

**PUBLIC NOTICE**  
**U. S. ENVIRONMENTAL PROTECTION AGENCY, REGION 4**  
**WATER PROTECTION DIVISION**  
**NPDES PERMITTING AND ENFORCEMENT BRANCH**  
**ATLANTA FEDERAL CENTER**  
**61 FORSYTH STREET, S.W.**  
**ATLANTA, GEORGIA 30303**

**DATE: May 27, 2016**

**PUBLIC NOTICE No. CWA-04-2016-4513(b)**

**Notice of Proposed Issuance of  
Consent Agreement and Final Order**

The U.S. Environmental Protection Agency (EPA), Region 4, proposes to issue a Consent Agreement and Final Order (CAFO), Docket No. CWA-04-2016-4513(b), that assesses an administrative penalty of \$1,500.00 to Smith Boat Leasing, LLC (Respondent), 1400 Clay Street, Vicksburg, Mississippi 39183, under the authority of Section 309(g)(2)(A) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(2)(A).

The EPA alleges that the Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), by operating, the Motor Vessel *Big J.O.*, a vessel that is greater than or equal to 300 gross tons or has the capacity to hold or discharge more than 8 cubic meters (2,113 gallons) of ballast water, in waters of the United States, without obtaining coverage under the Vessel General Permit for Discharges Incidental to the Normal Operation of Vessels (VGP).

Any person wishing to comment on any aspect of the proposed CAFO Docket No. CWA-04-2016-4513(b) may submit such comments in writing to the Regional Hearing Clerk at U.S. EPA, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia, 30303. Comments must be submitted within 30 days of the date of this notice. Please include the Public Notice Number and the Docket Number with any submitted comments.

This CAFO issued pursuant to CWA Section 309(g) is being simultaneously commenced and settled under 40 C.F.R. § 22.13(b), however the EPA cannot finally resolve or settle this CAFO until ten days after the close of the public comment period in accordance with 40 C.F.R. § 22.45 (b) and (c).

**FOR FURTHER INFORMATION:** Persons wishing to receive a copy of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22, which apply to this matter, or comment upon the proposed penalty assessment, should contact the Regional Hearing Clerk identified above. Unless otherwise noted, the public record for this action is located in the EPA Regional Office at 61 Forsyth Street, S.W., Atlanta, Georgia, and the file will be open for public inspection between 9:00 a.m. and 4:00 p.m., Monday through Friday.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

<b>IN THE MATTER OF:</b>	)	
	)	<b>CONSENT AGREEMENT AND</b>
<b>SMITH BOAT LEASING, LLC</b>	)	<b>FINAL ORDER</b>
<b>VICKSBURG, MISSISSIPPI</b>	)	
	)	
<b>RESPONDENT.</b>	)	<b>Docket No. CWA-04-2016-4513(b)</b>
<hr/>		

**CONSENT AGREEMENT**

**I. Statutory Authority**

1. This is a civil penalty proceeding pursuant to Section 309(g)(2)(A) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g)(2)(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*, including Subpart I, 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 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), is vested in the Administrator of the United States Environmental Protection Agency. The Administrator has delegated this authority to the Regional Administrator, Region 4, who in turn has delegated this authority to the Director of the Water Protection Division, who in turn has delegated this authority to the Chief of the NPDES Permitting and Enforcement Branch of the EPA, Region 4 (“Complainant”).

**II. Allegations**

3. Smith Boat Leasing, LLC (“Respondent”) is a corporation doing business in the State of Mississippi, and, therefore, is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

4. At all times relevant to this Consent Agreement and Final Order (“CA/FO”), the Respondent owned and/or operated a vessel named *Big J.O.*

5. To accomplish the objective of the CWA, defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), to restore and maintain the chemical, physical and biological integrity of the nation’s waters, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into waters of the United States except as in compliance with a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

6. On December 29, 2008, the EPA announced in the Federal Register issuance of a final NPDES Vessel General Permit (“VGP”), effective December 19, 2008, regulating point source discharges associated with discharges incidental to the normal operations of vessels into

“waters of the United States” as defined in 40 C.F.R. § 122.2, which extend to the outer reach of the 3 mile “territorial seas” as defined in section 502(8) of the CWA, 33 U.S.C. § 1362(8). See 73 Fed. Reg. 79473.

7. The VGP that became effective on December 19, 2008, applies to owners and operators of non-recreational vessels that are 79 feet and greater in length pursuant to Part 1.2.1 of the VGP. See 73 Fed. Reg. at 79477. If such a vessel is greater than or equal to 300 gross tons or has the capacity to hold or discharge more than eight cubic meters (2113 gallons) of ballast water, it is required to submit a Notice of Intent (“NOI”) to the EPA to receive coverage under the VGP in accordance with Part 1.5.1 of the VGP. The VGP was reissued on April 12, 2013 with an effective date of December 19, 2013, and an expiration date of December 19, 2018. (See 78 Fed. Reg. 21,938)

8. Part 1.5.1.1 (Vessels Required to Submit Notices of Intent), of the VGP provides that the owner/operator of vessels greater than or equal to 300 gross tons or vessels with the capacity to hold or discharge more than 8 cubic meters (2,113 gallons) of ballast water, must submit a signed and certified, complete and accurate NOI.

9. On March 9, 2016, the EPA sent an Information Request letter pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, to the Respondent requesting information regarding vessels owned and operated by Respondent to determine compliance with requirements of the VGP.

10. As a result of EPA’s review of the Respondent’s response to the Information Request, the EPA made the following observations and determinations:

a. During the period of May 22, 2015, through April 27, 2016, Respondent owned and/or operated the vessel *Big J. O.*, that is greater than or equal to 300 gross tons or has the capacity to hold or discharge more than 8 cubic meters (2113 gallons) of ballast water and which discharged pollutants incidental to the normal operation of the vessels into navigable waters of the United States without obtaining a VGP.

11. Therefore, the Respondent has violated Sections 301 of the CWA, 33 U.S.C. § 1311.

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

12. The Complainant and the 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 CA/FO will simultaneously commence and conclude this matter.

13. For the purposes of this CA/FO, the Respondent admits the jurisdictional allegations and the factual allegations set out above.

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

15. The 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.

16. By signing this CA/FO, the 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. The 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.

17. The 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 the Respondent was materially false or inaccurate at the time such information or certification was provided to the EPA.

18. The Complainant and the 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 CWA.

#### **IV. Payment**

19. Pursuant to Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. Part 19, and considering the nature of the violations and other relevant factors, the EPA has determined that One Thousand Five Hundred Dollars (**\$1,500**) is an appropriate civil penalty to settle this action.

20. The 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  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

21. At the time of payment, the 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  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

And

Ms. Mary Mattox  
U.S. Environmental Protection Agency, Region 4  
Water Protection Division  
NPDES Permitting and Enforcement Branch  
Municipal and Industrial Enforcement Section  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

22. The penalty amount specified above shall represent civil penalties assessed by the EPA and shall not be deductible for purposes of federal taxes.

23. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure by the Respondent to pay the penalty assessed by the CA/FO in full by its due date may subject the Respondent to a civil action to collect the assessed penalty plus interest (at currently prevailing rates from the effective date of this CA/FO), attorney's fees, costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of such penalty and nonpayment penalty which are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty and of this CA/FO shall not be subject to review.

#### **V. General Provisions**

24. This CA/FO shall not relieve the Respondent of its obligation to comply with all applicable provisions of federal, state, and 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 the EPA.

25. Issuance of this CA/FO shall not be deemed as prohibiting, altering, or in any way limiting the ability of the EPA to pursue any other enforcement actions available to it under law. Such actions may include, without limitation, any administrative, civil, or criminal action to seek penalties, fines, injunctive, or other appropriate relief, or to initiate an action for imminent and substantial endangerment, under the CWA or any other federal or state statute, regulation, or permit.

26. Except as otherwise set forth herein, this CA/FO constitutes a settlement by Complainant and the Respondent of all claims for civil penalties pursuant to the CWA with respect to only those violations alleged in this CA/FO and in the Administrative Order on Consent.. Except as otherwise set forth herein, compliance with this CA/FO shall resolve the allegations of violations contained herein.

27. 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, or other liability resulting from violations that were not alleged in this CA/FO or in the Administrative Order on Consent.

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

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

30. 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.

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

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

For Complainant:

Ms. Wilda Cobb  
Associate Regional Counsel  
Office of Environmental Accountability  
U.S. Environmental Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
(404) 562-9830

For the Respondent:

Mr. Patrick Smith  
Smith Boat Leasing, LLC  
1400 Clay Street  
Vicksburg, Mississippi 39183  
(601) 636-2454

33. The parties acknowledge and agree that this CA/FO is subject to the requirements of 40 C.F.R. § 22.45(c)(4), which provides a right to petition to set aside a consent agreement and proposed final order based on comments received during the public comment period.

34. Effective upon signature of this CA/FO by the Respondent's responsible corporate officer, the Respondent agrees that the time period commencing on the date of his signature and ending on the date the EPA receives from Respondent the payment required by this CA/FO shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the EPA related to the matters addressed in this CA/FO and that, in any action brought by the EPA related to the matters addressed, the Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If the EPA gives notice to the Respondent that it will not make this CA/FO effective, the

statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by the EPA.

35. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38(b), the Complainant represents that the State of Mississippi was provided a prior opportunity to consult with the Complainant regarding this matter.

**VI. Release by the Respondent**

36. The Respondent hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States, including any department, agency, or instrumentality of the United States, with respect to the matters addressed and resolved in this CA/FO, including, but not limited to any claim that any of the matters or actions described in this CA/FO have resulted in a taking of the Respondent's property without compensation.

**VII. Effective Date**

37. 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:**

**For RESPONDENT, SMITH BOAT LEASING, LLC.:**



Mr. Patrick Smith  
Manager  
Smith Boat Leasing, LLC

Date: 5/20/16

**For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:**

\_\_\_\_\_  
Denisse D. Diaz, Chief  
NPDES Permitting and Enforcement Branch  
Water Protection Division  
U.S. EPA, Region 4

Date: \_\_\_\_\_

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF: )  
 )  
SMITH BOAT LEASING, LLC ) CONSENT AGREEMENT AND  
VICKSBURG, MISSISSIPPI ) FINAL ORDER  
 )  
RESPONDENT. ) Docket No. CWA-04-2016-4513(b)  
 )

**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*, including Subpart I, 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 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), the Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: \_\_\_\_\_

\_\_\_\_\_  
Tanya Floyd  
Regional Judicial Officer

**Docket No. CWA 04-2016-4513(b)**

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of **SMITH BOAT LEASING, LLC**, **Docket No. CWA-04-2016-4513(b)** filed with the Regional Hearing Clerk on \_\_\_\_\_, 2016, was served on \_\_\_\_\_, 2016, in the manner specified to each of the persons listed below.

By hand-delivery: Ms. Wilda Cobb  
Associate Regional Counsel  
Office of Environmental Accountability  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

By certified mail,  
return receipt requested: Mr. Patrick Smith  
Smith Boat Leasing, LLC  
1400 Clay Street  
Vicksburg, Mississippi 39183

\_\_\_\_\_  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
(404) 562-9513