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**BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:)	DOCKET NO. CWA-10-2009-0002
ALLEN MARINE INC.,)	CONSENT AGREEMENT AND
)	FINAL ORDER
Respondent,)	
)	
Sitka, Alaska.)	

I. AUTHORITIES

1.1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA" or "Complainant") by Section 309(g)(2)(B) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g)(2)(B).

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who in turn has re delegated this authority to the Regional Judicial Officer.

1.3. Pursuant to Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment

**CONSENT AGREEMENT AND
FINAL ORDER - 1**

Docket No. CWA-10-2009-0002

**U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 900 (ORC-158)
Seattle, Washington 98101
(206) 553-1796**

1 of Civil Penalties," 40 C.F.R. Part 22, EPA hereby issues, and Allen Marine, Inc. ("Respondent")
2 hereby agrees to issuance of, the Final Order contained in Part V of this CAFO.

3 **II. PRELIMINARY STATEMENT**

4 2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this CAFO
5 commences this proceeding which will conclude when the Final Order contained in Part V of
6 this CAFO becomes effective.

7 2.2. Part III of this CAFO contains a concise statement of the factual basis for the
8 alleged violations of the CWA, together with specific provisions of the CWA that Respondent
9 have alleged to have violated.
10

11 **III. ALLEGATIONS**

12 3.1. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of
13 pollutants into waters of the United States by any person, except as authorized by a permit issued
14 pursuant to Section 402 or 404 of the Act, 33 U.S.C. §§ 1342 or 1344. The unpermitted
15 discharge of any pollutant from a point source constitutes a violation of Section 301(a) of the
16 Act, 33 U.S.C. § 1311(a). Section 502(12), 33 U.S.C. § 1362(12), defines the term "discharge of
17 any pollutant" to include "any addition of any pollutant to navigable waters from any point
18 source." "Navigable waters" are defined as "waters of the United States." 33 U.S.C. § 1362(7).
19

20 3.2. Respondent is a "person" within the meaning of Sections 301(a) and 502(5) of the
21 Act, 33 U.S.C. §§ 1311(a) and 1362(5).

22 3.3. Respondent owns, possesses, or controls real property in Sitka, Alaska; and
23 located within Section 3, Township 55 South, Range 63 East, Copper River Meridian ("Site").
24 The Site is adjacent to the Alaska Marine Highway System Ferry Terminal.
25

1 3.4. The Site encompasses a portion of the inter-tidal zone of Sitka Sound, which is
2 subject to the ebb and flow of the tide.

3 3.5. Sitka Sound is a “navigable water” within the meaning of Section 502(7) of the
4 Act, 33 U.S.C. § 1362(7), and “waters of the United States” within the meaning of 40 C.F.R. §§
5 230.3(s) & 232.2.

6 3.6. On August 24, 2005, during an on-site field inspection of an Alaska Ferry
7 Terminal adjacent to the Site, the U.S. Army Corps of Engineers (“Corps”) observed fill material
8 that had recently been placed within the inter-tidal zone of Sitka Sound.

9 3.7. On August 26, 2005, Respondent submitted to the Corps a Section 404 permit
10 application to discharge with a dump truck and backhoe 3,700 cubic yards of fill material below
11 the high tide line of Sitka Sound at the Site. The fill footprint was 0.25 acres. The project
12 purpose was to develop boat storage and haul out system for Respondent’s boat fleet.

13 3.8. On September 9, 2005, after confirming that the work was unauthorized, the
14 Corps issued Respondent a Notice of Violation.

15 3.9. On September 15, 2005, Respondent responded to the NOV, stating that fill area
16 was intended to be used for winter boat storage, that the filling activity started in mid-June and
17 was completed in mid-August of 2005, and that the fill material was a 50-50 mixture of shot rock
18 and pit run.

19 3.10. On February 13, 2006, the Corps referred the matter to EPA for enforcement.

20 3.11. The backhoe used to place fill material into the inter-tidal zone was a “point
21 source” within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).
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**CONSENT AGREEMENT AND
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1 3.12. The fill material that Respondent caused to be discharged included, among other
2 things, dirt and rock, each of which constitutes a "pollutant" within the meaning of Section
3 502(6) of the Act, 33 U.S.C. § 1362(6).

4 3.13. By causing such fill material to enter waters of the United States, Respondent
5 engaged in the "discharge of pollutants" from a point source within the meaning of Sections 301
6 and 502(12) of the Act, 33 U.S.C. §§ 1311 and 1362(12).

7 3.14. Respondent's discharge of fill material was not authorized by any permit issued
8 pursuant to Section 402 or 404 of the Act, 33 U.S.C. §§ 1342 or 1344.

9 3.15. Respondent's discharge of fill material into waters of the United States at the Site
10 without a permit violated Section 301 of the Act, 33 U.S.C. § 1311.

11 3.16. On August 24, 2007, EPA issued to Respondent an Administrative Compliance
12 Order (Docket No. CWA-10-2007-0201) to remove the fill material and restore the Site.

13 3.17. On February 12, 2008, Respondent informed EPA that it had removed the fill and
14 restored the Site.

15 3.18. On March 19, 2008, EPA notified Respondent that it had satisfactorily completed
16 all requirements under the Administrative Compliance Order.

17 3.19. Each day the authorized fill material remained in place without the required
18 permit constituted a day of violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

19 3.20. In accordance with Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B),
20 and 40 C.F.R. Part 19, Respondent is liable for civil penalties not to exceed \$11,000 per day for
21 each day during which the violation continued, up to a maximum of \$157,500.

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1 **IV. CONSENT AGREEMENT**

2 4.1. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in
3 this CAFO.

4 4.2. Respondent neither admits nor denies the specific factual allegations contained in
5 Part III of this CAFO.

6 4.3. In accordance with Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), EPA has
7 taken into account the nature, circumstances, extent, and gravity of the alleged violations as well
8 as Respondent's economic benefit of noncompliance, ability to pay, and other relevant factors.

9 After considering all of these factors, EPA has determined and Respondent agrees that an
10 appropriate penalty to settle this action is in the amount of **FIFTEEN THOUSAND THREE**
11 **HUNDRED DOLLARS (\$15,300).**

12 4.4. Respondent consents to the issuance of the Final Order set forth in Part V, below,
13 and agrees to pay the total civil penalty set forth in Paragraph 4.3 within 30 days of the effective
14 date of this Final Order.

15 4.5. Payment under this CAFO shall be made by cashier's check or certified check,
16 payable to the order of "Treasurer, United States of America" and delivered to the following
17 address:
18

19 US Environmental Protection Agency
20 Fines and Penalties
21 Cincinnati Finance Center
22 P.O. Box 979077
St. Louis, MO 63197-9000

23 Respondent shall note on the check the title and docket number of this case.
24
25

**CONSENT AGREEMENT AND
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(206) 553-1796**

1 4.6. Respondent shall serve photocopies of the check described in Paragraph 4.5 on
2 the Regional Hearing Clerk and the EPA Region 10 Office of Compliance and Enforcement at
3 the following addresses:

4 Regional Hearing Clerk
5 U.S. Environmental Protection Agency
6 Region 10
7 1200 Sixth Avenue, Suite 900 (ORC-158)
8 Seattle, Washington 98101

9 U.S. Environmental Protection Agency
10 Alaska Operations Office
11 Attn: Mark Jen
12 222 W. 7th Avenue, Box #19
13 Anchorage, Alaska 99513-7588

14 4.7. If Respondent fails to pay the penalty assessed by this CAFO in full by the due
15 date set forth in Paragraph 4.4, Respondent may be subject to a civil action to collect the
16 assessed penalty under the CWA, together with interest, fees, costs, and additional penalties
17 described below. In any collection action, the validity, amount, and appropriateness of the
18 penalty shall not be subject to review.

19 4.8. If Respondent fails to pay any portion of the penalty assessed by this CAFO in
20 full by the due date set forth in Paragraph 4.4, Respondent shall be responsible for payment of
21 the amounts described below:

22 4.8.1. Interest: Pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9),
23 any unpaid portion of the assessed penalty shall bear interest at a rate established by the
24 Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the
25 Final Order set forth in Part V, below, provided, however, that no interest shall be

1 payable on any portion of the assessed penalty that is paid within 30 days of the effective
2 date of the Final Order.

3 4.8.2. Attorneys Fees, Collection Costs, Nonpayment Penalty: Pursuant to
4 Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a
5 timely basis the amount of the penalty set forth in Paragraph 4.3, Respondent shall pay (in
6 addition to any assessed penalty and interest) attorneys fees and costs for collection
7 proceedings and a quarterly nonpayment penalty for each quarter during which such
8 failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty
9 percent (20%) of the aggregate amount of Respondent's penalties and nonpayment
10 penalties which are unpaid as of the beginning of such quarter.
11

12 4.9. The penalty described in Paragraph 4.3, including any additional costs incurred
13 under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be
14 deductible for purposes of federal taxes.

15 4.10. This CAFO shall not relieve Respondent of its obligation to comply with all
16 applicable provisions of federal, state, or local law; nor shall the CAFO be construed to be a
17 ruling on, or determination of, any issue related to any federal, state, or local permit.

18 4.11. Respondent or its undersigned representative, certify that he/she has full authority
19 to enter into the terms and conditions of this CAFO and to bind Respondent to this document.
20 This CAFO may be executed in multiple counterparts, each of which shall be deemed to have the
21 same force and effect as an original. A facsimile signature shall be treated as an original.
22

23 4.12. Except as described in Subparagraph 4.8.2, above, each party shall bear its own
24 costs in bringing or defending this action.
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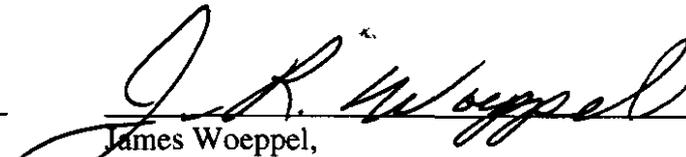
1 4.13. Respondent expressly waives any rights to contest the allegations and to appeal
2 the Final Order set forth in Part V, below.

3 4.14. The provisions of this CAFO shall bind Respondent and its officers, directors,
4 agents, servants, employees, successors, and assigns.

5 4.15. The above provisions are STIPULATED AND AGREED upon by Respondent
6 and EPA.

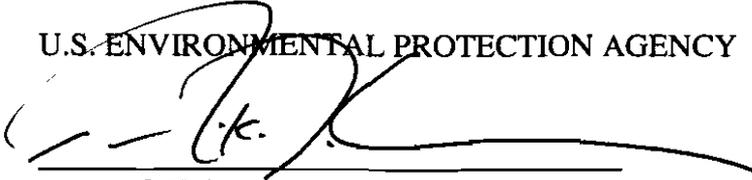
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8 **FOR RESPONDENT**

9 DATED: ALLEN MARINE, INC.

10
11 10/23/08 
12 James Woepfel,
13 Aiken, St. Louis & Siljeg, P.S.
14 Counsel for Allen Marine, Inc.

15 **FOR COMPLAINANT**

16 DATED: U.S. ENVIRONMENTAL PROTECTION AGENCY

17 10/27/08 
18 Ankur K. Tohan
19 Assistant Regional Counsel
20 For Complainant

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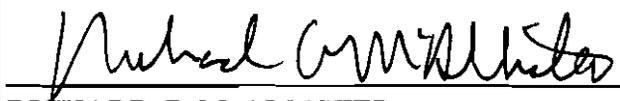
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5.5. This Final Order shall become effective upon filing.

SO ORDERED this 12th day of December, 2008.



RICHARD G. McALLISTER
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Allen Marine, Inc., DOCKET NO.: CWA-10-2009-0002** was filed with the Regional Hearing Clerk on December 12, 2008.

On December 12, 2008 the undersigned certifies that a true and correct copy of the document was delivered to:

Ankur Tohan, Esquire
US Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on December 12, 2008, to:

James Woepfel
Aiken, St. Louis & Siljeg, P.S.
801 Second Avenue, Suite 1200
Seattle, WA 98104

DATED this 12th day of December 2008.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10