

Island Watersports, LLC, Fenwick Island, DE

Docket No.CWA-03-2019-0084

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 ARCH STREET**

**PHILADELPHIA, PA 19103-2029**

**RESPONDENT**  
Island Watersports, LLC  
39084 Harpoon Road  
Fenwick Island, Delaware 19944

**EXPEDITED PENALTY ACTION  
AND CONSENT AGREEMENT  
DOCKET NO. CWA-03-2019-0084**

**U.S. EPA-REGION 3-RHC**  
FILED-12JUN2019AM11:26

**FACILITY**  
Island Watersports  
39084 Harpoon Road  
Fenwick Island, Delaware 19944

On August 14, 2018, an authorized representative of the United States Environmental Protection Agency (EPA) conducted an inspection of Respondent's facility known as Island Watersport at 39084 Harpoon Road in Fenwick Island, Delaware to determine compliance with the Oil Pollution Prevention regulations promulgated at 40 CFR Part 112 under Section 311(j) of the Clean Water Act, as amended, (33 U.S.C. §1321(j)), (the "Act" or "CWA"). The EPA representative found that Respondent had violated the regulations by failing to comply with the specific regulatory requirements noted on the attached OIL POLLUTION PREVENTION INSPECTION FINDINGS, ALLEGED VIOLATIONS AND PROPOSED PENALTY FORM (the "Form"), which is hereby incorporated by reference.

The parties enter into this Expedited Penalty Action and Consent Agreement ("Consent Agreement") to settle the civil violations set forth above for a penalty of \$3,200.00. This Consent Agreement commences and concludes this action pursuant to Sections 22.13(b), and 22.18(b)(2), and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 CFR §§ 22.13(b), and 22.18(b)(2), and (3). This Consent Agreement is being entered into by the United States Environmental Protection Agency, Region III ("EPA"), by its duly delegated official, the Director, Hazardous Site Cleanup Division, and by Respondent pursuant to Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. §1321(b)(6)(B)(i), and by 40 CFR § 22.13(b).

The settlement is subject to the following terms and conditions.

EPA hereby finds the Respondent is subject to the Oil Pollution Prevention regulations and has violated the regulations as further described in the Form.

The Respondent consents to the assessment of the penalty stated above. The settlement amount was based upon Complainant's consideration of a number of factors, including, but not limited to, the seriousness of the violations and the other factors provided in CWA Section 1321(b)(8) and EPA's Civil Penalty Policy for CWA Sections 311(b)(3) and 311(j) dated August 1998. Respondent certifies, subject to civil and criminal penalties for making a false statement to the United States Government, that the violations set forth in the Oil Pollution Prevention Inspection Findings, Alleged Violations and Proposed Penalty Form have been corrected. The Respondent agrees that it shall, within 15 calendar days of receipt of an executed copy of this Consent Agreement, make payment of \$3,200.00 in one of four forms: 1) electronic funds transfer ("EFT"), 2) Automated Clearinghouse, 3) Pay.Gov, or 4) a cashier's check or certified check payable to the "Environmental Protection Agency", with the Docket Number, located at the top right-hand corner of the Expedited Penalty Action, and "Oil Spill Liability Trust Fund - 311" referenced on the check.

1) Payment of the penalty amount by EFT to:

Federal Reserve Bank of New York  
ABA 021030004  
Account 68010727  
SWIFT address FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Beneficiary: Environmental Protection Agency

2) Payment of the penalty amount by Automated Clearinghouse (ACH) to EPA can be made through the U.S. Treasury using the following information:

U.S. Treasury REX/Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22- Checking

Physical Location of the U.S. Treasury Facility:

5700 Rivertech Court  
Riverdale, MD 20737

3) Payments made through Pay.gov:

- a) Payers can use their credit or debit cards (Visa, MasterCard, American Express & Discover) as well as checking account information to make payments. Follow these steps to make a payment:
- i. You **DO NOT** need a user name and password or account.
  - ii. Enter **SFO 1.1** in the form search box on the top left side of the screen.
  - iii. Open the form and follow the on-screen instructions
  - iv. Select your type of payment from the "Type of Payment" drop down menu.
  - v. Based on your selection, the corresponding line will open and no longer be shaded grey.
  - vi. Enter the docket number, invoice number, or other corresponding information into the field.

4) Payment of the penalty amount by regular US Postal Service shall be sent via certified mail to:

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

Payment of the penalty amount by overnight mail (FedEx or other non-US Postal Service express mail) shall be sent to:

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

Within 24 hours of payment, the Respondent shall also send proof of payment to:

Wanda Martinez, Environmental Engineer  
U.S. Environmental Protection Agency, Region III  
Preparedness and Support Section (3SD33)  
1650 Arch Street  
Philadelphia, PA 19103-2029  
martinez.wanda@epa.gov

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street (3RC00)  
Philadelphia, PA 19103-2029  
R3\_Hearing\_Clerk@epa.gov

The term "proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with EPA Docket No. Island Watersports, LLC

The payment made pursuant to this Consent Agreement is a penalty within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and, therefore, Respondent shall not claim it as a tax deductible expenditure for purposes of federal, state or local law.

This Consent Agreement and the accompanying Final Order resolve only the civil penalty claims for the specific violations alleged in this Consent Agreement. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. Nor shall anything in this Consent Agreement and the accompanying Final Order be construed to limit the United States authority to pursue criminal sanctions. In addition this settlement is subject to all limitations on the scope of resolution and the reservation of rights set forth in 40 C.F.R. § 22.18(c). Further, Complainant reserves any rights and remedies available to it under the CWA, the regulations promulgated thereunder, and any other federal laws or regulations for which Complainant has jurisdiction, to enforce the provisions of this Consent Agreement and accompanying Final Order following its filing with the Regional Hearing Clerk. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the CWA, 33 U.S.C. § 1321, or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law.

Respondent neither admits nor denies the allegations set forth in the Form, but agrees that jurisdiction has been established for this Consent Agreement. Also, upon EPA's final approval of the Consent Agreement, Respondent expressly waives its right to contest the allegations, to a hearing under Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), and to appeal this Order under Section 311(b)(6)(G)(i) of the Act, 33 U.S.C. § 1321(b)(6)(G)(i). Moreover, in entering into this Consent Agreement, the Respondent agrees to bear its own costs and attorney's fees related to this Consent Agreement.

If Respondent does not sign and return this Consent Agreement as presented within 30 days of the date of its receipt, the proposed Consent Agreement is withdrawn without prejudice to EPA's ability to file any other enforcement action for the violations identified in the Form.

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**ACCEPT THE PROPOSED PENALTY**

I/we consent to the proposed penalty.

**DECLINE THE PROPOSED PENALTY**

I/we decline the proposed penalty. If you choose to decline this proposed penalty, you may be subject to formal enforcement action and, in that event, will have an opportunity to a hearing related to any subsequent penalty assessment.

**COST OF COMPLIANCE**

Respondent certifies that it has expended \$ 1300.00 to correct the alleged violations and to come into compliance.

**EFFECTIVE DATE**

This Consent Agreement will be effective upon filing.

The undersigned representative of Respondent certifies that he or she is fully authorized by Respondent to execute this Consent Agreement and to legally bind the party whom he or she represents thereto.

**Respondent**

Signature  Date 5-20-14

Name and Title (print): Michael Fagan President



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SIGNATURE BY COMPLAINANT:

  
Date JUN 11 2019  
Karen Melvin, Director  
Enforcement and Compliance Assurance Division

FINAL ORDER

Pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. §1321(b)(6), and in accordance with the Consolidated Rules of Practice, 40 CFR Part 22, and having relied upon the representations of the parties set forth in the Consent Agreement, I have determined that the penalty assessed herein is based on a consideration of the factors set forth in CWA Section 1321(b)(8) and EPA's Civil Penalty Policy for CWA Sections 311(b)(3) and 311(j) dated August 1998.

THEREFORE, the foregoing Consent Agreement is hereby approved and incorporated by reference into the Final Order. The Respondent is ORDERED, as set forth above, to pay the civil penalty.

  
Joseph J. Lisa,  
Regional Judicial Officer

6-12-2019  
Date

U.S. EPA-REGION 3-RHC  
FILED-12JUN2019am11:26



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

**Expedited Settlement Agreement**

**In the Matter of:**

Island Watersports, LLC  
39084 Harpoon Road, Fenwick Island, DE 19944  
Proceedings under Section 311 of the Clean Water Act, 33 U.S.C. § 1321

**EPA Docket No.:** CWA-03-2019-0084

**CERTIFICATE OF SERVICE**

I certify that on JUN 12 2019, the original and one (1) copy of foregoing *Consent Agreement and Final Order*, were filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I served a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following addresses:

Copy served via **Certified Mail, Return Receipt Requested, Postage Prepaid**, to:

Mr. Michael Ferrari, Owner  
Island Watersports, LLC  
39084 Harpoon Road  
Fenwick Island, DE 19944

Copy served via **Hand Delivery or Inter-Office Mail** to:

Wanda Martinez, SPCC/FRP Inspector  
Superfund and Emergency Management  
Preparedness and Support Section- 3ED33  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

Dated: JUN 12 2019

Berwin Esposito  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region III

TRACKING NUMBER(S): 7017 1450 0000 2079 2265