

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Rohemir Ramirez Ballaps 1/23/17
Name of Case Attorney Date

in the ORC (RAA) at 918-1113
Office & Mail Code Phone number

Case Docket Number CWA-01-2016-0066

Site-specific Superfund (SF) Acct. Number _____

This is an original debt This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Great Bay Marine Inc.
61 Beane Ln
Newington, NH 03801

Total Dollar Amount of Receivable \$ 50,000 Due Date: 7/23

SEP due? Yes No Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

1st \$ 25,000 on 2/2/17
2nd \$ 25,000 on 7/23/17
3rd \$ _____ on _____
4th \$ _____ on _____
5th \$ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
in the Financial Management Office

Phone Number _____



U.S. Environmental Protection Agency

Region I New England
5 Post Office Square – Suite 100
Boston, MA 02109-3912

January 23, 2017

RECEIVED

JAN 23 2017

BY HAND

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region I
5 Post Office Square, Suite 100
Mail Code : ORA18-1
Boston, MA 02109-3912

EPA ORC
Office of Regional Hearing Clerk

Re: In the Matter of: Great Bay Marine Inc.
Docket No. CWA 01-2016-0066

Dear Ms. Santiago,

Enclosed for filing, please find a Consent Agreement and Final Order (CAFO) settling the matter referenced above.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. Ramirez", with a long horizontal flourish extending to the right.

Rohemir Ramirez Ballagas
Enforcement Counsel
EPA Region 1

Enclosure

cc: Lynn J Preston, Sheenan Phinney

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

RECEIVED

JAN 23 2017

_____))
In the matter of))
))
GREAT BAY MARINE INC.))
61 Beane Ln))
Newington, NH 03801,))
))
Respondent.))
_____)

EPA ORC
Office of Water Administration Clerk
Docket No. CWA-01-2016-0066

**CONSENT AGREEMENT AND
FINAL ORDER FOR CLASS II
CIVIL PENALTY UNDER THE
CLEAN WATER ACT**

The Regional Administrator of the United States Environmental Protection Agency, Region 1 (“EPA”) issues this Consent Agreement and Final Order (“CAFO”) to Great Bay Marine Inc. (“Respondent” or “Great Bay Marine”). EPA alleges that Respondent violated Sections 301(a), 308, and 311(j) of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1311(a), 1318 and 1321(j). The parties agree to resolve this action by the issuance of this CAFO as provided under 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) of EPA’s 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 (“Part 22”).

I. DESCRIPTION OF VIOLATIONS

1. EPA alleges that Respondent: (1) discharged untreated wastewater containing pollutants into navigable waters of the United States without authorization in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a); (2) discharged stormwater not in compliance with certain terms and conditions of its National Pollutant Discharge Elimination System (“NPDES”) permit; and (3) failed to fully implement a Spill Prevention Control and Countermeasure (“SPCC”) Plan in accordance with the Oil Pollution Prevention regulations set forth at 40 C.F.R. Part 112, promulgated under the authority of Section 311(j) of the CWA, 33 U.S.C. § 1321(j).

Statutory and Regulatory Authority

2. EPA takes this action under the authority of Sections 309(g) and 311(b)(6) of the Clean Water Act (“CWA” or the “Act”), 33 U.S.C. §§ 1319(g) and 1321(b)(6), as amended by the Oil Pollution Act of 1990. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), EPA has notified the State of New Hampshire’s Department of Environmental Services of this action.

3. EPA has provided the public a thirty-day opportunity for public notice and comment on this proposed CAFO, pursuant to Sections 309(g)(4)(A) and 311(b)(6)(C)(i) of the CWA, 33 U.S.C. §§ 1319(g)(4)(A) and 1321(b)(6)(C)(i), and 40 C.F.R. § 22.45(b).

General Allegations

Discharge of Pollutants

4. The CWA is designed to restore and maintain the chemical, physical, and biological integrity of the nation’s waters. Section 101(a) of the CWA, 33 U.S.C. § 1251(a).

5. To accomplish the objectives of the Act, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into navigable waters except in compliance with the terms and conditions of a permit issued pursuant to Section 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344, and EPA’s implementing regulations, found at 40 C.F.R. Part 122.

6. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), authorizes the Administrator of EPA to issue NPDES permits for the discharge of pollutants into navigable waters in compliance with the CWA.

7. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines “person” to include “an individual, corporation, partnership, [or] association.”

8. Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), defines “person” to

include “an individual, firm, corporation, association, [or] partnership.”

9. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

10. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, among other things, solid waste, chemical wastes, biological materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial waste discharged into water.

11. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” to include “any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged.”

12. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “the waters of the United States, including the territorial seas.”

13. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), requires any stormwater discharge “associated with industrial activity” to be authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit.

14. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), authorizes the Administrator of EPA to require the owner or operator of any point source to provide such information as the Administrator may reasonably need to carry out the objectives of the CWA, including, among other things, the development and issuance of NPDES permits under Section 402 of the CWA, 33 U.S.C. § 1342.

15. Pursuant to Sections 308 of the CWA, 33 U.S.C. § 1318, EPA promulgated storm water discharge regulations at 40 C.F.R. § 122.26.

16. Forty C.F.R. § 122.26(b)(13) defines “storm water” to include storm water runoff, snow melt runoff, and surface runoff and drainage.

17. Forty C.F.R. § 122.26(c)(1) provides that dischargers of stormwater associated with industrial activity are required to apply for an individual permit, apply for a permit through a group application, or seek coverage under a general permit.

18. Facilities within the categories set out in 40 C.F.R. § 122.26(b)(14), including those in Standard Industrial Classification (“SIC”) codes 3732 (boat and ship building and repair) and 4493 (water transportation facilities, including marinas), are industrial activities that must obtain permit authorization for stormwater discharges.

19. EPA issued a NPDES Storm Water Multi-Sector General Permit for Industrial Activities on September 29, 2008 (“2008 MSGP”), 73 Fed. Reg. 56527, and re-issued it on June 4, 2015 (“2015 MSGP”), 80 Fed. Reg. 34403.

20. Under the 2008 MSGP and the 2015 MSGP, a facility discharging stormwater associated with industrial activity is required to submit a Notice of Intent (“NOI”) to be covered under the Permit, prepare and implement a Stormwater Pollution Prevention Plan (“SWPPP”), conduct inspections, conduct monitoring and sampling, and meet other eligibility requirements.

21. Section 309(g) of the CWA, 33 U.S.C. § 1319, provides for the assessment of penalties for violations of Sections 301 and 308 of the CWA, 33 U.S.C. §§ 1311, 1318, and for violating any condition or limitation in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

Oil Pollution Prevention Regulations

22. Section 311(j)(1) of the Act, 33 U.S.C. § 1321(j)(1), provides that the President shall issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances . . . from onshore and offshore facilities, and to contain discharges”

23. Under the authority of Section 311(j)(1) of the Act, the Oil Pollution Prevention

regulations, found at 40 C.F.R. Part 112, establish procedures, methods, and requirements for preventing the discharge of oil. These requirements apply to owners or operators of non-transportation-related facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil or oil products which, due to their location, could reasonably be expected to discharge oil in harmful quantities (as defined in 40 C.F.R. Part 110) to navigable waters of the United States or adjoining shorelines. 40 C.F.R. § 112.1(b). However, except as provided in 40 C.F.R. § 112.1(f), these requirements do not apply to the owner or operator of any facility which meets both of the following requirements: (1) the completely buried storage capacity of the facility is 42,000 gallons or less of oil; and (2) the aggregate aboveground storage capacity of the facility is 1,320 gallons or less of oil. 40 C.F.R. § 112.1(d)(2).

24. Under 40 C.F.R. § 112.3(a)(1), an owner or operator of an onshore facility that became operational prior to August 16, 2002 and that has discharged or, due to its location, could reasonably be expected to discharge, oil in harmful quantities unto or upon the navigable waters of the United States must prepare and fully implement a Spill Prevention, Control, and Countermeasure (“SPCC”) plan in accordance with 40 C.F.R. § 112.7.

25. Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), provides for the assessment of penalties for violations of the Oil Pollution Prevention regulations, found at 40 C.F.R. Part 112.

Findings of Violation

26. Great Bay Marine is a corporation organized under the laws of the State of New Hampshire with its principal place of business in Newington, New Hampshire.

27. Respondent is a “person” within the meaning of Sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7), 1362(5).

28. Respondent owns and operates a marina and boat storage and repair yard at 61 Beane Ln., Newington, New Hampshire (the “Facility”), which is classified under Standard Industrial Classification (“SIC”) codes 3732 (Boat Building and Repairing), listed under “Sector R – Ship and Boat Building and Repair Yards,” and 4493 (Marinas), listed under “Sector Q – Water Transportation” of both the 2008 and 2015 MSGP.

29. The facility encompasses approximately 37.64 acres of land, and off-shore structures including docks, 128 boat slips, and 72 moorings. It is open throughout the year, has a public fuel station on the dock and conducts general boat maintenance and repair.

30. Respondent has at all times relevant to this Consent Agreement and Final Order controlled all daily business and industrial operations at the Facility, and otherwise meets the definition of “operators” of the Facility, as defined at Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), 40 C.F.R. § 112.2, and under the 2008 MSGP and the 2015 MSGP.

31. Respondent applied for and received coverage for discharges of stormwater associated with industrial activity under the 2008 MSGP and, as of October 1, 2015 it had applied for coverage under the 2015 MSGP.

32. Respondent was authorized under the 2008 MSGP and 2015 MSGP to discharge stormwater associated with industrial activity from four point sources at the Facility (identified in Respondent’s 2009 Stormwater Pollution Prevention Plan (“2009 SWPPP”) as “DSN-01, DSN-02, DSN-03, and DSN-04”) to Lower Little Bay which opens into the Piscataqua River, subject to the terms and conditions specified in the 2008 MSGP and 2015 MSGP.

33. Respondent also discharges stormwater overland along the northern end of the Facility from three point sources (identified in Respondent’s 2009 SWPPP as “DSN-05, DSN-06, and DSN-07”) to Lower Little Bay which opens into the Piscataqua River, subject to the

terms and conditions specified in the 2008 MSGP and 2015 MSGP.

34. All the above-mentioned discharge points discharge stormwater associated with industrial activity into Lower Little Bay which opens into the Piscataqua River.

35. All the above-mentioned discharge points are “point source[s]” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

36. Lower Little Bay and the Piscataqua River flow into the Atlantic Ocean, which are, “navigable waters,” as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

37. On October 2, 2015, authorized representatives of EPA visited the Facility to review compliance with Federal and State environmental laws and regulations, including compliance with the CWA (the “Inspection”).

Count 1: Discharge of untreated wastewater containing pollutants into navigable waters of the United States without authorization

38. Respondent conducts pressure washing at the Facility at the designated Boat Bottom Washing Area. The pressure-washing involves directing a high-pressure stream of water at the vessel’s hull while the boat is located on a travel lift or other structure.

39. Wash water from the above-mentioned activity is discharged through stormwater outfall DSN-07 to Lower Little Bay which opens into the Piscataqua River.

40. This activity occurred on certain occasions between October 1, 2010 and October 5, 2015 resulting in bottom wash water being discharged through stormwater outfall DSN-07 to Lower Little Bay.

41. The facility did not have a permit authorizing the discharge of process wastewater.

42. By discharging process water into waters of the United States without authorization under the existing NPDES permit, Respondent violated Section 301(a) of the

CWA, 33 U.S.C. § 1311(a) on certain occasions between October 2010 and October 2015.

Count 2: Discharge of stormwater not in compliance with the 2008 MSGP and 2015 MSGP permit terms and conditions

43. Paragraphs 1 through 42 are incorporated herein by reference.

44. From at least July 2009 through the present, Respondent has discharged “storm water associated with industrial activities” within the meaning of 40 C.F.R. § 122.26, from DSN-01, DSN-02, DSN-03, DSN-04, DSN-05, DSN-06, and DSN-04 to Lower Little Bay which opens into the Piscataqua River.

45. The release of stormwater associated with industrial activity from the point sources mentioned above constitute a “discharge of pollutants” within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

46. Since at least July 2009, Respondent was authorized under the 2008 MSGP and the 2015 MGSP to discharge stormwater to Lower Little Bay. The 2008 MSGP and the 2015 MGSP contain terms and conditions designed to ensure the implementation of practices to reduce the pollutants in stormwater discharges associated with industrial activity at the Facility.

2008 and 2015 MSGP Inspection Requirements

47. Section 4.1 of the 2008 MSGP and Section 3.1 of the 2015 MSGP require that a permittee conduct routine facility inspections, at least quarterly, including but not limited to:

- a. Areas where industrial materials or activities are exposed to stormwater;
- b. Areas identified in the SWPPP and those that are potential pollutant sources;
- c. Areas where spills and leaks have occurred in the past three years;
- d. Discharge points; and
- e. Control measures used to comply with the effluent limits contained in the

permit.

48. Section 4.1.2 of the 2008 MSGP and Section 3.1.2 of the 2015 MSGP require a permittee document all findings of the routine facility inspections on a facility inspection report.

49. From at least January 2009 through September 2015, Respondent did not document all of the quarterly inspections as required by the 2008 MSGP and 2015 MSGP.

50. Section 4.3 of the 2008 MSGP requires that a permittee conduct and document an annual comprehensive site inspection. Such inspection must cover all areas of the facility affected by the requirements of the 2008 MSGP, including areas identified in the SWPPP as potential pollutant sources where industrial materials or activities are exposed to stormwater, any areas where control measures are used to comply with the effluent limits, and areas where spills and leaks have occurred in the past three years.

51. From at least January 2011 through September 2014, Respondent did not document any annual inspection as required by the 2008 MSGP.

52. Section 4.2 of the 2008 MSGP and Section 3.2 of the 2015 MSGP require that a permittee conduct quarterly visual assessments of stormwater samples from each designated outfall. Furthermore, whenever the visual assessment shows evidence of stormwater pollution, the permittee must initiate the corrective action procedure.

53. Section 4.2.2 of the 2008 MSGP and Section 3.1.2 of the 2015 MSGP require a permittee document all findings of the quarterly visual assessments on site.

54. From at least January 2009 through September 2014, Respondent did not document any quarterly visual assessment as required by the 2008 MSGP and the 2015 MSGP.

55. In addition, Respondent failed to properly conduct visual inspections by only monitoring four designated outfalls, instead of all seven designated outfalls of the 2009 and 2015

SWPPP.

56. Section 6.2.1 of both the 2008 MSGP and the 2015 MSGP require specific pollutant benchmark concentrations applicable to certain sectors and subsectors. When a permittee submits an NOI to be covered under the 2008 or 2015 MSGP it must identify all applicable industrial sectors which apply to the facility, including co-located industrial activity, to ensure that all applicable benchmark monitoring is conducted.

57. Respondent failed to include in its NOI under the 2008 MSGP that certain activities under Sector Q (Water Transportation) were co-located activities at the Facility, and as a result, failed to conduct the Sector Q specific benchmark monitoring under the 2008 MSGP.

SWPPP Violations

58. Section 5 of the 2008 MSGP and 2015 MSGP require Respondent to develop and implement a SWPPP for the Facility in accordance with requirements specified in each permit.

59. Section 5.1.2 of the 2008 MSGP and Section 5.2.2 of the 2015 Permit require Respondent to include in the SWPPP a site map providing the location of all stormwater conveyances, potential pollution sources, stormwater control measures, stormwater inlets and outfalls, and the location of fueling stations, liquid storage tanks, among others.

60. Section 8.1.4 of the 2008 MSGP and Section 5.2.4 of the 2015 MSGP require that the SWPPP include a description of control measures used by the Facility to meet technology based and water quality based effluent limits.

61. Section 5 of the 2008 MSGP and 2015 MSGP require that the Facility's SWPPP be signed and dated.

62. From at least January 2011 through October 2015, Respondent failed to properly prepare a SWPPP in accordance with the terms and conditions of the 2008 MSGP and the 2015

MSGP by failing to include adequate site maps that contained all required components and having its 2015 SWPPP unsigned.

63. Accordingly, Respondent failed to properly prepare and fully implement a SWPPP in violation of the terms and conditions of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

64. By discharging stormwater from the Facility into waters of the U.S. in violation of certain terms and conditions of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and by failing to comply with all the conditions in the 2008 MSGP and the 2015 MSGP, Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a) from at least July 2009 through February 2016.

Count 3: Failure to Maintain and Fully Implement a Spill Pollution Control and Countermeasure Plan

65. Paragraphs 1 through 64 are incorporated herein by reference.

66. At all times relevant to the allegations in this CAFO, Respondent engaged in storing, using, and consuming “oil” or oil products located at the Facility within the meaning of 40 C.F.R. § 112.2.

67. At all times relevant to the allegations in this CAFO, the Facility had an aboveground oil storage capacity greater than 1,320 gallons in containers each with a shell capacity of at least 55 gallons.

68. The 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.

69. The Facility became operational prior to August 16, 2002.

70. The Facility is a “non-transportation-related” facility within the meaning of Appendix A to 40 C.F.R. Part 112, as incorporated by reference within 40 C.F.R. § 112.2.

71. Accordingly, the Facility is a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to navigable waters of the United States or its adjoining shorelines in a harmful quantity.

72. Respondent is therefore subject to the Oil Pollution Prevention regulations at 40 C.F.R. Part 112 at the Facility.

73. During the Inspection and based on additional information submitted by Respondent, EPA determined that Respondent had failed to maintain and fully implement an SPCC Plan for the Facility from at least April 2015 until November 12, 2015, in violation of Section 311(j) of the Act.

74. Respondent failed to adequately provide measures which would prevent the discharge of oil from reaching waters of the United States and failed to implement specific requirements listed in 40 C.F.R. §§112.7. Respondent's failure to maintain and fully implement an SPCC plan includes, but is not limited to the following deficiencies:

- a. Failure to keep and an up-to-date SPCC plan;
- b. Failure to conduct inspections of oil tanks and containment structures.

75. By failing to maintain and fully implement an SPCC plan for the Facility in accordance with the requirements of 40 C.F.R. §§ 112.7 and 112.8, as described above, Respondent violated 40 C.F.R. § 112.3 and Section 311(j) of the CWA, 33 U.S.C. § 1321(j), from at least April 2015 until November 12, 2015.

II. CONSENT AGREEMENT

76. EPA and Respondent agree that settlement of this cause of action is in the public interest and that entry of this CAFO without further litigation is the most appropriate means of resolving this matter. Therefore, before taking 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 ordered and adjudged as follows:

77. Respondent admits the jurisdictional allegations set forth in Section I above and hereby waives any defenses they might have as to jurisdiction and venue.

78. Respondent neither admits nor denies the factual or legal allegations, including without limitation, any of the violations alleged in the CAFO.

Waiver of Rights

79. Respondent waives the right to request a hearing under Sections 309(g)(2)(B) and 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. §§ 1319(g)(2)(B) and 1321(b)(6)(B)(ii), and to any appeal of the Final Order in this matter under Sections 309(g)(8)(B) and 311(b)(6)(G)(ii) of the CWA, 33 U.S.C. §§ 1319(g)(8)(B) and 1321(b)(6)(G)(ii). Respondent consents to the issuance of a Final Order without further adjudication.

Penalty

80. EPA proposes, and Respondent consents to, the assessment of a civil penalty of fifty thousand dollars (\$50,000.00) for all violations contained in this CAFO.

Payment Terms

81. In agreeing to the penalty described in paragraph 80 above, EPA has taken into account the statutory penalty factors at Sections 309(g)(3) and 311(b)(8) of the CWA, 33 U.S.C. §§ 1319(g)(3) and 1321(b)(8).

82. Of the total amount, 84 percent shall represent payment for Respondent's violations of Section 301 of the CWA, 33 U.S.C. §§1311 and 1318, and 16 percent shall represent payment for Respondent's violations of Section 311 of the CWA, 33 U.S.C. §1321.

83. Respondent shall pay a total penalty of \$50,000.00 in (2) installments. The first installment shall be paid within ten (10) days of the date this Agreement becomes final and shall

consist of a total of \$25,000.00. Of that first installment, Respondent shall pay a penalty of \$8,000.00 for the violations of Section 311 of the CWA, and, at the same time, Respondent shall pay \$17,000.00 of the penalty for violations of Sections 301 of the CWA. The second installment, comprising the remaining penalty for the violations of Section 301 of the CWA, shall be in the amount of \$25,500.00 (i.e., \$25,000.00 in principal, plus 500.00 in interest) and shall be due within six (6) months of the date this CAFO becomes final.

84. Respondent shall make each payment by cashier's, certified, or company check, payable to "Treasurer, United States of America," referencing the case name and docket number of this action (*In the matter of Great Bay Marine Inc.*, No. CWA-01-2016-0066) on the face of the check. For the payment relating to the violation of Section 311 of the CWA (\$8,000.00), the face of the check shall additionally include "Oil Spill Trust Fund – 311." The payments shall be made via regular U.S. Postal Service mail to:

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

In addition, at the time of payment, Respondent should also forward notice of the payments of the civil penalty as well as copies of the payment check to:

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code ORA 18-1)
Boston, MA 02109-3912

and

Jeffrey Kopf
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1

85. Pursuant to Sections 309(g)(9) and 311(b)(6)(H) of the CWA, 33 U.S.C. §§ 1319(g)(9) and 1321(b)(6)(H), a failure by Respondent to pay the penalty assessed by this CAFO in full by its due date shall subject Respondent to a civil action to collect the assessed penalty, plus interest at the prevailing rates, from the date this Agreement becomes final. The rate of interest assessed shall be at the rate set forth in 31 C.F.R. § 901.9(b), promulgated under 31 U.S.C. § 3717. Any person who fails to pay on a timely basis the amount of an assessed penalty shall be required to pay, in addition to such amount and interest, attorney's fees, costs for collection proceedings, and a quarterly nonpenalty payment for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent of the aggregate amount of such person's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

Supplemental Environmental Projects

86. Respondent shall undertake the following Supplemental Environmental Project ("SEP" or "Project"), which the parties agree is intended to secure environmental and public health protection and benefits. The SEP consists of an oyster reef restoration in the Great Bay Estuary.

87. Respondent shall complete the SEP according to the requirements and schedule set forth in Appendix A to this CAFO, which is incorporated herein by reference and is enforceable under this CAFO. Respondent shall transfer a total of \$95,000 to the New Hampshire Chapter of the Nature Conservancy within one year of the final date of this CAFO, at intervals agreed to between Respondent and the Nature Conservancy, to ensure that the SEP can

be completed as described in Appendix A.

88. **SEP Completion Report.** Respondent shall submit a SEP Completion Report within 60 days of completion of the Project. The SEP Completion Report shall contain the following information for each component of the SEP: (i) a detailed description of the SEP component as implemented; (ii) a description of any implementation problems encountered, if any, and the solutions thereto; (iii) a description of the environmental and public health benefits resulting from implementation of the SEP; (iv) evidence of SEP completion (which may include but is not limited to photos, vendor invoices or receipts, and/or correspondence from the SEP Recipient); (v) a list of itemized costs for implementing the SEP; and (vi) certification by a corporate official of Respondent that the SEP has been fully implemented pursuant to the provisions of this CAFO and in accordance with Appendix A.

89. **SEP Update Report(s).** Respondent, or its designees, shall submit a written SEP Update Report each quarter until the SEP Completion Report in paragraph 88 above has been submitted. The SEP Update Report(s) shall outline work completed and funds spent to date. The reports shall be submitted to EPA by the 30th day of the month following each quarter (January, April, July, October).

90. Respondent agrees that failure to submit the reports required by paragraphs 88 and 89 shall be deemed violations of this CAFO, and Respondent shall become liable for stipulated penalties pursuant to paragraph 94 below.

91. Respondent shall submit all notices, submissions, and reports required by this CAFO to Jeffrey Kopf by email at kopf.jeff@epa.gov, to Alex Rosenberg by email at rosenberg.alex@epa.gov, and by First Class mail or any other commercial delivery service to EPA at the addresses set forth below:

Jeffrey Kopf, Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code: OES 04-4)
Boston, MA 02109-3912

and

Alex Rosenberg
Stormwater Compliance Coordinator
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code OES04-4)
Boston, Massachusetts 02109-3912

The submission will be deemed to be made upon tendering the delivery to a commercial delivery service for overnight delivery or upon the date of the postmark in the event of use by First Class mail.

92. After receipt of the SEP Completion Report described in paragraph 88 above, EPA will notify Respondent in writing:

- a. That EPA concludes that the SEP has been completed satisfactorily;
- b. That EPA has determined that the Project has not been completed satisfactorily and is specifying a reasonable schedule for correction of the SEP or the SEP Completion Report; or
- c. That EPA has determined that the SEP does not comply with the terms of this CAFO and is seeking stipulated penalties in accordance with paragraph 94 herein.

93. If EPA notifies Respondent pursuant to paragraph 92.b above that the SEP itself or the SEP Completion Report or a SEP Update Report does not comply with the requirements of this CAFO, Respondent shall make corrections to the SEP and/or modify the SEP Completion Report or SEP Update Report in accordance with the schedule specified by EPA. If EPA notifies Respondent that the SEP itself does not comply with the requirements of this CAFO, Respondent

shall pay stipulated penalties in accordance with paragraph 94 herein.

94. Stipulated Penalties.

- a. In the event that Respondent fails to comply with any of the terms or provisions of this CAFO relating to performance of the SEP, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
 - i. For failure to submit the SEP Completion Report or a required SEP Update Report, Respondent shall pay a stipulated penalty in the amount of \$200 for each day that Respondent is late; and
 - ii. For each SEP or any portion thereof that has not been completed satisfactorily pursuant to this CAFO, Respondent shall pay a stipulated penalty of the dollar value of the portion of the SEP not satisfactorily completed times 1.25 plus interest from the date this Agreement becomes final. The definition of “satisfactory completion” is set out in Appendix A to this CAFO. However, if Respondent spends less than \$95,000 but otherwise satisfactorily complete the SEP, Respondent shall only be required to pay a stipulated penalty in the amount equal to the difference between \$95,000 and the actual amount spent on the Project.
- b. The determination(s) of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.
- c. Stipulated penalties 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 fifteen (15) days after receipt of written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of paragraph 83. Notice shall be given in accordance with the provisions of paragraph 84. Interest and late charges shall be paid as stated in paragraph 85.
- e. Payment of stipulated penalties shall be in addition to any other relief available under federal law.
- f. EPA may, in its sole discretion, decide not to seek stipulated penalties or to waive any portion of the stipulated penalties that accrue pursuant to this CAFO.

95. With regard to the SEP described herein and in Appendix A, Respondent certifies the truth and accuracy of each of the following:

- a. That all cost information provided to EPA in connection with EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is \$95,000;
- b. That, as of the date of executing this CAFO, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation, nor is Respondent required to perform the SEP by agreement, grant, or as injunctive relief awarded in this or 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 CAFO;

- 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. 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 be used to fund the same activity as the SEP; and
- h. That Respondent has inquired of the SEP Recipient whether it is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and have been informed by the SEP Recipient that it is not a party to such a transaction.

96. For the purposes of the certifications in paragraphs 95.g and 95.h, the term “open federal financial assistance transaction” refers to a grant, cooperative agreement, federal loan, federally-guaranteed loan, or other mechanism for providing federal financial assistance whose performance period has not yet expired.

97. Respondent agrees that any public statement, oral or written, in print, film, or other media, made by Respondent making reference to any portion of the SEP under this CAFO from the date of Respondent’s execution of this CAFO shall include the following language:

“This project was undertaken in connection with the settlement of an enforcement action, *In the matter of Great Bay Marine Inc.*, taken by the U.S. Environmental Protection Agency to enforce federal laws.”

General Provisions

98. The provisions of this CAFO shall apply to and be binding on Respondent, their officers, directors, agents, servants, employees, successors, and assigns.

99. The civil penalty provided under this CAFO, and any interest, nonpayment penalties, and charges described in this CAFO, shall represent penalties assessed by EPA within the meaning of 26 U.S.C. § 162(f) and are not tax deductible for purposes of federal, state, or local law. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of 26 C.F.R. § 1.162-21, and further agrees not to use those payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.

100. This CAFO does not constitute a waiver, suspension, or modification of the requirements of the CWA or any regulations or permits promulgated thereunder. Payment of the penalty pursuant to this CAFO resolves only Respondent’s liability for federal civil penalties for the violations and facts alleged herein.

101. This CAFO in no way relieves Respondent or its employees of any criminal liability, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.

102. 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 CAFO or of the statutes and regulations upon which this CAFO is based, or for Respondent's violation of any applicable provision of law.

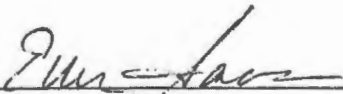
103. Except as described in paragraph 85 above, the parties shall bear their own costs and fees in this action, including attorney's fees, and specifically waive any right to recover such costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C § 504, or other applicable laws.

104. Respondent's obligations under the CAFO shall end when it has paid in full the scheduled civil penalty, performed the SEP, paid any stipulated penalties, and submitted the documentation required by this CAFO.

105. The terms, conditions, and requirements of this CAFO may not be modified or amended except upon written agreement of all parties, and approval of a Regional Administrator or his or her properly authorized delegate.

106. 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 CAFO and to execute and legally bind that party to it.

FOR GREAT BAY MARINE INC.:



Ellen Saas, President
Great Bay Marine Inc.

Date: 1-4-17

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

Susan Studlien

Date: 04/17/2017

Susan Studlien, Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1

APPENDIX A

SCOPE OF WORK FOR SUPPLEMENTAL ENVIRONMENTAL PROJECT

Great Bay Marine Inc.
Newington, New Hampshire

EPA Docket No. CWA-01-2016-0066

1. As part of the settlement in the matter referenced above, Great Bay Marine Inc. (“Respondent”) has agreed to conduct a Supplemental Environmental Project (“Project” or “SEP”) that is designed to: Restore oyster reef habitat to two acres of the Great Bay Estuary (“GBE”) for the purpose of improving water quality and restoring habitat in the estuary system.

2. Respondent has selected the New Hampshire Chapter of The Nature Conservancy (“TNC”) to implement this SEP, the commencement of which shall begin no less than 60 days after the date this CAFO becomes final. As set forth below, Respondents shall expend a total of at least \$95,000 in completing this SEP in accordance with the requirements of paragraphs 1, and 2 of this Appendix, which shall be applied to the costs of the purchase of oyster larvae, barge service for one day of reef construction, the purchase and delivery of seasoned clam shell, the production of oyster spat-on-shell, verification and assessment following the reef construction and seeding, one round of follow-on annual monitoring, and project permitting and project management.

a. Project details and Schedule

The oyster restoration project will follow an established process, as described below:

1. **Reef construction:** In late spring or early summer 2017, dried surf-clam shell will be acquired by the TNC, loaded onto a barge, and ferried out to the designated project site. Shell is deployed by systematically using a clam shell crane to lift the shell off the barge and release it into the estuary, either in a pattern of small piles or evenly spreading the shell across the area. The exact methodology will be determined by the TNC based on site conditions for the selected project site.



Transporting and deploying surf clam shell at the oyster reef restoration site (2016).

2. **Remote set and seeding:** TNC will contract with an appropriate aquaculture facility to raise oyster “spat on shell” to seed the restoration area. This process begins with washing and caging about 10 yd³ of recycled oyster shell in setting tanks. The TNC will purchase approximately 5 million disease resistant oyster larvae (aka “spat”), which will be placed in these tanks to set on the shell. The cages are then transported to a nursery raft in the GBE for further growth. In late summer or early fall 2017, oyster spat-on-shell will be sampled for count estimates, ferried to the newly constructed reef and spread over the surf-clam substrate. The target seeding density is 150,000-200,000 spat per acre of constructed reef area.
3. **Verification assessment:** In fall 2017, TNC will conduct a post-construction underwater video assessment to verify surf-clam coverage across the new reef. The TNC will also perform benthic sampling within a fixed area to retrieve surf-clam and spat-on-shell to estimate annual natural recruitment and initial density of live oysters for the reef.
4. **Follow up monitoring:** In the fall of the next year (2018), TNC will perform benthic sampling to determine the annual recruitment rates and live density estimates.
5. **Budget:** Budget details are as follows, with a total budget of \$95,000, including \$10,700 for TNC personnel, \$21,001 for supplies including oyster larvae and clam shells, and \$45,000 for contractual services, and \$850 for permits, licenses, and mailing. Indirect costs are budgeted at \$17,449 using TNC’s FY17 Negotiated Indirect Cost Rate Agreement (NICRA) of 22.5%. TNC will bill

indirect costs based on the fixed carry-forward rate in the NICRA for the given fiscal year.

EXPENDITURES	Award	TNC Match	Total
PERSONNEL	7,562	0	7,562
FRINGE BENEFITS (41.5%)	3,138	0	3,138
TRAVEL	0	0	0
EQUIPMENT	0	0	0
SUPPLIES	21,001	0	21,001
CONTRACTUAL	45,000	0	45,000
CONSTRUCTION	0	0	0
OTHER	850	0	850
Total Direct Costs	77,550	0	77,550
Indirect Costs (22.5%)	17,449	0	17,449
TOTAL PROJECT COSTS	95,000	0	95,000

6. **Required Permit:** The placement of shell in the Great Bay Estuary for the purpose of restoration requires a Wetlands and Non-Site Specific Permit from NH Department of Environmental Services (NHDES). TNC anticipates requesting an expedited review for minimum impact, as they have requested and received in past projects. This limits the agency permit review time to no more than 30 days. The importation of oyster larvae from TNC's supplier in Maine requires an Importation Permit from NH Department of Fish and Game (NHFG). Spat-on-shell seeding of the restoration area requires a scientific permit from NHFG. Based on past experience, TNC expects that all of these permits will be obtained in a timely manner. However, as with all permitting processes, TNC cannot guarantee that permitting will be completed by the permit agencies in a timely manner nor that permits will be issued for this work. TNC notes, also, that these permits do not bestow upon TNC control or ownership of the restoration site.

7. **Reporting Requirements:**

a. SEP Completion Report. TNC will submit a SEP Completion Report within 60 days of completion of the Project. The SEP Completion Report shall contain the following information for each component of the SEP: (i) a detailed description of the SEP component as implemented; (ii) a description of any implementation problems encountered, if any, and the solutions thereto; (iii) a description of the environmental and public health benefits resulting from implementation of the SEP; (iv) evidence of SEP completion (which may include but is not limited to photos, vendor invoices or receipts, and/or correspondence from the SEP Recipient); (v) a list of itemized costs for implementing the SEP; and (vi) certification by a corporate official of TNC that the SEP has been fully implemented pursuant to the provisions of this CAFO and in accordance with Appendix A.

- b. SEP Update Reports. TNC shall submit a written SEP Update Report each quarter until the SEP Completion Report has been submitted. The SEP Update Report(s) shall outline work completed and funds spent to date. The reports shall be submitted to EPA by the 30th day of the month following each quarter (January, April, July, October).

3. Satisfactory Completion

- a. Deadline for Completing SEP: Respondent shall use good faith efforts to complete the SEP within two years of the date this CAFO becomes final, but in any event shall complete the SEP by no later than three years after the date this CAFO becomes final.


FINAL ORDER

107. EPA has provided public a thirty-day opportunity for public notice and comment on this proposed CAFO, pursuant to Sections 309(g)(4)(A) and 311(b)(6)(C)(i) of the CWA, 33 U.S.C. §§ 1319(g)(4)(A) and 1321(b)(6)(C)(i), and 40 C.F.R. § 22.45(b).

108. The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order.

109. Respondent is hereby ordered to comply with the terms of the above Consent Agreement, which will become final thirty (30) days from the date it is signed by the Regional Administrator unless a petition to set aside the order is filed by a commenter pursuant to Sections 309(g)(4)(C) and 311(b)(6)(C)(iii) of the CWA, 33 U.S.C. §§ 1319(g)(4)(C) and 1321(b)(6)(C)(iii), and 40 C.F.R. Part 22.

Date: 1/19/17



H. Curtis Spalding
Regional Administrator
U.S. Environmental Protection Agency, Region 1

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

In the matter of)	Docket No. CWA-01-2016-0066
)	
GREAT BAY MARINE INC.)	CONSET AGREEMENT
61 Beane Ln)	AND FINAL ORDER
Newington, NH 03801)	
)	
Respondent.)	

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Consent Agreement and Final Order has been sent to the following persons on the date noted below:

Original and one copy,
hand-delivered:

Ms. Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region I (ORA18-1)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

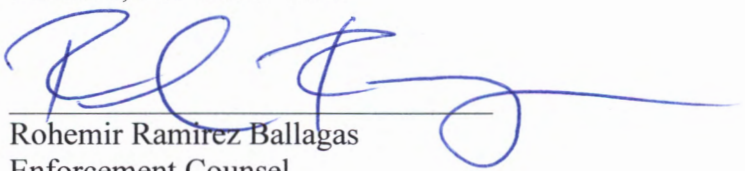
Copy, by Certified Mail,
Return Receipt Requested:

Lynn J. Preston, Esq.
Sheehan Phinney
Manchester Office
1000 Elm Street
PO Box 3701
Manchester, NH 03105-3701

and

Gretchen Hamel
New Hampshire Department of Environmental Services
PO Box 95
Concord, NH 03302-0095

Dated: 1/23/17



Rohemir Ramirez Ballagas
Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (OES04-3)
Boston, MA 02109-3912
Tel (617) 918-1262
Fax (617) 918-0148