

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Christine Fost 9/27/18
Name of Case Attorney Date

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

Case Docket Number CWA-01-2018-0054

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:

Prime Marina Vineyard Haven
100 Lagoon Pond Rd
Vineyard Haven, MA 02568

Total Dollar Amount of Receivable \$ 15,721 Due Date: 10/27/18

SEP due? Yes No Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

1st \$ _____ on _____

2nd \$ _____ on _____

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
FIVE POST OFFICE SQUARE SUITE 100
BOSTON, MASSACHUSETTS 02109-3912

RECEIVED

SEP 27 2018

EPA ORC WS
BY HAND Regional Hearing Clerk

September 27, 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: Prime Marina Vineyard Haven*; Docket No. CWA-01-2018-0054

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, appearing to read "Christine 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)
)
PRIME MARINA VINEYARD HAVEN)
100 Lagoon Pond Rd)
Vineyard Haven, MA 02568)
)
Respondent.)
)
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))
_____)

Docket No. CWA-01-2018-0054

**CONSENT AGREEMENT AND
FINAL ORDER FOR CLASS II
CIVIL PENALTY UNDER
CLEAN WATER ACT**



1. The Director of the Office of Environmental Stewardship of the United States Environmental Protection Agency, Region 1 (“EPA”) enters into this Consent Agreement and Final Order (“CAFO”) with Prime Marina Vineyard Haven (“Respondent” or “Prime Marina”). EPA alleges that Respondent violated Sections 301(a) and 311(j) of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1311(a) and 1321(j). The parties agree to resolve this action by the issuance of this CAFO as provided under 40 C.F.R. § 22.13(b) of EPA’s “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination, or Suspension of Permits,” 40 C.F.R. Part 22 (“Part 22”). Respondent neither admits nor denies the specific factual or other non-jurisdictional allegations contained in Section I.

I. DESCRIPTION OF VIOLATIONS

2. EPA alleges that after acquiring the marina in May 2016, Respondent: (1) discharged stormwater associated with industrial activity into navigable waters of the United States without following all requirements of the NPDES Storm Water Multi-Sector General

Permit for Industrial Activities, in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a); and (2) failed to prepare and implement an adequate Spill Prevention, Control, and Countermeasure (“SPCC”) Plan in violation of the Oil Pollution Prevention regulations set forth at 40 C.F.R. Part 112, under the authority of Section 311(j), 33 U.S.C. § 1321(j) and other provisions of the CWA, 33 U.S.C. §§ 1251 *et seq.*

Statutory and Regulatory Authority

3. EPA takes this action under the authority of Sections 309(g) and 311(b)(6) of the CWA, 33 U.S.C. §§ 1319(g) and 1321(b)(6), as amended by the Oil Pollution Act of 1990. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), EPA has notified the State of Massachusetts of this action.

4. EPA has provided the 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).

General Allegations

5. The CWA is designed to restore and maintain the chemical, physical, and biological integrity of the nation’s waters. Section 101(a) of the Act, 33 U.S.C. § 1251(a). To accomplish the objectives of the Act, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into navigable waters except in compliance with the terms and conditions of a permit issued pursuant to Section 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344, and EPA’s implementing regulations, found at 40 C.F.R. Part 122.

6. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), authorizes the Administrator of EPA to issue National Pollution Discharge Elimination System permits for the discharge of pollutants into navigable waters in compliance with the CWA.

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Boston, MA 02109

7. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines “person” to include “an individual, corporation, partnership [or] association.”

8. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

9. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, inter alia, solid waste, chemical wastes, biological materials, rock, sand, and industrial waste discharged into water.

10. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” to include “any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged.”

11. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “the waters of the United States, including the territorial seas.”

Stormwater Permits

12. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), authorizes the Administrator of EPA to require the owner or operator of any point source to provide such information as the Administrator may reasonably need to carry out the objectives of the CWA, including, among other things, the development and issuance of NPDES permits under Section 402 of the CWA, 33 U.S.C. § 1342.

13. Pursuant to Sections 308 and 402 of the CWA, 33 U.S.C. §§ 1318 and 1342, EPA promulgated stormwater discharge regulations at 40 C.F.R. § 122.26.

14. Forty C.F.R. § 122.26(b)(13) defines “storm water” to include stormwater runoff, snow melt runoff, and surface runoff and drainage.

15. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and implementing regulation 40

C.F.R. § 122.26(a)(1)(ii), require that facilities discharging storm water associated with industrial activity obtain a permit. Under 40 C.F.R. § 122.26(c)(1), dischargers of storm water associated with industrial activity must apply for an individual permit or seek coverage under a general permit.

16. Facilities within the categories set out in 40 C.F.R. § 122.26(b)(14), including those in Standard Industrial Classification (“SIC”) code 4493 (water transportation facilities, including marinas), are industrial activities that must obtain permit authorization for stormwater discharges.

17. EPA re-issued the NPDES Storm Water Multi-Sector General Permit for Industrial Activities on June 4, 2015 (“2015 MSGP”), which was effective on the date of issuance. 80 Fed. Reg. 34,403.

18. The 2015 MSGP contains terms and conditions designed to ensure the implementation of practices to minimize the pollutants in stormwater discharges associated with industrial activity.

19. Under the 2015 MSGP, a facility discharging stormwater associated with industrial activity is required to submit a Notice of Intent (“NOI”) to be covered under the Permit, prepare and implement a Stormwater Pollution Prevention Plan (“SWPPP”), conduct inspections, conduct monitoring and sampling, and meet other eligibility requirements.

20. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), provides for the assessment of penalties for violations of Sections 301 and 308 of the CWA, 33 U.S.C. §§ 1311 and 1318, and for violating any condition or limitation in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

Spill Prevention, Control, and Countermeasure Plan

21. Section 311(j)(1) of the Act, 33 U.S.C. § 1321(j)(1), 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 onshore and offshore facilities, and to contain discharges. . . .”

22. Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), defines “person” to include “an individual, firm, corporation, association, [or] partnership.”

23. Pursuant to Section 311(j)(1) of the CWA, 33 U.S.C. § 1321, EPA’s Oil Pollution Prevention regulations, found at 40 C.F.R. Part 112 (“the SPCC Regulations”), establish procedures, methods, and requirements for preventing the discharge of oil to waters of the United States. These requirements apply to owners or operators of non-transportation-related facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil or oil products which, due to their location, could reasonably be expected to discharge oil in harmful quantities (as defined in 40 C.F.R. Part 110) to navigable waters of the United States or adjoining shorelines. 40 C.F.R. § 112.1(b). However, except as provided in 40 C.F.R. § 112.1(f), these requirements do not apply to the owner or operator of any facility which meets both of the following requirements: (1) the completely buried storage capacity of the facility is 42,000 U.S. gallons or less of oil; and (2) the aggregate aboveground storage capacity of the facility is 1,320 U.S. gallons or less of oil. 40 C.F.R. § 112.1(d)(2).

24. Under 40 C.F.R. § 112.3(a)(1), an owner or operator of an onshore facility that became operational after November 10, 2011, and, due to its location, could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States must prepare and fully implement an SPCC plan in accordance with 40 C.F.R. § 112.7.

25. Section 311(b)(6), 33 U.S.C. § 1321(b)(6), of the CWA provides for the assessment of penalties for violations of Section 311(j) of the CWA.

Findings of Violation

26. Respondent is a company organized under the laws of the State of Florida with its principal place of business located at 2550 South Bayshore Drive, in Miami, Florida.

27. 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).

28. Respondent owns and operates a marina and boat storage and repair yard at 100 Lagoon Pond Rd, in Vineyard Haven, Massachusetts (the “Facility”), which is classified under Standard Industrial Classification (“SIC”) code 4493 (Marinas), listed under “Sector Q – Water Transportation” of the 2015 MSGP.

29. The facility encompasses approximately 3.5 acres in area and is composed of several buildings and can store up to 100 boats. It is open throughout the year and conducts general boat maintenance and repair.

30. Respondent has, at all times relevant to this Complaint controlled all daily business and industrial operations at the Facility and otherwise meets the definition of “operator” of the Facility, as defined at Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), 40 C.F.R. § 112.2, and under the 2015 MSGP.

31. Respondent acquired and began operating the Facility in May of 2016.

32. Respondent submitted a Notice of Intent to be covered for discharges of stormwater associated with industrial activity under the 2015 MSGP and received coverage under the 2015 MSGP, effective November 13, 2016.

33. Respondent prepared a Stormwater Pollution Prevention Plan (“SWPPP”), which

was signed on June 20, 2017. Accordingly, Respondent was authorized under the 2015 MSGP to discharge stormwater associated with industrial activity at the Facility from the two locations identified in Respondent's SWPPP as "Outfall 001" and "Outfall 002" to Lagoon Pond, subject to the terms and conditions specified in the 2015 MSGP. Outfall 001 and Outfall 002 were comprised of areas on the ground over which stormwater ran in significant rain events before reaching the adjacent waterway.

34. After reporting no discharge from either Outfall 001 or Outfall 002 when attempting to perform monitoring, Respondent modified its site map by eliminating those two outfall locations and identifying a new location for "New Outfall 001" at the landward edge of the boat ramp, where storm water flow enters Lagoon Pond.

35. New Outfall 001 is a location from which stormwater associated with a site on which industrial activity occurs flows overground into Lagoon Pond.

36. EPA has determined New Outfall 001 is a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

37. Lagoon Pond flows into Vineyard Haven Harbor, which opens into the Atlantic Ocean.

38. Lagoon Pond, Vineyard Haven Harbor, and Atlantic Ocean are each "waters of the United States," as defined by 40 C.F.R. § 122.2 (1993), and are also "navigable waters," under Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

39. At all times relevant to the allegations in this Complaint, Respondent engaged in storing, using, and consuming "oil" or oil products located at the Facility within the meaning of 40 C.F.R. § 112.2.

40. At all times relevant to the allegations in this Complaint, the Facility had an

aggregate above ground oil storage capacity close to but greater than 1,320 gallons in containers each with a shell capacity of at least 55 gallons.

41. The Facility is 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.

42. The Facility became operational after November 10, 2011.

43. The Facility is a “non-transportation-related” facility within the meaning of Appendix A to 40 C.F.R. Part 112, as incorporated by reference within 40 C.F.R. § 112.2.

44. Accordingly, the Facility is a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to navigable waters of the United States or its adjoining shorelines in a harmful quantity.

45. Respondent is therefore subject to the Oil Pollution Prevention regulations at 40 C.F.R. Part 112 at the Facility.

46. On October 18, 2017, authorized representatives of EPA visited the Facility to review compliance with Federal and State environmental laws and regulations, including compliance with the CWA (the “Inspection”).

Count 1: Discharge of Stormwater Not in Compliance with the 2015 MSGP Permit Terms and Conditions

47. Paragraphs 1 through 46 are incorporated herein by reference.

48. From May 2016 through the present, Respondent has discharged “stormwater associated with industrial activities” within the meaning of 40 C.F.R. § 122.26, to Lagoon Pond.

49. The release of stormwater associated with industrial activity from the point source mentioned above constitutes a “discharge of pollutants” within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

50. Since November 13, 2016, Respondent was authorized under the 2015 MGSP to discharge stormwater to Lagoon Pond, subject to certain terms and conditions contained within the 2015 MGSP. These terms and conditions are designed to ensure the implementation of practices to reduce the pollutants in stormwater discharges associated with industrial activity at the Facility.

2015 MSGP Inspection Requirements

51. Section 3.1 of the 2015 MSGP require that a permittee conduct routine facility inspections, at least quarterly, including but not limited to:

- a. Areas where industrial materials or activities are exposed to stormwater;
- b. Areas identified in the SWPPP and those that are potential pollutant sources;
- c. Areas where spills and leaks have occurred in the past three years;
- d. Discharge points; and
- e. Control measures used to comply with the effluent limits contained in the permit.

52. Section 3.1.2 of the 2015 MSGP requires a permittee to document all findings of the routine facility inspections on a facility inspection report.

53. From November 2016 through June 2017, Respondent did not document quarterly routine facility inspections as required by the 2015 MSGP.

54. Section 3.2 of the 2015 MSGP requires that a permittee conduct quarterly visual assessments of stormwater samples from each designated outfall. Furthermore, whenever the visual assessment shows evidence of stormwater pollution, the permittee must initiate the corrective action procedure.

55. Section 3.2.2 of the 2015 MSGP requires a permittee document all findings of the

quarterly visual assessments on site.

56. From November 2016 through December 2017, Respondent did not conduct and document any quarterly visual assessment as required by the 2015 MSGP.

57. Section 6.2.1 of the 2015 MSGP require specific pollutant benchmark concentrations applicable to certain sectors and subsectors. When a permittee applies for coverage under one of these sectors or subsectors, the permittee is required to conduct quarterly benchmark monitoring for each designated pollutant.

58. Through its Coastal Zone Management Program, the Commonwealth of Massachusetts has incorporated additional sector-specific requirements into the 2015 MSGP. These requirements include benchmark monitoring for copper for Sector Q (Water Transportation) facilities.

59. From November 2016 through December 2017, Respondent did not conduct any quarterly benchmark sampling required by the 2015 MSGP.

60. By discharging stormwater from the Facility into waters of the U.S. in violation of the terms and conditions of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and by failing to comply with all the conditions in the 2015 MSGP, Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a) from November 2016 through December 2017.

Count 2: Failure to Maintain and Fully Implement a Spill Pollution Control and Countermeasure Plan

61. Paragraphs 1 through 60 are incorporated herein by reference.

62. During the Inspection and based on additional information submitted by Respondent, EPA determined that Respondent had failed to maintain and implement a current SPCC Plan for the Facility until October 27, 2017, in violation of Section 311(j) of the Act, 33 U.S.C. § 1321(j).

63. Respondent failed to adequately provide measures which would prevent the discharge of oil from reaching waters of the United States and failed to implement specific requirements listed in 40 C.F.R. § 112.7. In this matter, EPA is not alleging that Respondent released or discharged oil into waters of the United States. Respondent's failure to maintain and fully implement an SPCC plan includes, but is not limited to the following deficiencies:

- a. Failure to keep an up-to-date SPCC plan; and
- b. Failure to conduct inspections of oil tanks and containment structures.

64. By failing to maintain and implement a current SPCC plan for the Facility in accordance with the requirements of 40 C.F.R. §§ 112.7 and 112.8, as described above, Respondent violated 40 C.F.R. § 112.3 and Section 311(j) of the CWA, 33 U.S.C. § 1321(j), from May 2016 until October 2017.

II. CONSENT AGREEMENT

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

65. Respondent admits the jurisdictional allegations set forth in Section I above and hereby waives any defenses it might have as to jurisdiction and venue.

66. Respondent neither admits nor denies the specific factual or other non-jurisdictional allegations contained in Section I above.

Waiver of Rights

67. Respondent waives the right to a hearing under Sections 309(g)(2)(B) and

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U.S. EPA, Region 1
5 Post Office Square, Suite 100
Boston, MA 02109

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

68. EPA proposes, and Respondent consents to, the assessment of a civil penalty of \$15,721 for all violations contained in this CAFO.

Payment Terms

69. In agreeing to the penalty described in paragraph 68 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).

70. Of the total amount, 68 percent shall represent payment for Respondent's violations of Section 301 of the CWA, 33 U.S.C. §§ 1311 and 1318, and 32 percent shall represent payment for Respondent's violations of Section 311 of the CWA, 33 U.S.C. § 1321.

71. Respondent shall pay a total penalty of \$15,721 in two (2) installments. The first installment shall be paid within ten (10) calendar days of the date this CAFO becomes final and shall consist of two payments that total \$7,861. Of that first installment, Respondent shall pay a penalty of \$5,030 for the violations of Section 311 of the CWA, and, at the same time, Respondent shall pay \$2,831 of the penalty for the violations of Section 301 of the CWA. The second installment, comprising the remaining penalty for the violations of Section 301 of the CWA, shall be in the amount of \$8,023.75 (*i.e.*, \$7,860 in principal, plus \$163.75 in interest) and shall be due within six (6) months of the date this CAFO becomes final.

72. Respondent shall make each payment by cashier's or certified check, or by wire

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U.S. EPA, Region 1
5 Post Office Square, Suite 100
Boston, MA 02109

transfer. Respondent shall include the case name and docket number (*In re: Prime Marina Vineyard Haven*; Docket No. CWA-01-2018-0054) on the face of each check or wire transfer confirmation. For the payment relating to the violation of Section 311 of the CWA (\$5,030), 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

Administrative Complaint
In re: Prime Marina Vineyard Haven
Docket No. CWA-01-2018-0054

U.S. EPA, Region 1
5 Post Office Square, Suite 100
Boston, MA 02109

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

73. If Respondent fails to make any of the payments required by Paragraph 71 by the required due dates, all remaining installments shall become immediately due and payable as of the missed payment date. Interest on such unpaid penalty amounts shall accrue from the missed payment date until the total amount due has been received by the United States. Respondent shall be liable for such amounts regardless of whether EPA has notified Respondent of its failure to pay or made demand for payment. All payments to the United States under this paragraph shall be made as described in Paragraph 72.

74. 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.

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U.S. EPA, Region 1
5 Post Office Square, Suite 100
Boston, MA 02109

General Provisions

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

76. 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.

77. 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.

78. 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.

79. 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.

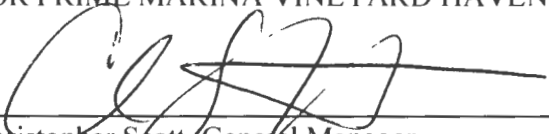
80. The parties shall bear their own costs and fees in this action, including attorney's

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.

81. 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.

82. 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.

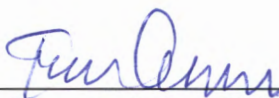
FOR PRIME MARINA VINEYARD HAVEN:



Christopher Scott, General Manager
Prime Marina Vineyard Haven

Date: 9/20/2018

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:



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

Date: 9/24/18

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I**

IN THE MATTER OF:))) Prime Marina Vineyard Haven) 100 Lagoon Pond Road) Vineyard Haven, MA 02568)) Respondent.)	EPA Docket No. CWA-01-2018-0054
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FINAL ORDER

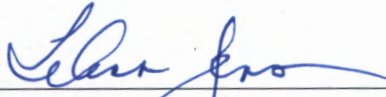
In accordance with Sections 309(g)(4)(A) and 311(b)(6)(C)(i) of the Clean Water Act, 33 U.S.C. §§ 1319(g)(4)(A) and 1321(b)(6)(C)(i), the U.S. Environmental Protection Agency provided a thirty-day opportunity for public notice and comment on the foregoing Consent Agreement. No comments were received. Accordingly, pursuant to 40 C.F.R. § 22.18(b) of the U.S. EPA’s Consolidated Rules of Practice, the Parties to this matter have forwarded the foregoing Consent Agreement to me for final approval.

The Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified. The Respondent is ordered to comply with all terms of the Consent Agreement, and shall pay a total penalty payment in two installment payments in accordance with Paragraph 71 of the Consent Agreement. 40 C.F.R. § 22.31(c). The Parties have provided assurance to me that the installment plan complies with the requirements of 40 C.F.R. § 13.18(a) and the U.S. EPA’s Guidance on Evaluation of a Violator’s Ability to Pay a Civil Penalty in an Administrative Enforcement Action (Jun. 29, 2015).

The Consent Agreement will become effective on the date it is filed. 40 C.F.R. § 22.31(b). It will become final thirty days from the date it is signed unless a petition to set aside

this Final Order is filed by a commenter pursuant to Sections 309(g)(4)(C) and 311(b)(6)(C)(iii) of the Clean Water Act, 33 U.S.C. §§ 1319(g)(4)(C) and 1321(b)(6)(C)(iii).

SO ORDERED THIS 26TH DAY OF SEPTEMBER 2018



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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

_____)
IN THE MATTER OF:)
)
PRIME MARINA VINEYARD HAVEN) Docket No. CWA-01-2018-0054
100 Lagoon Pond Rd)
Vineyard Haven, MA 02568) **CERTIFICATE OF SERVICE**
)
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 ORA18-1
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: 9/27/18


Christine Foot, Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
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Boston, MA 02109-3912
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