

Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

Southeast Regional Office • 20 Riverside Drive, Lakeville MA 02347 • 508-946-2700

Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor

Kathleen A. Theoharides
Secretary

Martin Suuberg
Commissioner

December 24, 2020

Patriot Stevedoring & Logistics, LLC
44 School Street, Suite 325
Boston, MA 02108
Attn: Steve Kelly

RE: Somerset – Brayton Point
Commerce Center
Administrative Consent Order
Enforcement Doc No. 00010433

Dear Mr. Kelly:

In connection with the referenced matter, attached please find your copy of the fully executed Administrative Consent Order (ACO) (Enforcement Doc Number 00010433). As you are aware, the ACO contains a schedule of actions and deadlines which, if not adhered to, could render the Respondent liable for stipulated penalties as described therein.

Thank you very much for your cooperation and assistance in this matter. If you have any questions regarding this matter, please contact Maissoun Reda maissoun.reda@mass.gov or 508-946-2804.

Sincerely,

Millie Garcia-Serrano
Regional Director
Southeast Regional Office

Enclosure

Certified Mail # 7019 2280 0002 2137 0161

Ec: Neil McLaughlin
nmclaughlin@phoenixbulkus.com

Meaghan Palmer
MPalmer@carvercompanies.com

Town Administrator Rob Brown
rbrown@town.somerset.ma.us

BOS Chair Holly McNamara
hmcnamara@town.somerset.ma.us

Town Clerk Nancy Durfee
ndurfee@town.somerset.ma.us

ConCom/Board of Health Agent Tim Turner
tturner@town.somerset.ma.us

DEP - SERO

ATTN: David Johnston, Deputy Regional Director
Shaun Walsh, Chief Regional Counsel
Dan Gilmore, Wetland and Waterways Chief
Maissoun Reda, Environmental Analyst
Lisa Ramos, Regional Enforcement Office

**COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the matter of:
Patriot Stevedoring & Logistics, LLC

Enforcement Document Number:
00010433
Issuing Bureau: BWR
Issuing Region/Office: SERO
Issuing Program: WET
Primary Program Cited: WET
Suffix(es):

**ADMINISTRATIVE CONSENT ORDER
AND
NOTICE OF NONCOMPLIANCE**

I. THE PARTIES

1. The Department of Environmental Protection (“Department” or “MassDEP”) is a duly constituted agency of the Commonwealth of Massachusetts established pursuant to M.G.L. c. 21A, § 7. MassDEP maintains its principal office at One Winter Street, Boston, Massachusetts 02108, and its Southeast Regional Office at 20 Riverside Drive, Lakeville, Massachusetts 02347.
2. Patriot Stevedoring & Logistics, LLC (“Respondent”) is an operator of a materials loading operation at property located at Brayton Point Commerce Center, Somerset, Massachusetts (“site” or “property”). Respondent’s mailing address for purposes of this Consent Order is 44 School Street, Suite 325, Boston MA 02108.

II. STATEMENT OF FACTS AND LAW

3. MassDEP is responsible for the implementation and enforcement of M.G.L. c. 131, § 40 and the Wetlands Regulations at 310 CMR 10.00. MassDEP has authority under M.G.L. c. 21A, § 16 and the Administrative Penalty Regulations at 310 CMR 5.00 to assess civil administrative penalties to persons in noncompliance with the laws and regulations set forth above.
4. Respondent holds no valid wetlands permits associated with the loading/offloading activities occurring at the Brayton Point Commerce Center Main Dock.
5. The following facts and allegations have led MassDEP to issue this Consent Order:
 - A. On November 19, 2020, Department staff inspected the site and determined that industrial materials had fallen within jurisdictional wetland resource areas.

- B. More specifically, pieces of industrial metal material attributable to loading and offloading operations along the Main Dock at Brayton Point Commerce Center entered the waters of the Taunton River altering Land Under the Ocean (310 CMR 10.25) within a Designated Port Area (310 CMR 10.26), an area subject to protection under M.G.L. c. 131, §40.

III. DISPOSITION AND ORDER

For the reasons set forth above, MassDEP hereby issues, and Respondent hereby consents to, this Order:

6. The parties have agreed to enter into this Consent Order because they agree that it is in their own interests, and in the public interest, to proceed promptly with the actions called for herein rather than to expend additional time and resources litigating the matters set forth above. Respondent enters into this Consent Order without admitting or denying the facts or allegations set forth herein. However, Respondent agrees not to contest such facts and allegations for purposes of the issuance or enforcement of this Consent Order.
7. MassDEP's authority to issue this Consent Order is conferred by the Statutes and Regulations cited in Part II of this Consent Order.
8. Respondent shall perform the following actions:
 - A. By February 9, 2021, in accordance with the Respondent's December 21, 2020 submittal (dated December 15, 2020) entitled, "Industrial Materials (metal) Loading Operations, Brayton Point Commerce Center," the Respondent shall employ a professional diving company to assess the extent of industrial metal materials within Land Under the Ocean Within a Designated Port Area attributable to loading/unloading operations along the entire length of the Brayton Point Commerce Center Main Dock.
 - B. Within fourteen (14) days of completion of the Assessment described in Paragraph 8. A. above, Respondent shall notify the Department in writing of their findings.
 - C. No later than one hundred and twenty (120) days from the date of conclusion of the subaquatic assessment described in Paragraph 8. A. above, Respondent shall implement the Recovery Plan outlined in Section 1. B. of the above-referenced Industrial Materials (metal) Loading Operations submittal, to include any of the following: removal by hand, magnet, with handheld equipment and hoisting of the material to the surface.
 - D. From the Effective Date of this Consent Order, the Respondent shall implement the Interim Method Industrial Metal Loading Plan [Section 3.0 of the above-referenced Industrial Material (metal) Loading Operations submittal] until such time that two (2) additional skip pans will have been added to the site for a total of four (4) skip pans, expected no later than June 30, 2021.

E. From the Effective Date of this Consent Order, for the purpose of informing lost metal material recovery efforts, the Respondent shall maintain a Lost Material Tracking Log that will contain the date, time, and approximate size and location of any metal material lost overboard during loading/offloading operations at Brayton Point Commerce Center Main Dock. This Lost Material Tracking Log shall be available for review by MassDEP upon request.

F. The Respondent shall perform annual underwater surveys within the immediate vicinity of the loading and offloading area for the duration of the industrial material loading operations. Such surveys shall be conducted every twelve (12) months and completed no later than July 31st of each year. The Respondent shall report in writing to MassDEP the results of each annual survey within thirty (30) days of each survey. Respondent shall remove any industrial metal material observed during each survey in accordance with the Department's approved methodology as cited in this Consent Order, no later than thirty (30) days after each survey, and Respondent shall report in writing to MassDEP the successful removal of such material within thirty (30) days of said removal.

9. Except as otherwise provided, all notices, submittals and other communications required by this Consent Order shall be directed to:

Maissoun Reda
MassDEP - SERO
Wetlands & Waterways Program
20 Riverside Drive
Lakeville, Massachusetts 02347

Such notices, submittals and other communications shall be considered delivered by Respondent upon receipt by MassDEP.

10. Actions required by this Consent Order shall be taken in accordance with all applicable federal, state, and local laws, regulations and approvals. This Consent Order shall not be construed as, nor operate as, relieving Respondent or any other person of the necessity of complying with all applicable federal, state, and local laws, regulations and approvals.
11. For purposes of M.G.L. c. 21A, § 16 and 310 CMR 5.00, this Consent Order shall also serve as a Notice of Noncompliance for Respondent's noncompliance with the requirements cited in Part II above. MassDEP hereby determines, and Respondent hereby agrees, that any deadlines set forth in this Consent Order constitute reasonable periods of time for Respondent to take the actions described.
12. Respondent understands, and hereby waives, its right to an adjudicatory hearing before MassDEP on, and judicial review of, the issuance and terms of this Consent Order and to notice of any such rights of review. This waiver does not extend to any other order issued by the MassDEP.

13. This Consent Order may be modified only by written agreement of the parties hereto.
14. The provisions of this Consent Order are severable, and if any provision of this Consent Order or the application thereof is held invalid, such invalidity shall not affect the validity of other provisions of this Consent Order, or the application of such other provisions, which can be given effect without the invalid provision or application, provided however, that MassDEP shall have the discretion to void this Consent Order in the event of any such invalidity.
15. Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting (i) any legal or equitable right of MassDEP to issue any additional order or to seek any other relief with respect to the subject matter covered by this Consent Order, or (ii) any legal or equitable right of MassDEP to pursue any other claim, action, suit, cause of action, or demand which MassDEP may have with respect to the subject matter covered by this Consent Order, including, without limitation, any action to enforce this Consent Order in an administrative or judicial proceeding.
16. This Consent Order shall not be construed or operate as barring, diminishing, adjudicating, or in any way affecting, any legal or equitable right of MassDEP or Respondent with respect to any subject matter not covered by this Consent Order.
17. This Consent Order shall be binding upon Respondent and upon Respondent's heirs, successors and assigns. Respondent shall not violate this Consent Order and shall not allow or suffer Respondent's employees, agents, contractors or consultants to violate this Consent Order. Until Respondent has fully complied with this Consent Order, Respondent shall provide a copy of this Consent Order to each successor or assignee at such time that any succession or assignment occurs.
18. If Respondent violates any provision of the Consent Order, Respondent shall pay stipulated civil administrative penalties to the Commonwealth in the amount of **\$500.00** per day for each day, or portion thereof, each such violation continues.

Stipulated civil administrative penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the day Respondent corrects the violation or completes performance, whichever is applicable. Stipulated civil administrative penalties shall accrue regardless of whether MassDEP has notified Respondent of a violation or act of noncompliance. All stipulated civil administrative penalties accruing under this Consent Order shall be paid within thirty (30) days of the date MassDEP issues Respondent a written demand for payment. If simultaneous violations occur, separate penalties shall accrue for separate violations of this Consent Order. The payment of stipulated civil administrative penalties shall not alter in any way Respondent's obligation to complete performance as required by this Consent Order. MassDEP reserves its right to elect to pursue alternative remedies and alternative civil and criminal penalties which may be available by reason of Respondent's failure to comply with the requirements of this Consent Order. In the event MassDEP collects alternative civil administrative penalties,

Respondent shall not be required to pay stipulated civil administrative penalties pursuant to this Consent Order for the same violations.

Respondent reserves whatever rights it may have to contest MassDEP's determination that Respondent failed to comply with the Consent Order and/or to contest the accuracy of MassDEP's calculation of the amount of the stipulated civil administrative penalty. Upon exhaustion of such rights, if any, Respondent agrees to assent to the entry of a court judgment if such court judgment is necessary to execute a claim for stipulated penalties under this Consent Order.

19. Failure on the part of MassDEP to complain of any action or inaction on the part of Respondent shall not constitute a waiver by MassDEP of any of its rights under this Consent Order. Further, no waiver by MassDEP of any provision of this Consent Order shall be construed as a waiver of any other provision of this Consent Order.
20. To the extent authorized by the current owner, Respondent agrees to provide MassDEP, and MassDEP's employees, representatives and contractors, access at all reasonable times to 1 Brayton Point Road, Somerset, Massachusetts for purposes of conducting any activity related to its oversight of this Consent Order. Notwithstanding any provision of this Consent Order, MassDEP retains all of its access authorities and rights under applicable state and federal law.
21. This Consent Order may be executed in one or more counterpart originals, all of which when executed shall constitute a single Consent Order.
22. The undersigned certify that they are fully authorized to enter into the terms and conditions of this Consent Order and to legally bind the party on whose behalf they are signing this Consent Order.
23. This Consent Order shall become effective on the date that it is executed by MassDEP.

SPECIAL INSTRUCTIONS:

Your two (2) signed copies of the Administrative Consent Order (ACO) must be delivered, for execution (signature) by MassDEP, to the following address:

Maissoun Reda
MassDEP - SERO
Wetlands & Waterways Program
20 Riverside Drive
Lakeville, Massachusetts 02347

SIGNED ACOs ARE TO BE SENT TO THE ABOVE ADDRESS.

MassDEP will return one (1) signed copy of the ACO to you after MassDEP has signed, provided you have followed the above instructions.

Payment will be due pursuant to the instructions outlined within the ACO after you receive your fully executed copy.

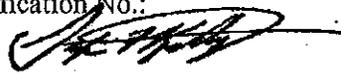
Please call Maissoun Reda at 508-946-2804 if you have questions regarding this document.

Consented To:

Patriot Stevedoring & Logistics, LLC

Employer Identification No.:

By: _____



Date: _____

December 24th, 2020

Stephen Kelley
Patriot Stevedoring & Logistics, LLC
44 School Street, Suite 325
Boston, MA 02108

Federal Employer Identification No.:

Issued By:

~~DEPARTMENT OF ENVIRONMENTAL PROTECTION~~

By: _____

Millie Garcia-Serrano, Regional Director
MassDEP
20 Riverside Drive
Lakeville, MA 02347

Date: _____

12/24/20