

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

)		
IN THE MATTER OF:)		ADMINISTRATIVE CONSENT AGREEMENT
)		AND FINAL ORDER
Cashman Dredging and Marine Contracting Co., LLC,)		Proceeding under Section 105(a) of the Marine
549 South Street)		Protection, Research and Sanctuaries Act, 33 U.S.C.
Quincy, Massachusetts 02169)		§ 1415(a)
)		
Respondent.)		Docket No. MPRSA-01-2021-0004
)		

I. INTRODUCTION

1. The Regional Administrator of the New England Office of the U.S. Environmental Protection Agency (“EPA”), pursuant to applicable delegations of authority, enters into this Administrative Consent Agreement and Final Order (“CAFO”) with Cashman Dredging and Marine Contracting Co., LLC (“Respondent”), pursuant to Section 105(a) of the Marine Protection, Research, and Sanctuaries Act (“MPRSA”), 33 U.S.C. § 1415(a), and in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) of EPA’s *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (“Consolidated Rules”).

2. This CAFO resolves EPA’s claims against Respondent for the transporting and dumping of dredged material into ocean waters in a manner inconsistent with an authorization and a permit issued pursuant to Section 103 of the MPRSA, 33 U.S.C. § 1413, and therefore,

CONSENT AGREEMENT AN FINAL ORDER
In re Cashman Dredging and Marine Contracting Co., LLC

US EPA, REGION 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

without authorization or permit, in violation of Section 101(a) of MPRSA, 33 U.S.C. § 1411(a).

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 prohibit 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. 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 water pursuant to Section 103 of the MPRSA is established under 40 C.F.R. subchapter H.

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 2020 Civil Monetary Penalty Adjustment Rule, 85 Fed. Reg. 1751 (Jan. 13, 2020), 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 13, 2020, shall be liable for a civil penalty of not more than \$ 202,878 for each violation.

III. FINDINGS OF VIOLATION

10. Respondent is a limited liability company incorporated under the laws of Massachusetts, with a principle place of business at 549 South Street, Quincy, 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).

11. On April 16, 2018¹, the USACE reissued federal Permit No. NAE-2007-02709 (“Permit-02709”) under the Massachusetts General Permit for the purpose of transporting and disposing of “dredged material,” as defined at Section 3(i) of the MPRSA, 33 U.S.C. § 1402(i), from the New Bedford Confined Aquatic Disposal Cell into the Rhode Island Sound Disposal Site (“RISD”), located in “ocean waters,” as defined at Section 3(b) of the MPRSA, 33 U.S.C. § 1402(b).

12. A letter to the City of New Bedford was issued on May 8, 2020 authorizing disposal of dredged materials within 300 yards of disposal point coordinate: Latitude 41.23750 decimal degrees and Longitude -71.38097 decimal degrees.

13. The City of New Bedford contracted with the Respondent to undertake the transport and disposal of the dredged material in ocean waters under Permit-02709.

Violation 1

14. On June 14, 2020, the Respondent dumped approximately 3,200 cubic yards of dredged material approximately 0.2 nautical miles (0.23 miles) from the designated placement location within the RISDS as specified by Permit-02709 and accompanying authorization letter. The unauthorized disposal occurred at latitude 41.234007 north, longitude -71.370792 west, a location to the south east of the designated Eastern disposal coordinates within the RISDS. This is about 908 feet outside of the designated 300-foot buffer zone around the Eastern assigned coordinates.

15. The Respondent’s transport of dredged material for the purpose of dumping it into

¹ This permit authorization was originally issued on November 15, 2011 and then reissued on July 31, 2013 and October 31, 2014.

ocean waters and dumping of such dredged material at locations outside the disposal point coordinates authorized by Permit-02709 was not authorized by Section 103 of the MPRSA, 33 U.S.C. § 1413.

16. The dumping of such dredged material at locations outside the disposal point coordinates authorized by Permit-02709 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).

Violation 2

17. On June 15, 2020, the Respondent dumped approximately 3,200 cubic yards of dredged material approximately 0.1 nautical miles (0.11 miles) from the designated placement location within the RISDS as specified by Permit-02709 and accompanying authorization letter. The unauthorized disposal occurred at latitude 41.237254 north, longitude -71.370196 west, a location to the south east of the designated Eastern disposal coordinates within the RISDS. This is about 306 feet outside of the designated 300-foot buffer zone around the Eastern assigned coordinates.

18. The 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 Permit-02709 was not authorized by Section 103 of the MPRSA, 33 U.S.C. § 1413.

19. The dumping of such dredged material at locations outside the disposal point coordinates authorized by Permit-02709 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).

Violation 3

20. On June 16, 2020, the Respondent dumped approximately 3,200 cubic yards of dredged material approximately 0.16 nautical miles (0.19 miles) from the designated placement location within the RISDS as specified by Permit-02709 and accompanying authorization letter. The unauthorized disposal occurred at latitude 41.234907 north, longitude -71.370026 west, a location to the south east of the designated Eastern disposal coordinates within the RISDS. This is about 685 feet outside of the designated 300-foot buffer zone around the Eastern assigned coordinates.

21. The 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 Permit-02709 was not authorized by Section 103 of the MPRSA, 33 U.S.C. § 1413.

22. The dumping of such dredged material at locations outside the disposal point coordinates authorized by Permit-02709 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).

Violation 4

23. On June 19, 2020, the Respondent, in route to the disposal site, dumped approximately 1,400 cubic yards of dredged material at a location outside the assigned disposal point coordinates in the RISDS as specified by Permit-02709 and accompanying authorization letters. The unauthorized disposal occurred at approximately latitude 41.2618 decimal degrees,

longitude -71.3320 decimal degrees, 2.62 miles from the authorized disposal point coordinate.

24. The 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 RISDS and the disposal point coordinates authorized by Permit-02709 was not authorized by Section 103 of the MPRSA, 33 U.S.C. § 1413.

25. The dumping of such dredged material at a location outside RISDS and the disposal point coordinates authorized by Permit-02709 are violations 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).

CONSENT AGREEMENT

26. EPA and Respondent agree that settlement of this cause of action is in the public interest and that entry of this CAFO without further litigation is the most appropriate means of resolving this matter. Therefore, before taking any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

27. Respondent waives the right to a hearing under Section 105(a) of the MPRSA, 33 U.S.C. § 1415, and to any appeal of the Final Order in this matter. Respondent consents to the issuance of a Final Order without further adjudication.

Penalty

28. In consideration of the statutory penalty factors contained at Section 105(a) of the MPRSA, 33 U.S.C. § 1415, EPA proposes, and Respondent consents to, the assessment of a civil penalty of \$ 185,000 for all violations contained in this CAFO through the effective date of the

CAFO.

29. Pursuant to 40 CFR § 22.31, within 30 days of this CAFO's issuance, 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 979077
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

30. 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

General Provisions

31. Consistent 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.

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

33. The provisions of this CAFO shall apply to and be binding on Respondent and Respondent's officers, directors, and successors or assigns.

34. 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.

35. This CAFO does not constitute a waiver, suspension, or modification of the requirements of the MPRSA or any regulations or permits promulgated thereunder.

36. 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 Respondents to comply with such laws and regulations.

37. 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. Payment of the penalty pursuant to this CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged herein.

38. This CAFO in no way relieves Respondent or its employees of any criminal liability, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.

39. 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.

40. The parties shall bear their own costs and fees in this action, including attorney's

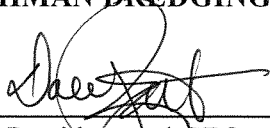
fees, and specifically waive any right to recover such costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C § 504, or other applicable laws.

41. The terms, conditions, and requirements of this CAFO may not be modified or amended except upon the written agreement of all parties, and approval of the Regional Administrator or his or her properly authorized delegate.

42. 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.

SIGNATURE PAGE OF CONSENT AGREEMENT FOLLOWS

FOR CASHMAN DREDGING AND MARINE CONTRACTING CO., LLC



Dale Pyatt, President and CEO
Cashman Dredging and Marine Contracting Co., LLC

Date: 12-22-20

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

Dennis Deziel, Regional Administrator
U.S. Environmental Protection Agency, Region 1

Date: _____

IV. FINAL ORDER

43. The foregoing Consent Agreement is incorporated by reference into this Final Order and is hereby ratified.

44. Respondent is hereby ordered to comply with the terms of the above Consent Agreement which shall become effective upon signature of the Regional Judicial Officer.

Date: _____

Sharon Wells
Acting Regional Judicial Officer
U.S. Environmental Protection Agency, Region 1