

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda L. Santiago for Tonia Bandrowicz
Name of Case Attorney

10/13/15
Date

in the ORC (RAA) at 918-1115
Office & Mail Code Phone number

Case Docket Number MPRSA-01-2015-0035

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:

Dale Ryatt
Cashman Dredging & Marine Contracting Co., LLC
549 South Street
Quincy, MA 02169

Total Dollar Amount of Receivable \$ 42,000 Due Date: 11/12/15

SEP due? Yes No _____ Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

- 1st \$ _____ on _____
- 2nd \$ _____ on _____
- 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 _____

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 1

IN THE MATTER OF:)
)
)

Cashman Dredging and Marine.)
Contracting Co., LLC,)
549 South Street)
Quincy, Massachusetts,)
)

Cashman-Weeks NB, JV)
549 South Street)
Quincy, Massachusetts,)
)

Respondents.)
_____)

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

Docket No. MPRSA-01-2015-0035

CONSENT AGREEMENT AND FINAL ORDER

1. Pursuant to Section 105(a) of the Marine Protection, Research and Sanctuaries Act (“MPRSA”), 33 U.S.C. § 1415(a), and in accordance with Section 22.13(b) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation, Termination or Suspension of Permits* at 40 C.F.R. Part 22 (“*Consolidated Rules*”), and applicable delegations of authority, the Regional Administrator of the United States Environmental Protection Agency, Region I (“EPA”) issues, and Cashman Dredging and Marine Contracting Co., LLC (“Respondent Cashman”) and Cashman-Weeks NB, JV (collectively, “Respondents”) agree to this Consent Agreement and Final Order (“CAFO”).

2. EPA takes this action against the Respondents under the authority of Section 105(a) of the MPRSA for its transporting and dumping of dredged material into ocean waters in a manner inconsistent with an authorization and a permit issued pursuant to Section 103 of the



MPRSA, 33 U.S.C. § 1413, and therefore, without authorization or permit, in violation of Section 101(a) of MPRSA, 33 U.S.C. § 1411(a).

3. EPA initiated this proceeding against Respondents by filing an Amended Administrative Complaint, Docket No. MPRSA-01-2015-0035, under the authority of Section 105(a) of the MPRSA, and in accordance with the *Consolidated Rules*.

4. The factual and jurisdictional basis for proposing the assessment of civil penalties is set forth in the Amended Complaint and incorporated herein by reference.

5. Respondents admit sufficient allegations to establish EPA's jurisdiction over this matter, and without admitting to, or denying any violations or liability, waiving their right to a hearing under the MPRSA, to appeal any Final Order in this matter, and consent to the issuance of a Final Order without further adjudication.

6. EPA and Respondents agree that the above matter constitutes a disputed claim and that settlement of the above matter is in the public interest, and that entry of this CAFO without 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, without any admission of liability, it is hereby ordered and adjudged as follows:

Terms of Settlement

7. Pursuant to the relevant provisions of the MPRSA, including the penalty factors in Section 105(a) of the MPRSA, 33 U.S.C. § 1415(a), and based upon the nature of the violations, Respondent Cashman's agreement to perform a Supplemental Environmental Project ("SEP"), and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of \$42,000.

8. Respondents consent, for the purposes of settlement, to the payment of a civil penalty of \$42,000 and to the performance of the SEP that will cost a minimum of \$130,000. Respondents shall pay the penalty of \$42,000, as specified below, within 30 calendar days of the effective date of this Consent Agreement and Final Order.

9. Respondents shall pay the penalty of \$42,000 by cashier's or certified check, payable to "U.S. Environmental Protection Agency," and referencing the title and docket numbers of the action ("*In the Matter of Cashman Dredging Co., LLC, and Cashman-Weeks NB, JV, MPRSA -01-2015-0035*"). The payment shall be mailed via regular U.S. Postal Service mail, to:

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

10. Respondents shall simultaneously submit a copy of the check referenced in the preceding paragraph to:

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

and to:

Tonia Bandrowicz, Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code: OES 04-3
Boston, MA 02109-3912

11. The penalty provided for herein is a penalty within the meaning of 26 U.S.C. §162(f) and is not tax deductible for purposes of federal, state, or local law.

Supplemental Environmental Project

12. Respondent Cashman agrees to undertake a SEP that includes the purchase and installation of a GPS Interlock for Scow Barge Dumping (hereinafter referred to as the “GeoFence”) on each of its five scows, the subsequent collection of data on the operation and performance of the GeoFence, the drafting of a technical paper based on the collected data, a presentation on the operation of the GeoFence at an dredging industry conference or symposium, and the general promotion of the GeoFence technology and sharing of information on its operation within the dredging industry.

- a. The GeoFence is comprised of a small computer, a GPS, and a relay which will be custom installed on each of Respondent Cashman’s scows. When installed, the GeoFence will be designed to track the current position of the scow relative to the MPRSA permitted dump site coordinates. If the scow is outside of the permitted dump site coordinates, the relay will be triggered (be in an open position). The open relay will be sensed by the onboard hydraulic control system which will then block (prevent) the signal from the remote or onboard controls that dump the contents of the scow. Once the scow enters into the MPRSA permitted dump site coordinates, the relay is disengaged and the operator will then have the ability to dump the contents of the scow either remotely from the tug or manually using the on board dumping controls. The system will be designed so that it will still be possible to perform an emergency dump of the contents of the scow, either by a key switch on the remote control or a key switch on board the scow. The emergency dump keys will not be left

in the key switch, but will be stored on board the tug or on board the scow in a secure location.

- b. There will be a Q/C protocol developed for entering each of the disposal site coordinates and it will be password protected. Once coordinates are entered, they will be verified by senior Cashman engineering personnel via remote login to the system;
- c. Until all 5 scows have the GeoFence installed, Respondent Cashman will make every effort to use only those scows that have the GeoFence installed for its dredging and disposal operations.
- d. The cost of the GeoFence, per scow, is approximately \$26,000 for a total cost of approximately \$130,000 (see attached itemized cost sheet). Copies of all receipts will be provided to EPA with the SEP Completion Report submitted pursuant to paragraph 16 below.
- e. Respondent Cashman shall install and have the Geo Fence fully operational as soon as possible, but by no later than one year from the effective date of this CAFO (i.e., the date the CAFO is filed with the Regional Hearing Clerk). Respondent Cashman shall provide notice to EPA of the date by which the Geo Fence is installed and fully operational within 15 days of such date.
- f. Within one year of the date the Geo Fence is installed and fully operational as required by subparagraph (d), Respondent Cashman shall collect data and draft a technical paper on the operation and performance of the GeoFence. The technical paper shall include, but not be limited to

an introduction describing the reason for developing the system and the concept and the benefits of installing the system for dredging projects. It will be followed by detailed design criteria, system schematics and installation instructions. There will be a section on system performance using actual collected data in the field, including disposal locations at which the system(s) were employed, number of trips utilized, feedback from tug captains and scowmen (if utilized), information on system reliability and recommendations for application of the product in maritime use. Respondent Cashman shall, as part of its SEP Completion Report submitted pursuant to paragraph 16 below, provide a copy of such technical paper to EPA. EPA shall have the right to distribute such technical paper to other interested parties or reference such technical paper, in whole or part, in any EPA materials.

- g. Within one year of the date the Geo Fence is installed and fully operational as required by subparagraph (d), Respondent Cashman shall, as part of its SEP Completion Report submitted pursuant to paragraph 16 below, certify in writing that it has made a presentation on the installation, operation and performance of the GeoFence at a WEDA conference or similar industry conference or symposium.

13. Respondent Cashman is responsible for the satisfactory completion of the SEP in accordance with the requirements of this CAFO. Respondent Cashman may use contractors and/or consultants in planning and implementing the SEP, but Respondent Cashman shall be solely responsible for the completion of the SEP.

14. With regard to the SEP, Respondent Cashman 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 Cashman in good faith estimates that the costs to implement the SEP is, at a minimum, \$130,000;
- b. That, as of the date of executing this CAFO, Respondent Cashman 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 Cashman was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CAFO;
- d. That Respondent Cashman has not received and will not receive credit for the SEP in any other enforcement action;
- e. That Respondent Cashman will not receive any reimbursement for any portion of the SEP from any another person or entity; and
- f. That for federal income tax purposes, Respondent Cashman agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

15. Respondent Cashman further certifies that it is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP.

16. Within 30 days after completion of the SEP, Respondent Cashman shall submit a SEP Completion Report to EPA which shall contain, at a minimum, the following information:

- a. A detailed description of the SEP as implemented, including, but not limited to, Respondent Cashman's technical paper on the installation, operation, and performance of the Geo Fence and certification that Respondent Cashman has made a presentation on the installation, operation and performance of the GeoFence at a WEDA conference or similar industry conference or symposium;
- b. Description of any problems encountered in completing the SEP and the solutions thereto;
- c. An itemized list of all eligible SEP costs expended, along with documentation of such expenses; and
- d. Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO.

17. EPA may require information in addition to that described in the preceding paragraph in order to evaluate the SEP Completion Report.

18. After receiving the SEP Completion Report, EPA shall notify Respondent Cashman as to whether it has satisfactorily completed the SEP. If Respondent has not completed the SEP in accordance with this CAFO, stipulated penalties may be assessed under Paragraphs 20 through 23 of this CAFO.

19. Any public statement, oral or written, in print, film, or other media, made by Respondent Cashman making reference to the SEP under this CAFO shall include the following language: "This project was undertaken in connection with the settlement of an administrative

enforcement action, *In the Matter of Cashman Dredging Co., LLC, and Cashman-Weeks NB, JV*, Docket Nos. MPRSA 01-2015-0035, taken by the U.S. Environmental Protection Agency under the Marine Protection, Research and Sanctuaries Act.”

Stipulated Penalties for Failure to Complete SEP/Failure to Spend Agreed-on Amount

20. In the event that Respondent Cashman fails to comply with any of the terms or provisions of this CAFO relating to the performance of the SEP described above or in subsequent correspondence from EPA, or to the extent that the actual expenditures for the SEP do not equal or exceed a cost of \$130,000, Respondent Cashman shall be liable for stipulated penalties according to the provisions set forth below:

- a. Except as provided in subparagraph (b) below, if the SEP has not been completed satisfactorily pursuant to this CAFO, Respondent Cashman shall pay a stipulated penalty in the amount of \$143,000 (which is 110% of the minimum amount of the SEP expenditure) plus interest from the effective date of this CAFO;
- b. If the SEP is not completed satisfactorily pursuant to this CAFO, but the Complainant determines that Respondent Cashman: (i) made good faith and timely efforts to complete the Project; and (ii) certifies, with supporting documentation, that at least 90 percent of the \$130,000 which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty;
- c. If Respondent Cashman completes a portion of the SEP satisfactorily pursuant to this CAFO but the Respondent Cashman spent less than 90 percent of the \$130,000 required to be spent on the SEP, Respondent

Cashman shall pay a stipulated penalty in the amount of the difference between the required SEP expenditure of \$130,000 and the amount actually spent by Respondent Cashman, plus interest from the effective date of this CAFO; and

- d. For failure to submit the SEP Completion Report required above, Respondent Cashman shall pay a stipulated penalty in the amount of \$100 for each day after the report was originally due until the report is submitted.

21. The determination of whether the SEP has been satisfactorily completed and whether the Respondent Cashman has made a good faith and timely effort to implement the SEP shall be in the sole discretion of EPA.

22. Stipulated penalties under this CAFO 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.

23. Respondent Cashman shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of paragraph 9 above.

General Provisions

24. The provisions of this CAFO shall be binding upon Respondents and Respondents' officers, directors, and successors or assigns.

25. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the MPRSA for the violations of the MPRSA alleged in the Amended Complaint. Compliance with this CAFO shall not be a defense to any actions subsequently commenced

pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondents to comply with such laws and regulations. This CAFO in no way relieves Respondents or their employees of any criminal liability. Nothing in this CAFO shall be construed to limit the authority of the United States to undertake any action against Respondents in response to conditions which may present an imminent and substantial endangerment to the public health or welfare or the environment.

26. This CAFO does not constitute a waiver, suspension or modification of the requirements of the MPRSA, or any regulations promulgated thereunder.

27. This CAFO shall not relieve Respondents of their 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.

28. Each party shall pay its own costs and counsel fees in connection with this action.

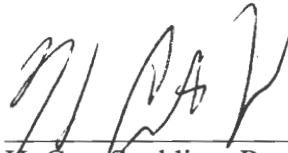
29. Pursuant to Section 22.5(c)(4) of the enclosed *Consolidated Rules*, the following individual is authorized to receive service on behalf of EPA:

Tonia Bandrowicz,
Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code: OES 04-3
Boston, MA 02109-3912

30. Each undersigned representative of the parties to this CAFO 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. This CAFO may be signed in counterparts, and its validity shall not be challenged on that basis.

THE UNDERSIGNED PARTY enters into this Consent Agreement and Final Order in the Matter of Cashman Dredging and Marine Contracting Co., LLC and Cashman-Weeks NB, JV, EPA Docket No. MPRSA-01-2015-0035, on behalf of EPA:

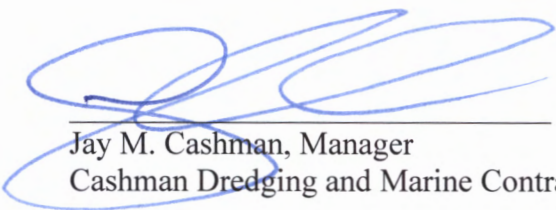
9/22/15
Date



H. Curt Spalding, Regional Administrator
Office of Environmental Stewardship
U.S. EPA

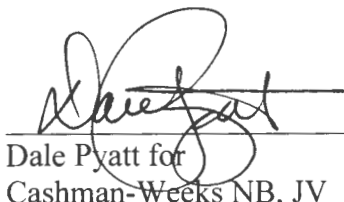
THE UNDERSIGNED PARTY enters into this Consent Agreement and Final Order in *the Matter Cashman Dredging and Marine Contracting Co., LLC., and Cashman-Weeks NB, JV,* EPA Docket No. MPRSA-01-2015-0035, EPA Docket No. MPRSA-01-01-2015-0035, on behalf of Respondent Cashman:

9-25-15
Date


Jay M. Cashman, Manager
Cashman Dredging and Marine Contracting Co., LLC

THE UNDERSIGNED PARTY enters into this Consent Agreement and Final Order in *the Matter Cashman Dredging and Marine Contracting Co., LLC., and Cashman-Weeks NB, LLC,* EPA Docket No. MPRSA-01-01-2015-0035, on behalf of Respondent Cashman-Weeks:

9-25-15
Date


Dale Pyatt for
Cashman-Weeks NB, JV