



State of New Jersey

Enforcement and Information Support Element
Bureau of Enforcement and Investigations
401 East State Street
5th Floor West
P.O. Box 028
Trenton, NJ 08625-0028
Fax: (609) 633-1439

CERTIFIED MAIL/HAND DELIVERY

7008 1140 0000 1264 8257

Donald Miller, President
Tradewinds Marina Inc
PO Box 5300
Toms River, NJ 08754-5300

CERTIFIED MAIL/HAND DELIVERY

7008 1140 0000 1264 8288

Donald Miller
571 W. Lake Avenue
Bay Head, NJ 08742

JUL 05 2012

CERTIFIED MAIL

7008 1140 0000 1264 8271

Carmine R. Villani
Villani & DeLuca
703 Richmond Avenue
Point Pleasant Beach, NJ 08742

Re: Administrative Order and Notice of Civil Administrative Penalty Assessment
Cedar Cove Marina
200 Route 166
South Toms River Borough, Ocean County
PI#: 438444
EA ID# PEA120001-438444:

Dear Mr. Miller:

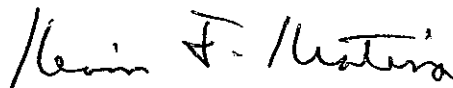
Enclosed for service upon you is an Administrative Order and Notice of Civil Administrative Penalty Assessment issued by the New Jersey Department of Environmental Protection ("the Department").

Notice is hereby given that Tradewinds Marina, Inc. and Donald Miller are entitled to request an administrative hearing. The requirements to request an administrative hearing are explained in the

enclosed document. Failure to request a hearing within 20 calendar days after receipt of this document will result in the loss of your right to a hearing.

Please be advised that the Department is willing to discuss settlement of this matter. If you would like to discuss settlement, or have any questions concerning this matter, please contact Nadine Drake at the address above, or by telephone at (609) 777-1912.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin F. Kratina".

Kevin F. Kratina, Assistant Director
Enforcement and Information Support Element

C: Nadine Drake, Compliance Manager, BEI
Randy Bearce, Compliance Manager, C&E
Mayor and Council, South Toms River Borough



State of New Jersey

Enforcement and Information Support Element
Bureau of Enforcement and Investigations
401 East State Street
PO Box 420, 401-05G
Trenton, New Jersey 08625
Telephone: (609) 633-1480
Fax: (609) 633-1439

IN THE MATTER OF :
CEDAR COVE MARINA :
200 RT 166 :
SOUTH TOMS RIVER BOROUGH OCEAN :
COUNTY :
AND :
TRADEWINDS MARINA, INC. D/B/A :
CEDAR COVE MARINA :
AND :
DONALD MILLER :
(HEREINAFTER KNOWN AS :
'VIOLATORS') :
EA ID # PEA120001 - 438444 :
ADMINISTRATIVE ORDER
AND
NOTICE OF CIVIL ADMINISTRATIVE
PENALTY ASSESSMENT
AND
NOTICE TO INSURERS

This Administrative Order and Notice of Civil Administrative Penalty Assessment (hereinafter "AONOCAPA") is issued pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection (hereinafter the "Department") by N.J.S.A. 13:1D-1 et seq., the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et seq., the Water pollution Control Act N.J.S.A. 58:10A-1 et seq., the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1.3, and the Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq., and the regulations promulgated thereunder, and duly delegated to the Assistant Director of the Enforcement and Assignment Element pursuant to N.J.S.A. 13:1B-4.

FINDINGS

Contaminated Site

1. The Cedar Cove Marina site is located at 200 Route 166, and is also known as Block 5, Lot 1 on the tax maps of the Borough of South Toms River, Ocean County, New Jersey (hereinafter "the Site").

2. The violators also operate on property owned by the Borough of South Toms River, which is adjacent to the Site. The violators have been operating on the Borough property without authorization, since the lease with the Borough expired in 2006. The property owned by the Borough of South Toms River, that was subject of the lease agreement is known as Block 5, Lots 4, 5 and 6 on the tax maps of the Borough of South Toms River, (hereinafter "the South Toms River Property").
3. The Site, the South Toms River Property, and all other areas to which any hazardous substances discharged on the Site or on the South Toms River Property, have migrated, are collectively referenced hereinafter as "the Contaminated Site".

Violator

4. Tradewinds Marina, Inc. also d/b/a Cedar Cove Marina, is a New Jersey Corporation with its main business address known as:

Tradewinds Marina Inc
PO Box 5300
Toms River, NJ 08754-5300

5. Donald Miller is an individual with his address known as 571 W. Lake Avenue, Bay Head, New Jersey 08742

Violators' Relationship to the Site

6. Tradewinds Marina, Inc. purchased the Site on November 15, 1988 and is the current owner and operator of the Site.
7. Donald Miller is the President of Tradewinds Marina, Inc. and directly oversees the operations at the Cedar Cove Marina.
8. On February 7, 2011, the Department received an anonymous report of an oil sheen on the water near the Cedar Cove Marina. The Department assigned incident number 11-02-07-1046-56. The United States Coast Guard (USCG) also responded to this discharge and created case number #966851.
9. Upon investigation the Department determined the oil sheen was emanating from the vessel the "Jak Bar." Cedar Cove Marina employees stated that the oil leaked from the boat upon refloating by marina employees, after it had sunk at the dock.
10. Following an investigation of the Cedar Cove Marina on February 8, 2011, the Department issued a Field Directive to Cedar Cove Marina requiring the following:
 - Remove fuel/oil from derelict boats;
 - Remove spilled fuel from the water
 - Remediate contaminated soils on the site;

- Remove containers of fuel from the Site
- Remove sorbent materials from dumpster and dispose of them in accordance with DEP regulations.

To date, fuel remains in derelict boats and soil stains are evident across the Site.

11. On February 1, 2012 the Department, along with representatives of the Borough of South Toms River, conducted a site inspection.
12. During the February 1, 2012 site inspection, the Department notified the violators that based on past complaints alleging release of raw sewage, Cedar Cove Marina was being investigated as a potential source of bacterial contamination in the Toms River and the downstream public swimming beaches in Beachwood and Pine Beach. In addition, the inspection identified numerous other environmental concerns at the Site.
13. On March 1, 2012, the New Jersey Department of Transportation (NJDOT) issued a letter to Cedar Cove Marina stating boats slips at the Marina are encroaching on land owned by the NJDOT. The letter required removal of all boat slips and associated structures from the highway embankment, and the repair of any damages caused by the pilings or other structures. To date these structures remain at the Cedar Cove Marina.
14. On May 3, 2012, the Department issued two Notices of Violation to Cedar Cove Marina for multiple violations under the Department's Land Use and Water Enforcement Programs. The Notice also summarized all the environmental concerns at the site, including but not limited to the following requirements:
 - Structures on Tidelands and/or Waterfront Development violations for the following unauthorized marina features: finger piers, mooring slips, floating docks, and the in-water floating homes.
 - Storm Water 5G2 general permit violations
 - Unauthorized occupation of Green Acres encumbered property
 - Solid Waste violations, including improperly disposed engine blocks and stockpiles of creosote treated material.
 - Failure to report past discharges of hazardous substances
15. On May 3, 2012, the Department verbally and in writing advised the violators of the Spill Act's reporting requirements, provided the number for the DEP Hotline and notified them that it is a violation of the Spill Act to fail to report a discharge at their facility
16. On May 22, 2012, the South Toms River Police Department notified the Department of an additional boat sinking in the Cedar Cove Marina. The Department assigned incident number 12-05-22-1639 to the discharge. In addition to the Department, the South Toms River Police Department and Fire Department, Berkeley HazMat Unit, Ocean County Prosecutors office and the NJ Marine Police responded to the discharge. The Department observed an oil discharge from one of three boats that had sunk at their slip in the Cedar Cove Marina. In addition, the Department observed a discharge, which

appeared to be waste solvents and fuel oil onto the ground from the vessel the "Jak Bar" which had been removed from its slip and placed on the land. The violators failed to report and remediate this discharge.

17. On May 23, 2012, owners of one boat in the Cedar Cove Marina admitted to directly discharging raw sewage and grey water into the Toms River, and the Department documented another boat discharging sewage and gray water onto the ground at the Cedar Cove Marina.
18. On June 7, 2012, the Department conducted ambient surface water sampling around the Cedar Cove Marina. Sampling results indicated significantly elevated enterococcus levels at the Cedar Cove Marina. This is evidence of raw sewage discharges in the area.
19. On June 12, 2012, the Department received a report from the South Toms River Police Department (Case #12-06-12-1209) the report indicating that the hydraulic lines on the large boat lift had ruptured causing a spill of hydraulic oil. There was a visible sheen on the water. The violators failed to report and remediate this discharge.
20. On June 19, 2012, the Department conducted a Site inspection at the Cedar Cove Marina. Although the violators were removing derelict boats as required, there were 24 gasoline tanks from those subject boats remaining on the Site and some were discharging to the soils. The violators failed to report and remediate the discharge.
21. During the June 19, 2012 inspection, the Department issued another Field Directive to Cedar Cove Marina, to empty the gasoline tanks, and to empty all the other derelict and unregistered boats of fuel.
22. In addition, on June 19, 2012 the Department noted that the soil stains from the June 12, 2012 discharges were still visible at the Site.
23. On June 27, 2012, the United States Coast Guard National Response Center notified the Department that another boat sank at its slip in the Cedar Cove Marina. The Department assigned incident number 12-06-27-0907-10. The notification stated that there was an oil sheen on the water approximately 100 yards long. The violators failed to report and remediate this discharge. The US Coast Guard re-floated the vessel and pumped out the fuel and oil.
24. On June 30, 2012, the Department was notified by the Ocean County Air Squadron that the boat that previously sank on June 27, 2012 was again under water and reported a related oil sheen on the water. The Department assigned incident number 12-06-30-1032-54. The violators refused to address the boat, stating that it is not their boat and is on NJDOT Property. The NJDOT property is the same property that is referenced in the NJDOT's March 1, 2012 letter above. The violators failed to report or remediate this discharge.

Obligation to Remediate the Contamination

25. The petroleum products referenced in the paragraph(s) above are hazardous substances pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11b.
26. The violators are responsible for the hazardous substances that were discharged at the Contaminated Site and/or for the remediation of the hazardous substances which were discharged to the lands and waters of the state pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11b, and N.J.A.C. 7:1E-5.7(a)2ii.
27. The violators are persons responsible for conducting the remediation pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C-2.
28. Pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C-2.3(a), any person who triggers a remediation, shall remediate all contamination at the site pursuant to N.J.A.C. 7:26C-2.3(a)1 through 9.
29. Pursuant to N.J.S.A. 58:10-23.11g.c., the violators are strictly liable, without regard to fault, for all cleanup and removal costs.

Violations

30. Pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, the person responsible for conducting the remediation shall comply with N.J.A.C. 7:26C-2.3(a) 1 through 9.
31. Pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E1.5, the person responsible for conducting the remediation shall comply with N.J.A.C. 7:26C-1.2.
32. On May 3, 2012 the Department issued a Notice of Violation, notifying the violators of the violations and affording the violators a period of time to correct the violations.
33. The Department conducted a follow-up compliance evaluation on June 19, 2012. To date, the violators have not addressed the violations. Therefore, the violators have failed to comply with applicable requirements as follows:
 - a) Requirement: Pursuant to N.J.A.C. 7:14A- 2.1(d), allowing a discharge to occur without an approved NJPDES permit.
Description of Noncompliance: Discharging pollutants to the waters of the State without a valid NJPDES permit issued by the Department. Discharge of oil from numerous boats sinking in the Cedar Cove Marina. Discharge of raw sewage from a boat into the Toms River.

- b) Requirement: Pursuant to N.J.A.C. 7:1E-1.11(a), no person shall cause, suffer, allow or permit and discharge of a hazardous substance.

Description of Noncompliance: Failure to prevent a discharge of a hazardous substance. Specifically, failure to remove the petroleum from the derelict boats, failure to remove the petroleum from the boats that were being demolished, allowing the hydraulic oil to leak from the hydraulic lines of the large boat lift, allowing the "Jak Bar" to leak oil onto the ground after it was removed from the water.

- c) Requirement: Pursuant to N.J.A.C. 7:1E-5.3(a), except as delineated in N.J.A.C. 7:1E-5.3(e), immediately after a discharge commences, any person or persons responsible for a discharge who knows or reasonably should know of the discharge, shall immediately notify the Department at (877) WARN DEP (927-6337). In the event that this number is inoperable, any person or persons responsible for a discharge shall immediately notify the State Police at (609) 882-2000.

Description of Noncompliance: Failure to immediately notify the Department of a discharge on February 7, 2011, May 22, 2012, June 12, 2012, June 19, 2012, June 27, 2012 and June 30, 2012.

- d) Requirement: Pursuant to N.J.A.C. 7:1E-5.7(a)2ii, any person responsible for a discharge shall take all necessary and appropriate measures to contain, mitigate, cleanup, and remove the discharge by remediating the discharge pursuant to the Administrative Requirements for the Remediation of Contaminated Sites at N.J.A.C. 7:26C-2.3.

Description of Noncompliance: Failure to conduct remediation of multiple discharges in accordance with N.J.A.C. 7:26C

Conclusion

34. Based on these FINDINGS, the Department has determined that the violators have violated the Water Pollution Control Act N.J.S.A. 58:10A-1 et seq., the Spill Compensation and Control Act, and the regulations promulgated pursuant thereto, specifically N.J.A.C. 7:26C.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

35. The violators shall comply with the following:

1. Cease all discharge and immediately notify the Department at (877)WARN DEP (927-6337) of any new discharges.

2. Remediate all discharges at the Contaminated Site in accordance with N.J.A.C. 7:26C-2.3.
 3. Within 30 days after receipt of this notice, remove all derelict boats from the water, and properly dispose of all related hazardous substances, without causing a discharge to the lands or waters of the State of New Jersey
 4. Within 30 days after receipt of this notice, remove all remaining solid and hazardous waste and other materials from the South Toms River Property.
36. This Order shall be effective upon receipt by the violators or someone on their behalf authorized to accept service.

NOTICE OF CIVIL ADMINISTRATIVE PENALTY ASSESSMENT

37. Pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C-9.5, and based upon the above FINDINGS, the Department hereby assesses a civil administrative penalty against the violators in the amount of **\$115,000.00**. See the Penalty Assessment Worksheet, which is attached hereto and included herein by reference.

NOTICE TO INSURERS

38. BE ON NOTICE THAT, pursuant to N.J.A.C. 58:10-23.11s., any claims for costs of cleanup or civil penalties by the State and any claim for damages by any injured person, may be brought directly against the bond, insurer or any other person providing evidence of financial responsibility. Violators are therefore urged to contact such insurers and notify them of the issuance of this Order and Notice to Insurers.

NOTICE OF RIGHT TO A HEARING

39. Pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C-9.10, the violators are entitled to request a hearing on this AONOCAPA. The violator(s) shall, in the request for a hearing, complete and submit the enclosed "Administrative Hearing Request and Checklist Tracking Form," along with all required information. Submittal or granting of a hearing request does not stay the terms or effect of this AONOCAPA. The Department shall deny your attempt to request a hearing if you do not comply with these requirements.
40. If the violators response to the AONOCAPA is that it has complied with some or all of the violations cited herein, as part of the hearing request the violator(s) shall describe any such compliance, including the specific dates relative to any such allegations.

41. If no request for a hearing is received within twenty calendar days from receipt of the AONOCAPA, it shall become a Final Order upon the twenty-first calendar day following its receipt, and the penalty shall be due and payable.
42. If a timely request for a hearing is received, payment of the penalty is due when the violator(s) receives a notice of the denial of the request, or, if the hearing request is granted, when the violator(s) withdraws the request or abandons the hearing, or, if the hearing is conducted, when the violator(s) receives a final decision from the Commissioner in this matter.
43. The violator shall make payment of the civil administrative penalty by check payable to Treasurer, State of New Jersey and shall be submitted along with the enclosed Enforcement Invoice to:

Department of Treasury
Division of Revenue
P.O. Box 417
Trenton, NJ 08646-0417

DATE: **JUL 05 2012**

Kevin F. Kratina

Kevin F. Kratina, Assistant Director
Enforcement and Information Support Element
New Jersey Department of Environmental
Protection

**Administrative Hearing Request Checklist
and Tracking Form**

I. Document Being Appealed: **EA ID** _____

Date Document Issued

II. Person Requesting Hearing:

Name/Company

Name of Attorney (if applicable)

Address

Address

Telephone #

Telephone #

III. Please Include the Following Information As Part of Your Request:

- A. The date the alleged violator received the Enforcement Document.
- B. A **copy of the Enforcement Document** and a list of all issues being appealed.
- C. An admission or denial of each of the findings of fact, or a statement of insufficient knowledge;
- D. The defenses to each of the findings of fact in the enforcement document;
- E. Information supporting the request;
- F. An estimate of the time required for the hearing;
- G. A request, if necessary, for a barrier-free hearing location for physically disabled persons;
- H. A clear indication of any willingness to negotiate a settlement with the Department prior to the Department's processing of your hearing request to the Office of Administrative Law; and
- I. This form, completed, signed and dated with all of the information listed above, including attachment, to:

- 1. New Jersey Department of Environmental Protection
Office of Legal Affairs
Attention: Adjudicatory Hearing Requests
401 E. State Street, P.O. Box 402
401-04L
Trenton, New Jersey 08625
- 2. Linda Grayson, Bureau Chief
Bureau of Enforcement and Investigations
New Jersey Department of Environmental Protection
401 E. State Street, PO Box 420
401-05G
Trenton, NJ 08625

IV. Signature; _____

Date: _____

PENALTY ASSESSMENT WORKSHEET

VIOLATOR NAME: Cedar Cove Marina

LOCATION: 200 Route 166, South Toms River, Ocean County

PROGRAM INTEREST # : 438444

CASE MANAGER/COMPLIANCE MANAGER: Nadine Drake

DATE OF VIOLATION: 2/7/2011, 5/22/12, 6/12/12. 6/19/12, 6/27/12 and 6/30/12

RULES VIOLATED:

Specifically, the following violations and the associated penalties are noted herewith:

- 1). Discharging pollutants to the waters of the State without a valid NJPDES Permit issued by the Department pursuant to N.J.A.C. 7:14A-2.1(d).

Assessment : Major Seriousness/Moderate Conduct

Total Penalty : \$35,000.00

- 2). Pursuant to N.J.A.C. 7:1E-1.11(a) no person shall cause, suffer, allow or permit a discharge of a hazardous substance

Up to \$20,000 for first violation

Up to \$35,000 for second violation

Up to \$50,000 for third and subsequent violations

Total Penalty: \$35,000.00

- 3). Failure to notify the Department of a discharge pursuant to N.J.A.C. 7:1E-5.3(a)

Up to \$5,000.00 for first violation

Up to \$10,000.00 for the Second Violation

Up to \$25,000 for third and subsequent violations.

Total Penalty \$10,000.00

- 5). Failure to conduct remediation of multiple discharges in accordance with N.J.A.C. 7:26C.

Up to \$20,000 for first violation

Up to \$35,000 for second Violation

Up to \$50,000 for third and subsequent violations

Total Penalty \$35,000.00

PENALTY RECOMMENDATION:

The Water Pollution Control Act Violations: Penalty was calculated with the matrix as per the rule. The Seriousness was determined to be **Major** due to the levels of enterococcus in the ambient water and the oil discharges directly to the water affecting the water quality and as a potential source impacting the nearby bathing beaches. The Conduct was determined to be Moderate because while the discharges were not purposeful by the violators, they were foreseeable since the violators allow patrons to live on their vessels and does not provide pump out facilities to the boat owners.

Spill Act Violations: The Department calculated the penalties based on a one time violation at the level of a 2nd time offence for each, rather than individual incremental violations. The responsible party was notified on numerous occasions of these violations. Penalties are hereby assessed for the referenced violations as listed above.

TOTAL CIVIL ADMINISTRATIVE PENALTY: \$ 115,000.00

PREPARED BY: Nadine Drake

DATE: 7/3/12



NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION ENFORCEMENT-SITE REMEDIATION AND WASTE MANAGEMENT

 INVOICE NO.
120936630

Program Interest
CEDAR COVE MARINA
200 RT 166
South Toms River Boro, NJ. 08757
438444

Type of Notice
ORIGINAL (NON-INITIAL)

Amount Due
\$ 115,000.00

Billing Date
07/02/12

Due Date
08/06/12

NJEMS Bill ID
000000099292700

Summary	
Total Amount Assessed	115,000.00
Amount Received Before Creating Installment Plan (if installment plans is allowed)	0.00
Amount Transferred To Installment Plan	0.00
Installment Amount	0.00
Total Amount Credited	0.00
Total Amount Debited (Other Than Amounts Assessed)	0.00
Total Amount Due	115,000.00

REMINDER:
 SHOULD YOU HAVE ANY QUESTIONS, DEP CONTACT INFORMATION CAN BE FOUND IN THE AC
 COMPANYING ENFORCEMENT DOCUMENT
 MAKE CHECKS PAYABLE TO: TREASURER - STATE OF NEW JERSEY
 WRITE PROGRAM INTEREST ID ON YOUR CHECK (SEE BOTTOM STUB)
 RETURN THE BOTTOM STUB WITH YOUR PAYMENT
 MAIL PAYMENT AND STUB TO: NJ DEPARTMENT OF TREASURY (SEE BOTTOM STUB)

See Back Of Page for Billing Inquiries

 INVOICE NO.
120936630

D9901F (R 3/14/02)

Let's protect our earth



NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION ENFORCEMENT-SITE REMEDIATION AND WASTE MANAGEMENT

 INVOICE NO.
120936630

Program Interest ID
438444

Type of Notice
ORIGINAL (NON-INITIAL)

Billing Date
07/02/12

Due Date
08/06/12

NJEMS Bill ID
000000099292700

Amount Due
\$ 115,000.00

For name and/or address
change, check box and write
corrections on the back of this
invoice.

**DO NOT FOLD, BEND OR MARK**Enter the Amount
of your payment →

\$

RETURN THIS PORTION with your check made payable to:TREASURER - STATE OF NEW JERSEY
and mail to:
 NJ DEPARTMENT OF TREASURY
DIVISION OF REVENUE
PO BOX 417
TRENTON, NJ 08646-0417


TRADEWINDS MARINA INC

S2

 PO BOX 5300
Toms River

NJ 08754-5300

EP101010101010101004030804040411111011500000000281209366302S21



NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENFORCEMENT-SITE REMEDIATION AND WASTE MANAGEMENT

INVOICE NO.
120936630

Program Interest

CEDAR COVE MARINA
200 RT 166
South Toms River Boro, NJ. 08757
438444

Type of Notice

ORIGINAL (NON-INITIAL)

Amount Due

\$ 115,000.00

Billing Date

07/02/12

Due Date

08/06/12

NJEMS Bill ID

000000099292700

AONOCAPA
Prescribed Enforcement Action
This bill was created by the Assessments Trigger.

ASSESSMENTS

Start-End Date: 07/02/2012-07/02/2012 Activity: PEA120001

Assessment Type: PENALTY(Spill Fund)

Regulatory Basis:

Status: Open (Pending Payment)

Amount: \$ 115000.00

Total Amount Assessed: \$ 115,000.00