

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, California 94105



IN THE MATTER OF: ) DOCKET NO. MPRSA-09-2020-0060  
)  
)  
Dutra Construction Co., Inc. )  
San Rafael, California )  
Respondent. ) **COMPLAINT, CONSENT AGREEMENT  
AND FINAL ORDER**  
)  
) *Administrative Penalty Proceeding under*  
) *Section 105(a) of the Marine, Protection,*  
) *Research and Sanctuaries Act, 33 U.S.C. §*  
) *1415(a), and 40 C.F.R. §§ 22.13(b) and*  
) *22.18(b)(2).*

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**CONSENT AGREEMENT AND FINAL ORDER**

**I. AUTHORITY AND PARTIES**

1. This is a civil administrative penalty proceeding under Section 105(a) of the Marine, Protection, Research and Sanctuaries Act (MPRSA, the Act), 33 U.S.C. § 1415(a) and 40 C.F.R. Part 22 (*Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*).
2. Pursuant to Section 105(a) of the MPRSA, 33 U.S.C. § 1415(a), the Administrator of the United States Environmental Protection Agency (EPA) is authorized to assess administrative penalties against persons who violate Section 101(a)(1) of the Act, 33 U.S.C. § 1411(a)(1). The Administrator has delegated this authority to the Regional Administrator of the EPA Region 9, who in turn has delegated this authority to the Director of the Enforcement and Compliance Assurance Division, hereinafter “Complainant.”
3. Respondent is Dutra Construction Co., Inc. a California corporation.
4. This Consent Agreement and Final Order (CA/FO), which contains the elements of a complaint required by 40 C.F.R. § 22.14(a), simultaneously commences and concludes this penalty proceeding, as authorized by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

NOW THEREFORE, before the taking of any testimony, without adjudication of any issue of fact or law, and upon consent by the EPA and Respondent, it is hereby STIPULATED, AGREED, AND ORDERED:

Dutra Construction Co., Inc.

## **II. STATUTORY AND REGULATORY FRAMEWORK**

5. Pursuant to MPRSA Section 101(a)(1), it is unlawful for any person to transport from the United States any material for the purpose of dumping it into ocean waters except as authorized by a permit issued pursuant to the MPRSA. 33 U.S.C. § 1411(a)(1). Ocean waters are all those waters of the open seas lying seaward of the base line from which the territorial sea is measured, as provided for in the Convention on the Territorial Sea and the Contiguous Zone. MPRSA § 3, 33 U.S.C. § 1402.
6. Pursuant to Section 102(c) of the MPRSA, 33 U.S.C. § 1412(c), EPA Region 9 promulgated rules designating the San Francisco Deep Ocean Disposal Site (SF-DODS). 40 C.F.R. § 228.15(l)(3)(viii). These SF-DODS Site Use Regulations provide that the SF-DODS is intended to be a multi-user ocean disposal site to be used only for suitable dredged material generated from projects located in the San Francisco Bay region. Furthermore, the use of the disposal site must conform to Mandatory Conditions set forth at 40 C.F.R. § 228.15(l)(3)(viii)(A)(1-13).
7. The authorization for the dredging project which is the subject of this CA/FO, required that disposal operations conform to Mandatory Conditions set forth in the EPA SF-DODS Site Use Regulations at 40 C.F.R. § 228.15(l)(3)(vi). This section states that “Adherence to ...mandatory permit conditions...and any other condition(s) EPA or the Corps have required as part of the project authorization or permit, is a requirement for use of SF-DODS.”
8. The site use conditions for the dredging activities in question were transmitted on July 27, 2017 (“EPA Conditions for Use of the San Francisco Deep Ocean Disposal Site (SF-DODS): 2017 Episode 6 Maintenance Dredging of Port of Oakland Berths 24, 25/26, 57, 58 and 69”).
9. Pursuant to MPRSA Section 105(a) and 40 C.F.R. §19.4, EPA may assess administratively a civil penalty of not more than \$194,457 for each violation, against any person who violates the Act, the regulations promulgated pursuant to the Act, or a permit issued pursuant to the Act. 33 U.S.C. § 1415(a). In assessing a penalty, each day of a continuing violation, as well as the unauthorized dumping from each vessel, constitutes a separate offense. MPRSA § 105(c); 33 U.S.C. § 1415(c).

## **III. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS, AND CONCLUSIONS OF LAW**

10. Respondent is a corporation and therefore a person within the meaning of the MPRSA § Section 3(e), 33 U.S.C. § 1402(e). Respondent’s headquarters is located at 2350 Kerner Boulevard, Suite 200, San Rafael, California 94901.”
11. Respondent dredged 6,001 cubic yards of sediment from Berth #35 at the Port of Oakland on August 6-7, 2017, and disposed it at the SF-DODS.
12. The Army Corps of Engineers (Corps) issued USACE Permit 2014-0090S (“the Permit”) to the Port of Oakland in 2014 for the dredging and disposal of material over 10 years. The

dredging episodes within the Permit were individually approved by the EPA as they arose.

13. Dredging at Berth #35 was not yet approved by the EPA and was therefore not authorized under the Permit.

#### **IV. ALLEGED VIOLATIONS**

14. Respondent violated 33 U.S.C. § 1411(a)(1) by disposing of 6,001 cubic yards of dredged material at the SF-DODS without authorization.

#### **V. ADMINISTRATIVE PENALTY**

15. Based upon the facts alleged herein and upon those factors which the Complainant must consider pursuant to Section 105(a) of the MPRSA, 33 U.S.C. § 1415(a), including the seriousness of the violations, any good faith efforts by the Respondent to comply with applicable requirements, and any economic benefit accruing to the Respondents, as well as such other matters as justice may require, the Complainant proposes that the Respondent be assessed, and the Respondent, in order to resolve this matter without further litigation, agrees to pay ONE HUNDRED SEVENTY THREE THOUSAND DOLLARS (\$173,000), as the civil penalty for the violations alleged herein, within thirty (30) calendar days of the Effective Date, as defined in Section XI below, of this CA/FO.

16. Respondent shall make penalty payment by one of the options listed below:

- a. Check Payment. Payment by a cashier's or certified check shall be made payable to "Treasurer, United States of America" and be mailed as follows:

- i. *If by regular U.S. Postal Service Mail:*

U.S. Environmental Protection Agency  
Fines and Penalties  
PO BOX 979077  
St. Louis, MO 63197-9000

- ii. *If by overnight mail:*

U.S. Environmental Protection Agency  
Government Lockbox 979077  
USEPA Fines and Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101

- b. Automated Clearinghouse Payment: Payment by Automated Clearinghouse

(ACH) via Vendor Express shall be made through the U.S. Treasury as follows:

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

- c. Fedwire: Payment by wire transfer to the EPA shall be made through the Federal Reserve Bank of New York as follows:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
(Field Tag 4200 of the Fedwire message should read: D 68010727  
Environmental Protection Agency)

- d. Online Payment: This payment option can be accessed from the information below

Go to [www.pay.gov](http://www.pay.gov)  
Enter “SFO Form Number 1.1.” in the search field  
Open “EPA Miscellaneous Payments – Cincinnati Finance Center” form  
and complete required fields

Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. If clarification regarding a particular method of payment remittance is needed, contact the EPA Cincinnati Finance Center at (513) 487-2091.

17. To ensure proper credit, Respondent shall include the following transmittal information with the penalty payment: (i) Respondent’s name (as appeared on the CA/FO), complete address, contact person, and phone number; (ii) the EPA case docket number; (iii) the EPA contact person (defined below); and (iv) the reason for payment.
18. Concurrent with the payment, Respondent shall send a true and correct copy of the payment and accompanying transmittal information to the following addresses:

Regional Hearing Clerk  
Office of Regional Counsel (ORC-1)  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

Brian Ross (EPA Contact Person)

Water Division (WTR 2-4)  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

19. Respondent shall not, and shall not allow any other person to, deduct any penalties and interest paid under this CA/FO from federal, state, or local taxes.
20. Pursuant to 33 U.S.C. §1415(a), if Respondent fails to pay the assessed penalty, the EPA may request the U.S. Department of Justice to commence an action in the appropriate district court of the United States for such relief as may be appropriate.

#### **VI. APPLICABILITY**

21. This CA/FO shall apply to and be binding on Respondent, Respondent's officers, directors, partners, agents, employees, contractors, successors and assigns. Action or inaction of any persons, firms, contractors, employees, agents, or corporations acting under, through, or for Respondent shall not excuse any failure of Respondent to fully perform its obligations under this CA/FO. Changes in ownership, real property interest, or transfer of personal assets shall not alter Respondent's obligations under this CA/FO.

#### **VII. RESPONDENT'S ADMISSIONS AND WAIVERS**

22. In accordance with 40 C.F.R. § 22.18(b), for the purpose of this proceeding, Respondent:
  - a. admits the jurisdictional allegations of the complaint;
  - b. neither admits nor denies specific factual allegations contained in the complaint;
  - c. consents to all conditions specified in this CA/FO and to the assessment of the civil administrative penalty set forth in Section V above;
  - d. waives any right to contest the allegations set forth in this CA/FO; and
  - e. waives its right to appeal this proposed Final Order.

#### **VIII. RESERVATION OF RIGHTS**

23. In accordance with 40 C.F.R. § 22.18(c), full payment of the penalty set forth in this CA/FO shall resolve Respondent's liability for MPRSA civil penalties for the violations and facts alleged in this CA/FO, and shall not in any case affect the right of the EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
24. This CA/FO is not a permit or modification of any existing permit issued pursuant to any federal, state, or local laws or regulations, and shall in no way relieve or affect Respondent's obligations under any applicable federal, state or local laws, regulations, or permits.

**IX. ATTORNEY FEES AND COSTS**

25. Unless otherwise specified, each party shall bear its own attorney fees and costs.

**X. NOTICES**

26. Respondent shall send all required submissions and any other written communications via email to each of the following individuals:

Brian Ross  
Life Scientist  
U.S. Environmental Protection Agency, Region 9  
Water Division  
[Ross.Brian@epa.gov](mailto:Ross.Brian@epa.gov)

and

Julia Jackson  
Asst. Regional Counsel  
U.S. Environmental Protection Agency, Region 9  
Office of Regional Counsel  
[Jackson.Julia@epa.gov](mailto:Jackson.Julia@epa.gov)

**XI. EFFECTIVE DATE AND TERMINATION**

27. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), the Effective Date of this CA/FO is the date that the Final Order, having been signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk with a copy to Respondent. This CA/FO shall terminate when Respondent has complied with the requirements of this CA/FO in full.

For Complainant the U.S. Environmental Protection Agency, Region 9

**AMY MILLER-** Digitally signed by AMY  
MILLER-BOWEN  
**BOWEN** Date: 2020.09.21 11:29:32  
-07'00'


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Amy C. Miller-Bowen  
Director  
Enforcement and Compliance Assurance Division

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Date

For Respondent

  
By: Harry K. Stewart  
Its: President, COO

9/14/20

Date



**FINAL ORDER**

It is Hereby Ordered that this Consent Agreement and Final Order (U.S. EPA Docket No. MPRSA-09-2020-0060) be entered and that Respondent shall pay a civil penalty in the amount of \$173,000 in accordance with the terms of this Consent Agreement and Final Order.

**Steven L.  
Jawgiel** Digitally signed by  
Steven L. Jawgiel  
Date: 2020.09.23  
10:52:40 -07'00'

\_\_\_\_\_  
Date

\_\_\_\_\_  
Steven L. Jawgiel  
Regional Judicial Officer  
U.S. EPA, Region IX

1 **CERTIFICATE OF SERVICE**

2 This is to certify that the forgoing CONSENT AGREEMENT and FINAL ORDER in the matter  
3 of Dutra Construction Co. Inc. (MPRSA-09-2020-0060), was filed with the Regional Hearing  
4 Clerk and served on the parties as follows:

5 ELECTRONIC MAIL

6 Counsel for Respondent: Robert C. Goodman, Esq.  
7 Rogers, Joseph, O'Donnell  
8 Email: RGoodman@rjo.com

9 ELECTRONIC MAIL

10 Counsel for Complainant: Julia Jackson, Attorney Advisor  
11 Office of Regional Counsel  
12 U.S. EPA – Region IX  
13 Email: Jackson.Julia@epa.gov

14  
15  
16 Date: \_\_\_\_\_

17 **STEVEN**  
18 **ARMSEY**

Digitally signed by  
STEVEN ARMSEY  
Date: 2020.09.23  
18:05:13 -07'00'

19 \_\_\_\_\_  
20 Steven Armsey  
21 Regional Hearing Clerk  
22 U.S. EPA, Region 9  
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