

State of New Jersey
Department of Environmental Protection
Division of Enforcement, Technical and Financial Support
401 East State Street, 6th Floor West
PO Box 420
Trenton, New Jersey 08625
Telephone: (609) 984-2902
Fax: (609) 777-0756

IN THE MATTER OF	:	
CEDAR COVE MARINA SITE	:	
200 ROUTE 166, SOUTH TOMS RIVER	:	ADMINISTRATIVE
BOROUGH, OCEAN COUNTY	:	
PROGRAM INTEREST NO. 438444	:	CONSENT ORDER
EA ID# PEA 120001-438444	:	
and	:	
TRADEWINDS MARINA, INC. D/B/A CEDAR	:	
COVE MARINA and THE ESTATE OF	:	
DONALD J. MILLER	:	

The following Administrative Consent Order is issued pursuant to the authority vested in the Department of Environmental Protection ("Department") by N.J.S.A. 13:1D-1 et seq., the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. ("Spill Act"), 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, et seq., and the Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq., and duly delegated to the Director of the Division of Enforcement, Technical and Financial Support within the Site Remediation Program of the Department pursuant to N.J.S.A. 13:1B-4.

FINDINGS

1. The Cedar Cove Marina site is located at 200 Route 166, South Toms River, Ocean County, and is also known as Block 5, Lot 1 on the tax map of the Borough of South Toms River, Ocean County ("Cedar Cove Property"), along with property owned by the Borough of South Toms River adjacent to the Cedar Cove Property that are identified as Block 5, Lots 4, 6, and a portion of Lot 5 as described in the legal description attached hereto as Exhibit A, on the tax map of the Borough of South Toms River ("South Toms River Property"). Collectively, the Cedar Cove Property and South Toms River Property constitute and are referenced herein as the "Site," which is also identified by the Department as Site Remediation Program Interest Number 438444.

2. Tradewinds Marina, Inc. d/b/a Cedar Cove Marina ("Tradewinds Marina") is a settling party and is a corporation incorporated in the State of New Jersey on September 9, 1988. Its main business address is 200 Atlantic City Blvd., South Toms River, New Jersey 08757. Tradewinds Marina is the owner of the Cedar Cove Property and operator of the marina located at the Site.

3. The Estate of Donald J. Miller is a settling party. Donald J. Miller was an individual

with a last address of 891 Somerset Drive, Toms River, New Jersey 08753. Donald J. Miller died intestate on November 30, 2012 and was the President and sole shareholder of Tradewinds Marina at the time of his death.

4. Tradewinds Marina and the Estate of Donald J. Miller shall be hereinafter referred to as the "Settling Parties" in this Administrative Consent Order.

5. On February 7, 2011, the Department received an anonymous report of an oil sheen on the water near the Cedar Cove Marina. The Department responded to this incident, as did the United States Coast Guard. The Department issued a field directive in response to that event that required removal of fuel and oil from derelict boats that were observed at the Site; removal of spilled fuel from the water; remediation of contaminated soils at the Site; removal of fuel containers from the Site; and removal and proper disposal of sorbent materials that were seen stored in a dumpster at the Site.

6. On March 1, 2012, the New Jersey Department of Transportation ("DOT") issued a letter stating that certain finger piers/boat slips constructed by Cedar Cove encroached upon waters adjacent to Route 166 for which Cedar Cove did not have riparian rights from the DOT as upland owner.

7. On May 3, 2012, a notice of violation was issued to Cedar Cove Marina, identifying it as a priority site and a potential source of bacterial contamination caused by the release of raw sewage impacting the Toms River and the downstream public swimming beaches in Beachwood and Pine Beach.

8. On May 22, 2012, the South Toms River Police Department notified the Department about a sinking boat in the waters adjacent to the Site. Upon investigation, the Department observed an oil discharge from one of three sunken boats at the Site, as well as waste solvent and fuel oil discharges from a derelict boat situated on land at the Site.

9. On June 12, 2012, South Toms River Police Department reported to the Department that hydraulic lines on a large boat lift had ruptured and caused a spill of hydraulic oil at the Site. A visible sheen was also observed on the water during that incident.

10. On June 19, 2012, the Department conducted an inspection of the Site and noted derelict boat in the water and on land at the Site, some of which were observed to be discharging fuel onto the soil.

11. On June 27, 2012, the United States Coast Guard National Response Center notified the Department that a boat sank in its slip at the Site and an oil sheen of approximately 100 yards was seen in the water adjacent to the Cedar Cove Property.

12. On June 30, 2012, the Ocean County Air Squadron notified the Department that the same boat involved in the June 27, 2012 incident had sunk again and an oil sheen was spotted in the water adjacent to the Cedar Cove Property. The boat was moored at the finger piers adjacent to Route 166.

13. On July 5, 2012, DEP issued an Administrative Order and Notice of Civil Administrative Penalty Assessment ("AONOCAPA") to Tradewinds Marina, Inc. d/b/a Cedar Cove Marina and Donald Miller (collectively, "Cedar Cove") for violations of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. ("WPCA"), the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11A 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. The AONOCAPA set forth the following violations and penalty assessments:

1) N.J.A.C. 7:14A-2.1(d): allowing the discharge of pollutants without an approved NJPDES permit, including oil and raw sewage from boats. \$35,000 (Major Seriousness/Moderate Conduct).

2) N.J.A.C. 7:1E-1.11(a): causing, suffering, allowing or permitting a discharge of a hazardous substance, including failing to remove petroleum from derelict boats, failing to remove petroleum from boats that were demolished, allowing hydraulic oil to leak from hydraulic lines of a boat lift, and allowing the leaking of oil from the boat the "Jak Bar" onto the soil after it was removed from the water. \$35,000 (Second Violation).

3) N.J.A.C. 7:1E-5.3(a): failure to immediately notify the Department of the discharge of hazardous substances, including failure to notify the Department of discharges on 2/17/11; 5/22/12; 6/12/12; 6/19/12; 6/27/12; and 6/30/12. \$10,000 (Second Violation).

4) N.J.A.C. 7:26C-2.3/N.J.A.C. 7:1E-5.7(a)2ii: failure to conduct remediation of multiple discharges. \$35,000 (Second Violation).

14. On July 24, 2012, the Settling Parties submitted a Statement of Contested Facts and requested a hearing.

15. On August 31, 2013, Tradewinds Marina submitted to the Department an LSRP Retention Form, pursuant to N.J.A.C. 7:26C-2.3(a)2, for the remediation of the Site.

16. Since the issuance of the AONOCAPA, the Settling Parties have additionally undertaken activities resulting in the removal of derelict boats and debris removal from the Site.

17. The Settling Parties, without admitting any fact, fault, or liability, have agreed to settle the AONOCAPA referenced above, with the Department.

NOW, THEREFORE, IT IS ORDERED AND AGREED AS FOLLOWS:

18. In settlement of the civil administrative penalties for the Site prior to the Effective Date of this Administrative Consent Order, the Settling Parties agree to pay the total amount of \$17,500.00 to the Department as follows:

a. Within thirty (30) days after the Effective Date of this Administrative Consent

Order, the Settling Parties shall pay \$8,750.00 to the Department (see attached payment invoice);

b. The Settling Parties shall pay the remaining \$8,750.00 in equal, quarterly installments over the course of one (1) calendar year from the date, with the first \$2,187.50 installment due 120 days after the Effective Date of this Administrative Consent Order and subsequent \$2,187.50 installments due every 90 days thereafter;

c. All payments by the Settling Parties shall be submitted by check made payable to "Treasurer, State of New Jersey" and to the address indicated on the Department's respective payment invoices.

19. The Settling Parties further agree that they will undertake all remaining remediation necessary to be performed at the Site in accordance with the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C et seq., and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E et seq.

20. The Settling Parties further agree that, within 30 days, they will commence the removal of the finger piers located along Route 166, as required in the letter dated March 1, 2012, from the Department of Transportation to Tradewinds Marina.

21. The Department agrees that, exclusive of the payments to be made as referenced in paragraph 18 above, the Settling Parties are additionally credited in the amount of \$37,242.00 for non-environmental debris removal and improvement projects that have been undertaken by the Settling Parties at the Site prior to the Effective Date of this Administrative Consent Order in further satisfaction of the civil administrative penalties.

22. This Administrative Consent Order shall be fully enforceable in the Superior Court of New Jersey as a Final Order upon the filing of a summary action for compliance pursuant to R. 4:67-1 et seq. This Administrative Consent Order shall also be enforceable in the same fashion as an Administrative Order issued by the Department pursuant to the Spill Act.

23. The Department reserves, and this Administrative Consent Order is without prejudice to, all rights against the Settling Parties concerning all other matters.

24. Nothing in this Administrative Consent Order shall be construed as precluding the Department from taking any action it deems necessary or appropriate to protect the public health and safety and the environment, and to enforce the environmental laws of the State of New Jersey.

25. Nothing in this Administrative Consent Order shall restrict the ability of the Department to raise or make the above Findings in any other proceeding, nor shall the Settling Parties be precluded from disputing the above Findings in any other proceeding as they are not admitted.

26. Nothing in this Administrative Consent Order shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Administrative Consent Order.

27. The Settling Parties consent to entry of this Administrative Consent Order and waive

their right to request a hearing concerning the terms hereof pursuant to N.J.S.A. 52:14B-1 et seq.

28. The Settling Parties agree not to contest (a) the authority or jurisdiction of the Department to enter into this Administrative Consent Order, and (b) the terms or conditions hereof, except that the Settling Parties do not waive their rights to contest the interpretation or application of such terms and conditions in an action or proceeding brought by the Department to enforce this Administrative Consent Order.

29. This Administrative Consent Order shall be binding on Tradewinds Marina and the Estate of Donald J. Miller and their respective heirs and assigns.

30. The Effective Date of this Administrative Consent Order shall be the date that both the Settling Parties and the Department have executed this Administrative Consent Order.

**NEW JERSEY DEPARTMENT OF ENVIRONMENTAL
PROTECTION**

DATE: 1-13-15

By: Kevin F. Kratina
Kevin Kratina, Assistant Director
Enforcement and Information Support Element
Site Remediation Program

**TRADEWINDS MARINA, INC.
d/b/a CEDAR COVE MARINA**

DATE: 11-06-14

By: Mirta Monica Miller

Name: Mirta Monica Miller

Title: President

ESTATE OF DONALD J. MILLER

DATE: 11-06-14

By: Mirta Monica Miller

Name: Mirta Monica Miller

Title: Administratrix

EXHIBIT A



LEGEND



REMEDIATION AREA



PROPERTY BOUNDARY



REMEDIATION AREA



BRILLIANT ENVIRONMENTAL
SERVICES, LLC

SOURCE: NJTAXMAPS.COM & GOOGLE EARTH

SCALE: 1"=110'

FIGURE 1

200 ROUTE 166
SOUTH TOMS RIVER, OCEAN COUNTY, NJ

PREPARED FOR:
CEDAR COVE MARINA

NOVEMBER 2014