

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9**

75 Hawthorne Street
San Francisco, California 94105

IN THE MATTER OF:)	DOCKET NO. CWA-09-2021-0021
)	
Keehi Marine, Inc.)	
Honolulu, HI)	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

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 sections 301(a) of the Act, 33 U.S.C. §§ 1311 (a) and or who has violated any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, 33 U.S.C. § 1342. The Administrator has delegated this authority to the Regional Administrator of the EPA Region 9, who in turn has delegated this authority to the Director of the Enforcement and Compliance Assurance Division, hereinafter “Complainant.”
3. Respondent is Keehi 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:

II. STATUTORY AND REGULATORY FRAMEWORK

5. Section 301(a) of the CWA, 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, including the territorial seas, except as authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.
6. Section 402 of the CWA, 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 facilities classified under Major Group 373, which includes SIC 3732 (Boat Building and Repairing), and 40 C.F.R. § 122.26(b)(14)(viii), which includes transportation facilities, but only for those portions of the facility that have a vehicle maintenance shop, classified under Major Group 44, which includes SIC 4493 (Marinas).
8. Pursuant to section 402(p)(4) of the CWA, 33 U.S.C. § 1342(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 Hawaii has an EPA-authorized NPDES program and issues permits, including industrial stormwater permits, through its Department of Health (DOH). On December 6, 2013, pursuant to Hawaii Administrative Rule (HAR) 11-55-24.2, DOH adopted NPDES General Permit Authorizing Discharges of Storm Water Associated with Industrial Activities, at HAR Chapter 11-55 Appendix B (hereinafter, “General Permit”) to be effective through December 5, 2017. DOH has not reissued the General Permit, however, HAR 11-55-34.09(d) administratively extends General Permit coverage for permittees who have already obtained a Notice of General Permit Coverage (NGPC), unless DOH informs a permittee otherwise.
10. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19.4, the EPA may assess a Class II civil administrative penalty of up to \$22,320 per day of violation, not to exceed \$278,995 in total, against a person for violations of section 301(a) of the CWA that occurred after November 2, 2015, where penalties are assessed on or after January 13, 2020.

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

11. Respondent is a Hawaii corporation and therefore, a person within the meaning of section 502(5) of the CWA, 33 U.S.C. § 1362(5). Respondent operates the Keehi Marine Center located at 24 Sand Island Access Road, Honolulu, Hawaii, hereinafter “Facility.”

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12. Respondent has been primarily engaged in operating a marina which provides fuel, maintenance and repair services for vessel owners, including providing space and support for vessel owners to conduct their own maintenance and repairs. These maintenance and repair activities include washing, sandblasting, grinding, welding, and painting of vessels. These maintenance operations take place at specified locations identified as “work areas” at the Facility. Respondent’s operations are properly categorized within SIC 4493 (Marinas) and SIC 3732 (Boat Building and Repairing) and therefore are an “industrial activity” for purposes of CWA § 402(p), 33 U.S.C. § 134(p), and 40 C.F.R. § 122.26(b)(14)(ii) and (viii).
13. 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) and (viii).
14. Stormwater runoff from the Facility discharges from outfall KMC1, as identified in Respondent’s 2017 storm water pollution control plan (SWPCP), into the territorial seas and the Pacific Ocean at Keehi Lagoon. This outfall is a “point source” within the meaning of section 502(14) of the CWA, 33 U.S.C. § 1362(14).
15. Stormwater discharges from the Facility contain lead, zinc, and copper, and therefore contain “pollutants,” as defined by section 502(6) of the CWA, 33 U.S.C. § 1362(6).
16. The Facility discharges directly to the Keehi Lagoon and the Pacific Ocean, each of which are a “navigable water” defined as a “water of the United States, including territorial seas,” in section 502(7) of the CWA, 33 U.S.C. § 1362(7), and implementing regulations. *See also* section 502(8) of the CWA, 33 U.S.C. § 1362(8).
17. Respondent’s discharge of pollutants in stormwater into waters of the United States constitutes a “discharge of pollutants” within the meaning of section 502(12) of the CWA, 33 U.S.C. § 1362(12).
18. On August 18, 2008, DOH issued a NGPC, File No. HI R20A705, to Respondent, authorizing discharges consistent with the provisions of the General Permit. DOH issued a Renewal NGPC to Respondent on December 9, 2013, to be effective through December 8, 2017. On August 7, 2017, Respondent filed a Renewal Notice of Intent with DOH. Because DOH was unable to complete processing of the NOI, under HAR 11-55-34.09(d), Respondent was granted an administrative extension of the NGPC on August 17, 2017, effective until the NGPC is renewed or Respondent is otherwise notified by DOH.
19. The General Permit requires, among other things, that:
 - a. Respondent shall develop and implement a SWPCP to minimize the discharge of pollutants in storm water and to maintain compliance with the terms of the General Permit. General Permit Condition 6(a);
 - b. Respondent shall review and update the SWPCP as often as needed to comply

with the conditions of the General Permit or conditions of the NGPC, whichever is more stringent, or as required by the director. General Permit Condition 6(d);

- c. Respondent shall limit and monitor storm water discharges as specified in this section and in Table 34.1. General Permit Condition 8(a). Table 34.1 requires permittees to monitor annually for toxic pollutants, and also provides in relevant part that:
 - i. Storm water discharge limitations for toxic pollutants are the acute water quality standards established in HAR 11-54-4, for either fresh or saline waters. General Permit Table 34.1, note 10;
 - ii. The permittee shall measure for toxic pollutants, as identified in Appendix D of 40 C.F.R. Part 122; *see also* 73 Fed. Reg. 56572-56578 (Sept. 29, 2008); *see also* HAR 11-54-4. The permittee shall measure for the total recoverable portion of all metals. If monitoring results indicate that the discharge limitation was equaled or exceeded, the [SWPCP] shall be amended to include additional best management practices targeted to reduce the parameter which was in excess of the discharge limitation. General Permit Table 34.1, note 9;
- d. Respondent shall not cause or contribute to a violation of the basic water quality criteria as specified in HAR 11-54-4. General Permit Condition 8(c)(1);
- e. Respondent shall timely inspect the receiving state waters, storm water runoff, control measures, and best management practices to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in HAR 11-54-4, *e.g.*, the permittee shall look at the storm water discharge and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect the items that may be toxic or harmful to human or other life. General Permit Condition 8(c)(2);
- f. Respondent shall immediately stop, reduce, or modify the discharge as needed to stop or prevent a violation of the basic water quality criteria as specified in HAR 11-54-4. General Permit Condition 9;
- g. Respondent shall report all monitoring results and other required information, at least annually, in a form that demonstrates compliance with the limitations in Table 34.1 and other requirements of the General Permit. General Permit Condition 10(a)-(b); and
- h. Respondent shall orally report any violation of a storm water discharge limitation specified in Table 34.1 or a basic water quality criteria specified in section 8(b) of

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the General Permit, or any discharge of noncompliance which may endanger health or the environment, and shall provide a written report within five days of the time the permittee becomes aware of the circumstances. The written report shall include steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance, unanticipated bypass, or upset. General Permit Condition 10(c).

20. HAR 11-55-34.04(a) states that discharges covered by a general permit shall comply with the applicable sections of state water quality standards in Chapter 11-54, and the applicable provisions of Chapter 11-55.
21. The acute water quality standards for saline waters for the toxic pollutants Copper (Cu), Zinc (Zn), and Lead (Pb) are Cu (2.9 µg/L); Zn (95 µg/L); and Pb (140 µg/L). HAR 11-54-4(c)(3).
22. The NGPC further requires Respondent to revise the SWPCP as often as needed to improve storm water discharge quality and/or control practices, or, as required by DOH should any effluent limitation or water quality standards established in HAR 11-54-4 be exceeded.
23. On April 21, 2017, representatives of the EPA performed an inspection of the Facility to evaluate the Respondent's compliance with the requirements of sections 301 and 402(p) of the CWA, 33 U.S.C. § 1311 and 1342(p); the regulations promulgated thereunder at 40 C.F.R. § 122.26, and the General Permit. The EPA provided the inspection report to Respondent on June 21, 2017.
24. As described more fully in the inspection report, the EPA inspectors observed the following:
 - a. Accumulations of fine sediment and debris in the Facility work areas that appeared to have been generated from vessel sanding, grinding and other repair activities;
 - b. Debris present throughout a work area where line ships are rebuilt that lacked any complete cover or alternate best management practices (BMPs);
 - c. Evidence of recent flooding at a covered work area on the southeastern portion of the Facility, indicating that pollutants within the work area can be mobilized and transported from the work area and subsequently discharge to Keehi Lagoon and the Pacific Ocean;
 - d. The wash-water collection system, including a low point at the Facility where the wash-water is directed and held for evaporation, leaving accumulated pollutants in the open, where they may later be mobilized by stormwater and subsequently discharge to Keehi Lagoon and the Pacific Ocean;
 - e. A potential for pollutants to be discharged off the Facility's Work Area without

encountering any pollution control measures (*i.e.* potential discharge off of the boat slip into the Keehi Lagoon and the Pacific Ocean); and

- f. The Facility's SWPCP lacked adequate descriptions of the policies and practices for implementing BMPs, and Respondent was unable to produce required records pertaining to employee training, daily inspections and sample analysis.
25. After the inspection, from September 2016 to December 2017, Respondent reported stormwater discharge monitoring results on five occasions to Hawaii DOH. These reports show that the discharges exceeded the acute water quality standards for saline waters for Copper (Cu) 2.9 µg/L, Zinc (Zn) 95 µg/L, and Lead (Pb) 140 µg/L. In September 2016, Respondent reported exceeded for Cu (1700 µg/L) and Zn (610 µg/L). In December 2016, the Respondent reported exceedances for Cu (2100 µg/L) and Zn (1000 µg/L). In February 2017, the Respondent reported exceedances for Cu (18,000 µg/L), Zn (760 µg/L), and Pb (570 µg/L). In April 2017, the Respondent reported exceedances for Cu (6600 µg/L), Zn (3000 µg/L) and Pb (200 µg/L). In December 2017, the Respondent reported an exceedance for Zn (4900 µg/L).
 26. On September 11, 2018, the EPA entered into an Administrative Order Consent (AOC) with Keehi Marine, Inc., Docket No. CWA-309-2018-0005. The AOC required Respondent, among other things, to correct CWA compliance deficiencies observed by EPA inspectors during the April 2017 inspection.
 27. On November 3, 2020, Respondent submitted a Final Report that included a description and timeline of all the actions undertaken toward achieving compliance with the AOC. On November 3, 2020, the EPA provided notice to Respondent that the requirements of the AOC had been completed and implemented in accordance with the terms of the AOC.
 28. Between December 30, 2015 and November 3, 2020, at least thirty-nine (39) days with rainfall in excess of 0.5 inches were recorded by the National Oceanic and Atmospheric Administration at the Honolulu International Airport, located approximately one mile from the Facility. Upon information and belief, each of these thirty-nine (39) rainfall events resulted in a discharge from the Facility.

IV. ALLEGED VIOLATIONS

29. Between December 30, 2015 and November 3, 2020 Respondent violated sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342 on at least thirty-nine (39) days by failing to comply with a condition or limitation in a CWA section 402 permit.

V. ADMINISTRATIVE PENALTY

30. In consideration of the penalty factors of section 309(g) of the CWA, 33 U.S.C. § 1319(g), Respondent shall pay to the United States a civil administrative penalty in the amount of **one**

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hundred twenty-seven thousand eight hundred twenty-one dollars (\$127,821) within ninety (90) calendar days of the Effective Date, as defined in Section X below, of this CA/FO.

31. On December 17, 2020, Respondent submitted a certified statement to the EPA indicating that Respondent has a limited ability to pay a civil penalty in this matter. The EPA considered this certified statement when agreeing to the ninety-day time period for payment. Respondent certifies to the truth and accuracy of the information and representations made to the EPA relating to Respondent's financial conditions. Respondent acknowledges that it may be subject to prosecution under federal law by providing false or inaccurate information to the EPA.

32. 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.

33. 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.
34. 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

Desean Garnett
Attorney-Advisor
ORC-2-4
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

35. 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.

36. Pursuant to section 309(g)(9) of the CWA, 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

37. 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

38. 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

39. 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.

40. 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

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

X. EFFECTIVE DATE AND TERMINATION

42. 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

43. Pursuant to section 309(g)(4) of the CWA, 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.

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

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

/s/

01/19/21

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

Date

For Respondent Keehi Marine, Inc.

/s/

12/22/20

Yoshi Muraoka
Director

Date

FINAL ORDER

It is Hereby Ordered that this Consent Agreement and Final Order (U.S. EPA Docket No. CWA-09-2021-0021) be entered and that Respondent shall pay a civil penalty in the amount of **one hundred twenty-seven thousand eight hundred twenty-one dollars (\$127,821)** in accordance with the terms of this Consent Agreement and Final Order.

Date

Steven L. Jawgiel
Regional Judicial Officer
U.S. EPA, Region IX