



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590  
**MAR 23 2016**

REPLY TO THE ATTENTION OF:

Robert McCune  
President  
Superior Marine Ways, Inc.  
5852 County Road 1  
South Point, Ohio 45680

Re: Superior Marine Ways, Inc., South Point, Ohio  
Docket No: **CWA-05-2016-0010**

Dear Mr. McCune :

Enclosed is the fully executed Consent Agreement and Final Order (CAFO) in the resolution of the above case. It was filed on March 23, 2016 with the Regional Hearing Clerk.

This CAFO requires that Superior Marine Ways, Inc. (Superior Marine) pay a penalty and complete a supplemental environmental project (SEP) to mitigate the penalty in this matter. The SEP will eliminate the need for a 2,000 gallon oil tank and 4,400 feet of above and below ground pressurized hydraulic piping along the Ohio River. The cost of the SEP will be at least \$298,000. In addition to the SEP, the penalty amount agreed upon is \$9,000 which is due 30 days after the effective date of this CAFO, and is to be paid by an electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read:  
"D68010727 Environmental Protection Agency"

The comment or description field of the electronic funds transfer must state Respondent's name and the docket number of this CAFO.

As indicated in your CAFO, a copy of the check or electronic transfer must be sent to:

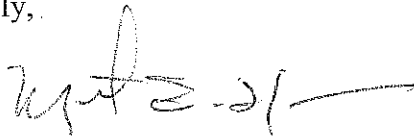
LaDawn Whitehead  
Regional Hearing Clerk (E-19J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Ellen Riley (SC-5J)  
Enforcement Officer  
Superfund Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Mary Fulghum  
Associate Regional Counsel  
Office of Regional Counsel (C-14J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

If you have any questions, please contact Ellen Riley (312) 886-9497-8752 or your attorney may contact Mary Fulghum, Associate Regional Counsel at (312) 886-4683.

Sincerely,



Michael E. Hans, Chief  
Chemical Emergency Preparedness and Prevention Section

Enclosure

cc: Michael Manns, Superior Marine CFO  
Chris Kim Kahn, Frost Brown Todd LLC  
Christopher Habel, Frost Brown Todd LLC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5



In the Matter of: ) Docket No. CWA-05-2016-0010  
)  
Superior Marine Ways, Inc. ) Proceeding to Assess a Class II Civil Penalty  
AKA Superior Marine, Inc. ) Under Section 311(b)(6) of the Clean Water  
) Act, 33 U.S.C. § 1321(b)(6)  
)  
5852 County Road 1 )  
South Point Ohio 45680 )  
)  
Respondent. )  
\_\_\_\_\_ )

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 311(b)(6) of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. Complainant is the Director of the Superfund Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Superior Marine Ways, Inc., also known as Superior Marine, Inc., a corporation with a place of business in South Point, Ohio.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

**Jurisdiction and Waiver of Right to Judicial Review and Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations and alleged violations in this CAFO.

8. Respondent waives its right to obtain judicial review of this CAFO under Section 311(b)(6)(G) of the CWA, 33 U.S.C. § 1321(b)(6)(G), its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

**Statutory and Regulatory Background**

**Spill prevention, control and countermeasure plan requirements**

9. Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore and offshore facilities, and to contain such discharges. The authority to promulgate these regulations for non-transportation-related onshore facilities has been delegated to EPA by Executive Order (E.O.) 12777 (October 18, 1991).

10. The oil pollution prevention regulations at 40 C.F.R. Part 112 implement the requirements of Section 311(j)(1)(C) of the CWA, and set forth procedures, methods, equipment, and other requirements to prevent the discharge of oil from non-transportation-related onshore facilities into or upon the navigable waters of the United States and adjoining shorelines. 40 C.F.R § 112.1(a)(1).

11. The oil pollution prevention regulations at 40 C.F.R. Part 112 apply to owners and operators of non-transportation-related onshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil and oil products, which due to their location, could reasonably be expected to discharge oil in quantities that may harmful, as described in 40 C.F.R. § 110.3, into or upon the navigable waters of the United States or adjoining shorelines, and have an aboveground oil storage capacity of more than 1,320 U.S. gallons or a completely buried oil storage capacity greater than 42,000 U.S. gallons. 40 C.F.R. § 112.1(b).

12. 40 C.F.R. § 112.3 requires the owner or operator of a subject facility to prepare in writing and implement a Spill Prevention Control and Countermeasure Plan (“SPCC Plan”) in accordance with the requirements of 40 C.F.R. Part 112.

13. 40 C.F.R. § 112.5(b) requires the owner or operator of a subject facility to complete a review and evaluation of the SPCC Plan at least once every five years from the date the facility becomes subject to the oil pollution prevention regulations.

14. 40 C.F.R. § 112.7(e) requires the owner or operator of a subject facility to conduct inspections and tests required by 40 C.F.R. Part 112 in accordance with written procedures developed for the facility, and further requires that the written procedures and a record of the inspections and tests, signed by the appropriate supervisor or inspector, be kept with the SPCC Plan for a period of three years.

15. 40 C.F.R. § 112.7(f)(1) requires the owner or operator of a subject facility to, at a minimum, train oil-handling personnel in the operation and maintenance of equipment to prevent discharges; discharge procedure protocols; applicable pollution control laws, rules, and regulations; general facility operations; and, the contents of the SPCC Plan.

16. 40 C.F.R. 112.7(f)(3) requires the owner or operator of a subject facility to schedule and conduct briefings for oil-handling personnel at least once per year to assure adequate understanding of the SPCC Plan for the facility. Such briefings must highlight and describe known discharges or failures, malfunctioning components, and any recently developed precautionary measures.

#### **General provisions and enforcement of the CWA**

17. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as waters of the United States. 40 C.F.R. § 112.2 further defines “navigable waters” to include: all navigable waters of the United States, as defined in judicial decisions prior to passage of the 1972 Amendments to the CWA and tributaries of such waters; interstate waters; intrastate lakes, rivers, and streams which are utilized by interstate travelers for recreational or other purposes; and intrastate lakes, rivers, and streams from which fish or shellfish are taken and sold in interstate commerce.

18. Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10) and 40 C.F.R. § 112.2, define “onshore facility” as any facility of any kind located in, on, or under any land within the United States, other than submerged land.

19. Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1) and 40 C.F.R. § 112.2, define “oil” as oil of any kind and in any form, including but not limited to: petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

20. Section 311(a)(6)(B) of the CWA, 33 U.S.C. § 1321(a)(6)(B) and 40 C.F.R. § 112.2, define “owner or operator” in the case of an onshore facility as any person owning or operating such onshore facility.

21. Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2, define “person” as including an individual, firm, corporation, association, and a partnership.

22. Appendix A to 40 C.F.R. § Part 112, *Memorandum of Understanding between the Secretary of Transportation and EPA*, defines “non-transportation-related onshore and offshore transportation facilities” to include oil storage facilities, including all equipment and appurtenances related thereto, as well as fixed bulk plant storage and terminal oil storage facilities; and industrial, commercial, agricultural or public facilities which use and store oil. Appendix A to 40 C.F.R. Part 112, (1)(F) and (G).

23. EPA may assess a class II civil penalty against any owner, operator, or person in charge of any onshore facility who fails or refuses to comply with any regulations issued under Section 311(j) of the CWA, 33 U.S.C. § 1321(j), under Section 311(b)(6)(A)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(A)(ii).

24. EPA may assess a class II civil penalty of up to \$16,000 per violation for each day of violation that occurred after January 12, 2009, up to a maximum of \$177,500 under Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), and 40 C.F.R. Part 19.

#### **Factual Allegations and Alleged Violations**

25. Respondent is a corporation organized under the laws of Ohio with a place of business located at 5852 County Road 1, South Point, Ohio. Respondent is a person within the meaning of Sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and C.F.R. § 112.2.

26. Respondent is the owner and operator within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2 of a Bulk Oil Storage Facility, located on the Respondent's South Point, Ohio premises (“the facility”).

27. The facility's oil could reasonably be expected to flow and/or discharge downgradient from the oil/water separator building crossing underneath County Road 1 to a drainage feature which flows south to the Ohio river approximately 300 feet from the facility.

28. During the flood stage, portions of the facility are inundated by the Ohio River and the oil from the facility could reasonably be expected to flow and/or discharge downgradient from the oil/water separator building crossing underneath County Road 1 to the Ohio River floodwaters.

29. The facility has an aggregate above-ground storage capacity, including the capacity of any bunkered or partially buried tank (as defined in 40 C.F.R. § 122.2), of greater than 1,320 gallons of oil in containers that each have a shell capacity of at least 55 gallons.

30. The facility has above-ground storage tanks located such that a spill could discharge to the Ohio River.

31. The Ohio River is a navigable water of the United States within the meaning of 40 C.F.R. § 112.2 and Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

32. Respondent is engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products located at the facility.

33. The facility possesses both "non-transportation" components and "transportation related" components as those terms are defined by 40 C.F.R. Subpart A § 112.2 and 40 C.F.R. § 112, Appendix A, *Memorandum of Understanding Between the Secretary of Transportation and the Administrator Of The Environmental Protection Agency*.



34. The facility is a “complex” which is defined by 40 C.F.R. § 112.2 as a facility possessing a combination of transportation-related and non-transportation related components that is subject to the jurisdiction of more than one Federal agency under Section 311(j) of the CWA.

35. The facility possesses an onshore facility within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

36. The facility is a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States or its adjoining shorelines in a harmful quantity (“an SPCC-regulated facility”).

37. Pursuant to the CWA, E.O. 12777, and 40 C.F.R. § 112.1 Respondent, as the owner and operator of an SPCC-regulated facility, is subject to the SPCC regulations.

38. Respondent began operating the facility prior to 1984.

### **Count 1**

39. Complainant incorporates by reference the allegations contained in Paragraphs 1 through 38 of this CAFO.

40. 40 C.F.R. § 112.3 requires that the owner or operator of an SPCC-regulated facility must prepare a written SPCC plan in accordance with 40 C.F.R. § 112.7 and any other applicable section of 40 C.F.R. Part 112.

41. On June 21 and June 22, 2010, the EPA representatives inspected the facility.

42. When EPA inspected the facility on June 22, 2010, EPA advised the Respondent of the requirement to prepare and maintain an SPCC plan for the facility.

43. EPA requested a copy of the Respondent’s SPCC Plan in a “Request for Information” dated May 14, 2012.

44. EPA determined following its review of information provided by Respondent under Section 308 of the CWA, 33 U.S.C. § 1318, and on information contained in Superior's Response to EPA's May 14, 2012 Information Request, that Respondent had failed to prepare and maintain an adequate SPCC plan for the facility.

45. Respondent's failure to prepare such an SPCC plan for the facility violated 40 C.F.R. § 112.3 and applicable sections of 40 C.F.R. § 112.7.

46. As alleged in the preceding Paragraph, and pursuant to Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), and 40 C.F.R. § 19.4, the Respondent is liable for civil penalties of up to \$11,000 per day, for violations that occurred after March 15, 2004 through January 12, 2009, up to a maximum of \$157,500, and, up to \$16,000 per day, for violations that occurred after January 12, 2009, up to a maximum of \$177,500.

#### **Civil Penalty**

47. Based on analysis of the factors specified in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), the facts of this case, the Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act, dated August 1998, and Respondent's agreement to perform a supplemental environmental project (SEP) costing at least \$298,000, Complainant has determined that an appropriate civil penalty to settle this action is \$9,000.00.

48. Within 30 days after the effective date of this CAFO, Respondent must pay a \$9,000.00 civil penalty by an electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read:  
"D68010727 Environmental Protection Agency"

The comment or description field of the electronic funds transfer must state Respondent's name and the docket number of this CAFO.

49. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Ellen Riley (SC-5J)  
Enforcement Officer  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

Mary Fulghum (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

50. This civil penalty is not deductible for federal tax purposes.

51. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H). The

validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

52. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 20 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 33 U.S.C. § 1321(b)(6)(H).

#### **Supplemental Environmental Project**

53. Respondent must complete a SEP designed to protect the public health and the environment by source reduction using equipment or technology modification. By using an electric motor-driven vessel haul out system, the project eliminates the need for a 2,000 gallon oil tank and 4,400 feet of above-ground and below-ground pressurized hydraulic oil piping.

54. At the South Point facility, Respondent must complete the SEP as follows, and as detailed in the attached Appendix A, which is incorporated by reference into this CAFO.

- a. Install five computer-controlled electronic motors to haul vessels from the Ohio River to Respondent's upland shipbuilding and ship repair operations including Building B at the South Point facility.

55. Within 30 days after the effective date of this CAFO, Respondent must apply to the Ohio EPA for any permits needed to install the electronic motor-driven system to haul out vessels from the Ohio River to Respondent's shipbuilding and ship repair facility at South Point, Ohio.

56. No later than November 1, 2016, Respondent must complete the SEP, including purchasing and installing all the equipment required for the SEP identified in Appendix A.

57. Respondent must spend at least \$298,000 to purchase and install the equipment necessary for the SEP.

58. Upon completion of the SEP, Respondent must continuously use or operate the electric motor driven vessel haul out system in lieu of any diesel motor driven system using hydraulic oil.

59. Respondent certifies as follows:

With the exception of the simultaneously negotiated and executed CAFO resolving alleged violations for discharging storm water associated with industrial activity in violation of Section 301 of the CWA, 33 U.S.C. § 1311 ("NPDES CAFO"), I certify that Superior Marine Ways, Inc.'s South Point facility is not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that Superior Marine Ways, Inc. has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action other than the instant action and the NPDES CAFO.

I certify that Superior Marine Ways, Inc. 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. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For 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 expired.

60. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

61. Respondent must maintain copies of the underlying research and data for all reports submitted to EPA pursuant to the CAFO. Respondent must provide the documentation of any underlying research and data to EPA within seven days of EPA's request for the information.

62. Respondent must submit a SEP completion report to EPA within 30 days of completing the SEP as detailed in Appendix A, but no later than December 1, 2016. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized cost of goods and services used to complete the SEP, documented by copies of invoices, purchase orders or canceled checks that specifically identify and itemize the individual cost of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

63. Respondent must submit all notices and reports required by this CAFO by first class mail to EPA at the addresses provided in Paragraph 49, above.

64. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the

information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

65. Following receipt of the SEP completion report described in Paragraph 62, above, EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under Paragraph 67.

66. If EPA exercises option b, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirement that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under Paragraph 67, below.

67. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, including the schedules in Paragraphs 55 and 56, Respondent must pay a penalty of \$65,000.
- b. If Respondent did not complete the SEP satisfactorily, but EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in Paragraph 57, Respondent will not be liable for any stipulated penalty under subparagraph a, above.

- c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in Paragraph 57, Respondent must pay a penalty of \$20,000.
- d. If Respondent did not submit timely the SEP completion report or any other information required by Paragraph 61, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$100	1 <sup>st</sup> through 14 <sup>th</sup> day
\$500	15 <sup>th</sup> through 30 <sup>th</sup> day
\$1000	31 <sup>st</sup> day and beyond

68. EPA's determinations of whether Respondent satisfactorily completed the SEP and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

69. EPA may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this CAFO.

70. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in Paragraph 48, above, and will pay interest and nonpayment penalties on any overdue amounts.

71. Any public statement that Respondent makes referring to the SEP must include the following language, "Superior Marine Ways, Inc. undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Superior Marine Ways, Inc. for violation of Section 311 of the Clean Water Act and its implementing oil pollution regulations at 40 C.F.R. Part 112 and for violation of Sections 309 and 402 of the Clean Water Act for failing to obtain a National Pollutant Discharge Effluent System permit for stormwater discharge associated with an industrial facility."



72. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

- a. Respondent must notify EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.
- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.
- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

73. Nothing in this CAFO is intended to nor will be construed to constitute EPA approval of the equipment or technology installed by Respondent in connection with the SEP under the terms of this CAFO.

74. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any cost or expenditures incurred in performing the SEP.

#### **General Provisions**

75. Consistent with the "Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules," dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: fulghum.mary@epa.gov (for Complainant), and

chabel@fbtlaw.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

76. Respondent certifies that to the best of its knowledge it is in compliance fully with Section 311 of the Clean Water Act and oil pollution prevention regulations at 40 C.F.R. Part 112.

77. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

78. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

79. This CAFO does not affect Respondent's responsibility to comply with the CWA and other applicable federal, state and local laws. Compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

80. This CAFO constitutes a "prior violation(s)" as that term is used in EPA's Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act to determine Respondent's "history of prior violations" under Section 311(b)(8) of the CWA 33 U.S.C. § 1321(b)(8).

81. This CAFO does not require a thirty day opportunity for public notice and comment pursuant to Section 311(b)(6)(C)(i) of the Act, 33 U.S.C. § 1321(b)(6)(C)(i), and 40 C.F.R. § 22.45(b), because it does not involve a Class II penalty and, therefore, there have been no public comments on the document.

82. The terms of this CAFO bind Respondent, its successors and assigns.

83. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

84. Each party agrees to bear its own costs and attorney fees in this action.

85. This CAFO constitutes the entire agreement between the parties.

Superior Marine Ways Inc., Respondent

1-20-16

Date

A handwritten signature in blue ink, appearing to read "Michael Manns", written over a horizontal line.

Michael Manns  
Chief Financial Officer

**United States Environmental Protection Agency, Complainant**

2-2-16

Date



Richard C. Karl

Director

Superfund Division

U.S. Environmental Protection Agency, Region 5

**CONSENT AGREEMENT AND FINAL ORDER**

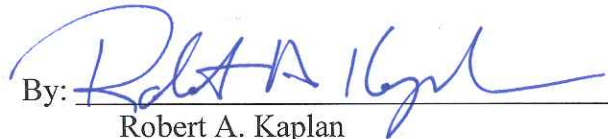
**In the Matter of: Superior Marine Ways, Inc.**

**Docket No. CWA-05-2016-0010**



**FINAL ORDER**

This CAFO is hereby approved. The Respondent is hereby ORDERED to comply with all of the terms of the CAFO effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This CAFO disposes of this matter pursuant to 40 C.F.R. § 22.18(c).

By:   
Robert A. Kaplan  
Acting Regional Administrator  
United States Environmental Protection Agency  
Region 5

Dated: 3/22/16

Consent Agreement and Final Order

In the matter of: **Superior Marine Ways, Inc. AKA Superior Marine, Inc.**

Docket Number: **CWA-05-2016-0010**



**CERTIFICATE OF SERVICE**


I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CWA-05-2016-0010, which was filed on Mar 23, 2016 in the following manner to the following addressees:

Copy by Certified Mail to Respondent:      Robert McCune  
President  
Superior Marine Ways, Inc.  
5852 County Road 1  
South Point, Ohio 45680

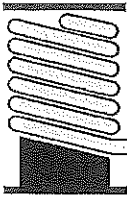
Copy by E-mail to                                      Mary Fulghum  
Attorney for Complainant:                      Fulghum.Mary@epa.gov

Copy by E-mail to                                      Christopher S. Habel  
Attorney for Respondent:                        chabel@fbtlaw.com

Copy by E-mail to                                      Ann Coyle  
Regional Judicial Officer:                        coyle.ann@epa.gov

Dated: March 23, 2016   
\_\_\_\_\_  
LaDawn Whitehead  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5

# Budgetary Proposal



# Wintech

[www.wintech-winches.com](http://www.wintech-winches.com)

**WINCHES & FAIRLEADS**

318.929.1242 (p) • 318.929.1245 (f)

To: Superior Marine  
 Attn: Jim Thompson  
 Phone:  
 E-mail: [jimthompson@superiormarineinc.com](mailto:jimthompson@superiormarineinc.com)

Date: July 24, 2015  
 From: Derek Leslie  
 Phone: 318.929.1242  
 E-mail: [derek@wintech-winches.com](mailto:derek@wintech-winches.com)

ITEM #	QTY	DESCRIPTION
1.0	1	<p><b>5 Winch System for Pulling Barge Out of Water</b></p> <p>(5) Wintech Model CP50000-20 Chain Drive Winches, each with the following specs:</p> <ul style="list-style-type: none"> <li>• 60,000 lbs continuous rated running linepull on 1<sup>st</sup> layer @ 15 fpm</li> <li>• 55,000 lbs continuous rated running linepull on 2<sup>nd</sup> layer @ 16 fpm</li> <li>• 51,000 lbs continuous rated running linepull on 3<sup>rd</sup> layer @ 17 fpm</li> <li>• 48,000 lbs continuous rated running linepull on 4<sup>th</sup> layer @ 18 fpm</li> <li>• 45,000 lbs continuous rated running linepull on 5<sup>th</sup> layer @ 19.5 fpm</li> <li>• 42,500 lbs continuous rated running linepull on 6<sup>th</sup> layer @ 21 fpm</li> <li>• 40,000 lbs continuous rated running linepull on 7<sup>th</sup> layer @ 22 fpm</li> <li>• Drum is capable of holding 1,350 ft of 1" cable on 7 layers</li> <li>• Drum has 24" Smooth Core and is 24" between the flanges</li> <li>• Minimum recommended fleetling distance is 40 feet</li> <li>• 30 Horsepower TEFC Electric Motor</li> <li>• 480V / 3 phase / 60Hz Supply Power</li> <li>• Suitable for -20°F to 105°F operating temperatures</li> <li>• Spring applied/Electric released holding brake rated at 100% of max rated load</li> <li>• Heavy duty welded frame construction</li> <li>• Fully enclosed helical planetary gear drive and final chain reduction</li> <li>• Drum shaft mounted on roller bearings with grease fittings</li> <li>• Winch is sandblasted, primed and painted with Wintech Blue Marine Duty Paint</li> <li>• Holding dog on drum flange similar to customers existing holding dog. Dog will be either spring actuated or gravity actuated. This prevent the drum from free spooling backwards in the event of an emergency.</li> </ul>

System Controls:

- Variable frequency drive system with infinite speed control
- Drives and controls are mounted in a centrally located control console
- The control system is set up so that each winch can work independently as well as one entire unit. Each winch will have a variable frequency drive paired with a proportional joystick. With the joystick, the further you pull the joystick the faster it goes. This gives you the capability of creeping the barge when it is close to its final position.
- The drives are controlled through a PLC to ensure that all the winches will work together.
- VFD's are SEW Eurodrive, PLC is Allen Bradley

Central console type panel controls include:

- Winch #1 power in / hold / power out switch
- Winch #2 power in / hold / power out switch
- Winch #3 power in / hold / power out switch
- Winch #4 power in / hold / power out switch
- Winch #5 power in / hold / power out switch
- Auto / Manual Selector Switch
  - Winches work independently in Manual
  - Winches work simultaneously in Auto
- (5) Proportional Joysticks
- Remote / Local Selector Switch
- E-stop button

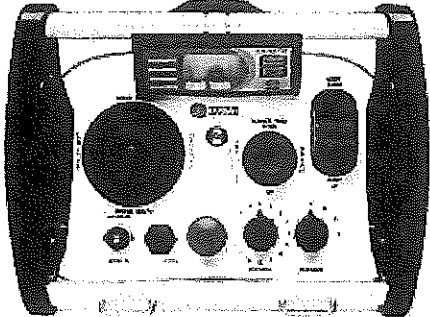


Control Console above is for a 6 Winch application. Not the exact application, but it shows you the joysticks within the console.

5 Winch System Price ..... \$298,590.00

*This quote is valid for 90 Days  
Prices are shown NET to customer specified and in USD  
FOB Factory, Shreveport, LA 71107*



2.0	1 EA	<p><b>Optional Custom Wireless Remote Control Package</b>  Wireless remote control system with handheld transmitter for control of system above via receiver with antennae mounted at the main control enclosure. Controls are rated for 300 ft clear line of sight range. Remote controls include the following:</p> <ul style="list-style-type: none"> <li>• Proportional Joystick for Winch Speed Control</li> <li>• Toggle Switch for Manual / Auto Mode</li> <li>• (5) Position Selector Switch for Manual mode to select which winch you want to control.</li> <li>• E-Stop</li> <li>• Padded Ergonomic Shoulder Harness</li> <li>• Rechargeable Batteries</li> </ul> <div style="text-align: center;">  </div> <p style="text-align: right;"><b>Wireless Remote Control Option Price ..... \$8,250.00</b></p>
3.0	1 EA	<p><b>5 Year Extended Warranty on Above..... \$12,274.00</b></p>

Standard Warranty is 1 year from installation or 18 months from shipment.  
Shipment from factory will be approximately 12-14 weeks from receipt of confirmed purchase order.  
Payment Terms: 25% Down Payment – Remaining Balance due prior to shipment  
Freight: Prepay and Add  
Wire rope to be quoted at a later date.

If you have any questions please call us at 888.946.8325 or 318.929.1242.

Best Regards,  
Derek Leslie

*This quote is valid for 90 Days.  
Prices are shown NET to customer specified and in USD  
FOB Factory, Shreveport, LA 71107*

**SUPERIOR MARINE - SOUTH POINT OHIO FACILITY  
CONCEPTUAL MODEL FOR ELECTRIC DRIVEN WINCH SEP**

