

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

IN THE MATTER OF:)	DOCKET NO. CWA-09-2020-0048
)	
Basin Marine, Inc.)	
Newport Beach, California)	COMPLAINT, CONSENT AGREEMENT AND FINAL ORDER
)	
Respondent.)	<i>Class II Administrative Penalty Proceeding under Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), and 40 C.F.R. §§ 22.13(b) and 22.18</i>
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CONSENT AGREEMENT AND FINAL ORDER

I. AUTHORITY AND PARTIES

1. This is a Class II civil administrative penalty proceeding under Section 309(g)(1)(A) and 2(B) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(1)(A) and 2(B), 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 309(g) of the CWA, 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency (EPA) is authorized to assess administrative penalties against persons who violate Section 301(a) of the Act, 33 U.S.C. § 1311 (a). The Administrator has delegated this authority to the Regional Administrator of the EPA Region IX, who in turn has delegated this authority to the Director of the Enforcement and Compliance Assurance Division, hereinafter “Complainant.”
3. Respondent is Basin Marine, Inc.
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:

Basin Marine, Inc.

II. STATUTORY AND REGULATORY FRAMEWORK

5. CWA Section 301(a), 33 U.S.C. § 1311(a), makes it unlawful for a person to discharge pollutants from a point source into waters of the United States, except as authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.
6. CWA Section 402, 33 U.S.C. § 1342, establishes the NPDES program and authorizes the EPA and authorized states to issue permits governing the discharge of pollutants from point sources into waters of the United States and CWA Section 402(p), 33 U.S.C. § 1342(p) requires that NPDES permits be issued for stormwater discharges “associated with industrial activity.”
7. 40 C.F.R. § 122.26(b)(14)(ii) defines stormwater discharges associated with industrial activity to include boat building and repairing classified under SIC Group 3732.
8. Pursuant to CWA § 402(p)(4), dischargers of stormwater associated with industrial activity are required to seek coverage under a promulgated general permit or seek individual permit coverage.
9. The State of California has an EPA-authorized NPDES program and issues permits, including industrial stormwater permits, through its State Water Resources Control Board (SWRCB) and nine Regional Water Quality Control Boards. On April 17, 1997, the State Water Board adopted General Permit No. CAS000001 for *Discharges of Stormwater Associated with Industrial Activities Excluding Construction Activities*, Water Quality Order No. 97-03-DWQ, which was in effect through June 30, 2015 and subsequently revised by the State Water Board on April 1, 2014, Water Quality Order No. 2014-0057-DWQ, which became effective on July 1, 2015 (hereinafter, “General Permit”).
10. Part III of the General Permit prohibits the discharge of liquids or materials other than storm water to waters of the United States unless authorized by another NPDES permit.
11. Part XI (B)(2) of the General Permit requires Respondent to collect and analyze storm water samples from two (2) Qualifying Storm Events (QSE) within the first half of the reporting year and two (2) QSEs within the second half of the reporting year.
12. Part X (H) (1)(a)(i) of the General Permit requires Respondent to clean and dispose of any identified debris, waste, spills, tracked materials or leaked materials.
13. Pursuant to CWA Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19.4, EPA may assess a Class II civil administrative penalty of up to \$16,000 per day of violation, not to exceed \$187,500 in total, against a person for CWA Section 301(a) violations that occurred after December 6, 2013. For violations that occurred after November 2, 2015, where penalties are assessed on or after January 13, 2020, the EPA may assess a penalty up to \$22,320 per day of violation, not to exceed \$278,995 in total.

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

14. Respondent is a California corporation and therefore, a person within the meaning of CWA § Section 502(5), 33 U.S.C. § 1362(5). Respondent operates a boat repair facility located at 829 Harbor Island Drive, Newport Beach, California, 92660, hereinafter “Facility.”
15. Respondent has been engaged in boat building and repair at the Facility since at least 1939, a date best known to Respondent. Respondent’s operations at the Facility fall within activities classified under SIC Code 3732, and is therefore an “industrial activity” for purposes of CWA Section 402(p), 33 U.S.C. § 1342(p), and 40 C.F.R. § 122.26(b)(14)(ii).
16. Stormwater runoff from the Facility is a “stormwater discharge associated with industrial activity” as defined by 40 C.F.R. § 122.26(b)(14)(ii).
17. Stormwater runoff from the Facility discharges into drilled holes in the perimeter wall at the Facility. Such holes are “point sources” within the meaning of CWA Section 502(14), 33 U.S.C. § 1362(14).
18. Stormwater discharges from the facility include paint, hydraulic fluid, oil and grease, epoxy resins, and copper, and therefore contain “pollutants,” as defined by CWA Section 502(6), 33 U.S.C. § 1362(6).
19. Stormwater runoff from the Facility discharges directly to Newport Bay through drilled holes along the Facility’s southern perimeter concrete wall. Discharges from the Facility enter Newport Bay, which flows to the coast waters of the Pacific Ocean. Newport Bay and the coastal waters of the Pacific Ocean are “navigable waters” and “waters of the United States, including the territorial seas” within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7) and implementing regulations.
20. Newport Bay is on California’s the CWA §303(d) list as impaired for Copper.
21. Respondent’s discharge of pollutants in stormwater into navigable waters constitutes a “discharge of pollutants” within the meaning of CWA Section 502(12), 33 U.S.C. § 1362(12).
22. On April 24, 2015 Respondent filed a Notice of Intent to be covered under the California General Permit.
23. On July 20, 2018, representatives of EPA Region 9 inspected the Facility to evaluate Respondent’s compliance with the General Permit. EPA inspectors observed: paint staining and accumulated debris near the catch basins; boat repair activities being conducted outdoors without any observable best management practices (“BMPs”) to prevent stormwater discharges; power-washing activities in the haul out area leading to non-stormwater discharges; inadequate storage capacity for the treatment system, and no stormwater sampling results.

24. EPA conducted a second inspection of the Facility on February 14, 2019 during an active rain event. Inspectors observed ineffective BMPs, and the active discharge of industrial storm water to Newport Bay via the drilled holes in the perimeter wall. Stormwater samples were taken by the inspectors, which revealed levels of aluminum, copper and zinc in excess of the Numeric Action Limits (“NAL”) in Section XI (B)(Table 2) of the General Permit.
25. Between July 21, 2014 and July 21, 2019, the NOAA reports that at least 0.5 inches of rain fell on at least 20 days at the Newport Beach Harbor Weather Station. Upon information and belief, each of these rain events resulted in the discharge of stormwater from the Facility.

IV. ALLEGED VIOLATIONS

26. Between July 21, 2014 and July 21, 2019, Respondent violated CWA Sections 301(a) and 402, 33 U.S.C. § 1311(a) and 1342, by discharging pollutants in stormwater to Newport Bay not in compliance with the General Permit.
27. Respondent discharged non-stormwater from boat wash operations at the Facility not otherwise permitted under an NPDES permit, in violation of Part III of the General Permit.
28. Respondent failed to sample any stormwater 20 times in violation of Part XI (B)(2) of the General Permit which requires Respondent to collect and analyze storm water samples from two (2) Qualifying Storm Events (QSE) within the first half of the reporting year and two (2) QSEs within the second half of the reporting year. Respondent failed to conduct the required sampling from 2014 – 2019.
29. The Facility had paint staining and accumulated debris near the catch basins in violation of Part X (H) (1)(a)(i) of the General Permit which requires Respondent to clean and dispose of any identified debris, waste, spills, tracked materials or leaked materials.
30. Stormwater samples taken by EPA at the Facility on February 14, 2019 exceeded the NAL for both copper and zinc as outlined in the Section XI (B) of the General Permit.
31. By discharging stormwater associated with industrial activity and failing to comply with the General Permit, Respondent has violated CWA §§ 301(a) and 402, 33 U.S.C. §§ 1311(a) and 1342.

V. ADMINISTRATIVE PENALTY

32. In consideration of the penalty factors of CWA Section 309(g), 33 U.S.C. § 1319(g) Respondent shall pay to the United States a civil administrative penalty in the amount of \$139,753, pursuant to the terms in Attachment #1.
33. Respondent submitted a certified statement to EPA indicating that Respondent has a limited ability to pay a civil penalty in this matter.

34. EPA considered the certified statement when agreeing to the civil penalty terms included in this CA/FO.
35. Respondent certifies to the truth and accuracy of the information and representations made to EPA relating to Respondent's financial conditions.
36. Respondent acknowledges that it may be subject to prosecution under federal law by providing false or inaccurate information to EPA.
37. 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
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.

38. 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; and (iv) the reason for payment.
39. 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

Lawrence Torres
ECAD-3-2
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

40. 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.
41. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), if Respondent fails to pay the assessed penalty on time, the EPA may request the U.S. Department of Justice to bring a civil action to recover the overdue amount, plus interest at currently prevailing rates from the Effective Date of this CA/FO. In such an action, the validity, amount, or appropriateness of the assessed penalty shall not be subject to review. In addition to any assessed penalty and interest, Respondent shall pay attorney fees, costs for collection proceedings, and a quarterly nonpayment penalty, which shall equal 20% of the aggregate amount of Respondent’s penalties and nonpayment penalties that are unpaid as of the

beginning of such quarter, for each quarter during which such failure to pay persists. The EPA may also take other debt collection actions as authorized by law, including, but not limited to, the Debt Collection Act, 33 U.S.C. § 3711, and 33 C.F.R. Part 13.

VI. APPLICABILITY

42. 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

43. 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

44. In accordance with 40 C.F.R. § 22.18(c), full payment of the penalty set forth in this CA/FO only resolves Respondent's CWA civil penalty liabilities for the violations specifically alleged herein and does 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.

45. 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

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

X. EFFECTIVE DATE AND TERMINATION

47. 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. This CA/FO shall terminate when Respondent has complied with the requirements of this CA/FO in full.

XI. PUBLIC NOTICE

48. Pursuant to CWA Section 309(g)(4), 33 U.S.C. §1319(g)(4), and 40 C.F.R. § 22.45(b), this Consent Agreement is subject to public notice and comment prior to issuance of the proposed Final Order. Complainant reserves the right to withhold or withdraw consent to this Consent Agreement if public comments disclose relevant and material information that was not considered by Complainant in entering into this Consent Agreement. Respondent may withdraw from this Consent Agreement only upon receipt of written notice from the EPA that it no longer supports entry of this Consent Agreement.

49. Pursuant to CWA Section 309(g)(1), 33 U.S.C. § 1319(g)(1), the EPA has consulted with the State of California regarding this penalty action.

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

/s/

7/21/20

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

Date

For Respondent [Name].

/s/

7/17/20

David L. New, President
Basin Marine, Inc.

Date