

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

_____))
IN THE MATTER OF:))
))
))
Cashman Dredging and Marine.))
Contracting Co., LLC,))
549 South Street))
Quincy, Massachusetts,))
))
Cashman-Weeks NB, JV))
549 South Street))
Quincy, Massachusetts,))
))
Respondents.))
_____)

**AMENDED
ADMINISTRATIVE COMPLAINT AND
NOTICE OF OPPORTUNITY TO REQUEST A
HEARING**

Proceeding to Assess Civil Penalty Under
Section 105(a) of the Marine Protection, Research,
and Sanctuaries Act, 33 U.S.C. § 1415(a)

Docket No. MPRSA-01-2015-0035

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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 Regional 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 Cashman”) and Cashman-Weeks NB, JV, located at 549 South Street, Quincy, Massachusetts (“Cashman-Weeks”), collectively, “Respondents” 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 Respondents' 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 Cashman is a corporation incorporated under the laws of Massachusetts and Respondent Cashman-Weeks is a Joint Venture, both with principal places of businesses at 549 South Street, Quincy, Massachusetts, and are, therefore, “private person or entities.” As such, Respondents are “persons” 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 Cashman. 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 Cashman 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., Respondent Cashman, 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 Respondent Cashman-Weeks 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 Cashman-Weeks, and output from the DQM Data Viewer and verified by the USACE’s contractors’ ADISS system, on September 4, 2014, Respondent Cashman-Weeks, 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 Cashman’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 Cashman 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 Cashman-Weeks' 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 Cashman-Weeks 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 Cashman in an amount which takes into account the gravity of the violations, prior violations, and the demonstrated good faith of Respondent Cashman 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 Portland, Maine disposal violation.

21. 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 Cashman-Weeks in an amount which takes into account the gravity of the violations, prior violations, and the demonstrated good faith of Respondent Cashman-Weeks 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 New Bedford, Massachusetts disposal violation.

22. Respondents' 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

23. Respondents 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 their Answer to this Complaint. Even if Respondents do not explicitly request a hearing in their 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.

24. 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, Respondents 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

Respondents are 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

25. 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 Respondents have 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 Respondents wish to assert, challenges to any factual allegation in the Complaint, and any basis Respondents may have to oppose the assessment of a penalty.

26. 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.

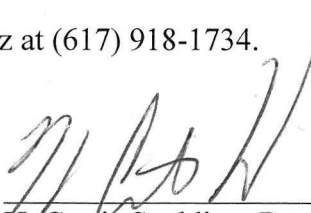
VII. SETTLEMENT

27. 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.

28. 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.

Date

9/22/15



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

Docket No. MPRSA-01-2015-0035

CERTIFICATE OF SERVICE

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

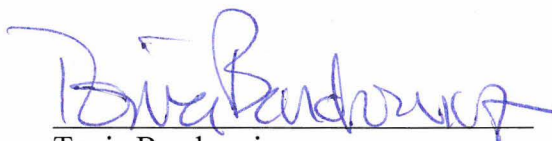
Original and one copy
by overnight mail:

Sybil Anderson,
Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Ronald Reagan Building, Room M1200
1300 Pennsylvania Ave., NW
Washington, DC 20004

Copy by certified mail,
return receipt requested:

Richard A. Nysten, Jr., Esq.
Lynch, DeSimone & Nysten, LLP
10 Post Office Square, Suite 970N
Boston, MA 02109

Dated: 10-5-15



Tonia Bandrowicz
U.S. EPA - Region I
5 Post Office Square
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