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May 1, 2015

OF COUNSEL

JAMES W. MURPHY  
WAYNE H. SCOTT

Via Hand Delivery

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency-Region 1  
5 Post Office Square, Suite 100  
Mail Code: ORA178-1  
Boston, MA 02109-3912



**Re: In the Matter of Cashman Dredging And Marine Contracting Co., LLC**  
**Docket No. MPRSA-01-2015-0035**

Dear Clerk Santiago,

With reference to the above-entitled matter, please find enclosed an original and one (1) copy of the Respondent's Answer to the Administrative Complaint and Request for A Hearing and a Certificate of Service.

Kindly file same.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard A. Nylen, Jr.". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Richard A. Nylen, Jr.

RAN/kad  
Enclosure

cc: Tonia Bandrowicz, Esq., Senior Enforcement Counsel  
Mr. Norman Bourque  
Mr. Dale H. Pyatt

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1

IN THE MATTER OF:

**Cashman Dredging and Marine  
Contracting Co., LLC,  
549 South Street  
Quincy, Massachusetts,  
Respondent**

**ANSWER OF RESPONDENT, CASHMAN  
DREDGING AND MARINE CONTRACTING  
CO., LLC  
TO ADMINISTRATIVE COMPLAINT AND  
REQUEST FOR A HEARING**

**Docket No. MPRSA-01-2015-0035**

Now comes the Respondent, Cashman Dredging and Marine Contracting Co., LLC (“Respondent” or “Cashman”) and responds to the Administrative Complaint and Notice of Opportunity to Request a Hearing dated April 2, 2015 with its Answer as follows:

**I. INTRODUCTION**

1. Paragraph 1 is an introductory paragraph with general assertions that does not require an admission or denial.
2. Paragraph 2 states that the EPA intends to issue a penalty against Respondent which does not require an answer. Respondent admits that the EPA has general authority to issue administrative penalties. Respondent denies the alleged claims. Respondent requests a hearing on this matter.

**II. STATUTORY AUTHORITY**

3. Paragraph 3 cites a federal statute which speaks for itself and which does not require an admission or denial.



4. Paragraph 4 cites federal regulations which speak for themselves and which does not require an admission or denial.
5. Paragraph 5 cites a federal statute which speaks for itself and which does not require an admission or denial.
6. Paragraph 6 cites the authority of the USACE to regulate the transportation and disposal of dredged materials which speaks for itself and which does not require an admission or denial.
7. Paragraph 7 cites a regulation regarding federal dredging permits which does not require an admission or denial.
8. Paragraph 8 cites the federal statutory authority to impose penalties for improper ocean disposal which speaks for itself and which does not require an admission or denial.

### **III. GENERAL ALLEGATIONS**

9. Respondent admits that it is a private person or entity under the statute cited but denies that it is responsible for all alleged acts.

#### **Portland Disposal Site**

10. Admitted that Respondent was issued approval for a federal dredging project in Portland Harbor.
11. Admitted that the USACE sent notice to the Project Manager and Respondent commencing the disposal process with disposal coordinates.

12. Denied that Respondent was solely responsible for dumping dredged material outside the assigned disposal point in the Portland Disposal Site.

#### **Rhode Island Sound Disposal Site**

13. Admitted that a permit was issued by the USACE to the City of New Bedford for the disposal of dredged materials into the Rhode Island Sound Disposal Site. Denied that the permit was issued to Respondent.
14. Denied that Respondent contracted with the City of New Bedford.
15. Denied that the Respondent was responsible.

### **IV. VIOLATIONS**

#### **Portland Disposal Site Unauthorized Discharge**

16. Respondent denies that it was solely responsible for the dumping of dredged materials outside the disposal coordinates and calls upon EPA to prove same. Respondent has taken steps to mitigate future occurrences.
17. Denied.

#### **Rhode Island Sound Disposal Site Unauthorized Discharge**

18. Denied that Respondent transported and improperly dumped the dredged materials outside of the disposal site.
19. Denied.

**V. PROPOSED PENALTY**

20. Paragraph 20 cites the general authority of the EPA as Complainant to issue a penalty taking into account specific conditions and mitigation. The EPA authority speaks for itself which does not require an admission or denial. Respondent reasserts its defense that a Final Order assessing administrative penalties is not appropriate given the wrong parties, the lack of gravity and the demonstrated good faith in achieving rapid response and immediate compliance after the incident and prior to notification of the violation. Respondent took immediate steps for mitigation.
21. Denied.

**VI. OPPORTUNITY TO REQUEST HEARING**

22. Paragraph 22 cites the right of Respondent to a hearing on the alleged violation which does not require an admission or denial. Respondent hereby requests a hearing on this matter.
23. Paragraph 23 cites the basis for Respondent's default for its failure to file an answer. Respondent is filing its answer and is not subject to default. Respondent has also taken steps to settle this matter.
24. Respondent has provided answers to the Complaint in accordance with 40 CFR 22.15. Respondent states that the alleged incidents were one time occurrences which were the result of human error and were not intentional or willful and which were corrected. Respondent reacted immediately to the Portland incident with physical changes to the mechanical dumping system to mitigate future impacts prior to notice of the violation. Respondent was not the responsible party in the Rhode Island incident. Respondent is

aware that the Rhode Island one time incident was also the result of unintentional human error involving a third party and corrections were made immediately. Respondent is not aware of damage to the environment from the discharges.

25. Paragraph 25 is an information paragraph that does not require an admission or denial.

## VII. SETTLEMENT

26. Respondent has requested an informal conference with EPA counsel pursuant to Paragraph 26.
27. Paragraph 27 does not required an admission or denial.

**Respondent,**

**Cashman Dredging and Marine  
Contracting Co., LLC,**

By Its Attorney,



Richard A. Nylén, Jr., Esq.  
BBO#375280  
Lynch, DeSimone & Nylén, LLP  
10 Post Office Square – Suite 970N  
Boston, MA 02109  
Tel: (617) 348-4500  
Fax: (617) 348-4545  
Email: [rnylen@ldnllp.com](mailto:rnylen@ldnllp.com)

Dated: May 1, 2015

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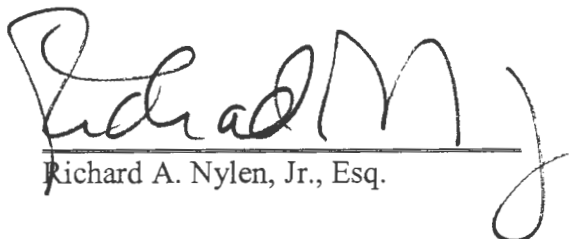
**In the Matter of Cashman Dredging And Marine Contracting Co., LLC  
EPA Docket No. MPRSA-01-2015-0035**

**CERTIFICATE OF SERVICE**

I certify that the foregoing ANSWER was transmitted to the following persons, in the manner specified, on the date below:

Original and one copy hand delivered:      Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency-Region 1  
5 Post Office Square, Suite 100  
Mail Code: ORA178-1  
Boston, MA 02109-3912

Copy my electronic mail and  
first class mail      Tonia Bandrowicz  
Senior Enforcement Counsel  
U.S. Environmental Protection Agency-Region 1  
5 Post Office Square, Suite 100  
Mail Code: ORA178-1  
Boston, MA 02109-3912

  
Richard A. Nysten, Jr., Esq.

Dated: May 1, 2015





**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

IN THE MATTER OF:	)	
	)	<b>ADMINISTRATIVE COMPLAINT AND</b>
	)	<b>NOTICE OF OPPORTUNITY TO REQUEST A</b>
	)	<b>HEARING</b>
<b>Cashman Dredging and Marine.</b>	)	
<b>Contracting Co., LLC,</b>	)	Proceeding to Assess Civil Penalty Under
<b>549 South Street</b>	)	Section 105(a) of the Marine Protection, Research,
<b>Quincy, Massachusetts,</b>	)	and Sanctuaries Act, 33 U.S.C. § 1415(a)
	)	
Respondent.	)	Docket No. MPRSA-01-2015-0035

**I. INTRODUCTION**

1. This Administrative Complaint is issued under the authority vested in the U.S. Environmental Protection Agency ("EPA") by Section 105(a) of the Marine Protection, Research, and Sanctuaries Act ("MPRSA"), 33 U.S.C. § 1415(a). "Complainant" is the Region 1 Administrator of EPA, Region 1.

2. Pursuant to Section 105(a) of the MPRSA, and in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits*, codified at 40 C.F.R. Part 22 ("Consolidated Rules"), Complainant hereby provides notice of its proposal that a civil penalty be assessed against Cashman Dredging and Marine Contracting Co., LLC, located at 549 South Street, Quincy, Massachusetts ("Respondent") for the transporting and dumping of dredged material into ocean waters in a manner inconsistent with an authorization and a permit issued pursuant to Section 103 of the MPRSA, 33 U.S.C. § 1413, and therefore, without authorization or permit, in violation of Section 101(a) of MPRSA, 33 U.S.C. § 1411(a). This Complaint also

provides notice of Respondent's opportunity to file an Answer to this Complaint and to request a hearing on the proposal to assess a penalty.

## **II. STATUTORY AUTHORITY**

3. Section 101(a) of the MPRSA, 33 U.S.C. § 1411(a), prohibits a person from transporting from the United States any material for the purpose of dumping it into ocean waters, except as may be authorized by a permit issued pursuant to Sections 102 or 103 of the MPRSA, 33 U.S.C. §§ 1412 or 1413, and as subject to regulations issued pursuant to Section 108 of the MPRSA, 33 U.S.C. § 1418.

4. Regulations promulgated pursuant to Section 108 of the MPRSA include 40 C.F.R. 220.1 which prohibit a person from transporting from the United States any material for the purpose of dumping it into ocean waters, "except as authorized ... pursuant to section 103 of the MPRSA, and subject to other applicable regulations promulgated pursuant to section 108 of the MPRSA."

5. Pursuant to Section 103 of the MPRSA, 33 U.S.C. § 1413, and the regulations promulgated thereunder, the U.S. Army Corps of Engineers ("USACE") may issue permits for the transportation of "dredged material" (defined in Section 3(i) of the MPRSA, 33 U.S.C. § 1402(i), as "any material excavated or dredged from the navigable waters of the United States") for the purpose of dumping it into "ocean waters" (defined in Section 3(b) of the MPRSA, 33 U.S.C. § 1402(b), as "those waters of the open seas lying seaward of the base line from which the territorial sea is measured") as long as the dumping will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities.

6. Pursuant to Section 103(e) of the MPRSA, 33 U.S.C. § 1413(e), for federal projects involving dredged material, the USACE may, in lieu of the permit procedures, issue regulations which require the application to such projects of the same criteria, other factors to be evaluated, the same procedures, and the same requirements which apply to the issuance of permit under that section. The criteria to be applied by the USACE in its review of activities involving the transportation of dredged material for the purpose of dumping it in ocean water pursuant to Section 103 of the MPRSA is established under 40 C.F.R. subchapter H.

7. Under 40 C.F.R. 220.2(h), a "Dredged Material Permit" for the transportation of dredged material for the purpose of dumping it in ocean waters, includes "any Federal project reviewed under section 103(e) of the MPRSA, 33 U.S.C. § 1413(e).

8. Under Section 105(a) of the MPRSA, 33 U.S.C. § 1415(a), as amended by the Debt Collection Improvement Act of 1996, and 40 C.F.R. Part 19.4 (Civil Monetary Penalty Inflation Adjustment), after December 6, 2013, any person who transports dredged material for the purpose of dumping it into ocean waters in a manner inconsistent with a permit issued under Section 103 of the MPRSA, 33 U.S.C. § 1413, shall be liable for a civil penalty of not more than \$75,000 for each violation.

### **III. GENERAL ALLEGATIONS**

9. Respondent is a corporation incorporated under the laws of Massachusetts, with a principle place of business at 549 South Street, Quincy, Massachusetts, and is, therefore, a "private person or entity." As such, Respondent is a "person" as defined under Section 3(e) of the MPRSA, 33 U.S.C. § 1402(e).

### **Portland Disposal Site**

10. On August 1, 2013, the USACE awarded a contract for a Federal dredging project (Contract No. W912WJ-13-C-0012) to Respondent. The project involved the dredging of Portland Harbor and disposal of "dredged materials," as defined at Section 3(i) of the MPRSA, 33 U.S.C. § 1402(i), into the Portland Disposal Site, located in "ocean waters," as defined at Section 3(b) of the MPRSA, 33 U.S.C. § 1402(b).

11. On December 20, 2013 and February 11, 2014, the USACE sent memoranda to the Project Manager and Respondent acknowledging the initiation of the disposal of dredged material in accordance with Contract W912WJ-13-C-0012 and specifying disposal coordinates.

12. Based on output from the Dredging Quality Management ("DQM") Data Viewer (automated dredge contract monitoring system developed by the USACE) and verified by the USACE's contractors' Automated Disposal Surveillance System ("ADISS") (a private enterprise automated disposal tracking system), on March 5, 2014 at approximately 12:45 p.m., the Respondent, while transporting dredged material for the purpose of dumping it into ocean waters, dumped such dredged material at a location outside the assigned disposal point coordinates in the Portland Disposal Site as authorized by the December 20, 2013 and February 11, 2014 memoranda. The unauthorized disposal occurred approximately at Latitude 43.549838 decimal degrees, Longitude -70.099355 decimal degrees, 3.37 miles from the designated disposal point coordinates of Latitude 43.56324 decimal degrees and Longitude -70.02456 decimal degrees.

### **Rhode Island Sound Disposal Site**

13. On November 15, 2011, the USACE issued a federal permit (Permit No. NAE 2007-2709) under the Massachusetts General Permit (GP) and accompanying permit authorization letter to the City of New Bedford for the purpose of transporting and disposing of “dredged material,” as defined at Section 3(i) of the MPRSA, 33 U.S.C. § 1402(i), from New Bedford Harbor into the Rhode Island Sound Disposal Site, located in “ocean waters,” as defined at Section 3(b) of the MPRSA, 33 U.S.C. § 1402(b). This permit authorization was modified on July 31, 2013 and October 31, 2014.

14. Based on information and belief, the City of New Bedford contracted with the Respondent to undertake the transport and disposal of the dredged material in ocean waters under the Permit No. NAE-2007-2709 and the November 15, 2011, July 31, 2013 and October 31, 2014 permit authorizations.

15. Based on a September 12, 2014 letter from Respondent, and output from the DQM Data Viewer and verified by the USACE’s contractors’ ADISS system, on September 4, 2014, the Respondent, while transporting dredged material for the purpose of dumping it into ocean waters, dumped such dredged material at a location outside the assigned disposal point coordinates in the Rhode Island Sound Disposal Site as specified by Permit No. NAE-2007-2709 and accompanying authorization letters. The unauthorized disposal occurred approximately at Latitude 41.246189 decimal degrees, Longitude -71.358162 decimal degrees, 1.4 miles from the authorized disposal point coordinates of Latitude 41.23750 decimal degrees and Longitude -71.38097 decimal degrees.

#### **IV. VIOLATIONS**

##### **Portland Disposal Site Unauthorized Discharge**

16. The Respondent's transport of dredged material for the purpose of dumping it into ocean waters and dumping of such dredged material at a location outside the Portland Disposal Site and the disposal point coordinates authorized by Contract W912WJ-13-C-0012 and December 20, 2013 and February 11, 2014 USACE memorandums, was not authorized by Section 103 of the MPRSA, 33 U.S.C. § 1413.

17. The dumping of such dredged material at a location outside the Portland Disposal Site and the disposal point coordinates authorized by Contract W912WJ-13-C-0012 and December 20, 2013 and February 11, 2014 USACE memoranda is a violation of Section 101(a) of the MPRSA, 33 U.S.C. § 1411(a), and, therefore, Respondent is subject to penalties under § 105(a) of the MPRSA, 33 U.S.C. § 1415(a).

##### **Rhode Island Sound Disposal Site Unauthorized Discharge**

18. The Respondent's transport of dredged material for the purpose of dumping it into ocean waters and dumping of such dredged material at a location outside the Rhode Island Sound Disposal Site and the disposal point coordinates authorized by Permit No. NAE-2007-2709 and the November 15, 2011, July 31, 2013 and October 31, 2014 permit authorizations, was not authorized by Section 103 of the MPRSA, 33 U.S.C. § 1413.

19. The dumping of such dredged material at a location outside Rhode Island Sound Disposal Site and the disposal point coordinates authorized by Permit No. NAE-2007-2709 and the November 15, 2011, July 31, 2013 and October 31, 2014 permit authorizations, is a violation of Section 101(a) of the MPRSA, 33 U.S.C. § 1411(a), and, therefore, Respondent is

subject to penalties under Section 105(a) of the MPRSA, 33 U.S.C. § 1415(a).

#### **V. PROPOSED PENALTY**

20. Based on the forgoing Findings of Violation and pursuant to the authority of Section 105(a) of MPRSA, 33 U.S.C. § 1415(a), as adjusted by the Debt Collection Improvement Act and its implementing regulations at 40 C.F.R. Part 19.4 (Civil Monetary Penalty Inflation Adjustment), the Complainant proposes that a Final Order assessing administrative penalties be issued against Respondent in an amount which takes into account the gravity of the violations, prior violations, and the demonstrated good faith of the Respondent in attempting to achieve rapid compliance after notification of a violation, and is not in excess of the statutory maximum for such violations which is \$75,000 per violation. For the purpose of imposing administrative penalties against Respondent, each separate transport and dumping of dredged material constitutes a separate violation.

21. Respondent's alleged violations of the MPRSA represent significant violations of the MPRSA because failure to fully comply with the dredged material permit and authorizations undermines the integrity of the MPRSA regulatory structure. Moreover, while the exact impact to marine resources is unknown, the water depths and anticipated bottom type is consistent with habitat used by numerous commercial and recreational fish and invertebrate species.

#### **VI. OPPORTUNITY TO REQUEST HEARING**

22. Respondent may, pursuant to Section 105(a) of the MPRSA, 33 U.S.C. § 1415(a), and 40 C.F.R. § 22.15(c), request a hearing on the proposal to assess a penalty in its Answer to this Complaint. Even if Respondent does not explicitly request a hearing in its Answer, the

Presiding Officer may hold such a hearing if the Answer raises issues appropriate for adjudication. The procedures for any such hearing and for all proceedings in this action are set forth in the *Consolidated Rules of Practice* at 40 C.F.R. Part 22, a copy of which is enclosed with this Complaint.

23. Default constitutes an admission of all facts alleged in this Complaint and a waiver of the right to a hearing on such factual allegations. In order to avoid default in this matter, within 30 days after receipt of this Complaint, Respondent must either: (1) settle this matter with the Complainant; or (2) file both an original and one copy of a written Answer to this Complaint with:

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency-Region 1  
5 Post Office Square, Suite 100  
Mail Code: ORA18-1  
Boston, MA 02109-3912

Respondent is also required to provide a contemporaneous copy of any Answer to Complainant's legal counsel, who is authorized to receive service on behalf of EPA pursuant to 40 C.F.R. § 22.5(c)(4), at the following address:

Tonia Bandrowicz, Senior Enforcement Counsel  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency – Region 1  
5 Post Office Square, Suite 100  
Mail Code: OES04-3  
Boston, MA 02109-3912

24. Pursuant to 40 C.F.R. § 22.15, the Answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which Respondent has knowledge. If the Answer asserts no knowledge of a particular factual



allegation, the allegation shall be deemed denied. Otherwise, the failure to admit, deny, or explain any material factual allegation contained in this Complaint constitutes an admission of the allegation. The Answer shall also state the circumstances or arguments for any defense Respondent wishes to assert, challenges to any factual allegation in the Complaint, and any basis Respondent may have to oppose the assessment of a penalty.

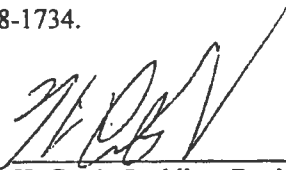
25. Following receipt of the Answer, a Presiding Officer will be assigned. The Presiding Officer will notify the parties of his or her assignment, and shall notify the parties of the time and place of further proceedings in the case.

#### VII. SETTLEMENT

26. You may request an informal conference with Complainant's legal counsel, Tonia Bandrowicz, concerning the alleged violations and the assessment of the penalty. A request for an informal conference does not extend any deadline in this proceeding, including the deadline by which you must submit an Answer to this Complaint.

27. If you have any questions concerning the enclosed Complaint or the settlement process, or wish to arrange for an informal conference, please contact, or have your legal counsel contact Ms. Bandrowicz at (617) 918-1734.

3/31/15  
Date

  
\_\_\_\_\_  
H. Curtis Spalding, Regional Administrator  
Office of Environmental Stewardship  
U.S. EPA

**In the Matter of Cashman Dredging and Marine Contracting, Co., LLC.  
EPA Docket No. MPRSA-01-2015-0035**

**CERTIFICATE OF SERVICE**

I certify that the foregoing COMPLAINT was transmitted to the following persons, in the manner specified, on the date below:

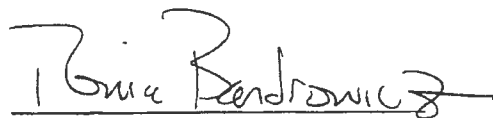
Original and one copy  
hand-delivered:

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Mail Code: MC-ORA 18-1  
Boston, MA 02109-3912

Copy by certified mail,  
return receipt requested:

Jay M. Cashman, Manager  
Cashman Dredging & Marine Contracting Co., LLC  
549 South Street  
Quincy, MA 02269

Dated: 4/2/15



Tonia Bandrowicz  
Senior Enforcement Counsel  
U.S. Environmental Protection Agency  
5 Post Office Square, Suite 100  
Mail Code OES 04-3  
Boston, MA 02109  
617-918-1734  
617-918-0734 (Fax)  
bandrowicz.toni@epa.gov