



USEPA – Region II
Regional Hearing Clerk

REGION 2

NEW YORK, N.Y. 10007

December 12, 2024

John D. Witte
Executive Vice-President
Donjon Marine Co., Inc.
100 Central Avenue
Hillside, New Jersey 07205

**Re: Notice of Proposed Assessment of a Civil Penalty
Donjon Marine Co., Inc.
Docket No. MPRSA-02-2025-6001**

Dear Mr. Witte:

Enclosed is an Administrative Complaint, which the U.S. Environmental Protection Agency, Region 2 (“EPA”) is issuing to Donjon Marine Co., Inc. (“Donjon”). Based upon a review of the dredging and transportation logs, inspector reports, ADISS records, and other pertinent documents, the EPA finds that Donjon violated Section 101(a) of the Marine Protection, Research, and Sanctuaries Act of 1972 (“MPRSA”), 33 U.S.C. § 1411(a), during the performance of a U.S. Army Corps of Engineers, New York District (“USACE-NYD”) contract (the “Contract”). The EPA has made findings that Donjon has violated Section 101(a) of the MPRSA by improperly discharging dredged material into an area outside of the area ocean placement site specified by the Contract and by submitting photographic documentation that did not meet the Contract’s specifications.

Special significance is attached to these violations because of the unique nature and designation of the Historic Area Remediation Site (“HARS”) as a remediation site that requires stringent regulation. Misplacement of dredged materials, mismanagement of contract requirements, and non-compliance with operational requirements threaten the integrity of the ongoing remediation efforts and undermine the ability of the EPA and USACE-NYD to effectively manage a dredged material program for the New York/New Jersey Harbor. For these reasons, the EPA is assessing an administrative penalty of **\$220,000**.

By law, you have the right to a hearing to contest the factual allegations in the Complaint. If you admit the allegations, or they are found to be true after you have had an opportunity for a hearing on them, you have the right to contest the penalty proposed in the Complaint. Enclosed is a copy of “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination of Suspension of Permits” (“CROP”) (40 Code of Federal Regulations (C.F.R.) Part 22), which the Agency follows in cases of this kind. Please note the

requirements for an Answer at 40 C.F.R. § 22.15. **If you wish to contest the allegations in the Complaint or the penalty proposed in the Complaint, you must file an Answer within thirty (30) days of your receipt of the enclosed Complaint to the EPA Regional Hearing Clerk at the following address:**

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor (Room 1631)
New York, NY 10007-1866

If you do not file an Answer within thirty (30) days of receipt of this Complaint, you may be judged to have defaulted. See 40 C.F.R. § 22.17. If a default order is entered, the entire proposed penalty may be assessed without further proceedings.

Whether or not you request a formal hearing, you may informally confer with EPA concerning the alleged violations and the proposed penalty amount. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement through such informal conference with the Agency. A request for an informal conference does not substitute for a written Answer or affect what you may choose or say in an Answer, nor does it extend the thirty (30) days by which you must file an Answer requesting a hearing. Any hearing held in this matter will be conducted in accordance with the CROP, including Subpart I thereof. You may represent yourself or be represented by an attorney at any stage of the proceedings, including any informal discussions in person or by telephone.

Please note that, in determining the appropriate penalty amount, EPA may consider the public health and/or environmental benefits of a Supplemental Environmental Project (“SEP”) voluntarily performed by a violator. A SEP is a new project that is not otherwise legally required, and that is designed to (1) reduce the likelihood that similar violations will occur in the future, (2) reduce any adverse public health and/or environmental impacts created by the violations, and/or (3) reduce the risk that the affected public and/or environment will experience similar adverse impacts. Enclosed is a copy of the 2015 Update to the 1998 U.S Environmental Protection Agency Supplemental Environmental Projects Policy (March 10, 2015) for your consideration.

If mutually satisfactory settlements can be reached, they will be formalized by the issuance of Consent Agreements and Final Orders signed by you and by the Regional Administrator, EPA Region 2. The issuance of such Consent Agreements and Final Orders shall constitute a waiver by you of your right to a hearing on, and to a judicial appeal of, the agreed-upon civil penalties.

If you have any questions or wish to discuss the possibility of settlement of these matters either formally or informally, please have your attorney immediately contact (within 10 days of receipt of this letter):

Zoe Oldham
Water and General Law Branch
Office of Regional Counsel - 16th Floor
United States Environmental Protection Agency
290 Broadway
New York, New York 10007
(212) 637-3228

We appreciate your prompt attention to this matter. Should you have any technical questions concerning this matter, please contact Patricia Pechko of the Dredging, Sediment and Oceans Section at (212) 637-3796 or by email at pechko.patricia@epa.gov. Legal questions should be addressed to Zoe Oldham at the email provided above.

Sincerely,

Kathleen Anderson, Director
Enforcement and Compliance Assurance Division

Enclosures

1. Complaint
2. Consolidated Rules of Practice
3. EPA Supplemental Environmental Projects Policy and SEP Brochure

CC (via email):

Karen Maples, Regional Hearing Clerk
Phyllis Feinmark, Manager, Water and General Law Branch, EPA R2
Zoe Oldham, Water and General Law Branch, EPA R2
Mark Reiss, Manager, Water Division, Dredging, Sediment and Ocean Section, EPA R2
Patricia Pechko, Water Division, Dredging, Sediment and Ocean Section, EPA R2
Douglas McKenna, Deputy . Director, Enforcement and Compliance Assurance
Division, EPA R2
Justine Modigliani, Enforcement and Compliance Assurance Division, EPA R2
Kelly Vega, Manager, Dredged Material Mgt. Section, USACE-NYD

USEPA – Region II
Regional Hearing Clerk

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Donjon Marine Co., Inc.
100 Central Avenue
Hillside, New Jersey 07205

Respondent.

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

DOCKET NO. MPRSA-02-2025-6001

**COMPLAINT
FINDINGS OF VIOLATION, NOTICE OF PROPOSED
ASSESSMENT OF A CIVIL PENALTY, AND
NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

I. Statutory Authority

1. The following Findings of Violation, Notice of Proposed Assessment of Civil Penalty, and Notice of Opportunity to Request a Hearing (“Complaint”) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Section 105(a) of the Marine Protection, Research, and Sanctuaries Act (“MPRSA” or “Act”), 33 U.S.C. § 1415(a). The Administrator has delegated this authority to the Regional Administrator of EPA Region 2, who in turn has delegated it to the Director, Enforcement and Compliance Assurance Division of EPA Region 2 (“Complainant”).

2. Pursuant to Section 105(a) of the MPRSA, and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits” (“CROP”), 40 C.F.R. Part 22, a copy of which is attached, Complainant seeks a civil penalty against Donjon Marine Co., Inc. (“Respondent”) for violating Section 101(a) of the MPRSA, 33 U.S.C. § 1411(a), by the unauthorized discharge of dredged material, as described below.

II. Findings of Violation

1. Respondent is a “person” as defined in Section 3 of the MPRSA, 33 U.S.C. § 1402(e).

2. Respondent is a contractor for the U.S. Army Corps of Engineers, New York District (“USACE-NYD”) for the maintenance dredging of the Kill van Kull Federal Navigation Channel Project (Contract No. W912DS22C0006) (the “Project” or “contract”).

3. The Project involves removal of 145,045 cubic yards (“cy”) of material and authorizes the transportation and placement of the dredged material at the Historic Area Remediation Site (“HARS”) in accordance with 40 C.F.R. §§ 227.2, 227.6. A HARS placement grid was approved by USACE-NYD on May 2, 2022, which allows for up to 200,000 cy of material to be placed in specific locations at the HARS.

4. For dredged material to be placed in the ocean, it must be adequately characterized in accordance with the regulations found at 40 C.F.R. §§ 227.6, 227.27, and 228.15(d)(6). Accordingly, the contract requires that the project material is sampled and characterized. Based upon review of the results of sampling and testing, the project sediments from the above-referenced contract area were determined to: meet the criteria for ocean placement as described in 40 C.F.R. §§ 27.6 and 227.27; qualify as Category I material under EPA Region 2/CENAN guidance; and be suitable for placement at the HARS as remediation material pursuant to 40 C.F.R. § 228.15(d)(6).

5. Requirements regarding dredging and placement of dredged materials are set forth in Section 35 20 23.10 18 of the contract, “Dredged Material Transport, Disposal and Monitoring”. This contract section describes the requirements of the USACE-NYD dredged material transport and placement monitoring program, including protocols for placement of dredged materials within the HARS. Sections 35 20 23.10 18 1.6 and 1.7 specifically discuss ocean placement locations, noting that the Government has identified the HARS for placement of dredged material from this project and requires the contractor to use the HARS placement requirements for ocean placement within the HARS. Section 35 20 23.10 18 1.7 specifically states that the “Contractor shall perform dredged material placement at specific locations within the HARS. Details of the placement location with the HARS, for HARS-suitable material, will be provided at the DMTPM (Dredged Material Transport and Placement Meeting). Dredged material placement must not occur anywhere outside of the HARS, in HARS buffer zones, in the HARS ‘No Discharge Zone’, or in any other area of the HARS determined by the New York District to be off-limits for dredged-material placement.”

6. On June 22, 2022, Respondent placed approximately 2,250 cy of material dredged from the eastern section of the Kill van Kull into Scow W4001. At that time, the tug crew noted that the hydraulic system (HPU) on Scow W4001 was not operational. At 2213 hours, the shift Quality Control Manager (CQCM) directed SCOW W4001 to be towed to Stapleton Anchorage, approximately 1/4 mile from the dredging site. At the Stapleton Anchorage, Respondent’s CQCM gave instructions to an on-board tug crew member via cell phone on resetting the HPU. At approximately 0115 hours on June 23, 2022, while pressing buttons to attempt to reset the HPU, the tug crew member pressed the emergency dump button, releasing all 2,250 cy of dredged material into the waters of New York Harbor (40° 37.630’ N, -74° 3.715’).

7. The shortdump of dredged material outside of the HARS is a violation of Section 101 of the MPRSA, 33 U.S.C. § 1411, since Respondent did not have authorization to dump the dredged material outside of the HARS.

8. Based on the above findings, Complainant finds Respondent to be in violation of Section 101(a) of the MPRSA, 33 U.S.C. § 1411(a), for the discharge of material outside of the HARS without authorization by the Secretary of the Army as provided by Section 103 of the Act, 33 U.S.C. § 1413.

9. Photographic documentation requirements are set forth in Section 35 20 23.10 18 of the contract, “Dredged Material Transport, Disposal and Monitoring”, which describes the USACE-NYD dredged material transport and placement monitoring program, including protocols for documenting the contents of each container vessel prior to transport from the dredging site. Section 35 20 23.10 18 1.3 specifically discusses photographic documentation requirements and requires, among other things, submittal of both close-up and overview photographs, of a minimum resolution and with sufficient lighting, of the loaded container vessel that are digitally imprinted with the project name, date and time of each photograph, trip number, and container vessel identification.

10. Respondent submitted photographic documentation for its June 22, 2023, trip (Trip #3). The photographs do not meet the standards of Section 35 20 23.10 18 1.3. The photos are poorly lit, the “Material Close-up” photo is blurry, and the date and time on the photos is incorrect.

11. Based on the above findings, Complainant finds Respondent to be in violation of Section 101(a) of the MPRSA, 33 U.S.C. § 1411(a), since Respondent did not follow contract conditions necessary to ensure compliance with all terms and conditions of the USACE-NYD contract and the HARS placement requirements.

12. Under Section 105(a) of the Act, 33 U.S.C. § 1415(a), and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, Respondent is liable for the administrative assessment of civil penalties in an amount not to exceed \$242,550 for each violation.

III. Notice of Proposed Order Assessing a Civil Penalty

Based on the foregoing Findings of Violation and pursuant to the authority of Section 105(a) of the MPRSA, 33 U.S.C. § 1415(a), EPA Region 2 hereby proposes to issue a Final Order Assessing Administrative Penalties (“Final Order”) to Respondent, assessing a penalty of **two hundred twenty thousand dollars (\$220,000)** for the unlawful disposal of materials into ocean waters. Based on the Findings set forth above, Respondent has been found to have violated the Act. Respondent did not follow the operational requirements necessary to ensure compliance with all terms and conditions of the authorization. Complainant determined the proposed penalty after taking into account the applicable factors identified in Section 105(a) of the Act, 33 U.S.C. § 1415(a). Complainant has considered the gravity of the violation, prior violations, and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation.

IV. Procedures Governing This Administrative Litigation

The rules of procedure governing this civil administrative litigation have been set forth in the CROP, 40 C.F.R Part 22. A copy of these rules accompanies this Complaint.

A. Answering the Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk, EPA Region 2, both an original and one copy of a written Answer to the Complaint, and such Answer must be filed within 30 days after service of the Complaint. 40 C.F.R. § 22.15(a). The address of the Regional Hearing Clerk, EPA Region 2, is:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway – 17th Floor
New York, NY 10007

Respondent shall also then serve one copy of the Answer to the Complainant upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with regard to which Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense; (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding); (3) the basis for opposing the proposed relief; and (4) whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).

Respondent's failure to affirmatively raise in the Answer facts that constitute or that might constitute the grounds of its defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

B. Opportunity to Request a Hearing

If requested by Respondent in its Answer, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If, however, Respondent does not request a hearing, the Presiding Officer (as defined at 40 C.F.R. § 22.3) may still hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c).

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the applicable

provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

C. Failure to Answer

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely (i.e., in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)) Answer to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 22.15(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued thereafter shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings 30 days after the Default Order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such Final Order of Default against Respondent, and to collect the assessed penalty amount, in federal court.

V. Informal Settlement Conference

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the MPRSA and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this Complaint, and Respondent may also provide whatever additional information it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations alleged herein; (2) any information relevant to Complainant's calculation of the proposed penalty; (3) the effect any proposed penalty would have on Respondent's ability to continue in business; and (4) any other special facts or circumstances Respondent wishes to raise. 40 C.F.R. § 22.18.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant, or to dismiss any or all of the charges if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18. Any request for an informal conference, or any questions that Respondent may have regarding this Complaint, should be directed to:

Zoe Oldham
Assistant Regional Counsel
Water and General Law Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway – 16th Floor
New York, NY 10007
(212) 637-3228
Oldham.Zoe@epa.gov

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent's request for a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written Consent Agreement. 40 C.F.R. § 22.18(b)(2). In accepting the Consent Agreement, Respondent waives its right to contest the allegations in the Complaint and waives its right to appeal the Final Order that will accompany the Consent Agreement. 40 C.F.R. § 22.18(b)(2). To conclude the proceeding, a Final Order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Should Respondent enter into a settlement through the signing of such Consent Agreement and comply with the terms and conditions set forth in such Consent Agreement, this administrative litigation and civil proceedings arising out of the allegations made in the Complaint will be deemed terminated. Entering into a settlement does not extinguish, waive, satisfy, or otherwise affect Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

VI. Resolution of this Proceeding Without Hearing or Conference

Instead of filing an Answer, Respondent may choose to pay the total amount of the proposed penalty within 30 days after receipt of the Complaint, provided that Respondent files with the Regional Hearing Clerk at the address noted above, a copy of the check or other instrument of payment. 40 C.F.R. § 22.18(a). A copy of the check or other instrument of payment should be provided to the EPA attorney identified above. Payment of the penalty may be made using any method described at <http://www.epa.gov/financial/additional-instructions-making-payments-epa>, and shall indicate "Docket No. MPRSA-02-2023-6001." Payment of the penalty may also be

made by cashier's or certified check payable to the "Treasurer, United States of America," sent to the following address:

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

Pursuant to 40 C.F.R. § 22.18(a)(3), if Respondent elects to pay the full amount of the penalty proposed in the Complaint within 30 days of receiving the Complaint, then, upon EPA receipt of such payment, the Regional Administrator of EPA Region 2 (or, if designated, the Regional Judicial Officer), shall issue a Final Order in accordance with 40 C.F.R. § 22.18(a)(3). Issuance of a Final Order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Further, pursuant to 40 C.F.R. § 22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of Respondent's right both to contest the allegations made in the Complaint and to appeal said Final Order to federal court. Such payment does not extinguish, waive, satisfy, or otherwise affect Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

VII. Filing of Documents

1. The Answer and any hearing request, and all subsequent documents filed in this action shall be sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway – 17th Floor
New York, NY 10007

2. A copy of the Answer and any hearing request, and all subsequent documents filed in this action shall be sent to:

Zoe Oldham,
Assistant Regional Counsel
Water and General Law Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway – 16th Floor
New York, NY 10007

VII. General Provisions

1. Respondent has a right to be represented by an attorney at all stages of these proceedings.
2. This complaint does not constitute a waiver, suspension, or modification of the requirements of the MPRSA, regulations promulgated thereunder, or any applicable permit.
3. Neither assessment nor payment of an administrative penalty pursuant to Section 105(a) of the MPRSA will affect Respondent's continuing obligation to comply with the Act.

ISSUED THIS 12th DAY OF December 2024.

Kathleen Anderson, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 2

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

Donjon Marine Co., Inc.
100 Central Avenue
Hillside, New Jersey 07205

Respondent.

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

DOCKET NO. MPRSA-02-2025-6001

CERTIFICATE OF SERVICE

I certify that, on the date noted below, I caused to be mailed, by certified mail, return receipt requested, a copy of the foregoing ADMINISTRATIVE COMPLAINT and a copy of the “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, to the following person at the address listed below:

John D. Witte
Executive Vice-President
Donjon Marine Co., Inc.
100 Central Avenue
Hillsdale, NJ 07205

I hand carried the original and a copy of the foregoing Complaint to the office of:

Ms. Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway – 17th Floor
New York, NY 10007

Date

Signature of sender