

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Christine Foot 12/20/18  
Name of Case Attorney Date

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

Case Docket Number CWA-01-2018-0066

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:

Jamy Buchanan Madeja  
Martha's Vineyard Shipyard, Inc.  
164 Beach Road  
Vineyard-Haven, MA 02568

Total Dollar Amount of Receivable \$ 26,520 Due Date: 1/29/19

SEP due? Yes \_\_\_\_\_ No  Date Due \_\_\_\_\_

Installment Method (if applicable)

INSTALLMENTS OF:  
1<sup>st</sup> \$ \_\_\_\_\_ on \_\_\_\_\_  
2<sup>nd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_  
3<sup>rd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_  
4<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_  
5<sup>th</sup> \$ \_\_\_\_\_ 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  
FIVE POST OFFICE SQUARE SUITE 100  
BOSTON, MASSACHUSETTS 02109-3912

RECEIVED

DEC 20 2018

EPA ORC  
Office of Regional Hearing Clerk

**BY HAND**

December 20, 2018

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region I  
5 Post Office Square Suite 100, Mail Code ORC04-6  
Boston, MA 02109-3912

Re: *In the Matter of: Martha's Vineyard Shipyard, Inc.*; Docket No. CWA-01-2018-0066

Dear Ms. Santiago,

Enclosed for filing, please find an original and one copy of the Consent Agreement and Final Order (CAFO) settling the matter referenced above.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Christine M. Foot".

Christine Foot  
Enforcement Counsel  
EPA Region 1

Enclosures

cc: Jamy Buchanan Madeja, Esq.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

IN THE MATTER OF )	Docket No. CWA-01-2018-0066
MARTHA’S VINEYARD SHIPYARD, INC. )	
164 Beach Road )	
Vineyard Haven, MA 02568 )	<b>CONSENT AGREEMENT AND</b>
Respondent. )	<b>FINAL ORDER FOR CLASS II</b>
	<b>CIVIL PENALTY UNDER</b>
	<b>CLEAN WATER ACT</b>
Proposing to Assess a Civil Penalty Under )	
Sections 309(g) and 311(b)(6) of the Clean )	
Water Act, 33 U.S.C. §§ 1319(g) and 1321(b)(6) )	

RECEIVED

DEC 20 2018

EPA ORC  
Office of Regional Hearing Clerk

1. Complainant, the United States Environmental Protection Agency (“EPA”), and Respondent, Martha’s Vineyard Shipyard, Inc. (“Respondent” or “MV Shipyard have agreed that settlement of this matter is in the public interest and that entry of this Consent Agreement and Final Order (“CAFO”) without further litigation is the most appropriate means of resolving this matter. MV Shipyard is not required to admit to the alleged violations or interpretations of law in agreeing to the settlement of this matter. This CAFO is issued under the authority granted to EPA by Section 309(g) of the Clean Water Act (“CWA”), 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/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22.

**I. PRELIMINARY STATEMENT**

2. EPA initiated this proceeding against 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-01-2018-0066, on September 24, 2018 (the “Complaint”).

3. 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.

4. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), the Commonwealth of Massachusetts has been given an opportunity to consult with EPA regarding the assessment of the administrative penalty for CWA violations against Respondent.

5. 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 issuance of such order.

## **II. CONSENT AGREEMENT**

6. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint.

7. Respondent waives any defenses it may have as to jurisdiction and venue. Respondent neither admits nor denies the specific factual or legal allegations, including without limitation, any of the violations alleged in the Complaint, except as expressly stated in the CAFO. Respondent consents to the terms of this CAFO.

### **Waiver of Rights**

8. Respondent waives the right to a hearing under Sections 309(g)(2)(B) and 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. §§ 1319(g)(2)(B) and 1321(b)(6)(B)(ii), and to any appeal of the Final Order in this matter under Sections 309(g)(8)(B) and 311(b)(6)(G)(ii) of the CWA, 33 U.S.C. §§ 1319(g)(8)(B) and 1321(b)(6)(G)(ii). Respondent consents to the issuance of a Final Order without further adjudication.

### **Penalty**

9. EPA proposes, and Respondent consents to, the assessment of a civil penalty of

\$26,526 for all alleged violations contained in this CAFO.

### **Payment Terms**

10. In agreeing to the penalty described in paragraph 9 above, EPA has taken into account the statutory penalty factors at Sections 309(g)(3) and 311(b)(8) of the CWA, 33 U.S.C. §§ 1319(g)(3) and 1321(b)(8).

11. Respondent shall pay the total penalty of \$26,526 within ten (10) calendar days of the date this CAFO becomes final. Respondent shall pay a penalty of \$4,775 for the alleged violations of Section 311 of the CWA, and, separately but at the same time, Respondent shall pay \$21,751 for the alleged violations of Section 301 of the CWA.

12. Respondent shall make each payment by cashier's or certified check, or by wire transfer. Respondent shall include the case name and docket number (*In re: Martha's Vineyard Shipyard, Inc.*; Docket No. CWA-01-2018-0066) on the face of each check or wire transfer confirmation. For the payment relating to the alleged violation of Section 311 of the CWA (\$4,775), the face of the check shall additionally include "Oil Spill Trust Fund – 311." A check should be payable to "Treasurer, United States of America." Each payment shall be remitted as follows:

If remitted by regular U.S. mail:

U.S. Environmental Protection Agency / 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  
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”

In addition, at the time of payment, Respondent should also forward notice of payment of the civil penalty as well as copies of the payment check or payment receipt 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, Massachusetts 02109-3912

and

Christine M. Foot, Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Mail Code: OES 04-2  
Boston, Massachusetts 02109-3912

13. Pursuant to Sections 309(g)(9) and 311(b)(6)(H) of the CWA, 33 U.S.C. §§ 1319(g)(9) and 1321(b)(6)(H), a failure by Respondent to pay the penalty assessed by this CAFO in full by its due date shall subject Respondent to a civil action to collect the assessed penalty, plus interest at the prevailing rates, from the date this Agreement becomes final. The rate of interest assessed shall be at the rate set forth in 31 C.F.R. § 901.9(b), 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 non-penalty payment for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent of the aggregate amount of

such person's penalties and nonpayment penalties that 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.

### **General Provisions**

14. The provisions of this CAFO shall apply to and be binding on Respondent, their officers, directors, agents, servants, employees, successors, and assigns.

15. The civil penalty provided under this CAFO, and any interest, nonpayment penalties, and charges described in this CAFO, 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.

16. This CAFO does not constitute a waiver, suspension, or modification of the requirements of the CWA or any regulations or permits promulgated thereunder. Payment of the penalty pursuant to this CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged herein.

17. 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.

18. 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



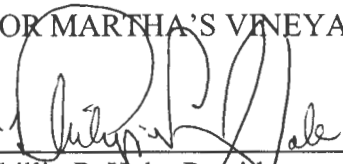
based, or for Respondent's violation of any applicable provision of law. Nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting defenses available to Respondent for alleged violations of this CAFO.

19. 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.

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

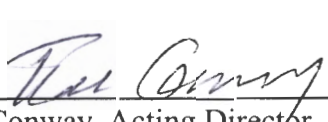
21. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

FOR MARTHA'S VINEYARD SHIPYARD, INC.:

  
\_\_\_\_\_  
Phillip P. Hale, President  
Martha's Vineyard Shipyard, Inc.

Date: 11/20/2018

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

  
\_\_\_\_\_  
Tim Conway, Acting Director  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency, Region 1

Date: 12/13/18



**FINAL ORDER**

1. EPA has provided public a thirty-day opportunity for public notice and comment on this proposed CAFO, pursuant to Sections 309(g)(4)(A) and 311(b)(6)(C)(i) of the CWA, 33 U.S.C. §§ 1319(g)(4)(A) and 1321(b)(6)(C)(i), and 40 C.F.R. § 22.45(b).

2. Pursuant to 40 C.F.R. §§ 22.18(b) & (c) of EPA's Consolidated Rules of Practice, the foregoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

3. Respondent is hereby 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 Administrator unless a petition to set aside the order is filed by a commenter pursuant to Sections 309(g)(4)(C) and 311(b)(6)(C)(iii) of the CWA, 33 U.S.C. §§ 1319(g)(4)(C) and 1321(b)(6)(C)(iii), and 40 C.F.R. Part 22.

Date:

12/19/18



\_\_\_\_\_  
LeAnn Jensen  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 1

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

IN THE MATTER OF:	)	
	)	
MARTHA'S VINEYARD SHIPYARD, INC.	)	Docket No. CWA-01-2018-0066
164 Beach Road	)	
Vineyard Haven, MA 02568	)	<b>CERTIFICATE OF SERVICE</b>
	)	
Respondent.	)	
	)	
	)	
	)	

I hereby certify that the foregoing Consent Agreement and Final Order has been sent to the following persons on the date noted below:

Original and one copy,  
hand-delivered:

Ms. Wanda I. Santiago  
Regional Hearing Clerk  
U.S. EPA, Region I  
5 Post Office Square, Suite 100  
Mail Code ORC04-6  
Boston, MA 02109-3912

Copy (Certified Mail,  
Return Receipt Requested):

Jamy Buchanan Madeja, Esq.  
Buchanan & Associates  
100 Cambridge Street, 14th Floor  
Boston, MA 02114

Dated: 12/10/18

  
Christine Foot, Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Mail Code OES04-2  
Boston, MA 02109-3912  
Phone: 617-918-1333  
Fax: 617-918-0333  
E-mail: foot.christine@epa.gov