

6. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States, to ensure compliance with the requirements of the CWA. The discharges are subject to specific terms and conditions, as prescribed in the permit. *See also* 33 U.S.C. § 1311.
7. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.2 and 122.26 provide that, with some exceptions not relevant here, storm water discharges are “point sources” subject to NPDES permitting requirements under Section 402(a) of the Act, 33 U.S.C. § 1342(a).
8. 40 C.F.R. § 122.2. defines “pollutant” as “dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.” *See also* 33 U.S.C. § 1362(6).
9. 40 C.F.R. § 122.2 states, in relevant parts: “Discharge of a pollutant means: a) any addition of any ‘pollutant’ or combination of pollutants to waters of the United States from any point sources . . . This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works . . .”.
10. 40 C.F.R. § 122.26(b)(13) defines “storm water” as “storm water runoff, snow melt runoff and surface runoff and drainage.”
11. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and implementing regulation at 40 C.F.R. § 122.26(a)(1)(ii), require that facilities discharging stormwater associated with industrial activity obtain a permit. Under 40 C.F.R. § 122.26(c)(1), dischargers of stormwater associated with industrial activity must apply for an individual permit or seek coverage under a general permit.
12. Facilities within the categories set out in 40 C.F.R. § 122.26(b)(14), including those in Standard Industrial Classification (“SIC”) codes 4412-4499 (Water Transportation Facilities—Sector Q) are industrial activities that must obtain permit authorization for stormwater discharges.
13. EPA is the permitting authority for operators of stormwater discharges associated with industrial activity located in the District of Columbia.
14. EPA has incorporated the NPDES Permit program requirements of the CWA, 33 U.S.C. § 1342, into a Multi-Sector General Permit for Stormwater Discharges Associate with Industrial Activity (“MSGP”) applicable to all jurisdictions where EPA is the permitting authority.

15. The MSGP requires permittees, in part, to develop a written Stormwater Pollution Prevention Plan (“SWPPP”), implement control measures that include site-specific best management practices, maintenance plans, inspections, employee training, and reporting.
16. Pursuant to the authority of the CWA, EPA issued an MSGP on June 4, 2015 (“2015 MSGP”). The 2015 MSGP expired on June 3, 2020.
17. Pursuant to the authority of the CWA, EPA issued an MSGP on January 15, 2021 that became effective on March 1, 2021 (“2021 MSGP”). Those permittees previously covered by the 2015 MSGP were granted an administrative extension to request permit coverage (also called a Notice of Intent) under the 2021 MSGP by May 30, 2021.
18. The failure to seek and maintain MSGP coverage for applicable industrial activities is a violation of the CWA and may be subject to penalties established under the statute.
19. A violation of the 2015 and/or 2021 MSGP is also a violation of the CWA and may be subject to penalties established under that statute.
20. EPA has consulted with the District of Columbia’s Department of Energy & Environment (“DOEE”) regarding this action and, subsequent to the Effective Date of this Order, EPA will mail a copy of this fully executed Order to the appropriate DOEE official.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

21. Washington Marina operates Yacht Basin Number One (the “Facility”), located at 1300 Maine Avenue, SW, Washington DC, 20024, also known as 1230-1238 and 1300-1312 Maine Avenue, Southwest, bounded generally by the Baltimore and Ohio Railroad Bridge, the Washington Channel, the Municipal Fish Wharf, and Maine Avenue, Southwest.
22. As a corporation incorporated in the State of Maryland, Washington Marina is a “person” under Section 502(5) of the Act, 33 U.S.C. § 1362.
23. The Facility consists of a warehouse and marine supply store, and appurtenances and abutments including slips, docks, pier, decks and wharves, extending to the pierhead line and riparian rights.
24. The maintenance area of the Facility includes a marine elevator that is used to make minor repairs to boats after they have been removed from the water. The marine elevator is used to lift boats from the water so that their hulls and engines can be serviced.
25. Washington Marina serves recreational boaters in Washington D.C., including selling boating equipment, parts and accessories, servicing boats, and accepting slip requests.
26. The primary SIC Code category for the Marina is 4493 (Marinas, Water Transportation Facilities with vehicle Maintenance Shops, and/or Equipment Cleaning Operations—

Sector Q), and as such, the Marina performs industrial activities that must obtain permit authorization for stormwater discharges.

27. Washington Marina has been engaging in “industrial activity” at its Facility within the meaning of 40 C.F.R. § 122.26(a)(1)(ii).
28. Washington Marina discharges stormwater to the Washington Channel, which flows to the Potomac River, which flows to the Chesapeake Bay. The Washington Channel is a “water of the United States” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
29. Washington Marina applied for and was granted coverage under the 2015 MSGP under NPDES Permit number DCR053041, effective August 17, 2016.
30. After the 2015 MSGP expired on June 3, 2020, existing permittees were granted an administrative extension of permit coverage under the 2015 MSGP through May 30, 2021 to re-apply for coverage under the 2021 MSGP, which was issued on January 15, 2021 and became effective on March 1, 2021.
31. On March 1, 2021, March 31, 2021 and May 20, 2021, EPA sent e-mail notifications to the Washington Marina as reminders to renew its existing permit coverage before the May 30, 2021 deadline.
32. The Marina did not re-apply for permit coverage under the 2021 MSGP before the May 30, 2021 deadline.
33. On September 29, 2020, EPA sent an information request letter (“IRL”) to Washington Marina, pursuant to its authority under Section 308 of the CWA, 33 U.S.C. § 1318, to determine the Marina’s compliance with the Clean Water Act.
34. EPA has reviewed the Marina’s response to the IRL, the Marina’s 2017, 2018 and 2019 Annual Reports, and its 2018 SWPPP that was updated in 2019.

Count 1
Failure to Obtain Authorization to Discharge

35. The allegations in the preceding paragraphs are incorporated by reference.
36. Part 1.1.1 of the 2015 MSGP states that facilities eligible to discharge under the MSGP must, “(1) have an allowable stormwater discharge or an allowable non-stormwater discharge associated with industrial activity from your primary industrial activities, as defined in Appendix A, provided your primary industrial activity is included in Appendix D, or (2) be notified by EPA that you are eligible for coverage under Section AD of this permit. Your facility must also be located in an area where EPA is the permitting authority (see Appendix C).”

37. Part 1.1.2 of the 2015 MSGP provides that, “stormwater discharges associated with industrial activity for any primary industrial activities and co-located industrial activities, as defined in Appendix A, except for any stormwater discharges specifically prohibited in Part 8” are discharges eligible for coverage under the MSGP.
38. Facilities within the categories set out in 40 C.F.R. § 122.26(b)(14), including those in Standard Industrial Classification (“SIC”) codes 4412-4499 (Water Transportation Facilities—Sector Q) are industrial activities that must obtain permit authorization for stormwater discharges.
39. EPA is the permitting authority for operators of stormwater discharges associated with industrial activity located in the District of Columbia.
40. According to the National Oceanic and Atmospheric Administration’s National Centers for Environmental Information, it rained approximately 85.5 inches and snowed approximately 19 inches from May 31, 2021 to July 12, 2023 at the Washington Reagan National Airport, located 3 miles from the Facility.¹
41. The Marina failed to register for authorization to discharge stormwater under the 2021 MSGP on or before May 30, 2021. As a result, the administratively continued 2015 MSGP permit was terminated effective May 31, 2021, and the Marina has been operating without a permit from June 1, 2021 until July 12, 2023.
42. On December 13, 2022, the Marina submitted a Notice of Intent requesting authorization to discharge under the 2021 MSGP. This submission subsequently required revisions. On May 25, 2023, the Marina submitted an updated Notice of Intent. The Notice of Intent was subsequently revised July 7, 2023, and was approved by EPA on July 12, 2023. The Marina is currently authorized to discharge under the 2021 MSGP, Permit No. DCR05J017.
43. EPA finds Washington Marina’s discharge of stormwater without permit coverage under the MSGP from June 1, 2021 to July 12, 2023 is a violation of Section 301 of the Clean Water Act, 33 U.S.C. § 1311.

Count 2
Failure to Submit Annual Reports

44. The allegations in the preceding paragraphs are incorporated by reference.
45. Part 7.5 of the 2015 MSGP requires permittees to “submit an Annual Report to EPA electronically, per Part 7.2, by January 30th for each year of permit coverage containing information generated from the past calendar year.” Annual Reports must include summaries of the past year’s routine facility inspections, past year’s quarterly visual assessment documentation, and corrective action documentation, among other items.

¹ See <https://www.ncdc.noaa.gov/cdo-web/datasets/GHCND/stations/GHCND:USW00013743/detail>

46. The Marina failed to timely submit Annual Reports for years 2018 and 2019 by January 30, 2019 and January 30, 2020, respectively, as required by the 2015 MSGP.
47. EPA received the Marina's 2018 and 2019 Annual Reports in the Marina's November 19, 2020 response to EPA's IRL.
48. EPA finds the Marina's failure to timely submit Annual Reports for years 2018 and 2019 as required by the 2015 MSGP is a violation of the 2015 MSGP and Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342.

IV. ORDER

AND NOW, pursuant to Sections 308 and 309(a) of the Act, 33 U.S.C. §§ 1318, 1319(a), having taken into account the seriousness of the violations and good faith efforts by Respondent to comply with Section 301(a) of the Act, Respondent is hereby ORDERED to do the following:

49. Now that the Marina is authorized to discharge stormwater under the 2021 MSGP as of July 12, 2023, it must take all actions as and when necessary to comply with the 2021 MSGP. In addition, the Respondent shall take the following actions:
 - a. **Routine Facility Inspection Checklist:** Within thirty (30) days of the Effective Date of this Order, create and submit to EPA for approval a checklist for Routine Facility Inspections that covers the requirements listed in Section 3 of the 2021 MSGP. Once approved by EPA, Respondent shall incorporate the checklist into quarterly routine site inspections.
 - b. **Visual Assessment of Stormwater Discharges Checklist:** Within 30 days of the Effective Date of this Order, create and submit to EPA for review a checklist for Quarterly Visual Assessments of Stormwater Discharges under Section 3.2 of the 2021 MSGP. Once reviewed by EPA, Respondent shall incorporate the checklist into quarterly routine site inspections. Use of the MSGP Quarterly Visual Assessment Form in Appendix B to the Industrial Stormwater Monitoring and Sampling Guide (April 2021) is acceptable.
 - c. **Sampling Plan:** Within forty-five (45) days of the Effective Date of this Order, Respondent shall develop a sampling plan that adheres to the requirements in the 2021 MSGP for the Marina's industrial sector (Section Q/SIC4493). This includes:
 - i. Identifying outfalls and/or sampling locations at the Marina;
 - ii. Developing a Standard Operating Procedure for conducting sampling as required under the 2021 MSGP (including for indicator monitoring and benchmark monitoring) as applicable to the Marina; and

- iii. Electronic reporting of sampling results in adherence to the deadlines in the 2021 MSGP.

50. **Quarterly Submissions:** For a period of one year from the Effective Date of this Order, the Marina shall submit to EPA on a quarterly basis due by the last day of the month following the close of the preceding quarter (no later than January 31, April 30, July 31, and October 31):

- a. All quarterly self-inspection reports (including Routine Facility Inspection Checklists and Visual Assessment of Stormwater Discharges Checklists) performed by the Marina during the preceding quarter; and
- b. All quarterly sampling results obtained by the Marina for the preceding quarter.

V. PROCEDURES FOR SUBMISSIONS

51. Respondent shall include with all documents required to be submitted by this Order and any Request for Termination a certification signed by a responsible officer, as defined in 40 CFR § 122.22(d), that reads as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signed _____

Title _____

52. Any submission or communication relating to this Order shall be submitted via electronic transmission) to:

Ingrid Hopkins (3ED32)
Enforcement and Compliance Assurance Division
U.S. EPA, Region III
Philadelphia, PA 19103
Hopkins.ingrid@epa.gov

and

Aviva Reinfeld (3RC40)
Assistant Regional Counsel
U.S. EPA, Region III
Philadelphia, PA 19103
reinfeld.aviva@epa.gov; and
R3_ORC_mailbox@epa.gov [sent with subject line “attn: Aviva Reinfeld, Dkt.
No. CWA-03-2023-0006DN”]

53. For each submission required pursuant to this Order, except for any Quarterly Status Report, EPA will review the submission and provide comments. If EPA provides comments on a submission, Respondent agrees to respond in writing within thirty (30) calendar days.
54. Respondent may assert a business confidentiality claim covering part or all of the information which this AOC requires it to submit to EPA, but only to the extent and only in the manner described in Part 2 Subpart B of Title 40 of the C.F.R. The EPA will disclose information submitted under a confidentiality claim only as provided in Part 2 Subpart B of Title 40 of the C.F.R. If Respondent does not assert a confidentiality claim, EPA may make the submitted information available to the public without further notice to Respondent.

VI. GENERAL PROVISIONS

55. 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.
56. EPA reserves any existing rights and remedies available to it under the CWA, 33 U.S.C. § 1251, et seq., the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction. Further, EPA reserves any rights and remedies available to it under the CWA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provision of this Order, following its Effective Date (as defined below).
57. This Order does not constitute a waiver or modification of the terms or conditions of any NPDES Permit coverage obtained by the Respondent. Compliance with the terms and conditions of this Order does not relieve Respondent of its obligations to comply with any applicable federal, state, or local law, regulation or permit.
58. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
59. EPA reserves all existing inspection authority otherwise available to EPA pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, or pursuant to any other statute or law.

60. For the purpose of this proceeding only, Respondent admits each jurisdictional allegation set forth in this Order and agrees not to contest the jurisdiction of EPA with respect to the execution or enforcement of this Order.
61. Respondent shall bear its own costs and attorney's fees in connection with this Order.
62. By signing this Order, Respondent acknowledges that this Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Order does not contain any confidential business information or personally identifiable information from Respondent.
63. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Order, including information about respondent's ability to pay a penalty, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.
64. This Order shall apply to and be binding upon the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Order on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Order and to legally bind Respondent to the terms and conditions of this Order.
65. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2), performance of Section IV of this Order is restitution, remediation, or required to come into compliance with the law.
66. Respondent neither admits nor denies EPA's findings in Section III.

VII. TERMINATION AND SATISFACTION

67. The provisions of this Order shall be deemed satisfied when Respondent receives written notice from EPA that Respondent has demonstrated, to the satisfaction of EPA, that the terms of this Order have been satisfactorily completed and the written notice will state that this Order is terminated.
68. Respondent may submit to EPA a Certification of Compliance and Request for Termination of this Order, including documentation to demonstrate that it has met all requirements of this Order. If, following review of any Certification of Compliance and

Request for Termination of this Order, EPA agrees that Respondent has adequately complied with all requirements of this Order, EPA shall provide written notification of termination of this Order, as described in the above preceding paragraph.

VIII. EFFECTIVE DATE

71. This ORDER is effective upon receipt by Respondent, or Respondent's counsel, of a fully executed document ("Effective Date of Order").

FOR THE RESPONDENT WASHINGTON MARINA COMPANY:

Date: 8/30/2023



Robert L. Stickell
President and General Manager
The Washington Marina Company

SO ORDERED:

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY

[digitally signed and dated]
Karen Melvin, Director
Enforcement & Compliance Assurance Division
U.S. EPA Region III

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:

**The Washington Marina Company
1300 Maine Avenue, SW
Washington, DC 20024**

Respondent.

:
:
: **U.S. EPA Docket No. CWA-03-2023-0006DN**
:
:
: **ADMINISTRATIVE ORDER ON CONSENT**
: **PURSUANT TO 33 U.S.C. §§ 1318, 1319(a)**
:
:
:
:
:

CERTIFICATE OF SERVICE

I certify that the foregoing Administrative Order on Consent was filed with the EPA Region III Regional Hearing Clerk on the date that has been electronically stamped on the Administrative Order on Consent. I further certify that on the date set forth below, I caused to be served a true and correct copy of the foregoing Administrative Order on Consent to each of the following persons, in the manner specified below, at the following addresses:

Copies served **via UPS** and email to:

Mr. R.L. (Bob) Stickell
President & General Manager
The Washington Marina Company
1300 Maine Ave., SW
Washington, DC 20024-2420
bstickell@washingtonmarina.com

Mr. Mark S. Randall, Esq.
P.O. Box 62/1658 Back Road
Mill Creek, WV 26280
Mark.randall@pondeloths.com

Copies served via email to:

Aviva H. Reinfeld
Assistant Regional Counsel
U.S. EPA, Region III
Reinfeld.aviva@epa.gov

Ingrid Hopkins
Enforcement & Compliance Assurance Division
U.S. EPA, Region III
Hopkins.ingrid@epa.gov

[Digital Signature and Date]

U.S. Environmental Protection Agency, Region III