

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Fire Island Ferries, Inc,
99 Maple Avenue
Bayshore, NY 11706

RESPONDENT

Proceeding pursuant to Section 309(g) of the
Clean Water Act, 33 U.S.C. §1319(g)

**CONSENT AGREEMENT
AND FINAL ORDER**

DOCKET No. CWA-02-2019-3302

I. PRELIMINARY STATEMENT

1. This is a civil administrative proceeding for the assessment of a civil penalty instituted pursuant to Section 309(g) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. §1319(g).
2. The following Findings of Fact are made and Order issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by the Act, 33 U.S.C. §1251 *et. seq.*, which authority has been duly delegated to the Regional Administrator of Region 2, EPA and since further re-delegated to the Director, Division of Enforcement and Compliance Assistance, Region 2, EPA.
3. EPA is initiating and concluding this proceeding for the assessment of a civil penalty, pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. §1319(g), and 40 C.F.R. §22.13(b) of 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" ("CROP"), which sets forth procedures for simultaneous commencement and conclusion of administrative civil penalty assessment proceedings through issuance of a consent agreement and final order pursuant to 40 C.F.R. §§22.18(b)(2) and (3).

II. FINDINGS OF FACT

4. Fire Island Ferries, Inc. ("Respondent") is a corporation chartered under the laws of the State of New York, and as such, the Respondent is a person, as defined in Section 502(5) of the CWA, 33 U.S.C. §1362(5), and 40 C.F.R. §122.2, and is an "incorporated place" as defined in 40 C.F.R. §122.26(b)(3).

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5. The Respondent owns and operates the ferry terminal facility located at or near 99 Maple Avenue, Bayshore, New York, and is an "owner or operator" within the meaning of 40 C.F.R. §122.2.
6. The Respondent discharges pollutants associated with industrial activity, including stormwater, through a series of catch basins into two (2) outfall pipes that discharge to Penataquit Creek, which flows directly into the Great South Bay
7. The Respondent's two (2) outfall pipes, which are "point sources" within the meaning of Section 502(14) of the CWA, 33 U.S.C. §1362(14), discharge pressure wash water, which is a "pollutant" within the meaning of Section 502(6) of the CWA, 33 U.S.C. §1362(6), to Penataquit Creek, which flows directly into the Great South Bay. Penataquit Creek and the Great South Bay are waters of the United States within the meaning of 40 C.F.R. §122.2. As such, pollutants have been discharged to navigable waters from a point source within the meaning of Section 502(12) of the CWA, 33 U.S.C. §1362(12).
8. The EPA conducted a Compliance Evaluation Inspection ("CEI") of the Respondent's facility on November 22, 2017, and determined that Respondent had failed to obtain a State Pollutant Discharge Elimination System ("SPDES") Permit for the pressure wash waters, sediment-laden rinse waters, paints, and visible solids resulting from industrial maintenance activities, which resulted in process water discharges to the two (2) piped outfalls into Penataquit Creek and the Great South Bay, in violation of Section 301 of the Act, 33 U.S.C. §1311.
9. Based on the Findings cited in Paragraphs 4-8 above, the Respondent violated Section 301 of the Act, 33 U.S.C. §1311.

III. CONCLUSIONS OF LAW AND JURISDICTION

10. Section 301(a) of the Act, 33 U.S.C. §1311(a), provides, in part, that the discharge of any pollutants by any person from a point source to a navigable water of the United States shall be unlawful except, inter alia, in accordance with the terms and conditions of a duly issued permit pursuant to Section 402 of the Act, 33 U.S.C. §1342.
11. Section 402 of the Act, 33 U.S.C. §1342, authorizes the Administrator of the EPA to issue a National Pollutant Discharge Elimination System ("NPDES") permit for the discharge of any pollutant, or combination of pollutants, subject to certain requirements of the Act and conditions which the Administrator determines are necessary.
12. Pursuant to Section 402(b) of the Act, 33 U.S.C. §1342(b), the EPA granted authority to the New York State Department of Environmental Conservation to issue State Pollutant Discharge Elimination System permits to facilities in New York State for the discharge of pollutants from said facilities from a point source to a navigable water of the United States.
13. Section 402(p) of the CWA, 33 U.S.C. §1342(p) sets forth the requirements for discharges of stormwater.

14. The Administrator of the EPA has promulgated regulations, at 40 C.F.R. §122.26(a)(9)(i)(A), which require operators to obtain a NPDES permit for discharges composed entirely of stormwater from a small MS4 required to be regulated pursuant to 40 C.F.R. §122.32.
15. Section 402 of the CWA, 33 U.S.C. §1342, authorizes the Administrator of the EPA to issue a NPDES permit for the discharge of any pollutant, or combination of pollutants, subject to certain requirements of the CWA and conditions which the Administrator determines are necessary. The NYSDEC is the agency with the authority to administer the federal NPDES program in New York pursuant to Section 402 of the CWA, 33 U.S.C. §1342. Additionally, under the authority granted to the NYSDEC by the EPA under Section 402(b) of the CWA, 33 U.S.C. §1342(b), a SPDES issued by the NYSDEC is required for the discharge of pollutants from a point source from said facilities to a navigable water of the United States. The EPA maintains concurrent enforcement authority with authorized States for addressing violations of the CWA.
16. The Respondent's Facility is subject to the NPDES requirements pursuant to Section 402 of the Act, 33 U.S.C. §1342 and Section 301(a) of the Act, 33 U.S.C. §1311(a).
17. Based upon the Findings of Fact set forth above, the Respondent operated the Facility in violation of Sections 301 and 402 of the Act.
18. EPA has jurisdiction over the subject matter of this action, pursuant to Section 309 of the Act, 33 U.S.C. §1319, and over the Respondent.

IV. CONSENT AGREEMENT

19. Paragraphs 1 through 18, above, are re-alleged and incorporated herein by reference.
20. The EPA and the Respondent agree that it is in the public interest to resolve the issues alleged in this Consent Agreement without further litigation and the expense and effort that litigation entails.
21. Based upon the foregoing and pursuant to Section 309(g) of the Act, 33 U.S.C. §1319(g), and the CROP, it is hereby agreed by and between EPA and the Respondent, and the Respondent voluntarily and knowingly agrees as follows:

V. TERMS OF SETTLEMENT

22. For the purpose of this proceeding, the Respondent:
 - a. Admits the jurisdictional allegations of this CA/FO;
 - b. Neither admits or denies the factual allegations contained herein;
 - c. Waives its right to contest the allegations at a judicial or administrative hearing, or to appeal this CA/FO; and
 - d. Consents to the payment of the civil penalty in the amount of Ten Thousand Dollars (\$10,000.00), as stated in Paragraph 23, below.

VI. PAYMENT OF CIVIL PENALTY

23. The Respondent shall pay a civil penalty in the amount of *Ten Thousand Dollars (\$10,000.00)* to the "Treasurer of the United States of America."
24. Payments can be made by debit/credit card, check, or electronically. Electronic payments fall into two categories: wires and Automated Clearinghouse (ACH). Wires are same day and more costly. ACH is the next day or any future scheduled day and is less expensive. Please note that wires and ACH payments must be conducted through the sender's bank. The checks (cashier's or certified checks only) shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. Payment methods are described below:

Type of Payment	Payment Information		
Debit and Credit Card Payments	https://www.pay.gov/paygov/		
Checks from U.S. Banks		U.S. Postal Service	UPS, Federal Express, or Overnight Mail
Finance Center Contacts: Craig Steffen (513-487-2091)	Check Payments – Fines and Penalties	US Environmental Protection Agency Fines and Penalties Cincinnati Finance Center PO Box 979077 St. Louis, MO 63197-9000	U.S. Bank Government Lockbox 979077 US EPA Fines & Penalties 1005 Convention Plaza SL-MO-C2-GL St. Louis, MO 63101 314-418-1028 Contact: Natalie Pearson 314-418-4087
Checks drawn on foreign banks with no USA branches (any currency)	Cincinnati Finance US EPA, MS-NWD 26 W ML King Drive Cincinnati, OH 45268-0001		
Wire Transfers (any currency)	Federal Reserve Bank of New York ABA: 021030004 Account Number: 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"		
ACH - Automated Clearinghouse for receiving US currency Finance Center Contacts: John Schmid	US Treasury REX / Cashlink ACH Receiver ABA: 051036706 Account Number: 310006, Environmental Protection Agency CTX Format Transaction Code 22 – checking Physical location of US Treasury facility:		

(202-874-7026) REX (Remittance Express) 1-866-234-5681	5700 Rivertech Court Riverdale, MD 20737
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ON LINE PAYMENT:

There is now an On Line Payment Option, available through the Department of Treasury. This payment option can be accessed from the information below: WWW.PAY.GOV. Enter sfo 1.1 in the search field. Open form and complete required fields.

The Respondent shall also send copies of this payment to each of the following:

Branch Chief
Water Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. EPA, Region 2
290 Broadway, 20th Floor
New York, New York 10007-1866

and

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007

The payment must be received at the above address on or before forty-five (45) calendar days after the effective date of this Order at the end of this document (the date by which payment must be received shall hereafter be referred to as the "due date").

25. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for Collection.
26. Further, if the payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31 U.S.C. §3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each 30-day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.
27. In addition, pursuant to Section 309(g)(9) of the Act, 33 U.S.C. §1319(g)(9), if payment is not received by the due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly nonpayment penalty is 20% of the aggregate amount of penalties and quarterly nonpayment penalties, which are unpaid as of the

beginning of such quarter. You also may be required to pay attorney's fees and costs for collection proceedings in connection with nonpayment.

28. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from the Respondent's federal or New York State taxes.

VII. GENERAL PROVISIONS

29. Upon execution by the parties, this Agreement shall be subject to a public comment period of not less than thirty (30) days, pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. §1319(g)(4)(A) and 40 C.F.R. §22.45. The EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations indicating that the Agreement is inappropriate, improper, or inadequate.
30. If comments during the public comment period do not require modification or withdrawal by the EPA from this Agreement, the parties agree to submit this Agreement to the Director of the Division of Enforcement and Compliance Assistance, ten (10) days after closure of the public comment period, with a request that it be incorporated into a final order.
31. The provisions of this CA/FO shall be binding upon the Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns, including but not limited to, subsequent purchasers. No transfer of ownership or operation shall relieve the Respondent of its obligation to comply with this CA/FO.
32. The Respondent waives any right it may have pursuant to 40 C.F.R. §22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Director or the Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.
33. Except for the specific violations alleged herein, nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of the EPA to seek any other remedies or sanctions available by virtue of the Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for the Respondent's violation of any applicable provision of law.
34. This CA/FO shall not relieve the 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.
35. This CA/FO constitutes a settlement by the EPA of all claims for civil penalties pursuant to the CWA for the violations by the Respondent alleged herein. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent. Compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by the EPA, and it is the responsibility of the Respondent to comply with such laws and regulations.

36. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.
37. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this CA/FO.

For the Respondent: Fire Island Ferries, Inc. hereby consents to the issuance of the ORDER and agrees to be bound thereby.

BY:  _____

DATE: 12/12/18


Tim Mooney, Owner
Fire Island Ferries, Inc.
99 Maple Avenue
Bay Shore, New York 11706

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For the Complainant, the United States Environmental Protection Agency

BY: 

DATE: MAR - 1 2019

 **Dore LaPosta, Director**
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007

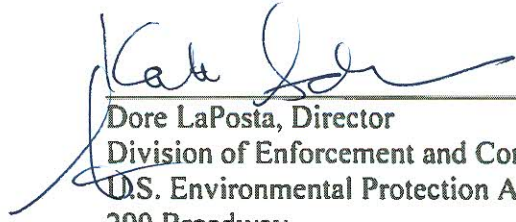


VIII. FINAL ORDER

The Regional Administrator of the United States Environmental Protection Agency, Region 2, vested by authority delegated by the Administrator of the United States Environmental Protection Agency ("EPA") and having further re-delegated such authority to the Division of Enforcement and Compliance Assistance, Region 2, EPA, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, New York, New York.

MAR - 1 2019

DATED: _____



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007-1866

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Fire Island Ferries, Inc.
99 Maple Avenue
Bay Shore, NY 11706

Respondent

Proceeding to Assess Civil Penalty
Pursuant to Section § 309(g) of the
Clean Water Act, 33 U.S.C. § 1319(g)

CONSENT AGREEMENT
AND FINAL ORDER

Docket No. CWA-02-2019-3302

CERTIFICATE OF SERVICE

I certify that, on the date noted below, I caused to be mailed a copy of this "CONSENT AGREEMENT AND FINAL ORDER" to the following person at the address listed below:

Mr. Timothy Mooney, President
Fire Island Ferries, Inc.
99 Maple Avenue
P.O. 5311
Bay Shore, NY 11706

I [hand carried/mailed] the original and a copy of this "CONSENT AGREEMENT AND FINAL ORDER" to the following person at the address listed below:

U.S. Environmental Protection Agency
Regional Hearing Clerk
290 Broadway, 16th Floor
New York, N.Y. 10007-1866

Date: 3/5/19
New York, New York


Marie St. Germain, Branch Secretary