

II. STATUTORY AUTHORITY

3. Section 3(e) of the MPRSA, 33 U.S.C. § 1402(e) defines “Person” to include “any private person or entity.”

4. Section 101(a) of the MPRSA, 33 U.S.C. § 1411(a), prohibits a person from transporting from the United States any material for the purpose of dumping it into ocean waters, except as may be authorized by a permit issued pursuant to Sections 102 or 103 of the MPRSA, 33 U.S.C. §§ 1412 or 1413, and as subject to regulations issued pursuant to Section 108 of the MPRSA, 33 U.S.C. § 1418.

5. Regulations promulgated pursuant to Section 108 of the MPRSA include 40 C.F.R. 220.1 which prohibits a person from transporting from the United States any material for the purpose of dumping it into ocean waters, “except as authorized ... pursuant to section 103 of the MPRSA, and subject to other applicable regulations promulgated pursuant to section 108 of the MPRSA.”

6. Pursuant to Section 103 of the MPRSA, 33 U.S.C. § 1413, and the regulations promulgated thereunder, the U.S. Army Corps of Engineers (“USACE”) may issue permits for the transportation of “dredged material” (defined in Section 3(i) of the MPRSA, 33 U.S.C. § 1402(i), as “any material excavated or dredged from the navigable waters of the United States”) for the purpose of dumping it into “ocean waters” (defined in Section 3(b) of the MPRSA, 33 U.S.C. § 1402(b), as “those waters of the open seas lying seaward of the base line from which the territorial sea is measured”) as long as the dumping will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities.

7. Pursuant to Section 103(e) of the MPRSA, 33 U.S.C. § 1413(e), for federal projects involving dredged material, the USACE may, in lieu of the permit procedures, issue regulations which require the application to such projects of the same criteria, other factors to be evaluated, the same procedures, and the same requirements which apply to the issuance of permit under that section. 33 C.F.R. Part 324. The criteria to be applied by the USACE in its review of activities involving the transportation of dredged material for the purpose of dumping it in ocean waters pursuant to Section 103 of the MPRSA is established under 40 C.F.R. subchapter H. 33 C.F.R. § 324.4(b).

8. Under 40 C.F.R. 220.2(h), a “Dredged Material Permit” for the transportation of dredged material for the purpose of dumping it in ocean waters, includes “any Federal project reviewed under section 103(e) of the MPRSA, 33 U.S.C. § 1413(e).”

9. Under Section 105(a) of the MPRSA, 33 U.S.C. § 1415(a), as amended by the 2023 *Civil Monetary Penalty Adjustment Rule*, 88 Fed. Reg. 986 (Jan. 6, 2023), any person who transports dredged material for the purpose of dumping it into ocean waters in a manner inconsistent with a permit issued under Section 103 of the MPRSA, 33 U.S.C. § 1413, where violation occurred after November 2, 2015, and penalties are assessed on or after January 6, 2023, shall be liable for a civil penalty of not more than \$ 234,936 for each violation.

III. FINDINGS OF VIOLATION

10. Respondent is a limited liability company incorporated under the laws of Delaware, with a principal place of business at 9811 Katy Freeway, Suite 1200, Houston, Texas, and is, therefore, a “private person or entity.” As such, Respondent is a “person” as defined under Section 3(e) of the MPRSA, 33 U.S.C. § 1402(e).

11. In August 2021, the USACE signed contract W912WJ-21-C-0027 (“Contract-

0027”) with Respondent for the purpose of dredging, transporting, and disposing of “dredged material,” as defined at Section 3(i) of the MPRSA, 33 U.S.C. § 1402(i), from the Portsmouth Harbor Federal Navigation Project into the Isles of Shoals North Disposal Site (“IOS-N”), located in “ocean waters,” as defined at Section 3(b) of the MPRSA, 33 U.S.C. § 1402(b).

12. Contract-0027 authorized disposal of dredged materials within 500 feet of disposal point coordinate: Latitude 43.021654 decimal degrees north and Longitude 70.456803 decimal degrees west. A total of 192 loads of dredged material were taken to IOS-N by Respondent under Contract-0027.

13. During transportation of the March 20, 2022, load, approximately 4,785 cubic yards of fine-grained material were discharged approximately 0.37 nautical miles (0.42 miles) from the edge of the designated placement location within the IOS-N as specified by Contract-0027 and accompanying authorization letter. The unauthorized disposal occurred at Latitude 43.020932 north, Longitude 70.466943 west, a location to the west of the designated disposal coordinates within the IOS-N. This is about 400 feet outside of the overall IOS-N disposal site boundary.

14. Respondent’s transport of dredged material for the purpose of dumping it into ocean waters and dumping of such dredged material at locations outside the disposal point coordinates authorized by Contract-0027 was not authorized by Section 103 of the MPRSA, 33 U.S.C. § 1413.

15. The dumping of such dredged material at locations outside the disposal point coordinates authorized by Contract-0027 is a violation of Section 101(a) of the MPRSA, 33 U.S.C. § 1411(a), and, therefore, Respondent is subject to penalties under Section 105(a) of the

MPRSA, 33 U.S.C. § 1415(a).

IV. TERMS OF SETTLEMENT

The Penalty

16. Pursuant to the relevant provisions of the MPRSA, including the penalty factors and authority in Section 105(a) of the MPRSA, 33 U.S.C. § 1415(a), and based upon the nature of the violations, Respondent Great Lake's agreement to institute certain supplemental actions as specified below and designed to prevent future misdumps (herein referred to collectively as the "Project"), and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of \$92,500.

17. Respondent consents, for the purposes of settlement, to the payment of a civil penalty of \$92,500 and to the performance the Project which is estimated to cost in excess of \$100,000. Respondent shall pay the penalty of \$92,500, as specified below, within 30 calendar days of the effective date of this Consent Agreement and Final Order.

18. Pursuant to 40 CFR § 22.31, within 30 calendar days of the effective date of this CAFO, Respondent shall remit the foregoing penalty payment via one of the following approved methods:

If remitted by regular U.S. mail:

U.S. EPA / Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

If remitted by any overnight commercial carrier:

U.S. Bank
Government Lockbox 979078
1005 Convention Plaza

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

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

If remitted through the Automated Clearing House (ACH) for receiving US currency:

U.S. Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 -- checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, Maryland 20737

19. At the time of payment, Respondent shall simultaneously send notice of the payments and copies of the checks to:

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code ORC 04-6)
Boston, MA 02109-3912

and

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

20. 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 CAFO becomes final.

21. 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.

The Project

22. Respondent agrees to perform the following Project by the dates specified herein:

a. By December 15, 2023, complete retrofitting of Great Lakes scow control boxes (approximately 30 boxes) to include a secondary dump initiation button so that two steps are required to initiate a dumping sequence, as specified in the Carlton Fields May 15, 2023, letter (attached hereto), at an estimated cost of approximately \$3,500, and provide training on the use of the updated control boxes, and

b. By June 15, 2024, complete installation of a geofence-type control hardware/software offered by ADISS, Inc., on all fourteen (14) Great Lakes scows, as specified in the Carlton Fields May 15, 2023, letter (attached hereto), at an estimated cost of approximately \$108,000, and provide training on the geofence-type control system.

23. With regard to the Project, Respondent certifies that all cost estimates provided to EPA in connection with the Project are truthful, complete, and accurate and that Respondent in good faith estimates that the costs to implement the Project, exclusive of any training, to be at least \$100,000.

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

25. Within 30 days after completion of the two components of the Project as described in paragraph 22, above, Respondent shall submit a “Project Completion Report” to EPA which shall contain, at a minimum, the following information:

- a. A detailed description of the Project as implemented, including, but not limited to: specific information on the type and installation of the secondary dump initiation button and the type and installation of the geofence-type disposal control system, the number of scows retrofitted with each technology along with each scow’s name or other identifying information, and the dates of such installation;
- b. A detailed description of any problems encountered in completing the Project and the solutions thereto;
- c. An itemized list of all eligible Project costs expended, along with documentation of such expenses; and
- d. Certification that the Project has been fully implemented pursuant to the provisions of this CAFO.

26. After receiving the Project Completion Report, EPA shall:

- a. Notify Respondent in writing that it has satisfactorily completed the Project in all or in part;

- b. Provide Respondent with written notification of the need for additional information for EPA to determine if the Project has been satisfactorily completed and a date for providing that information; and/or
- c. Provide Respondent with written notice of any deficiencies in completion of the Project and an opportunity to cure those deficiencies within a specified amount of time to be determined by EPA.

27. If after written notification of the need for additional information and/or the time period for curing any deficiencies has passed, EPA reasonably determines that the Project has not been satisfactorily completed, in whole or in part, Respondent shall be liable for stipulated penalties in accordance with paragraphs 30 to 32, below.

28. Within 365 days of completion of the Project, Respondent shall provide EPA with a list of dredging projects using the secondary dump initiation button and the geofence-type disposal control system and any observations of their effectiveness or noted issues.

29. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the Project 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 Great Lakes Dredge & Dock Co., LLC, Docket No. MPRSA-01-2024-0006*, taken by the U.S. Environmental Protection Agency under the Marine Protection, Research and Sanctuaries Act.” This paragraph does not apply to statements made to government agencies that may reference the two-step dump initiation sequence and geofence software.

**Stipulated Penalties for Failure to Complete Project as Proposed
or Failure to Spend Agreed-on Amount**

30. Respondent shall be liable for stipulated penalties as follows:
- a. For every scow on which Respondent fails to implement both components of the Project, without adequate justification and EPA approval, Respondent shall be subject for a stipulated penalty of \$5,892.
 - b. In addition, Respondent's failure to submit the Project Completion Report required by paragraph 25, within the specified time frame, shall be construed as failure to implement the Project as required by paragraph 22, and Respondent shall be liable for the stipulated penalties above.

31. Stipulated penalties under this CAFO shall begin to accrue on the day after performance is due, regardless of whether EPA has notified Respondent and/or demanded payment of stipulated penalties.

32. Respondent 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 paragraphs 18 through 21 above.

General Provisions

33. Consistent with 40 C.F.R. 22.18(b)(2), Respondent admits the jurisdictional allegations set forth in this CAFO, consents to the assessment of the civil penalty stated herein, and waives its right to contest the allegations and its right to appeal the proposed Final Order accompanying this Consent Agreement.

34. Respondent neither admits nor denies the factual or non-jurisdictional allegations contained in this CAFO.

35. The provisions of this CAFO shall apply to and be binding on Respondent, its

successors or assigns.

36. The civil penalty provided under this CAFO, and any interest, 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.

37. This CAFO does not constitute a waiver, suspension, or modification of the requirements of the MPRSA or any regulations or permits promulgated thereunder. Except as provided in paragraph 38, 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 Respondent to comply with such federal laws and regulations administered by EPA.

38. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the MPRSA for the violations of the MPRSA alleged herein and as alleged in EPA's August 22, 2022, letter to Respondent. Payment of the penalty and completion of the Project and any associated stipulated penalties pursuant to this CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged herein and as alleged in EPA's August 22, 2022, letter to Respondent.

39. This CAFO shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law, or to undertake any action against Respondent in response to conditions which may present

an imminent and substantial endangerment to public health, welfare, or the environment. 40 CFR § 22.18(c).

40. Except as provided in paragraph 38 above, 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.

41. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of all parties and approval of the Regional Judicial Officer, except that the Regional Judicial Officer need not approve written agreements between the parties modifying the Project description or schedule for implementation. If Respondent determines that the Project description or schedule for implementation should be modified, Respondent may submit a written request to EPA for consideration.

42. 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.

43. 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.

44. Respondent agrees to acceptance of both (a) EPA's digital or an original signature on this CAFO and (b) service of the fully executed CAFO on the Respondent by mail or

electronically by e-mail. EPA agrees to acceptance of the Respondent's digital or an original signature on this CAFO.

SIGNATURE PAGE OF CONSENT AGREEMENT FOLLOWS

FOR GREAT LAKES DREDGE & DOCK CO., LLC



Vivienne Schiffer,
Senior Vice President and Chief Legal Officer
Great Lakes Dredge & Dock Co., LLC

Date: July 19, 2023

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

Cash, David
Digitally signed by Cash,
David
Date: 2023.07.25 06:00:58
-04'00'

Date: _____

David W. Cash, Regional Administrator
U.S. Environmental Protection Agency, Region 1

IV. FINAL ORDER

45. Pursuant to 40 C.F.R. §§ 22.18(b) and (c) of the Consolidated Rules, the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

46. The Respondent is ORDERED to comply with all terms of the Consent Agreement, which shall become effective on the date it is filed with the Regional Hearing Clerk.

Date: _____

LeAnn Jensen
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 1