



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

SEP 09 2009

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. Robert B. Birthisel  
Hamilton, Miller and Birthisel  
100 South Ashley Drive, Suite 1210  
Tampa, Florida 33602

SUBJ: Consent Agreement and Final Order  
Dann Marine Towing, LC  
Docket No. CWA-04-2009-7500

Dear Mr. Birthisel:

Enclosed please find a copy of the executed Consent Agreement and Final Order mentioned above. The U.S. Environmental Protection Agency has the original executed Consent Agreement and Final Order which will be retained in our office.

Thank you for your cooperation regarding this matter. If you have any further questions, please contact Chris McArthur of my staff at (404) 562-9391.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Welborn".

Thomas C. Welborn, Chief  
Wetlands, Coastal and Oceans Branch

Enclosure

Cc: U.S. Army Corps of Engineers, Jacksonville  
Attn: Teresa Frame, Regulatory Division

Mr. Christopher C. Dann

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF:

DANN MARINE TOWING, LC  
CHESAPEAKE CITY, MARYLAND,

Respondent.

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CONSENT AGREEMENT AND  
FINAL ORDER

Docket No.: MPRSA 04-2009-7500

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**CONSENT AGREEMENT**

**I. Statutory Authority**

1. This is a civil penalty proceeding pursuant to Section 105(a) of the Marine Protection, Research and Sanctuaries Act ("MPRSA"), 33 U.S.C. 1415(a), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, published at 64 Fed. Reg. 40176 (July 23, 1999) and codified at 40 Code of Federal Regulations (C.F.R.) Part 22.

2. The authority to take action under Section 105(a) of the MPRSA, 33 U.S.C. 1415(a), is vested in the Administrator of the United States Environmental Protection Agency (EPA). The Administrator has delegated this authority to the Regional Administrators. The Regional Administrator of Region 4 has further re-delegated this authority to the Director, Water Protection Division.

3. Pursuant to Section 101(a)(1) of the MPRSA, 33 U.S.C. 1411(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.

**II. Allegations**

4. At all times relevant to this action, Dann Marine Towing, LC (Respondent), was a corporation duly organized and existing under the laws of the State of Maryland and, therefore, a person within the meaning of Section 3(e) of the MPRSA, 33 U.S.C. 1402(e).

5. On December 19, 2007, the United States Army Corps of Engineers (USACE) issued a permit to the United States Navy, SAJ-2002-2052 (SP-BAL), pursuant to Section 103 of the MPRSA, 33 U.S.C. 1413 (the Permit). The Permit authorized disposal by the permittee of suitable dredged material from the entrance channel and turning basin at the Mayport Naval Base to the Jacksonville Ocean Dredge Material Disposal Site (ODMDS). The USACE managed the project on behalf of the

United States Navy through contract specifications (Contract Number W912EP-08-C-0004) with Norfolk Dredging Company. The Respondent provided vessel services to Norfolk Dredging Company, pursuant to a Charter Agreement.

6. Pursuant to the Charter Agreement, the Respondent was operating tugs and scows that carried dredged material from the dredging site at the Mayport Naval Base to the Jacksonville ODMDS for purposes of disposal.

7. Based on electronic disposal monitoring data, submitted to EPA on April 18, 2008 and April 25, 2008, and the U.S. Army Corps of Engineers (USACE) Report, "Jacksonville ODMDS Post Disposal Summary Report For Maintenance Dredging of U.S. Naval Station, Mayport Entrance Channel, Turning Basin, Destroyer Slip, Carrier Basin and Pier C-2 [Contract Number W912EP-08-C-0004]", dated July 18, 2008, EPA alleges that Respondent violated Section 101(a)(1) of the MPRSA, 33 U.S.C. 1411(a)(1), by disposing of dredged material in the Atlantic Ocean outside of the location specified in the Permit. The specific violations alleged are as follows:

- On April 11, 2008, Respondent, operating the Tug Calusa Coast, Scow N4002, departed the dredging site at Mayport Naval Base, on Trip 87 of the project, loaded with dredged material. At approximately 2130 hours, personnel operating the tug and scow disposed of an estimated 4483 cubic yards of dredged material approximately 275 meters south of the permitted disposal zone as specified in the above-referenced Permit.

- On April 19, 2008, Respondent, operating the Tug Calusa Coast, Scow BR-8, departed the dredging site at Mayport Naval Base, on Trip 109 of the project, loaded with dredged material. At approximately 0525 hours, personnel operating the tug and scow disposed of an estimated 4417 cubic yards of dredged material approximately 460 meters east of the permitted disposal zone and 150 meters east of the eastern boundary of the ODMDS, as specified in the above-referenced Permit.

### **III. Stipulations and Findings**

8. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. 22.13(b), this Consent Agreement and Final Order (CA/FO) will simultaneously commence and conclude this matter.

9. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out above and neither admits nor denies the factual allegations set out above.

10. Respondent hereby waives its right to contest the allegations set out above and its right to appeal the Final Order accompanying this Consent Agreement.

11. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CA/FO and consents to the other conditions set forth in this CA/FO.

12. By signing this CA/FO, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and is, truthful, accurate, and complete for each such submission, response and statement. Respondent realizes that there are significant penalties for submitting false or misleading information, including the possibility of fines and/or imprisonment for knowing submission of such information.

13. EPA reserves the right to assess and collect any and all civil penalties for any violation described herein to the extent that any information or certification provided by Respondent was materially false or inaccurate at the time such information or certification was provided to EPA.

14. Complainant and Respondent agree to settle this matter by their execution of this CA/FO. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of the MPRSA.

#### **IV. Payment**

15. Pursuant to Section 105(a) of the MPRSA, 33 U.S.C. 1415(a) and 40 C.F.R Part 19 and considering the nature of the violations and other relevant factors, EPA has determined that Twenty Thousand Dollars (\$20,000.00) is an appropriate civil penalty to settle this action.

16. Respondent shall submit payment of the penalty specified in the preceding paragraph within thirty (30) days of the effective date of this CA/FO via a cashier's or certified check, payable to the order of "Treasurer, United States of America." The check shall reference on its face the name of Respondent and the Docket Number of this CA/FO. Such payment shall be tendered to:

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

17. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CA/FO, to the following persons at the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

and

not receive payment of the penalty assessed by this CA/FO in full by its due date, interest shall accrue on the unpaid balance from the due date through the date of payment at an annual rate equal to the rate of the current value of funds to the United States Treasury as prescribed and published by the Secretary of the Treasury. If all or part of the payment is overdue, EPA will assess a late-payment handling charge of \$15.00, with an additional delinquent notice charge of \$15.00 for each subsequent thirty (30) day period. EPA will also assess on a monthly basis an up to six per cent (6%) per annum penalty on any principal amount not paid within ninety (90) days of the due date. In addition, pursuant to Section 105(a) of MPRSA, 33 U.S.C. 1415(a), upon failure to pay the penalty, Complainant may request the Attorney General to commence an action in the appropriate district court of the United States for such relief as may be appropriate.

## **V. General Provisions**

20. This CA/FO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit. Other than as expressed herein, compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA.

21. Nothing in this CA/FO shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Respondent's violation of this CA/FO or of the statutes and regulations upon which this CA/FO is based, or for Respondent's violation of any federal or state statute, regulation or permit.

22. Except as otherwise set forth herein, this CA/FO constitutes a settlement by Complainant and Respondent of all claims for civil penalties pursuant to the MPRSA with respect to only those violations alleged in this CA/FO. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of Respondent, or other liability resulting from violations that were not alleged in this CA/FO. Other than as expressed herein, Complainant does not waive any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

23. Each undersigned representative of the parties to this CA/FO certifies that he or she is fully authorized to enter into the terms and conditions of this CA/FO and to execute and legally bind that party to it.

24. This CA/FO applies to and is binding upon Respondent and its officers, directors, employees, agents, successors and assigns.

25. Any change in the legal status of Respondent, including but not limited to any transfer of assets of real or personal property, shall not alter Respondents responsibilities under this CA/FO.

26. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this CA/FO.

27. In accordance with 40 C.F.R. 22.5, the individuals below are authorized to receive service relating to this proceeding.

For Complainant:

Craig Higgason  
Associate Regional Counsel  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303  
(404) 562-9534

For Respondent:

Robert B. Birthisel  
Hamilton, Miller and Birthisel, LLP  
100 South Ashley Drive, Suite 1210  
Tampa, Florida 33602


#### **VI. Effective Date**

28. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

**AGREED AND CONSENTED TO:**

Region 4

For RESPONDENT, DANN MARINE TOWING, LC:

  
~~Robert F. Dann, Sr.~~ Christopher DANN  
President, Dann Marine Towing  
V.P.

Date: 7/17/09

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF:

DANN MARINE TOWING, LC  
CHESAPEAKE CITY, MARYLAND,

Respondent.

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CONSENT AGREEMENT AND  
FINAL ORDER

Docket No.: MPRSA 04-2009-7500

**FINAL ORDER**

In accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, 40 C.F.R. Part 22, and authorities delegated to me, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Pursuant to Section 105(a) of the MPRSA, 33 U.S.C. 1415(a), Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 9/1/09

*As* J. Scott Cole  
A. Stanley Meiburg  
Acting Regional Administrator  
U.S. EPA, Region 4

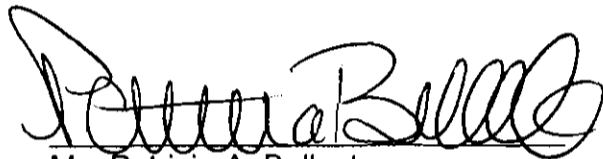


**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of Dann Marine Towing, LC, **Docket No. MPRSA 04-2009-7500** (filed with the Regional Hearing Clerk on SEP 09 2009, 2009) was served on SEP 09 2009, 2009, in the manner specified to each of the persons listed below.

By hand-delivery: Craig Higgason  
Associate Regional Counsel  
U.S. EPA, Region 4  
61 Forsyth Street, SW  
Atlanta, GA 30303

By certified mail,  
return receipt requested: Robert B. Birthisel  
Hamilton, Miller and Birthisel, LLP  
100 South Ashley Drive, Suite 1210  
Tampa, Florida 33602



Ms. Patricia A. Bullock  
Regional Hearing Clerk  
U.S. EPA, Region 4  
61 Forsyth Street, SW  
Atlanta, GA 30303  
(404) 562-9511