

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 9**

75 Hawthorne Street  
San Francisco, California 94105

IN THE MATTER OF:	)	DOCKET NO. CWA-09-2019-0056
	)	
Precision Marine, LLC	)	<b>COMPLAINT, CONSENT AGREEMENT</b>
14011 Bush Highway	)	<b>AND FINAL ORDER</b>
Mesa, Arizona 85215	)	
	)	<i>Class I Administrative Penalty Proceeding</i>
	)	<i>under Section 309(g) of the Clean Water Act,</i>
Respondent.	)	<i>33 U.S.C. § 1319(g), and 40 C.F.R. §§</i>
_____	)	<i>22.13(b) and 22.18</i>

**CONSENT AGREEMENT AND FINAL ORDER**

**I. AUTHORITY AND PARTIES**

1. This is a Class I civil administrative penalty proceeding under Sections 309(g)(1)(A) and 2(A) of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1319(g)(1)(A) and (2)(A), 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 EPA Region 9, who in turn has delegated this authority to the Assistant Director of the Enforcement and Compliance Assurance Division, hereinafter “Complainant.”
3. Respondent is Precision Marine, LLC (“Respondent”).
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. 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 repair classified under SIC Code 3732.
8. Pursuant to CWA Section 402(p)(4), 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 Arizona has an EPA-authorized NPDES program and issues permits, including industrial stormwater permits, through the Arizona Department of Environmental Quality (“ADEQ”). On February 11, 2011, ADEQ issued its Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity from Industrial Facilities (“MSGP”), which remains in effect.
10. Pursuant to CWA Section 309(g)(2)(A), 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. Part 19.4, the EPA may assess a Class I civil administrative penalty of up to \$16,000 per day of violation, not to exceed \$37,500 in total, against a person for CWA Section 301(a) violations that occurred on or after December 6, 2013. For violations that occurred after November 2, 2015, where penalties are assessed after January 15, 2019, the EPA may assess a penalty of up to \$21,933 per day of violation, not to exceed \$54,833 in total.

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

11. Respondent is an Arizona corporation and therefore a person within the meaning of CWA Section 502(5), 33 U.S.C. § 1362(5). Respondent is engaged in boat maintenance and repair activities at its facility located on the shoreline of Saguaro Lake at 14011 Bush Highway, Mesa, Arizona (referred to in this CA/FO as “the Facility.”)
12. Respondent has been engaged in boat maintenance and repair at the Facility since at least September 26, 2000, on an exact date best known to Respondent. Respondent’s industrial activities at the Facility fall within those classified under SIC Code 3732 (Boat Building and Repair) and are therefore “industrial activities” for purposes of CWA Section 402(p), 33 U.S.C. § 1342(p), and 40 C.F.R. § 122.26(b)(14)(ii).
13. Stormwater runoff from the Facility discharges from a paved outdoor maintenance area through an engineered conveyance directly to Saguaro Lake. The engineered conveyance is a “point source” within the meaning of CWA Section 502(14), 33 U.S.C. § 1362(14).

14. Stormwater runoff from the Facility is a “storm water discharge associated with industrial activity” as defined by 40 C.F.R. § 122.26(b)(14)(ii).
15. Stormwater discharges from the Facility include Copper, Zinc, boat engine oil, and used oil, and therefore contain “pollutants,” as defined by CWA Section 502(6), 33 U.S.C. § 1362(6).
16. The Facility discharges to Saguaro Lake, which lies within the Salt River, both of which are “waters of the United States” within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7) and implementing regulations.
17. Respondent’s discharge of pollutants in stormwater into waters of the United States constitutes a “discharge of pollutants” within the meaning of CWA Section 502(12), 33 U.S.C. § 1362(12).
18. On June 27, 2018, EPA Region 9 representatives inspected the Facility, accompanied by representatives from ADEQ, to evaluate Respondent’s compliance with the CWA.
19. During the June 27, 2018 inspection, the EPA inspectors found that Respondent had no CWA authorization for discharge of pollutants from its Facility. The boat repair and maintenance industrial activities at the Facility include fiberglass repair, application of anti-fouling paint, and power washing of hulls, occurring outside in uncovered areas exposed to rain. EPA inspectors also observed no stormwater best management practices (BMPs) and no functional equivalent of a stormwater pollution prevention plan (SWPPP) on site.
20. During the June 27, 2018 inspection, EPA also observed a non-stormwater discharge from an outdoor air cooler flowing through industrial equipment (*e.g.* boat engines and batteries) stored in the Facility’s outdoor boat maintenance area and into Saguaro Lake.
21. On August 28, 2018, the EPA provided its inspection report from the June 27, 2018 inspection (“inspection report”) to Respondent.
22. On October 18, 2018, Respondent obtained 2010 MSGP coverage from ADEQ authorizing discharges of stormwater associated with industrial activity from the Facility to Saguaro Lake. Respondent’s SWPPP, submitted to ADEQ, contains BMPs to prevent any further discharge of non-stormwater originating from the air cooler to Saguaro Lake.
23. Between October 18, 2017 and October 18, 2018, at least 17 days with rainfall in excess of 0.1 inches were recorded. Upon information and belief, each of these seventeen rainfall events resulted in a discharge of stormwater from the Facility to Saguaro Lake and waters of the United States.

#### **IV. ALLEGED VIOLATIONS**

24. Between October 18, 2017 and October 18, 2018, Respondent violated CWA Section 301(a), 33 U.S.C. § 1311(a), on at least seventeen (17) days by discharging stormwater associated with industrial activity from a point source into waters of the United States without NPDES permit coverage as described above.
25. Respondent’s discharge of non-stormwater observed by EPA inspectors on June 27, 2018 resulted in the addition of pollutants from a point source to waters of the United States without NPDES Permit authorization and thus constitutes a violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

## V. ADMINISTRATIVE PENALTY

26. 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 **\$7,200** within thirty (30) calendar days of the Effective Date, as defined in Section X below, of this CA/FO.

27. 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](http://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.

28. 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.

29. 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  
U.S. EPA - Region 9  
75 Hawthorne Street (mail code: ORC-1)  
San Francisco, CA 94105

Lawrence Torres  
Enforcement and Compliance Assurance Division  
U.S. EPA - Region 9  
75 Hawthorne Street (mail code: ENF-3-2)  
San Francisco, CA 94105

30. 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.

31. 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 CA/FO’s Effective Date. 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**

32. 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**

33. In accordance with 40 C.F.R. § 22.18(b), for the purpose of this proceeding, Respondent:
- a. admits the jurisdictional allegations set forth in the Consent Agreement;
  - b. admits the facts stipulated in the Consent Agreement;
  - 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**

34. 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.
35. 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**

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

## **X. EFFECTIVE DATE AND TERMINATION**

37. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), the CA/FO's Effective Date is the date the Final Order, as signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk. This CA/FO shall terminate when Respondent has complied with the CA/FO's requirements in full.

## **XI. PUBLIC NOTICE**

38. 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.
39. Pursuant to CWA Section 309(g)(1), 33 U.S.C. § 1319(g)(1), the EPA has consulted with the State of Arizona regarding this penalty action.

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

/s/

8/8/2019

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Thanne Berg  
Acting Assistant Director, Water Branch  
Enforcement and Compliance Assurance Division  
U.S. EPA Region IX

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Date

Of Counsel:

Rich Campbell  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 9

For Respondent Precision Marine, LLC:

/s/

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Paul Lyells, Owner  
Precision Marine, LLC

7/31/2019

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Date



**FINAL ORDER**

It is Hereby Ordered that this Consent Agreement and Final Order (U.S. EPA Docket No. CWA-09-2019-0056) be entered and that Respondent shall pay a civil penalty in the amount of seven thousand two hundred dollars (**\$7,200**) in accordance with the terms of this Consent Agreement and Final Order.

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

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