



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I  
5 Post Office Square, Suite 100  
Boston, Massachusetts 02109-3912

**BY HAND**

SEP 30 2010

RECEIVED  
SEP 30 2010  
EPA ORC WS  
Office of Regional Hearing Clerk

Wanda Santiago  
Regional Hearing Clerk  
United States Environmental Protection Agency  
5 Post Office Square - Suite 100  
Boston, MA 02109-3912

Re: Burnham Associates, Inc.  
Docket No. MPRSA-01-2010-0078

Dear Ms. Santiago:

Enclosed please find an administrative penalty complaint filed under the Marine Protection, Research and Sanctuaries Act in the above-referenced case.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Tonia Bandrowicz".

Tonia Bandrowicz  
Senior Enforcement Counsel  
U.S. EPA

Enclosure

cc: Craig C. Burnham, President  
Burnham Associates, Inc.



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**Burnham Associates, Inc.**  
**Docket No. MPRSA-01-2010-0078**

**CERTIFICATE OF SERVICE**

I certify that the foregoing Compliant was transmitted to the following persons, in the manner specified, on the date below:

Original and one copy  
hand-delivered:

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

Copy by certified mail,  
return receipt requested:

Craig C. Burnham, President  
Burnham Associates, Inc.  
14 Franklin Street  
Salem, Massachusetts 01970-2504

Dated: \_\_\_\_\_

9/30/10



Tonia Bandrowicz  
U.S. EPA - Region I  
One Congress Street, Suite 1100 (SEL)  
Boston, MA 02114-2023  
Phone: (617) 918-1734  
Fax: (617) 918-0734

**Burnham Associates, Inc.**  
**Docket No. MPRSA-01-2010-0078**

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

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SEP 30 2010

EPA ORC  
Office of Regional Hearing Clerk

IN THE MATTER OF:

**ADMINISTRATIVE COMPLAINT AND  
NOTICE OF OPPORTUNITY TO REQUEST A  
HEARING**

BURNHAM ASSOCIATES, INC.

14 Franklin Street  
Salem, MA 01970,

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

Respondent.

Docket No. MPRSA-01-2010-0078

**I. INTRODUCTION**

1. This Administrative Complaint is issued under the authority vested in the U.S. Environmental Protection Agency ("EPA") by Section 105(a) of the Marine Protection, Research, and Sanctuaries Act ("MPRSA"), 33 U.S.C. § 1415(a). "Complainant" is the Regional Administrator of EPA, Region 1.

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 and the Revocation, Termination or Suspension of Permits," codified at 40 C.F.R. Part 22 ("Part 22"), Complainant hereby provides notice of its proposal to assess a civil penalty against Burnham Associates, Inc. ("Respondent") for transporting and dumping of dredged material into ocean waters in a manner inconsistent with a permit issued under Section 103 of the MPRSA, 33 U.S.C. § 1413, in violation of Section 101(a) of MPRSA, 33 U.S.C. § 1411(a). This Complaint also provides notice of Respondent's opportunity to file an Answer to this Complaint and to request a hearing on the proposal to assess a penalty.

## **II. STATUTORY AUTHORITY**

3. Section 101(a) of the MPRSA, 33 U.S.C. § 1411(a), prohibits the transportation of any material for the purpose of dumping it into ocean waters, except as authorized by a permit issued pursuant to Sections 102 or 103 of the MPRSA, 33 U.S.C. §§ 1412 or 1413.

4. 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.

5. Under Section 105(a) of the MPRSA, 33 U.S.C. § 1415(a), as amended by 40 C.F.R. Part 19.4 (Civil Monetary Penalty Inflation Adjustment), after January 12, 2009, 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, shall be liable for a civil penalty of not more than \$70,000 for each violation.

## **III. GENERAL ALLEGATIONS**

6. Respondent is a corporation incorporated under the laws of Massachusetts, with a principle place of business at 14 Franklin Street, Salem, Massachusetts, 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).

7. On January 23, 2009, USACE issued, by letter, an authorization, No. NAE-2007-1559,<sup>1</sup> under the federal Massachusetts Programmatic General Permit (“PGP”), NAE 2004-2594, effective January 20, 2005, pursuant to Section 103 of the MPRSA, 33 U.S.C. § 1413, to the Town of Hingham, Massachusetts (“Hingham”) for the dredging of Hingham Harbor and disposal of “dredged materials,” as defined at Section 3(i) of the MPRSA, 33 U.S.C. § 1402(i), into the Massachusetts Bay Disposal Site, which is located in “ocean waters,” as defined at Section 3(b) of the MPRSA, 33 U.S.C. § 1402(b) (hereinafter referred to as the “PGP Authorization”). Specifically, Hingham was authorized to maintenance dredge approximately 25.53 acres of Hingham Harbor to a depth of seven feet below mean low water. Approximately 95,250 cubic yards of fine silt and sand was authorized to be removed by mechanical means and disposed of at the Massachusetts Bay Disposal Site.

8. Under the PGP Authorization, disposal operations were not to begin until the USACE issued a letter authorizing the initiation of open-water disposal at specific disposal point coordinates. In addition, Special Condition 6 of the PGP Authorization provided in relevant part:

Except when directed otherwise by the [USACE] Program Manager for site management purposes, all disposal of dredged material shall adhere to the following:

- a. The permittee shall release the dredged material at a specified set of coordinates within the disposal site with the scow at a complete halt.

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<sup>1</sup> This letter incorrectly cites the authorization as number “NAE-2008-1559.” The correct number, however, is “NAE-2007-1559,” as indicated on the permit application and all subsequent authorization letters for the project.

- b. When a disposal buoy is present at the specified coordinates, disposal shall occur with the side of the scow at least 100 feet and no greater than 200 feet from the buoy to minimize collisions with the buoy.

9. On or about November 3, 2009, and on December 8, 2009, and January 22 and 26, 2010, the USACE issued authorization letters to Hingham to initiate and/or continue dumping dredged material in accordance with the PGP Authorization and at the specific disposal point coordinates contained therein (hereinafter referred to as the "Authorization Letters").

10. Hingham contracted with the Respondent to conduct the dredging of Hingham Harbor in accordance with the PGP Authorization, including the transportation of dredged material for the purpose of dumping it at the Massachusetts Bay Disposal Site.

11. Based on reports from a human on-board inspector trained and certified by the USACE to witness the disposal of dredged material and from a Silent Inspector system (an automated dredge contract monitoring system comprised of both hardware and software developed by the USACE), on November 11, 16, 17, 18, 19, 20, 21, 22, 26, and 29, and December 1, 2, 4, 7, 9, 13, 14, 15 and 22, 2009, and January 22-23, 26, 27, 28, 30-31, and February 1, 2, 3-4, and 5, 2010, Respondent transported dredged material for the purpose of dumping it into ocean waters and dumped such dredged material at locations within the Massachusetts Bay Disposal Site beyond the disposal point coordinates authorized by the Authorization Letters (in some cases, at coordinates half a mile or more from the authorized disposal point coordinates), and/or at coordinates not within 100 to 200 feet of the disposal buoy.

#### **IV. VIOLATIONS**

12. The Respondent's transport of dredged material for the purpose of dumping it into ocean waters and dumping of such dredged material at locations within the Massachusetts Bay Disposal Site beyond the disposal point coordinates authorized by the Authorization Letters and/or at coordinates not within 100 to 200 feet of the disposal buoy on November 11, 16, 17, 18, 19, 20, 21, 22, 26, and 29, and December 1, 2, 4, 7, 9, 13, 14, 15, and 22, 2009, and January 22-23, 26, 27, 28, 30-31, and February 1, 2, 3-4, and 5, 2010, were not authorized by a permit issued pursuant to Section 102 or 103 of the MPRSA, 33 U.S.C. §§ 1412 or 1413.

13. are separate violations of the PGP Authorization and the Authorization Letters, and, as a result, are separate violations of Section 101(a) of the MPRSA, 33 U.S.C. § 1411(a), and, therefore, are subject to penalties under § 105(a) of the MPRSA, 33 U.S.C. § 1415(a).

#### **V. PROPOSED PENALTY**

14. Based on the forgoing Findings of Violation and pursuant to the authority of Section 105(a) of MPRSA, 33 U.S.C. § 1415(a), the Complainant proposes that a Final Order assessing administrative penalties be issued against Respondent in an amount which takes into account the gravity of the violation, prior violations, and the demonstrated good faith of the Respondent in attempting to achieve rapid compliance after notification of a violation, and is not in excess of the statutory maximum for such violations which is \$70,000 per violation. For the purpose of imposing administrative penalties against Respondent, each separate transport and dumping of dredged material constitutes a separate violation.

15. Respondent's violations of the MPRSA alleged above represent significant violations of the Act because failure to fully comply with the PGP Authorization may unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities, or undermine the integrity of the MPRSA regulatory structure.

#### **VI. OPPORTUNITY TO REQUEST HEARING**

15. Respondent may, pursuant to Section 105(a) of the Act, and 40 C.F.R. § 22.15(c), request a hearing on the proposal to assess a penalty in its Answer to this Complaint. Even if Respondent does not explicitly request a hearing in its Answer, the Presiding Officer may hold such a hearing if the Answer raises issues appropriate for adjudication. The procedures for any such hearing and for all proceedings in this action are set out in 40 C.F.R. Part 22, a copy of which is enclosed with this Complaint.

16. Default constitutes an admission of all facts alleged in this Complaint and a waiver of the right to a hearing on such factual allegations. In order to avoid default in this matter, within 30 days after receipt of this Complaint, Respondent must either: (1) settle this matter with the Complainant; or (2) file both an original and one copy of a written Answer to this Complaint to:

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

Respondent is also required to provide a contemporaneous copy of any Answer to Complainant's

counsel, who is authorized to receive service on behalf of EPA pursuant to 40 C.F.R.

§ 22.5(c)(4), at the following address:

Tonia Bandrowicz, Senior Enforcement Counsel  
Office of Environmental Stewardship (SEL)  
U.S. Environmental Protection Agency – Region 1  
5 Post Office Square, Suite 100  
Mail Code: OES04-3  
Boston, MA 02109-3912

17. Pursuant to 40 C.F.R. § 22.15, the Answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which Respondent has knowledge. If the Answer asserts no knowledge of a particular factual allegation, the allegation shall be deemed denied. Otherwise, the failure to admit, deny, or explain any material factual allegation contained in this Complaint constitutes an admission of the allegation. The Answer shall also state the circumstances or arguments for any defense Respondent wishes to assert, challenges to any factual allegation in the Complaint, and any basis Respondent may have to oppose the assessment of a penalty.

18. Following receipt of the Answer, a Presiding Officer will be assigned. The Presiding Officer will notify the parties of his or her assignment, and shall notify the parties of the time and place of further proceedings in the case.

#### **VII. SETTLEMENT**

19. You may request an informal conference with Complainant's attorney, Tonia Bandrowicz, concerning the alleged violations and the amount of the penalty. A request for an informal conference does not extend any deadline in this proceeding, including the deadline by which you must submit an Answer to this Complaint.

20. If you have any questions concerning the enclosed Complaint, or the settlement process, or wish to arrange for an informal conference, please contact Ms. Bandrowicz at (617) 918-1734.

9/29/10  
Date

 / ACTING FOR  
H. Curtis Spalding, Regional Administrator  
Office of Environmental Stewardship  
U.S. EPA