

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Kathleen E. Woodward 6/18/12
Name of Case Attorney Date

in the ORC (RAA) at 918-1113
Office & Mail Code Phone number

Case Docket Number CWA-01-2011-0036

Site-specific Superfund (SF) Acct. Number _____

This is an original debt This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Grimmel Industries, LLC
555 Market Street
Portsmouth, NH 03081

Total Dollar Amount of Receivable \$ 75,000 Due Date: 02/10/13

SEP due? Yes No Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

1st \$ 37,500 on 8/15/12
2nd \$ 37,500 on 02/10/13
3rd \$ _____ on _____
4th \$ _____ on _____
5th \$ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
in the Financial Management Office

Phone Number _____



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

5 Post Office Square, Suite 100
Boston, MA 02109-3912

RECEIVED

JUN 15 P 11:12

EPA ORC
OFFICE OF
REGIONAL HEARING CLERK

BY HAND

June 15, 2012

Ms. Wanda Rivera
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region I
5 Post Office Square, Suite 100
Mail Code ORA17-1
Boston, MA 02109-3912

Re: In the Matter of: Grimmel Industries, L.L.C.
Consent Agreement and Final Order under the Clean Water Act
Docket No. CWA 01-2011-0036

RECEIVED
2012 JUN 15 P 11:12
EPA ORC
OFFICE OF
REGIONAL HEARING CLERK

Dear Ms. Rivera:

For the above-referenced matter, please file the enclosed Consent Agreement and Final Order. I have included the original and one copy of these documents.

Thank you for your attention to this matter. Should you have any questions, please contact me at (617) 918-1780.

Sincerely,

Kathleen E. Woodward
Senior Enforcement Counsel

Enclosure

cc: The Honorable Susan L. Biro, Chief Administrative Law Judge
William Taylor, Esq.
Brian Rayback, Esq.

RECEIVED

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION I

EPA ORC OFFICE OF RECEIVING CLERK

IN THE MATTER OF)
)
)
Grimmel Industries, L.L.C.)
555 Market Street)
Portsmouth, NH 03081)
Respondent.)

CONSENT AGREEMENT AND FINAL ORDER

Docket No. CWA 01-2011-0036

This Consent Agreement and Final Order ("CAFO") is issued under the authority granted to the U.S. Environmental Protection Agency ("EPA") by Section 309(g) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," at 40 C.F.R. Part 22 ("Part 22 Rules").

I. PRELIMINARY STATEMENT

- 1. EPA initiated this proceeding against the Respondent pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), by filing an administrative Complaint against Respondent, Docket No. CWA-01-2011-0036 (the "Complaint"), on September 30, 2011.
2. The complete factual and jurisdictional basis for proposing the assessment of a civil penalty is set forth in the Complaint and is incorporated herein by reference.

CONSENT AGREEMENT AND FINAL ORDER
U.S. EPA Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Docket No. CWA-01-2011-0036

3. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), the State of New Hampshire has been given an opportunity to consult with EPA regarding the assessment of the administrative penalty for CWA violations against Respondent.
4. Section 309(g)(4)(A) of the CWA, 33 U.S.C. 1319(g)(4)(A), provides that, prior to issuing an order assessing a penalty under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA must provide public notice of, and reasonable opportunity to comment on, the proposed issuance of such order. EPA has satisfied this requirement by providing public notice of, and reasonable opportunity to comment on, the proposed penalty from October 6, 2011 through November 4, 2011 and November 22, 2011 through December 5, 2011. EPA received comments from the Conservation Law Foundation and from the Coastal Conservation Association of New Hampshire. These comments do not give EPA cause to withdraw the Complaint.

II. CONSENT AGREEMENT

5. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint.
6. Respondent waives any defenses it might have as to jurisdiction and venue, and, without admitting or denying the facts and violations alleged in the Complaint, consents to the terms of this CAFO.

III. WAIVER OF RIGHTS

7. Respondent hereby waives its right to request a judicial or administrative hearing on any issue of law or fact set forth in the Complaint, and consents to the issuance of the Final Order included with this Consent Agreement without further adjudication.

IV. PENALTY

8. Based upon the statutory penalty factors at Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA has determined that an appropriate civil penalty to settle this action is in the amount of seventy-five thousand dollars (\$75,000.00).

V. PAYMENT TERMS

9. Respondent shall pay the civil penalty set forth in Paragraph 8 of this CAFO in two installments due as follows: 1) Thirty-seven thousand five hundred (\$37,500) no later than 30 calendar days after this CAFO is final; and 2) Thirty-seven thousand five hundred (\$37,500), with interest, no later than 180 days after this CAFO is final (“Second Installment Payment”). Respondent shall pay interest on the balance due, at the rate provided in 28 U.S.C. § 1961(a), that is, a rate equal to the coupon issue yield equivalent (as determined by the Secretary of Treasury) of the average accepted auction price for the last auction of 52-week U.S. Treasury bills settled prior to the date this CAFO is final. Interest shall be computed daily and compounded annually. The Second Installment Payment shall include the principal amount due plus an additional sum of accrued interest on the declining balance calculated from the date this CAFO is final until the Second Installment Payment is paid. Respondent may accelerate this payment, and interest will accrue only on the actual outstanding balance.
10. Respondent shall make payments by depositing in the United States mail a cashier’s or certified check, payable to the order of “Treasurer, United States of America” and referencing the title and docket number of the action (“In the Matter of Grimm Industries, L.L.C., CWA-01-2011-0036”) to:

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

11. Respondent shall simultaneously submit copies of the penalty payment check to:

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region I
5 Post Office Square, Suite 100
Mail Code ORA17-1
Boston, MA 02109-3912
and
Kathleen E. Woodward
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region I
5 Post Office Square, Suite 100
Mail Code OES4-2
Boston, MA 02109-3912

VI. SUPPLEMENTAL ENVIRONMENTAL PROJECT

12. Respondent shall undertake and complete the following supplemental environmental project ("SEP"), which the parties agree is intended to secure significant environmental improvements. In accordance with the schedule referenced in Paragraph 13 hereof, Respondent shall implement a project to restore oyster beds and eel grass to the Great Bay ("Habitat Restoration SEP"). The Habitat Restoration SEP will benefit the environment by both restoring habitat and enhancing water quality.

13. Respondent shall undertake and complete the SEP according to the schedule set forth in the Scope of Work (Attachment A). The SEP is more specifically described in the Scope of Work incorporated herein by reference.
14. The total cost to the Respondent of the Habitat Restoration SEP shall be not less than one-hundred fifty thousand dollars (\$150,000.00) in accordance with the specifications set forth in the Scope of Work. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report required by Paragraph 16.a.
15. Respondent certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent further certifies that, to the best of its knowledge and belief, there is no such open federal financial transaction that is funding or could be used to fund the same activities as the SEP, nor have either of the same activities been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

16. SEP Reports:

- a. **SEP Completion Reports:** Respondent shall submit a SEP Completion Report to EPA for the SEP within thirty (30) days of completion of the SEP. The SEP Completion Report shall contain the following information:
- (i) A detailed description of the SEP as implemented;

- (ii) A description of any operating problems encountered and the solutions thereto;
- (iii) Itemized costs, documented by copies of purchase orders and receipts, canceled checks, or wire transfer records;
- (iv) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Order; and
- (v) A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

b. **Quarterly Reports:** Until Respondent submits its Completion Reports for the SEP, Respondent shall submit quarterly written reports (“Quarterly Reports”) outlining work performed on the SEP to date and funds spent to date, commencing with the first full calendar quarter following the effective date of this CAFO. Such reports shall be provided to EPA postmarked no later than the last day of the calendar month following the end of each calendar quarter. Calendar quarters end on the following dates: March 31, June 30, September 30 and December 31. Quarterly Reports are to be postmarked not later than April 30, July 31, October 31, and January 31. The first Quarterly Report shall be prepared for the calendar quarter during which the CAFO becomes final. Each Quarterly Report shall contain a narrative description of the SEP activities undertaken to date, an itemization (with copies of supporting documentation) of costs incurred with respect to the SEP, and a report of any difficulties or delays in the implementation of the SEP. The absence of EPA comments on the Quarterly Reports shall not constitute

approval of the progress being made on the SEP or waiver of EPA's rights to determine that the SEP was not completed satisfactorily and to take any action specified in Paragraph 20 of this Consent Agreement and Final Order.

c. Respondent agrees that an unexcused failure to submit an SEP Completion Report or any Quarterly Report required by subsections a. and b. above shall be deemed a violation of this Consent Agreement and Order and that Respondent shall become liable for stipulated penalties pursuant to Paragraph 20 below.

d. Respondent shall submit all Quarterly Reports, the Completion Reports and any other notices required by this Consent Agreement and Order by first class mail to:

Joy Hilton
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region I
5 Post Office Square, Suite 100
Mail Code OES4-3
Boston, MA 02109-3912

e. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. If the SEP completion report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made.

Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

17. **EPA right to inspect:** Respondent agrees that EPA may inspect the facility at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

18. **Document retention and certification:** Respondent shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to EPA pursuant to this CAFO and shall provide the documentation of any such underlying research and data to EPA not more than seven days after a request for such information. In all documents or reports, including, without limitation, any SEP reports, submitted to EPA pursuant to this Consent Agreement, Respondent shall, by its owners, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

19. EPA acceptance of SEP Completion Report and Determination of SEP Compliance

a. After receipt of the SEP Completion Report described in Paragraph 16(a) above, EPA will notify the Respondent in writing: (i) that EPA concludes that the SEP has been completed satisfactorily; (ii) that EPA has determined that the project has not been

completed satisfactorily and is specifying a reasonable schedule for correction of the SEP or the SEP Completion Report; or (iii) that EPA has determined that the SEP does not comply with the terms of this CAFO and is seeking stipulated penalties in accordance with Paragraph 20 herein.

b. If EPA notifies Respondent pursuant to clause (ii) above that the SEP itself or the SEP Completion Report does not comply with the requirements of this CAFO, Respondent shall make such corrections to the SEP and/or modify the SEP Completion Report in accordance with the schedule specified by EPA.

c. If EPA notifies Respondent pursuant to clause (iii) above that the SEP itself does not comply with the requirements of this CAFO, Respondent shall pay stipulated penalties to EPA in accordance with Paragraph 20 herein.

20. Stipulated Penalties:

a. In the event that Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of an SEP described in Paragraphs 12 through 16 above and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in Paragraph 14 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

(i) Except as provided in subparagraph (ii) immediately below, for a SEP which has not been completed satisfactorily pursuant to this Consent Agreement and Order, Respondent shall pay a stipulated penalty to the United States in the amount of \$150,000.00, plus interest at the rate identified in Paragraph 24.

(ii) If the SEP is not completed in accordance with Paragraph 12 and but the Complainant determines that the Respondent: a) made good faith and timely efforts to complete the project; and b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.

(iii) If the SEP is completed in accordance with paragraph 12, but the Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to the United States in the amount of the difference between \$150,000.00 and the amount of eligible costs that Respondent spent on the SEP, plus interest pursuant to Paragraph 24.

(iv) If the SEP is completed in accordance with Paragraph 13, and the Respondent spent at least 90 percent of the amount of money required to be spent for the project, Respondent shall not be liable for any stipulated penalty.

(v) For failure to submit the SEP Completion Report required by Paragraph 16(a) above or for failure to submit an adequate Completion Report, Respondent shall pay a stipulated penalty in the amount of \$250.00 per day for each day from the day after the report is due until the report is submitted, or in the case of an inadequate report, until the report is submitted with deficiencies addressed.

(vi) For failure to submit any other report required by Paragraph 16(b) above, Respondent shall pay a stipulated penalty in the amount of \$250.00 per day for each day from the day after the report is due until the report is submitted, or in the case of an inadequate report, until the report is submitted with deficiencies addressed.

b. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.

c. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of a written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of Paragraph 10 above. Interest and late charges shall be paid as stated in Paragraph 24 herein.

d. 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 agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

21. **Public statements must acknowledge enforcement action:** Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the Clean Water Act."

22. **No relief from compliance; no endorsement by EPA:** This Consent Agreement and Order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval of the design used or materials installed by Respondent in connection with either SEP undertaken pursuant to this Agreement.

23. Force Majeure

a. If any event occurs which causes or may cause delays in the completion of the SEP as required under this CAFO, Respondent shall notify EPA in writing not more than 10 days after the delay or Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondent to prevent or minimize the delay, and the timetable by which those measures will be implemented. The Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular incident involved and constitute a waiver of the Respondent's right to request an extension of its obligation under this CAFO based on such incident.

b. If the parties agree that the delay or anticipated delay in compliance with this CAFO has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the parties shall stipulate to such extension of time.

c. In the event that the EPA does not agree that a delay in achieving compliance with the requirements of this CAFO has been or will be caused by circumstances beyond the control of the Respondent, EPA will notify Respondent in writing of its decision and any delays in the completion of the SEP shall not be excused.

d. The burden of proving that any delay is caused by circumstances entirely beyond the control of the Respondent shall rest with the Respondent. Increased costs or expenses associated with the implementation of actions called for by this CAFO shall not, in any event, be a basis for changes

in this CAFO or extensions of time under section (b) of this paragraph. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

VII. General Provisions

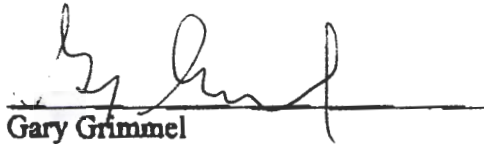
24. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), a failure by Respondent to pay the penalty assessed by this CAFO in full by the payment due date shall subject Respondent to a civil action to collect the assessed penalty, plus interest at current prevailing rates from the date the penalty was due pursuant to Paragraph 9 of this CAFO. The rate of interest assessed shall be at the rate set forth in 31 C.F.R. § 901.9(d), promulgated under 31 U.S.C. § 3717. Any person who fails to pay on a timely basis the amount of an assessed penalty shall be required to pay in addition to such amount and interest, attorney's fees, costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of such person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.
25. The penalties specified in Paragraphs 8 and 20 above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes. The SEP costs described in Paragraph 14 shall not be deductible for purposes of Federal taxes.
26. The provisions of this CAFO shall be binding upon Respondent and its successors or assigns.
27. Except as described in Paragraph 24 above, each party shall bear its own costs and attorneys fees in this proceeding.

28. Issuance of this CAFO constitutes a full and complete settlement by EPA of all claims for judicial and administrative civil penalties pursuant to Sections 309(d) and (g) of the CWA, 33 U.S.C. §§ 1319(d) and (g), for all past violations of the CWA alleged in the Complaint referenced in Paragraph 1.
29. This CAFO shall not limit the authority of the United States to enforce the underlying substantive legal requirements of this administrative penalty assessment, whether administratively or judicially, pursuant to Sections 309(a), (b), and (c) of the Act, 33 U.S.C. §§ 1319(a), (b), and (c), or Section 504 of the Act, 33 U.S.C. § 1364.
30. This CAFO does not constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. §§ 1251 *et seq.*, or any regulations promulgated or permits issued thereunder.

30. The undersigned representatives of Respondent certify that they are fully authorized by Respondent to enter into the terms and conditions of this CAFO and legally bind Respondent.

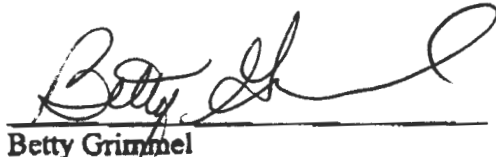
STIPULATED AND AGREED:

For GRIMMEL INDUSTRIES, L.L.C.



Gary Grimmel
Owner
Grimmel Industries, L.L.C.

Date: 5/31/12



Betty Grimmel
Owner
Grimmel Industries, L.L.C.

Date: 5/31/12

For U.S. ENVIRONMENTAL PROTECTION AGENCY

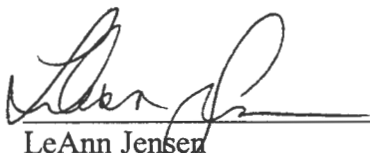
Susan Studlien
Susan Studlien, Director
Office of Environmental Stewardship
U.S. EPA, Region 1

Date: 06/13/12

FINAL ORDER

31. The forgoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondent is ordered to comply with the terms of the above Consent Agreement which will become final thirty (30) days from the date it is signed by the Regional Judicial Officer unless a petition to set aside the order is filed by a commenter pursuant to Section 309(g)(4) (C) of the CWA, 33 U.S.C. 1319(g)(4) (C) and 40 C.F.R. Part 22.

U.S. ENVIRONMENTAL PROTECTION AGENCY



LeAnn Jensen
Acting Regional Judicial Officer
U.S. EPA, Region 1

Date: 6/14/12

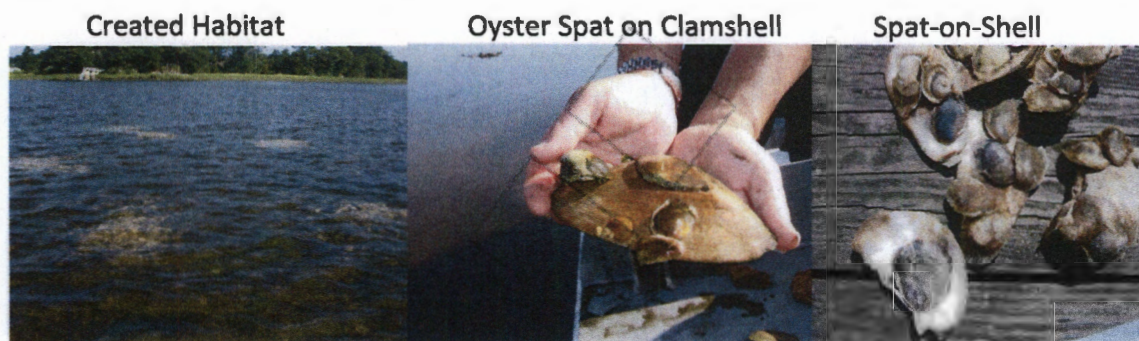
ATTACHMENT A

SCOPE OF WORK

Oyster and Eelgrass Restoration in the Piscataqua River

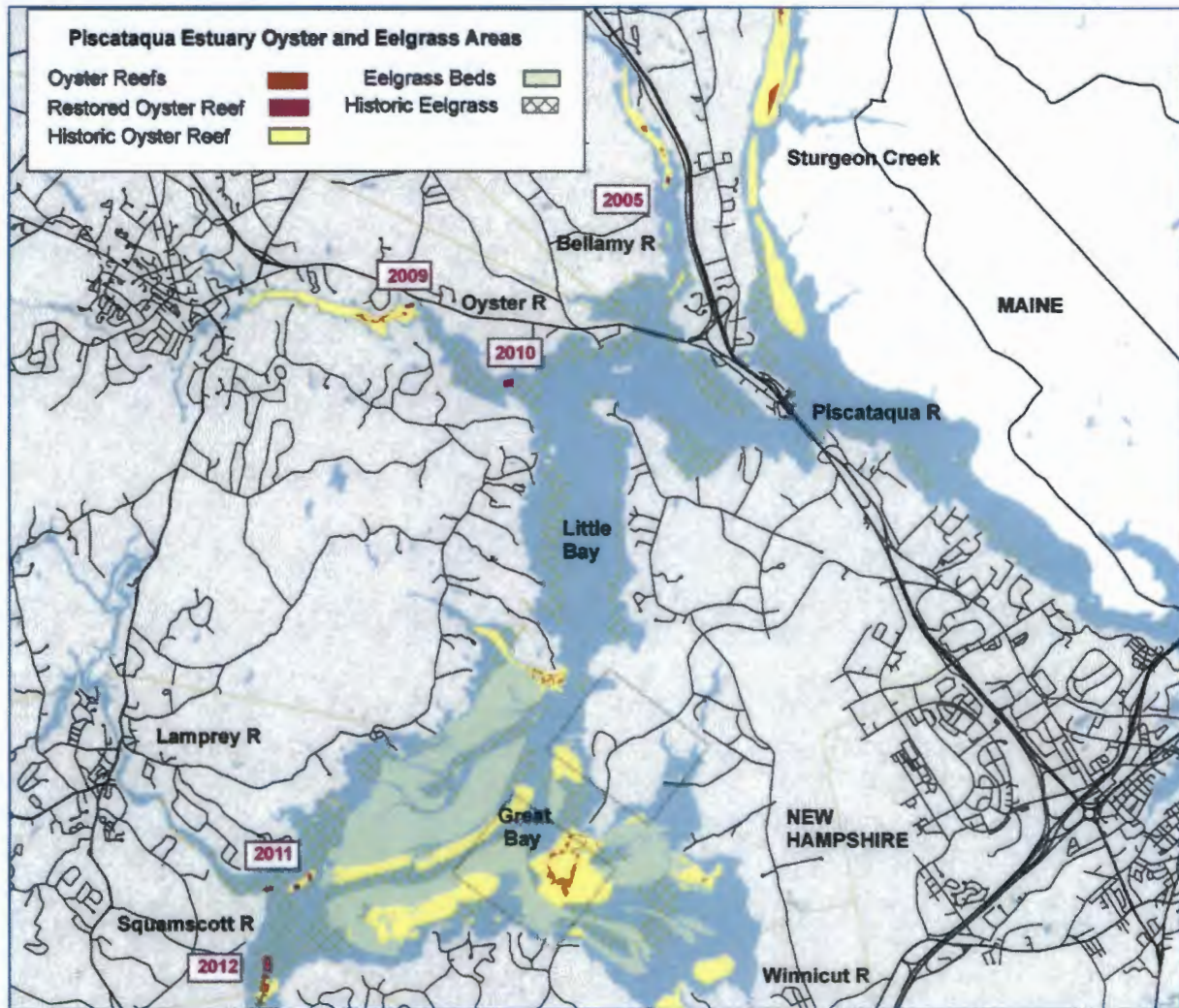
Dr. Ray Konisky (The Nature Conservancy) and Dr. Ray Grizzle (University of New Hampshire)
June 14, 2012

Restoration Rationale. The most significant environmental problem in Great Bay Estuary is poor water quality caused by excessive nitrogen, siltation, chemical pollution and storm-water runoff from developed areas. Critical habitats like oyster reefs and eelgrass beds, along with the fish and invertebrate populations they support, are severely affected by these pollutants. Oysters in the Great Bay Estuary have declined by 90% since the early 1990s, with fewer than 50 acres of oyster reef remaining from a historic base of about 900 acres. Although disease accounted for most of this collapse, pollution remains a significant threat to very slow recovery. A coincident and persistent loss of eelgrass beds has led to a 65% decline in biomass in the Great Bay. All the eelgrass has been lost from the Piscataqua River north of Portsmouth Harbor and the estuary-wide trend in eelgrass cover has been downward since the year 2000 (see Figure).



Severe decline of estuarine habitats has had a devastating effect on the functioning of the Great Bay ecosystem, especially for maintaining water quality. Nitrogen levels have increased by 42% in the past five years in the estuary, resulting in harmful algae blooms. Low levels of oysters limit the regulation of chlorophyll removal, nitrogen control, and water clarification. Similarly, less eelgrass means fewer shoots to take up excess nutrients and filter sediments, further degrading water quality and clarity. Local eelgrass and oyster populations in Great Bay Estuary are now at risk, lacking the requisite seed sources and favorable starting conditions to regenerate naturally on their own. Reestablishment of oyster reefs and eelgrass beds in suitable areas help reverse the downward trends of water quality and estuarine health.

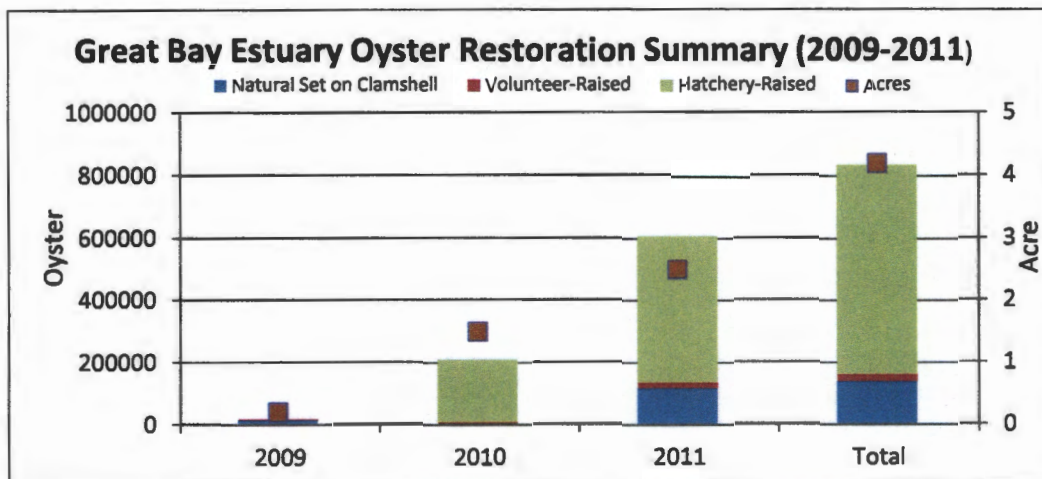
Our restoration approach is based on reestablishment of oysters to enable water quality conditions that eelgrass can tolerate. Each oyster filters 20 gallons per day and clears the water of light-blocking algae, helping eelgrass colonize and survive. Oyster feeding removes nitrogen directly from the water column and stores it in shell and tissue, buries it as part of the reef, and releases it as a gas byproduct of feeding. Studies show that each acre of oyster reef removes about one-half ton of nitrogen from the water column each year. In a system like the Piscataqua River that is overwhelmed with nitrogen, this water quality benefit is substantial.



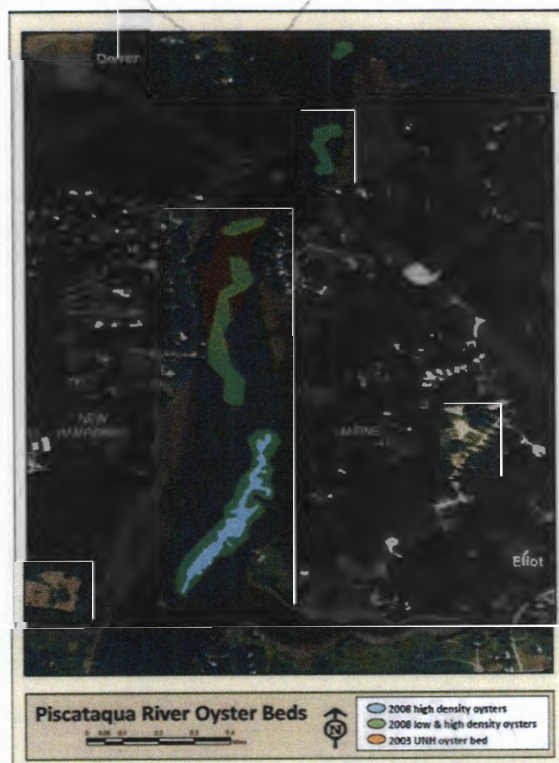
To return valuable ecosystem services to the estuary, principal investigators from The Nature Conservancy (TNC) and the University of New Hampshire's Jackson Estuarine Laboratory (JEL) have been working together to scale-up successful methods of habitat restoration. For oysters, we use recycled surf clam shell (from a seafood processor) to cover silted estuary bottom with a layer of hard substrate that settles native oyster larvae and acts as a foundation for supporting hatchery seed stock.

We have successfully restored over four acres of oyster reefs and 830,000 oysters to the estuary in 2009-2011, with on-going plans for annual construction each year. We will restore an additional two acres of oysters in 2012. Our sites are selected near spawn sources with tidal flows adequate to provide steady food and to flush suspended sediments, increasing the probability of successful oyster recruitment and survival. For eelgrass, JEL long-term experience includes restoration methods of transplanting eelgrass shoots and dispersing seed. Our 2011 post-construction oyster reef monitoring shows that eelgrass is seeding naturally in sediment patches interspersed with shell reef mounds. Further, observations of fish use (especially

juvenile winter flounder) on new reefs with eelgrass suggest that this habitat has exceptional value and immediate impact. We will implement a similar habitat-creation approach based on shell spreading, oyster seeding and eelgrass seeding to re-establish a functioning mosaic of oyster reef and eelgrass habitat.



Proposed Work Site. Our preliminary surveys indicate that the Piscataqua River at Sturgeon Creek (between Eliot and Dover Point) offers optimal depth profiles, bottom type, and oyster densities for a multi-acre oyster and eelgrass project with a high probability of success. There is a 3+ acre live oyster reef here in the main channel of Piscataqua River just upstream of the confluence with Sturgeon Creek (see Figure).



The NH side of the reef is degraded and appears highly suitable for reconstruction. We will add clean and dried shell to about 60,000 square feet (1.5 acres) of silted river bottom around existing reef to re-establish hard substrate suitable for recruiting native oyster set. UNH will then produce lab-raised oysters set on oyster shell as “spat-on-shell” as a supplemental seeding. As with all of our reef construction projects, our target is to establish an average initial density of 50 oysters per square meter on the new reef, similar to long-term observations on natural reefs in Great Bay Estuary. Once established, these filter feeders will provide a significant amount of water quality benefits to the Piscataqua River. On the Maine side, Sturgeon Creek basin has had eelgrass in the 1980s and recently supported the annual seagrass *Ruppia maritima*. There is currently no source of eelgrass propagules this far up the Piscataqua River, so reestablishing eelgrass is unlikely to occur naturally. The restored eelgrass will provide filtration of creek watershed outflow into the estuary as these waters approach the new oyster flats and move downstream into the river.

Principals and Work Plan. All work will be directed by the Project Manager, Ray Konisky PhD and the Science Co-Lead Ray Grizzle PhD. Dr. Konisky, TNC Director of Marine Science, has ten years of experience managing complex estuarine restoration projects with a track record of on-time and on-budget results, including multiple consecutive of successful oyster restoration results. Dr. Grizzle, UNH Research Professor, has more than twenty years of experience as science lead on a series of successful oyster restoration and estuarine research projects.

Dr. Konisky will be assisted by a seasonal restoration coordinator. Dr. Grizzle will lead a team that includes his lab technician Krystin Ward and eelgrass field scientist Dr. David Burdick. Dr. Fred Short will be retained as a consultant for technical support with eelgrass restoration. Project restoration work will be conducted as a two-year project that includes six tasks for pre-construction monitoring, oyster reef and eelgrass bed reestablishment, post-construction verification, and one-year follow-on monitoring. Details are as follows:

Task 1 - Pre-construction. In the fall of 2012, Grizzle will conduct underwater video monitoring to delineate the existing oyster reef and to assess the bottom for suitable substrate (scattered shell) and the absence of eelgrass. Konisky will contract with a shell supplier in Massachusetts (M&V Livestock) to secure about 140 tons of surf clam shell. The supplier will dry the shell for six months out of water prior to construction per state requirements.

Task 2 – Permits. In early 2013, Konisky will develop a Wetland Permit for reef construction, secure approval from the town of Dover, and submit to NH Department of Environmental Services. He will also work with the State of Maine Department of Marine Resources to ensure permission for eelgrass reestablishment. Grizzle will secure a Scientific Permit from NH Fish and Game Department for all lab-raised spat-on-shell work. NH permits are under the discretion of the State of NH and have been secured for the past four years for prior projects.

Task 3 – Reef Construction. In May and June 2013, Konisky will manage logistics for shell transport from Massachusetts, contract for barge services, supervision of shell loading, and oversee distribution of shell from barge at the Piscataqua work site.

Task 4 – Seeding. By July 2013, Grizzle and team will secure oyster larvae and recycled oyster shell, prepare shell, and settle oyster spat-on-shell in a laboratory setting. A seed source of 5 million larvae will be acquired from our approved hatchery provider for this operation. Set oysters are moved to a nursery raft for growing until dispersal at the site by hand. In August, Burdick, Grizzle, and team will coordinate the collection by hand of eelgrass seed from shoreline wrack around Great Bay Estuary. We expect to collect many thousands of seeds with this method. Eelgrass seed will be spread by hand from small boats with a settling technique to colonize open patches of sediment. The spat-on-shell seeding will be done at the same time as the eelgrass seeding, around late August.

Task 5 – Post-Construction Monitoring. Around October 2013, Grizzle and team will conduct post-construction reef sampling to verify shell distribution, natural oyster setting, eelgrass shoot development, and spat-on-shell survival on created reef areas.

Task 6 – Follow-on Monitoring. Grizzle and team will conduct follow-on reef monitor one year post construction to quantify oyster and eelgrass recruitment and survival, and will issue a final report.

Project Timeline (October 1 2012 to September 30 2014):

- Task 1:** Pre-construction video survey monitoring and clam shell acquisition
- Task 2:** Permit preparation and acquisition
- Task 3:** Oyster reef foundation construction (clam shell)
- Task 4:** Seeding (oyster spat-on-shell, eelgrass)
- Task 5:** Post-construction monitoring
- Task 6:** Follow-on monitoring (one-year post construction)

	2012			2013												2014									
	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	
Task 1	X																								
Task 2				X																					
Task 3																									
Task 4																									
Task 5																									
Task 6																									X

Budget. Budget details are as follows, with a total project budget of \$154,666, including: \$42,144 for project management and logistics, \$65,453 for UNH science sub-award, \$25,300 for contract services (barge, shell transit, boat service, and eelgrass consulting), \$7,000 for supplies (oyster larvae and field equipment), \$500 for permits, and \$660 for travel to work sites and service contractor offices. TNC will receive indirect of \$13,609 at our approved rate of 18% for project expenses exclusive of the UNH sub-award.

Budget for Restoration of Piscataqua River Oysters and Eelgrass

		Unit	Effort	Rate	Amount
TNC	Proj Mgt & Science-salary	months	3	8000.00	24000
	Proj Mgt & Science-fringe	percent		42.00	10080
	Seasonal Coordinator - salary	months	3	2400.00	7200
	Seasonal Coordinator - fringe	percent		12.00	864
	TNC Subtotal				42144
UNH JEL	Science Co-Lead (JEL) - salary	months	2	9861.00	19722
	Science Co-Lead (JEL)-fringe	percent		42.90	8461
	Technical Assistant-salary	months	2	3458.00	6916
	Technical Assistant-fringe	percent		42.90	2967
	Eelgrass Field Science-salary	months	1	6505.00	6505
	Eelgrass Field Science-fringe	months		42.90	2791
	UNH Indirect	percent		38.20	18092
Contractual	UNH Subtotal				65453
Trucking Co.	Shell Processor to Barge	truckloads	4	1200.00	4800
Pickering	Barge Services	days	4	3500.00	14000
Boat Rental	UNH boats	days	10	100.00	1000
Consulting	Eelgrass	months	0.5	11000.00	5500
	Other Subtotal				25300
Supplies	Oyster Larvae	million	5	1200.00	6000
	Misc supplies (cages, rope, buoys)		1	1000.00	1000
	SubTotal				7000
Other	Permit				500
Travel	Travel	miles	1200	0.55	660
Total Direct Costs	Subtotal				141057
TNC Overhead [Excluding UNH]	percent			18.00	13609
1.5ac Total					154666

In the Matter of: Grimm Industries, L.L.C.
Docket No. CWA 01-201-0036

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent to the following persons, in the manner specified on the date below:

Copy hand-delivered:

Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region I
5 Post Office Square, Suite 100
Mail Code ORA17-1
Boston, Massachusetts 02109-3912

Copy by certified mail, return
receipt requested

Betty and Gary Grimm, Owners
Grimm Industries, L.L.C.
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Thomas F. Irwin, Esq.
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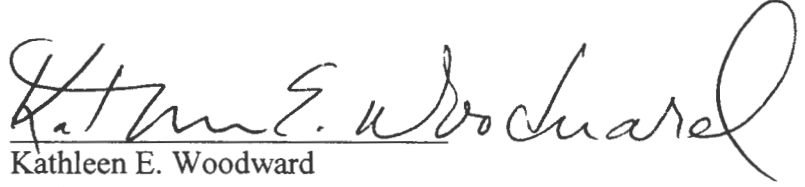
Copy by first-class mail to:

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New Hampshire Department of Environmental
Services
P.O. Box 95
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William Taylor, Esq.
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Brian Rayback, Esq.
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Dated: June 15, 2012

A handwritten signature in black ink, reading "Kathleen E. Woodward". The signature is written in a cursive style with a large, looping "W" at the end.

Kathleen E. Woodward
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