



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

SEP 29 2016

CERTIFIED MAIL 7012-1010-0002-6291  
RETURN RECEIPT REQUESTED

Katie Mackie LaVoy  
Vice President & General Counsel – Dredging Operations  
Great Lakes Dredge and Dock, LLC  
Corporate Office  
2122 York Road  
Oak Brook, Illinois 60523

Re: Consent Agreement and Final Order No. MPRSA-04-2016-7500

Dear Ms. LaVoy:

Enclosed is a copy of the Consent Agreement and Final Order that has been finalized by the U.S. Environmental Protection Agency Region 4 and the Regional Administrator. Please make note of the provisions under Section IV.

Thank you for your cooperation in settling this matter. Should you have any further questions, you may contact Mr. Philip Mancusi-Ungaro, Attorney-Advisor, at (404) 562-9519 or via email at [mancusi-ungaro.philip@epa.gov](mailto:mancusi-ungaro.philip@epa.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "James D. Giattina".

James D. Giattina  
Director  
Water Protection Division

Enclosure

cc: Kelly C. Finch, Army COE  
David Bernhart, NOAA Fisheries  
Captain David J. Yoder, Mayport Naval Base

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

IN THE MATTER OF )  
 )  
**Great Lakes Dredge and Dock Co. LLC.** )  
 )  
 )  
 Respondent. )  
 )  
 Proceeding Pursuant to §105(a) of the )  
 Marine Protection, Research and )  
 Sanctuaries Act, 33 U.S.C. §1415(a) )  
----- )

ADMINISTRATIVE  
CONSENT AGREEMENT AND  
FINAL PENALTY ORDER

Docket No. MPRSA-04-2016-7500

USERA-REGION 4  
 OFFICE OF REGIONAL  
 COUNSEL  
 2016 SEP 29 PM 12:11  
 HEARING CLERK

**CONSENT AGREEMENT**

**I. Preliminary Statement**

Complainant, the United States Environmental Protection Agency (“EPA”), and Great Lakes Dredge and Dock Company, LLC (“Respondent” or “GLDD”), the parties herein, have agreed to a settlement of this matter, and the entry of this Consent Agreement and Final Order (“CAFO” or “Agreement”).

**II. Statutory Authority**

1. This administrative proceeding for the assessment of a civil penalty is instituted pursuant to Section 105(a) of the Marine Protection, Research and Sanctuaries Act (“MPRSA” or “Act”), 33 U.S.C. §1415(a).
2. The following Findings of Fact are made and Final 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 by the Administrator to the Regional Administrator of the EPA Region 4, and this authority has been duly re-delegated to the undersigned Director of the Water Protection Division of Region 4 of EPA.
3. Pursuant to MPRSA section 101(a)(1), it is unlawful for any person to transport from the United States any material for the purpose of dumping it into the ocean waters except as authorized by and *consistent with a permit issued pursuant to the MPRSA. 33 U.S.C. §1411(a)(1). Ocean waters are all those waters of the open seas lying seaward of the base line from which the territorial sea is measured, as provided for in the Convention of the Territorial Seas and the Contiguous Zone.*

4. Pursuant to MPRSA Section 105(a), 33 U.S.C. §1415(a), the EPA may assess administratively a civil penalty of not more than \$50,000 for each violation, against any person who violates the Act, the regulations promulgated pursuant to the Act, or a permit issued pursuant to the Act. This civil penalty has been adjusted by the Federal Civil Penalties Inflation Act of 1990, 28 U.S.C. § 2461, and the Debt Collection Improvement Act of 1996, 31 U.S.C. §3701. The EPA has published inflation-adjusted maximum penalties. *See* 73 Fed. Reg. 75340 (Dec. 11, 2008). *See* 40 CFR § 19.4. Accordingly, the maximum penalty for each violation of Section 105(a) occurring after January 12, 2009 is \$70,000 per violation. In assessing a penalty, each day of a continuing violation, as well as the unauthorized dumping from each of several vessels, constitutes a separate offense. MPRSA, §105(c), 33 U.S.C. §1415(c).
5. This Consent Agreement and Final Order is issued in accordance with 40 C.F.R. §§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”, 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 issuance of a consent agreement and final order.
6. Respondent is a “person” as defined under Section 3(e) of the Act, 33 U.S.C. §1402(e).
7. The dredged sediments constitute “material” as defined at Section 3(c) of the Act, 33 U.S.C. §1402(c).
8. The movement of the material from the dredge site to the designed ODMDS constitutes “transport” or transportation as defined at Section 3(l) of the Act, 33 U.S.C. §1402(l).
9. The disposal of the dredged sediments in this instance is “dumping” within the meaning of Section 3 of the Act, 33 U.S.C. §1402(f).
10. Section 103 of the Act, 33 U.S.C. §1413 authorizes the Secretary of the Army to issue permits for the transportation of dredged material for the purpose of dumping it into ocean waters.

### **III. Procedural Background and EPA’s Findings of Fact**

11. Pursuant to Section 103 of MPRSA, 33 U.S.C. § 1413, on July 2, 2010, the U.S. Army Corps of Engineers, Jacksonville District (SAJ), issued Department of the Army Permit No. SAJ-2002-2052, (SP-BAL) (Permit), authorizing the deepening of the Mayport Turning Basin and Entrance Channel and Jacksonville Harbor Bar Cut 3.
12. In addition to specifying the dredging locations and the specific volumes of material to be dredged in each location, the Permit authorized the transport to and disposal of the dredged material at the Jacksonville and Fernandina Beach Ocean Dredged Material Disposal sites (ODMDs).
13. The July 2, 2010 Permit also included the following special conditions:
  - a) Special Condition 6 – Biological Opinion: ....Authorization under this Corps permit is conditional upon compliance with all of the mandatory terms and conditions associated with

incidental take of the attached BO, which terms and conditions are incorporated by reference in this permit...

- b) **Biological Opinion (BO) Section 9.4 Terms and Conditions:** ....1. The Navy and USACE shall require the use of a Silent Inspector on all dredge vessels to ensure compliance with the 10-knot speed limit during the right whale calving season (November 15 through April 15 of each year.)...
- c) **Special Condition 10 – Loss of Material:** The Permittee shall not allow water or dredged material placed in a hopper dredge or scow to flow over the sides or leak from such vessels during transportation to the Jacksonville or Fernandina Beach ODMDSs.
- d) **Special Condition 12 – Jacksonville ODMDS Disposal Release Zone Restrictions:** The Permittee shall prescribe to the following Coordinates and Conditions for the Release Zones within the Jacksonville ODMDS which includes specific release zones as specified in Attachment 3 to the permit (Release Zone Time Table).
- e) **Special Condition 13 – Fernandina Beach ODMDS Disposal Release Zone Restrictions:** The Permittee shall ensure that the disposal of material in the Fernandina Beach ODMDS shall occur no less than 1,500 feet inside the site boundaries within the ODMDS defined by the following coordinates:

	<i>Geographic (NAD83)</i>		<i>State Plane (FL East 0901 Ft NAD83)</i>	
	<i>NW Corner</i>	<i>30E32.7670'N</i>	<i>81E18.8359'W</i>	<i>2258679 N</i>
<i>NE Corner</i>	<i>30E32.7670'N</i>	<i>81E17.1409'W</i>	<i>2258656 N</i>	<i>566237 E</i>
<i>SW Corner</i>	<i>30E31.2619'N</i>	<i>81E18.8359'W</i>	<i>2249556 N</i>	<i>557319 E</i>
<i>SE Corner</i>	<i>30E31.2619'N</i>	<i>81E17.1408'W</i>	<i>2249532 N</i>	<i>566214 E</i>

- f) **Special Condition 14 – Returning Vessels:** The Permittee shall ensure the hopper dredge or scow shall be in the closed position and all discharge of material has ceased before the disposal vessel leaves the ODMDS.
- g) **Special Condition 15 - Disposal Operations Compliance:** The Permittee shall ensure that the dredge material is released in either the Fernandina Beach or Jacksonville ODMDS release zone. If a violation occurs: a) the violation shall be reported immediately to the contracting officer's representative and to EPA's Ocean Dumping Coordinator. b) written notification shall be faxed to the EPA Region 4, Attn: EPA's Ocean Dumping Coordinator, to the U.S. Army Corps of Engineers, Operations, and the U.S. Army Corps of Engineers, Enforcement Section within twenty-four (24) hours after the violation occurs. A Compliance Report shall be submitted within

three working days after a violation is reported.

14. Respondent entered into a contract with the Army Corps of Engineers, Jacksonville District, (#W912EP-10-C-0038) to conduct the dredging.

15. On April 8, 2014, the EPA issued a “show cause” letter to the Respondent detailing the alleged MPRSA violations and inviting the Respondent to meet with the EPA to review the allegations.

16. On June 19, 2014, the EPA and Respondent met to discuss the allegations. In response to that meeting, the Respondent provided additional written material to the EPA on July 23, 2014. In addition, on November 3, 2014, the Respondent sent the EPA an email with an attachment that included speed data associated with this project. The EPA has reviewed the record associated with this project, including the July 23, 2014, response from the Respondent and the November 3, 2014, submittal.

17. As a result of that meeting, and further discussions, the EPA alleges the following violations of MPRSA:

- a) On five occasions, the Respondent disposed dredged material in the Atlantic Ocean outside of the Jacksonville ODMDS release zone specified for disposal by special condition 12 in the permit (see also construction specification 1.4.2.1). Based on modeling analysis conducted by USACE staff in September 2013 the required level of dilution serving as the basis for permit requirements was not achieved on these five occasions;
- b) On seven occasions, the Respondent disposed dredged material in the Atlantic Ocean outside of the Jacksonville ODMDS release zone specified for disposal by special condition 12 in the permit (see also construction specification 1.4.2.1 and 3.3.1);
- c) On 12 occasions, the Respondent left the hull open outside the designated ODMDS, a violation of special condition 14 in the permit (see also construction specification 3.3.3);
- d) On two occasions, the Respondent caused excessive leakage of dredged material to occur en route to the ODMDS, a violation of special condition 10 in the permit (see also construction specifications 1.4.3 and 3.3.2);
- e) On 52 occasions, the Respondent exceeded speed limits set forth in the permit (see special condition 6 and also construction specification 1.4.2.2); and
- f) On 11 occasions, the Respondent did not report to the EPA or the USACE within 24 hours misplaced materials, a violation of special condition 15 in the permit (see also construction specification 3.3.8).

18. Based on these Findings as set forth in this CAFO, the EPA finds the 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(e) of the Act, 33 U.S.C. §1413(e).

#### **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 40 C.F.R. §22.18, it is hereby agreed by and between the parties in settlement and compromise of disputed positions as follows:

### Jurisdiction

19. For the purpose of this proceeding, the Respondent admits the jurisdictional allegations and neither admits nor denies the factual allegations set forth in this CAFO. Without admitting or denying any violations or liability with the exception of jurisdiction, the Respondent waives its right to contest the allegations set out above and its right to appeal the Final Order accompanying this Consent Agreement.

20. The entry of this CAFO shall not constitute a finding or determination that the Respondent and/or its agents or contractors violated any laws or regulations cited in the Complaint. In addition, nothing in this CAFO shall be construed or interpreted by any governmental entity (Federal, State, or local) or private party as a finding of fault or 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

21. 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, the EPA has determined that a civil penalty in the amount of **\$450,000.00 (four hundred and fifty thousand dollars and zero cents)**, is appropriate in settlement of this case.

22. The Respondent shall pay, by cashier's or certified check, a civil penalty in the amount of **four hundred and fifty thousand dollars and zero cents (\$450,000.00)** 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:

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

For other payment options (Ex: Wire Transfers, Overnight Mail, ACH, and On Line) please refer to Attachment A.

Respondent shall also send copies of such payment to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 4  
61 Forsyth St SW  
Atlanta, Ga 30303

and to:

Philip G. Mancusi-Ungaro  
Attorney Advisor  
Office of Water Legal Support  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
61 Forsyth St SW  
Atlanta, GA 30303.

23. 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 18 above shall represent a civil penalty assessed by the EPA and shall not be deductible from Respondent's federal or state taxes.

#### V. General Provisions

24. This CAFO 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. Other than as expressed herein, compliance with this CAFO shall not be a defense to any actions subsequently commenced under federal laws and regulations administered by the EPA.

25. Nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of the United States 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 agreement is based, or for Respondent's violation of any federal or state statute, regulation or permit.

26. Except as otherwise set forth in this document, this CAFO constitutes a settlement by Complainant and Respondent of all claims for civil penalties under the MPRSA with respect to only those violations alleged in this CAFO based on the MPRSA Permit. Except as otherwise set forth in this document, compliance with this CAFO shall resolve the allegations of violations contained in this CAFO. Nothing in this CAFO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent, or other liability resulting from violations that were not alleged in this CAFO. Other than as expressed in this document, Complainant does not waive any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit within its statutory authority, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.
27. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.
28. This CAFO applies to and is binding upon Respondent and its successors and assigns.
29. Any change in the legal status of Respondent including, but not limited to, any transfer of assets of real or personal property, shall not alter Respondent's responsibilities under this CAFO. Responsibility for the requirements of this CAFO will remain with the Respondent.
30. Each party shall bear its own costs and attorneys' fees in connection with the action resolved by this CAFO.
31. In accordance with 40 C.F.R. Part 22.5, the individuals below are authorized to receive service relating to this proceeding.

For Complainant:

Mr. Philip Mancusi-Ungaro  
Attorney-Advisor  
U.S. Environmental Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
(404) 562-9519

For Respondent:

Cynthia Taub  
Counsel to GLDD  
Steptoe & Johnson LLP  
1330 Connecticut Avenue, NW  
Washington, DC 20036  
(202) 429-8133  
ctaub@steptoe.com



31. This CAFO in no way affects the rights of the Complainant as against any person or entity not a party to this CAFO.

32. Effective upon signature of this CAFO by the Respondent, Respondent agrees that the time period commencing on the date of its signature and ending on the date the EPA receives from the Respondent the payment required by this CAFO. This payment date shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the EPA related to the matters addressed in this CAFO. Any action brought by the EPA under the MPRSA related to the matters addressed, the Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If the EPA gives notice to the Respondent that it will not make this CAFO effective, the statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by the EPA.

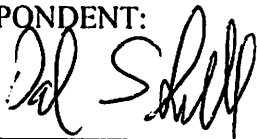
**VII. Release by Respondent**

33. Respondent hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States, including any department, agency or instrumentality of the United States, with respect to the matters addressed and resolved in this CAFO, including but not limited to, any claim that any of the matters or actions described in this CAFO have resulted in a taking of Respondent's property without compensation.

**VIII. Effective Date**

34. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

For RESPONDENT:

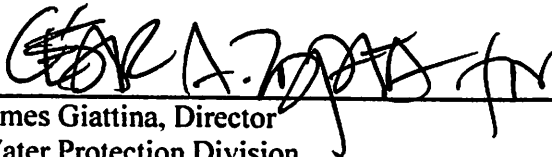


\_\_\_\_\_  
Great Lakes Dredge and Dock Company, LLC

9/15/2016

\_\_\_\_\_  
Date

For COMPLAINANT:



\_\_\_\_\_  
James Giattina, Director  
Water Protection Division  
U.S. Environmental Protection Agency, Region 4

9/22/16

\_\_\_\_\_  
Date

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**IN THE MATTER OF**

**Great Lakes Dredge and Dock Co. LLC,**

**Respondent.**

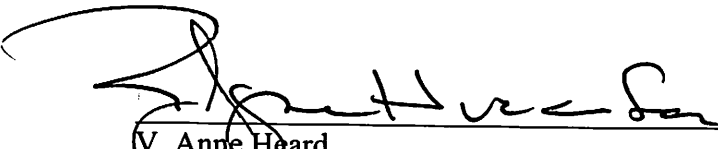
Proceeding Pursuant to §105(a) of the  
Marine Protection, Research and  
Sanctuaries Act, 33 U.S.C. §1415(a)  
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**Consent Agreement  
and Final Order**

**Docket No: MPRSA-04-7500**

**Final Order**

The Regional Administrator of the U.S. Environmental Protection Agency, Region 4, 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 4, Atlanta, GA.

  
\_\_\_\_\_  
V. Anne Heard  
Acting Regional Administrator  
U.S. Environmental Protection Agency, Region 4

9/20/16  
Date

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order in the matter of: **Docket No. MPRSA 04-2016-7500** on the parties listed below in the manner indicated:

EPA Internal Mail:

Mr. Christopher McArthur  
Environmental Engineer  
Data Information and Analysis Section  
U.S. EPA, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

By hand-delivery:

Mr. Philip Mancusi-Ungaro  
Office of Regional Counsel  
U.S. EPA, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

By Certified mail,  
return receipt requested:

Katie Mackie LaVoy  
Vice President & General Counsel – Dredging Operations  
Great Lakes Dredge and Dock, LLC  
Corporate Office  
2122 York Road  
Oak Brook, Illinois 60523

Dated: 9-29-16



Patricia Bullock  
Regional Hearing Clerk  
U. S. Environmental Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

## **ATTACHMENT A**

### **COLLECTION INFORMATION**

#### **WIRE TRANSFERS:**

Wire transfers should be directed to the Federal Reserve Bank of New York

Federal Reserve Bank of New York

ABA = 021030004

Account = 68010727

SWIFT address = FRNYUS33

33 Liberty Street

New York NY 10045

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

#### **OVERNIGHT MAIL:**

U.S. Bank

1005 Convention Plaza

Mail Station SL-MO-C2GL

St. Louis, MO 63101

Contact: Natalie Pearson

314-418-4087

#### **ACH (also known as REX or remittance express):**

Automated Clearinghouse (ACH) for receiving US currency

PNC Bank

808 17<sup>th</sup> Street, NW

Washington, DC 20074

Contact – Jesse White 301-887-6548

ABA = 051036706

Transaction Code 22 - checking

Environmental Protection Agency

Account 310006

CTX Format

#### **ON LINE PAYMENT:**

There is now an On Line Payment Option, available through the Dept. of Treasury. This payment option can be accessed from the information below:

[WWW.PAY.GOV](http://WWW.PAY.GOV) (Enter sfo 1.1 in the search field Open form and complete required fields).