



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

OCT - 8 2014

U.S. Environmental
Protection Agency-Reg 2
2014 OCT -9 PM 1:32
REGIONAL HEARING
CLERK

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Thomas D. Witte
Northeast Dredging Equipment Company, LLC
100 Central Avenue
Hillside, New Jersey 07205

RE: Notice of Proposed Assessment of a Civil Penalty
Docket Numbers MPRSA-02-2015-6001
MPRSA-02-2015-6002
MPRSA-02-2015-6003
Respondent: Northeast Dredging Equipment Company, LLC.

Dear Mr. Witte,

Enclosed are copies of **three** Administrative Complaints which the U.S. Environmental Protection Agency, Region 2 (EPA) is issuing to Northeast Dredging Equipment Company, LLC (Northeast). EPA has made findings that Northeast has violated Section 101(a) of the Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA), as amended, 33 U.S.C. §§ 1401 *et. seq.* by discharging dredged material into ocean waters in violation of MPRSA and its implementing regulations during the performance of the U.S. Army Corps of Engineers S-AK-2 New York/New Jersey Harbor Deepening Contract (Contract).

Based upon a review of the dredging and transportation logs, inspector reports, ADDISS records, and other pertinent documents, EPA finds that Northeast violated Section 103 of MPRSA multiple times during the performance of the Contract as follows:

MPRSA-02-2015-6001- Trips #1 and 2 – disposal of dredged material at the ocean disposal site known as the Historic Area Remediation Site (HARS) without conducting a Dredged Material Transport and Placement Meeting (DMTPM) as required by the Contract.

MPRSA-02-2015-6002 -Trip #119 – shortdump of dredged material into the ocean outside of the boundaries of the HARS.

MPRSA-02-2015-6003 (5 counts) – Trips #871-875 – placement of non-HARS material at the HARS (Trips #872 and 874) and failing to adequately visually document the quality of dredged material being transported to the HARS, as required by the Contract (Trips #871, 873, and 875).

Special significance is attached to these violations because of the unique nature and designation of the HARS as a remediation site. Misplacement of dredged materials in the ocean, mismanagement of contract requirements and non-compliance with operational requirements threatens the integrity of ongoing remediation efforts and undermines the ability of EPA and USACE to effectively manage the dredged material program for New York/New Jersey Harbor.

For these reasons, EPA is issuing three Complaints to assess administrative penalties as follows for violations of MPRSA:

MPRSA-02-2015-6001	\$15,000
MPRSA-02-2015-6002	\$70,000
MPRSA-02-2015-6003 (5 counts)	\$350,000

By law, you have a right to request a hearing regarding the violations alleged in the Complaint and the proposed penalty. A request for a hearing must be contained in a written Answer to the Complaint. Pursuant to 40 C.F.R. Part 22 (a copy of which is enclosed), you must file a written Answer with the Regional Hearing Clerk within twenty (20) days of receipt of this Complaint if you contest any material fact upon which the Complaint is based, contend that the proposed penalty is inappropriate or contend that you are entitled to judgment as a matter of law. If you do not file a timely Answer in accordance with the requirements specified in 40 C.F.R. §22.18, you may be found in default and the proposed penalty will be assessed without further proceedings. You have the right to be represented by an attorney, or to represent yourself at any stage of these proceedings.

EPA encourages all parties against whom it files a Complaint to pursue settlement discussions with the Agency. Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss the alleged violations and the proposed penalty. You may represent yourself or be represented by an attorney at any conference, whether in person or by telephone. An attorney from the Agency's Office of Regional Counsel (ORC) will normally be present at any informal conference. Please be advised that any informal conferences conducted in person with Agency officials will be held in New York City. Please also be advised that a request for an informal conference does not substitute for a written Answer nor does it extend the period of time (twenty days) within which you must file an Answer and request a hearing.

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, please contact:

Phyllis Feinmark, Chief
Water and General Law Branch
Office of Regional Counsel - 16th Floor
United States Environmental Protection Agency
290 Broadway
New York, New York 10007
(212) 637-3232

A copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation of Suspension of Permits, 40 C.F.R. Part 22, is enclosed for your reference.

I urge your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Joan Leary Matthews". The signature is written in a cursive style with a large initial "J" and "M".

Joan Leary Matthews
Director, Clean Water Division

Enclosures

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

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Protection Agency-Reg 2
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REGIONAL HEARING
CLERK

IN THE MATTER OF

**Northeast Dredging Equipment
Company, LLC**
Hillsdale, New Jersey

Respondent

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

Docket No. MPRSA-02-2015-6002

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

I. Statutory Authority

1. This Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing ("Complaint") is issued under the authority vested in the Administrator of the U.S. 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, Clean Water Division of EPA Region 2 ("Complainant").
2. Pursuant to Section 105(a) of 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 Code of Federal Regulations ("C.F.R.") Part 22 (July 1, 2000), a copy of which is attached, Complainant hereby requests that the Regional Administrator assess a civil penalty against **Northeast Dredging Equipment Company, LLC** ("Respondent") for violating Section 101(a) of MPRSA, as amended, 33 U.S.C. §§ 1411(a) by the unauthorized discharge of dredged material in the Atlantic Ocean in violation of Section 101(a) of MPRSA.

II. Findings of Violation

1. Respondent is a “person” as defined in Section 3 of the Act, 33 U.S.C. §1402(e).
2. Northeast Dredging Equipment Company, LLC (Northeast Dredging) is a contractor for the U.S. Army Corps of Engineers, New York District (USACE-NYD) for the NY and NJ Harbor Channel Navigation Improvement 50’ Project (Arthur Kill Channels, Contract 13, S-AK-2).
3. The project contract involved deepening Contract Area 13 of the S-AK-2 project located in the Arthur Kill through the removal of 1.6 million cubic yards (cy) of material. Depending upon the characteristics of the material removed, it was to be disposed of at several suitable locations, including the Historic Area Remediation Site (HARS), artificial reef sites and at a state-approved upland remediation site.
4. In order for dredged material to be placed in the ocean, it must be adequately characterized in accordance with the Regulations found at 40 CFR Part 227.6, 227.27 and 228.15(d) (6). EPA Region 2 and USACE-NYD required that the project material be sampled. Based upon review of the results of sampling and testing, the project sediments from the above referenced contract area were determined to be adequately characterized, and some of the sediments met the criteria for ocean placement as described at 40 CFR 227.6, and 227.2
5. Dredging and placement of dredged materials is discussed in the S-AK-2 Contract in Section 35 20 23.10 18, “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. Section 35 20 23.10 18 1.8.2 specifically discusses 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 1.8.2 states “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.**” (emphasis added).
6. Trip #119 of the S-AK-2 contract departed the dredging site for the HARS on May 1, 2012, at approximately 1535 hours, with the Tug Atlantic Salvor towing Scow 4001 with a scowman aboard. Scow 4001 held approximately 3,181cy of red clay. The weather was hazy with ocean wind speeds of approximately 2 mph from the south and ocean wave heights were reported to be 4.3 feet. At approximately 1836 hours, the scowman onboard Scow 4001 opened the scow outside of the HARS when he heard instructions from the Tug Mary Alice, which was within the HARS towing another scow, to open the scow doors. Both Tug Atlantic Salvor and Tug Mary Alice were operating radios on the same frequency.

7. The shortdump of dredged material outside of the HARS is a violation of Section 103 of the MPRSA. Northeast Dredging did not have authorization to dump the dredged material outside of the HARS. Northeast Dredging did not place dredged materials as contracted with USACE-NYD. They did not follow contract conditions necessary to ensure compliance with all terms and conditions of the USACE-NYD contract or the HARS Placement Requirements

8. Based on the above findings, EPA finds 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(a) of the Act, 33 U.S.C. §1413(a).

9. Under Section 105(a) of the Act, 33 U.S.C. §1415(a), Respondent is liable for the administrative assessment of civil penalties in an amount not to exceed \$70,000 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 MPRSA, 33 U.S.C. 1415(a), and the Debt Collection Improvement Act of 1996, EPA Region 2 hereby proposes to issue a Final Order Assessing Administrative Penalties ("Final Order") to Respondent assessing a penalty of **\$70,000** for unlawful disposal of materials in ocean waters. Based on the Findings set forth above, the Respondent has been found to have violated the Act in this instance. The Respondent did not follow the operational requirements necessary to ensure compliance with all terms and conditions of the authorization. EPA determined the proposed penalty after taking into account the applicable factors identified at Section 105(a) of the Act, 33 U.S.C. § 1415(a). EPA 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, which have been codified at 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 of EPA, Region 2, both an original and one copy of a written Answer to the Complaint, and such Answer must be filed within thirty (30) days after service of the Complaint. 40 C.F.R. § 22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2, is:

**Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway - 16th Floor
New York, New York 10007-1866**

Respondent shall also then serve one copy of the Answer to the Complaint 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 that are contained in the Complaint and 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 affirmatively to 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 in 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. § 22.17(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 thirty (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 Act 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 herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business and/or (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:

**Phyllis Feinmark, Chief
Water and General Law Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway - 16th Floor
New York, New York 10007-1866
(212) 637-3232**

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). In order 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 the 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, Region 2 (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 on the previous page. Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "**Treasurer, United States of America**", in the full amount of the penalty assessed in this Complaint to the following addressee:

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

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 thirty (30) days of receiving the Complaint, then, upon EPA's 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. 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 - 16th Floor
New York, New York 10007-1866**

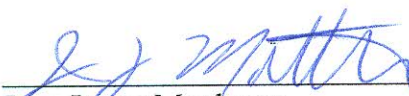
2. A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to

**Phyllis Feinmark, Chief
Water and General Law Branch, Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway - 16th floor
New York, New York 10007-1866**

VIII. General Provisions

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

ISSUED THIS 8th DAY OF October, 2014.



Joan Leary Matthews
Director, Clean Water Division
United States Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007-1866

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY, REGION 2

IN THE MATTER OF

**Northeast Dredging Equipment
Company, LLC**
Hillsdale, New Jersey 07205

Respondent

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

Docket No. MPRSA-02-2015-6002

CERTIFICATE OF SERVICE

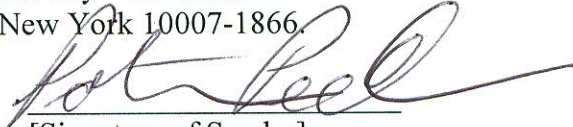
I certify that, on the date noted below, I caused to be mailed, by certified mail, return receipt requested, a copy of the foregoing "ADMINISTRATIVE COMPLAINT" and a copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," (40 Code of Federal Regulations Part 22 (July 1, 2000)) to the following person at the address listed below:

Mr. Thomas D. Witte
Northeast Dredging Equipment Company, LLC
100 Central Avenue
Hillsdale, New Jersey 07205

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

Ms. Karen Maples
Regional Hearing Clerk
United States Environmental Protection Agency, Region 2
290 Broadway - 16th Floor
New York, New York 10007-1866.

Date: 10/9/14
New York, New York


[Signature of Sender]