will include:
 - The statement, "I certify that within 60 days of replacement, the old engines have been permanently disabled. Disabling the engines consists of cutting/punching a three inch by three inch (3" x 3") hole in the engine block. If other pre-approved scrapping methods are used, details and documentation are attached. Photos of the disabled engines that are required as part of this settlement are attached to the final SEP Report, as required";
 - Old engines' make, model number year, horsepower, ID/serial number; and
 - Photos of the engine blocks prior to holes, and photos of the engine blocks after holes.
- (b) Itemized costs, as set forth in Paragraph 25, below;
- (c) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Order;
- (d) A description of the environmental health benefits resulting from implementation of the SEP.

23. Respondent agrees that failure to submit the SEP Completion Report required by Paragraph 22, above, shall be deemed a violation of this Consent Agreement and Order and Respondent shall become liable for stipulated penalties pursuant to Paragraph 30, below.

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

Patricia Pechko
USEPA, Region 2
Dredging, Sediment and Oceans Section
290 Broadway, 24th Floor
New York, New York 10007

25. 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.

26. 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 31, below.

27. Respondent agrees that EPA and its authorized representatives may inspect the SEP site at any time in order to confirm that the SEP is being undertaken and maintained in conformity with the representations made herein.

28. 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, and shall provide the documentation for any such underlying research and data to EPA not more than seven days after a request for such information. 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, **to the best of his or her knowledge and belief**, the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I 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, **to the best of my knowledge** 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.

29. EPA Acceptance of SEP Report

- a. After receipt of the SEP Completion Report described in Paragraph 22, above, EPA will notify the Respondent, in writing, regarding:
 - (i) any deficiencies in the SEP Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or
 - (ii) EPA's conclusion that the project has been completed satisfactorily; or,
 - (iii) EPA's determination that the project has not been completed satisfactorily and EPA's intent to seek stipulated penalties in accordance with Paragraph 31, below.
- b. If EPA elects to exercise option (i), above, i.e., if the SEP Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of the completion of the SEP itself, EPA shall permit Respondent the opportunity to

object in writing to the notification of deficiency given pursuant to this paragraph within thirty (30) 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 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 final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any such deficiency or failure to comply with the terms of this Consent Agreement and 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 31, below.

30. Stipulated Penalties for Failure to Complete SEP or Failure to Expend Sufficient Funds in Performance of the SEP

- a. In the event that Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP described in Paragraph 18 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 19, above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
 - (i) For a SEP which has not been completed satisfactorily pursuant to this Consent Agreement and Order, Respondent shall pay a stipulated penalty to the United States in the amount of \$250,000.00.
 - (ii) If the SEP is completed in accordance with Paragraph 18, but the FMV of Respondent's expenditures totals less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to the United States equal to the difference between \$250,000.00 and the amount of money spent.
 - (iii) If the SEP is completed in accordance with Paragraph 18, and Respondent spent at least 90 percent of the amount of money required to be spent for the project, Respondent shall not be liable for any stipulated penalty.
 - (iv) For failure to submit the SEP Completion Report required by Paragraph 22 above, and/or the certification required by Paragraph 33 below, Respondent shall pay a stipulated penalty in the amount of \$100.00 for each day after the report due date as set forth in Paragraph 22, above, until the document is submitted.
- b. The determination of whether Respondent has complied with the terms of this Consent Agreement and whether the SEP has been satisfactorily completed, and whether Respondent has made a good faith, timely effort to implement the SEP, shall be made in a reasonable manner, in the sole discretion of EPA.

- c. Stipulated penalties for Subparagraph a(iv), above, shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.
- d. Respondent shall pay stipulated penalties not more than thirty (30) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraph 16, above. Interest and late charges shall be paid as stated in Paragraph 17, above.
- e. 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.

31. 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 Section 101(a) of the Marine Protection, Resources and Sanctuaries Act, 33 U.S.C. §1411(a)."

32. 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, including, but not limited to, unforeseen circumstances associated with the obtaining of necessary permits, 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 entirely 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.

V. General Provisions

33. Respondent hereby agrees that any funds expended by it or any other person or entity in the performance of the SEP will not be claimed as a deductible business expense for purposes of Federal taxes. In addition, Respondent hereby agrees that, within sixty (60) days of the date the Respondent or any other person or entity submits its Federal tax reports for the calendar year in which the above-identified SEP is completed, the Respondent will submit to EPA certification that any funds expended in the performance of the SEP have not been deducted from Federal taxes.

34. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full and final settlement of the civil liabilities that might have attached as a result of the allegations contained in the Findings of Fact, above. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable, and consents to its issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

35. Respondent explicitly and knowingly consents to the assessment of the civil penalty and the performance of the SEP as set forth in this Consent Agreement, and agrees to pay the penalty and complete the SEP in accordance with the terms of this Consent Agreement.

36. 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.

37. Respondent knowingly and explicitly waives its right under Section 105(a) of the Act, 33 U.S.C. §1415(a) 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.

38. Respondent waives any right it may have pursuant to 40 C.F.R. §22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Director where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.

39. Issuance of this Consent Agreement and Final Order does not constitute a waiver by EPA of its right to enforce the substantive legal requirements underlying this penalty assessment, either administratively or judicially, pursuant to Sections 105(a), (b), and (d) of the Act, 33 U.S.C. §1415(a), (b) and (d).

40. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.

41. The provisions of this Consent Agreement and Final Order shall be binding upon the Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns.

42. Each party shall bear its own costs and attorneys' fees in connection with the action resolved by this Consent Agreement and Final Order.

43. Respondent consents to service upon Respondents by a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

FOR RESPONDENT:

Thomas D Witte
Northeast Dredging Equipment Company, LLC
Thomas D. Witte
President

3/25/17
Date

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Javi C. Laureano
Javier Laureano, Ph.D.
Director
Clean Water Division
U.S. Environmental Protection Agency, Region 2

4/3/17
Date

VI. 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, New York.

IN THE MATTER OF:

Northeast Dredging Equipment Company, LLC
Hillside, New Jersey

Proceedings Pursuant to §105(a) of the
Marine Protection, Research and
Sanctuaries Act, 33 U.S.C. §1415(a)

Docket No.
MPRSA-02-2015-6001
MPRSA-02-2015-6002
MPRSA-02-2015-6003

for 

Catherine McCabe
Acting Regional Administrator
U.S. Environmental Protection Agency, Region 2

APRIL 5, 2017

Date

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY, REGION 2

IN THE MATTER OF

**Northeast Dredging Equipment
Company, LLC**
Hillside, New Jersey 07205

Respondent

Proceeding to Assess Civil Penalty under
Section 105(a) of the Marine Protection,
Research, and Sanctuaries, 33 U.S.C.
§1415(a)

Docket Nos. MPRSA-02-2015-6001
MPRSA-02-2015-6002
MPRSA-02-2015-6003

CERTIFICATE OF SERVICE

I certify that, on the date noted below, I caused to be mailed, by certified mail, return receipt requested, a copy of the foregoing "Consent Agreement Final Order" upon:

Robert G. Ruggieri
Cohen Seglias Pallas Greenhall & Furman PC
United Plaza, 19th Floor
30 South 17th Street
Philadelphia, PA 19103

I hand carried the original and a copy of the foregoing Consent Agreement Final Order to the office of

Ms. Karen Maples
Regional Hearing Clerk
United States Environmental Protection Agency, Region 2
290 Broadway - 16th Floor
New York, New York 10007-1866.

Date:

4/20/17
New York, New York


[Signature of Sender]