



## State of New Jersey

### DEPARTMENT OF ENVIRONMENTAL PROTECTION

Water and Land Use Enforcement  
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CHRIS CHRUSTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

BOB MARTIN  
*Commissioner*

March 1, 2012

Honorable Joseph Champagne, Jr., Mayor  
South Toms River Borough  
114 Mill Street  
South Toms River, New Jersey 08757-5105

Re: Cedar Cove Marina (aka Tradewinds Marina)  
200 Atlantic City Blvd  
South Toms River Borough, Ocean Co.  
Block 5 Lot 1 and  
Borough owned Block 5 Lots 4, 5, & 6  
NJDEP file Nos.: PI# 299347 Water Enforcement; PI # 1529-09-0003.1 Tidelands and Land Use  
Enforcement; PI #550169 and #438444 Site Remediation Program; PI #U1871 Solid Waste  
Enforcement; and Green Acres.

Dear Mayor Champagne:

Thank you for coming to Trenton on 2/22/12 to meet with the New Jersey Department of Environmental Protection's (hereinafter "Department") programs who have been investigating various environmental concerns. We appreciate the time that you, your Borough attorney, the Chief of Police and several councilmen spent so that we could discuss a cooperative effort to address these concerns. In accordance with your request, we compiled in detail the Department's concerns by department and unit.

This letter details the various violations and other environmental concerns at Cedar Cove Marina (hereinafter "CCM") identified during the multimedia site inspection conducted with Borough personnel on 02/02/12 and the follow-up meeting on 02/22/12. As you are aware the Governor has initiated a comprehensive action plan to address the health of the Barnegat Bay (for more information see web link at <http://www.nj.gov/dep/barnegatbay/>). During its efforts to implement initiatives to identify and address issues affecting the Bay, the Department has identified CCM as a potential source of bacterial contamination caused by the release of raw sewage that may be impacting the downstream public swimming beaches in Beachwood and Pine Beach. As you are aware, these swimming beaches are subject to frequent closures due to elevated bacterial counts and represent a public health concern for the Department and a threat to the overall quality of the Bay.

In response to complaints alleging that illegal sewage discharges are occurring from the live aboard boats at CCM, the Department conducted an investigation into the matter. That investigation identified several violations and additional numerous environmental concerns that include activities occurring on the Borough owned property that has been leased, or portions leased, to CCM. The Borough may be held

liable for any or all violations occurring on Borough owned property, therefore, the Borough should address the issues occurring on Borough property. CCM has a history of regulatory concerns relating to the poorly maintained condition of the site.

Below is a violation / issue summary for Borough owned property only (Note: there are additional violations on the property owned by CCM and other property used by CCM):

Current Violations of the Riparian Lands Statutes for structures on unconveyed Tidelands:

- 1) The 8 finger piers used for mooring slips off Boro owned B 5 L 4 & 6;
  - 2) 1 newer large floating dock off Boro owned B 5 L 4;
- Violations of the Waterfront Development Law:
- 1) The 1 newer floating dock referenced above installed without a permit.
  - 2) The 7 unauthorized floating homes (in water) on or offshore of Boro owned property.

Green Acres:

- 1) Unauthorized occupation of Green Acres encumbered property (that includes part of the slips and the storage yard area).
- 2) Public access issues.

Other:

- 1) Eliminate any potential for future sewage discharges;
- 2) Past Water Enforcement violations for illegal discharges;
- 3) Eliminate exposure of source materials under the NJPDES Stormwater permit;
- 4) Eliminate potential for future discharges of hazardous substances;
- 5) Failure to report past discharges of hazardous substances in violation of the Spill Act;
- 6) Remove and properly dispose any stockpiles of creosote treated material;
- 7) Remove any potential solid waste;
- 8) Better overall housekeeping.

These issues and the corrective actions are further detailed below:

### **Water Enforcement and Stormwater permitting**

Violation(s) / issues summary:

- 1) Past violations of the Water Pollution Control Act and the New Jersey Pollutant Discharge Elimination System violations have occurred on or offshore of Borough owned land for the discharge of grey water from a washing machine into the river by one of the live aboard boats.
- 2) Stormwater permit activities occurring on Borough owned property.

Corrective action(s): All discharges must be eliminated from the site. See below for details.

In March 2011 the Department received a complaint alleging sewage was being discharged into the river from a live aboard floating home holding tank at night. All the houseboats are located on or offshore of Borough owned property. In March 2011 the Department issued a Notice of Violation of the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.) and the New Jersey Pollutant Discharge Elimination System (NJPDES) regulations (N.J.A.C. 7:14A-1 et seq.) for the illegal discharge of grey

water from a washing machine from one of the live aboard boats into the river. This houseboat was located on or offshore of Borough property. This discharge was subsequently removed.

CCM has a NJPDES 5G2 -Basic Industrial Stormwater General Permit which requires CCM to eliminate all exposure of industrial materials or activities to stormwater (rainfall and snowmelt waters) that discharge to groundwater or surface water. Exposure may be eliminated by pollution prevention techniques and source control such as covering the materials or activities or by moving materials or activities indoors (see the Department's Guidance Document for marinas at [http://www.nj.gov/dep/dwq/pdf/Marina\\_final\\_guidance\\_color.pdf](http://www.nj.gov/dep/dwq/pdf/Marina_final_guidance_color.pdf)).

In their original Request for Authorization (RFA) application for the stormwater permit, CCM did not identify the Borough owned Block and Lots where the activities would be located or that activities would be occurring on Borough owned property.

Per the permit application form, CCM should have identified this information. The Borough should have been made aware of this permit by CCM and have been in agreement with it. Under the stormwater requirements, in order to continue CCM operations on the Borough owned property, CCM must submit an updated RFA stormwater application, with the Borough as co-applicant, accurately describing all areas where they conduct industrial activities and ensure that their Stormwater Pollution Prevention Plan (SPPP) is also updated accordingly. The Borough will then be held jointly liable for any future non-compliance of the stormwater permit.

In general, CCM does a poor job with housekeeping and preventative measures such as maintaining proper coverings in good condition. For example, there were exposed rusting metals including old engine blocks, old un-workable equipment including a roofing tar machine, and other sources located on the storage yard area on Borough owned property. On 02/02/12 the Department identified a violation of the NJPDES permit for the discharge of leaking oil onto the ground from a 55 gallon drum at the used waste oil storage area of the site located on CCM owned property. CCM was verbally advised of the violation and the Department has been informed by CCM that the leaking drum and contaminated soil was removed.

Since CCM operates on property owned by the Borough any contamination caused by CCM's poor housekeeping practices would ultimately be the Borough's responsibility to remediate if CCM fails to take appropriate action to prevent, eliminate, or remediate any past, present, or future exposures or discharges.

### **Tidelands and Land Use Enforcement**

Violation(s) / issues summary: Current Waterfront Development and/or Tidelands violations located on or offshore of Borough owned property including the following regulated structures: 8 finger piers, 1 large floating dock, and 7 floating homes. CCM uses these piers and docks for boat slips as part of CCM operations.

Corrective action(s): All the illegal structures must be removed or legalized by obtaining the necessary permit(s) and/or Tidelands. Note, the floating docks and floating homes cannot be permitted because they do not meet the rule requirement for approval, and therefore must be removed. See below for further details.

There are 8 finger piers for a total of 16 slips located offshore of Borough owned Block 5 Lots 4 & 6 where vessels are moored at CCM, including 6 of the live aboard floating homes (houseboats). These pier structures are on unconveyed tidelands (land that does not have a tidelands instrument such as a grant, lease or license) so they would need a tidelands conveyance (aka instrument) to legally remain, however, because these finger pier structures appear in the waterfront development base photomap dated 7/16/77, the pier structures themselves do not need a Waterfront Development permit. However, in order to moor vessels at these piers requires that a tidelands instrument be obtained for any vessels or structures that occupy this area (Riparian Lands Statutes at N.J.S.A. 12:3-58). As the owner of the adjacent upland South Toms River Borough would have to obtain the tidelands rights to this area<sup>1</sup>.

CCM has a Tidelands license # 1529-09-0003.1 which only covers the two "L" shaped piers off CCM owned Block 5 Lot 1. CCM never identified in their tidelands application that they moor vessels off the Borough owned property as part of CCM operations. The Tidelands office has recorded a Notice of Action (Lien) of the Tidelands Resource Council onto the deed of CCM owned Block 5 Lot 1 due to the various Tidelands issues and violations by CCM. More specifically, this includes the failure to make the required license payments for the two "L" shaped piers for the 2007-2011 seasons, and for the slip operations on the adjacent lots without a Tidelands Conveyance (this includes Borough owned Block 5 Lots 4 and 6).

There were a total of 9 live-aboard houseboats (2 on land and 7 floating in-water) at CCM all located on or offshore of Borough owned land. The in-water mooring of a floating home for more than 10 consecutive days requires a Waterfront Development permit (see the Coastal Permit Program Rules at N.J.A.C. 7:7-2.3(c)3.), however the housing use requirements under the Rules would not allow the mooring of new floating homes. Therefore, these floating homes can not be legalized via the permitting process and must be removed. In addition, as of 02/02/12 none of these floating homes were currently registered boats with the State Motor Vehicle Commission and the CCM manager admitted that none of these boats has moved for a very long time (years). The live aboard boats include the following:

- Two (2) on land (one on Block 5 Lot 4 – vessel owner Schulte - and one on B 5 L 6 – owner Gardner). These are not Waterfront Development violations but are on Borough owned land;
- Seven (7) in-water floating homes which are Waterfront Development violations:
  - one inside the lagoon (on Borough owned Block 5 Lot 4) where no tidelands is required (owner Kratz);
  - Six (6) located on unconveyed tidelands (4 off Borough owned Block 5 Lot 4 – owners Pape, Cole, Eason, Toci, and 2 off Borough owned Block 5 Lot 6 – owners David and Earhart),

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<sup>1</sup> On Borough owned Block 5 Lot 5, where the CCM storage yard is located, the Borough obtained a Land Use permit to construct a public fishing pier at the end of this peninsula of land. Specifically permit #1529-01-1001.1 was issued on 2/21/02 to construct a 10' by 100' timber fishing pier with a 10' by 20' access ramp; regrade an existing gravel parking area; construct a 6' by 125' wood chip walkway; and create a picnic area with tables and trash receptacles and associated parking, as shown on two sheets entitled "Crabbe Point Pier, Borough of South Toms River, Ocean County, New Jersey", prepared by O'Donnell, Stanton & Associates, Inc., dated December 28, 2000, unrevised. This permit conditioned that Tidelands be obtained for the fishing pier. A Tidelands license was obtained and on 12/28/11 this license was renewed. Again, this license was for the fishing pier only and did not include any of the other pier structures or floating docks located off Borough owned property referenced in this letter.

In addition 2 newer large floating docks have been installed and moored in the water since at least 2010 without the necessary Waterfront Development permit and therefore these docks constitute Waterfront Development Violations (N.J.A.C. 7:7-2.3(c)2.) One (25' L x 10' W) floating dock is located at the end of one of the "L" shaped piers off CCM owned Block 5 Lot 1, and one (45' L x 10' W) floating dock is located on unconveyed Tidelands off Borough owned Block 5 Lot 4. These docks appear in the 2010 aerial photo and were observed during a 12/23/11 site inspection. These floating docks exceed the maximum width allowed under the Rules and therefore these floating docks cannot be legalized via the permitting process so they must be removed.

### **Site Remediation and Spill Act violation**

Violation(s) / issues summary: Past issues concerning leaking fuel and/or oil from old and sinking vessels moored at CCM or other on-site sources that initially were not reported and/or properly remediated as required by law. Note: these discharges may also constitute Water Enforcement violations of the Water Pollution Control Act, and any discharge of a hazardous substances into the waters or onto the lands of the State is prohibited under the NJ Spill Compensation and Control Act (aka the Spill Act) at N.J.S.A. 58:10-23.11c. Discharge includes the intentional or unintentional releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of hazardous substances. Hazardous substances include petroleum products such as diesel fuel and waste oil. Any discharge of a hazardous substance of any quantity is required to be reported to the Department immediately; and the failure to notify the Department is a violation that may be subject to penalty provisions of the Act (N.J.S.A. 58:10-23.11e). Any future discharge of a hazardous substance should immediately be reported to the Department's phone Hotline at 877-WARN-DEP.

Corrective action(s): Eliminate the potential source of future discharges and contamination by removing all old, rotting, and/or unseaworthy vessels and/or other sources from the site (including sources in-water as well as on land).

In February 2011 the Department's Bureau of Emergency Response investigated an anonymous report of a fuel leak and discovered a heavy sheen in the river and the source of the spill from a significant amount of leaked diesel fuel coming from the vessel Jak Bar which was moored in a slip in the lagoon at the CCM on Borough owned Block 5 Lot 4. This was an old rotting vessel that sunk numerous times at its mooring. CCM did not report the spill as required under the Spill Act and they did not take the appropriate steps to remediate the spill until caught and forced to do so by the NJDEP (via Field Directive issued 02/17/11) and the US Coast Guard. According to the Site Remediation Report of the incident the wooden vessel Jak Bar was saturated with oil and the vessel itself continued to pose a potential risk as a source of continued pollution even after it was pumped out (see attached Site Remediation Inspection Report for this incident which further characterizes the overall poor condition of the site and the way the marina is operated). As of the 02/02/12 site inspection the vessel Jak Bar was being stored on the land on Borough owned Block 5 Lot 4 with just a blue tarp under it. This vessel should be removed and properly disposed.

CCM has a history of vessels sinking at their moorings, other spills, and failure to report and/or properly remediate those spills. This includes an August 2004 incident involving oily water pumped from a vessel bilge into the river, and a May 2007 incident involving a leaking heating oil tank into the river (see attached Investigation Reports of these incidents).

## **Green Acres**

Violation(s) / issues summary: Unauthorized encroachment and use of Green Acres encumbered property that is supposed to be preserved for public recreation and conservation purposes.

Corrective action(s): Remove the unauthorized encroachments and restore the disturbed parkland.

South Toms River Borough last received Green Acres funding in 1978 for improvements to South Toms River Park. Green Acres statutes, specifically (N.J.S.A. 13:8A-47(b)), and Rules (N.J.A.C. 7:36-25.2) require that all lands held by the Borough for recreation and conservation purposes at the time of grant funding must be preserved and not disposed of or diverted to a use for other than recreation and conservation without the prior approval of the Commissioner of the Department and the State House Commission.

The tax map identifies Block 5, Lot 6 as a "park" and Block 5, Lot 5 was identified on the Borough's Recreation & Open Space Inventory at the time of grant funding. Lot 5 is also where the public fishing pier and picnic area was constructed (see footnote #1). These two properties are therefore encumbered by Green Acres.

Based on GIS mapping of the site with the property boundaries overlay, and as noted during the 02/02/12 site inspection, the storage yard area is located on Borough owned Block 5 Lot 5. This storage yard area had a high solid wood fence along the entrance from Crabbe Road with "private property" and "no trespassing" signs on it with a chained and locked gate. This storage yard is used by CCM to store old dilapidated boats, boat parts, rusted metal, old trailers, empty truck trailers, engine blocks, an old unusable roofing tar machine, creosote piles and various other materials. The site looks more like a junk yard than a boat storage yard normally found at a marina (such as winter storage for shrink wrapped boats).

A portion of CCM operations including a few boat slips are located on Borough owned Block 5 Lot 6. This includes the following which are on unconveyed Tidelands (referenced above): 3 finger piers (out of the 8 total off Borough property); 5 mooring slips, including 2 of the in-water floating homes (owners David and Earhart); and part of one of the live aboard houseboats on land (owner Gardner).

Again, the above is all located on Green Acres encumbered parkland which is supposed to be available to the public for recreation and conservation purposes, not to be encroached upon for private use and gain. If left unresolved, the Borough of South Toms River may jeopardize its eligibility for future Green Acres grants and loans.

## **Solid Waste Enforcement**

Violation(s) / issues summary: Stockpiling of creosote-treated ties and piles, and possible additional solid waste issues.

Corrective action(s): Remove any piles of creosote-treated materials and any other solid waste.

In March of 2011 Solid Waste inspected the site and identified a pile of creosote-treated ties that were not properly stored and required that the material be raised off the ground and covered with tarp. This was done to resolve the matter. During the 02/02/12 site inspection the CCM manager identified that this material was still covered and being stored on Borough owned Block 5 Lot 6 in the vicinity of the live

aboard boat on land (owner Gardner). Therefore, the Department now identified that this material is also being stored on the Green Acres encumbered property.

In addition, during the 02/02/12 site inspection it was noted that a large pile of old creosote-treated pilings was stored uncovered on a truck trailer in the CCM storage yard located on Borough owned Block 5 Lot 5, which is also Green Acres encumbered land.

Note: on July 17, 2007 New Jersey signed into a law a bill to prohibit the manufacture, sale, use, and burning of creosote and creosote-treated wood products anywhere in the state. Only railways, which use creosote-treated ties on rail lines, and utilities, which use creosote-treated power poles, are exempt from the provisions of this bill. Therefore, CCM can no longer re-use these creosote-treated materials for the repair or construction of pilings, bulkhead and etc.

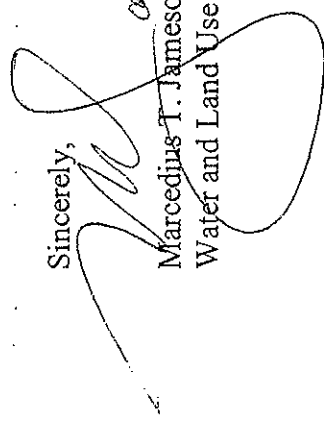
Other materials stored on site that can no longer serve its original intended use (such as the old unworkable roofing tar machine, tractor trailers, and other old materials or equipment) that are stored for more than 6 months may be considered a Solid Waste under the Solid Waste Rules at N.J.A.C. 7:26-1.6 and cannot be stored at the site without being a permitted solid waste facility. The Department may cite CCM and property owner for operating an illegal solid waste facility by failing to dispose of this material within 6 months from the date of the 02/02/12 site inspection (N.J.A.C. 7:26-2.8(f).)

Therefore, the Department suggests that all creosote-treated material and any other potential solid waste be removed and properly disposed, particularly if they are being stored on Borough owned property and especially Green Acres encumbered property.

Please be advised that the Department will issue a Notice of Violation(s) to CCM which will include all the violations at the site, including those on CCM property as well as Borough owned property. The Borough will be copied on all correspondence with CCM.

Please contact Randy Bearce of my staff at the above address or email [randy.bearce@dep.state.nj.us](mailto:randy.bearce@dep.state.nj.us) and advise the Department what actions the Borough proposes to resolve these matters occurring on Borough owned property.

Sincerely,



Marcedius T. Jameson, Director  
Water and Land Use Enforcement

Enclosures: SRP reports

c: Robert L. Tarver, Jr., Borough Attorney  
Chris Theodos, Borough Engineer  
Matt Csik, Ocean County Health Department  
Cindy Randazzo, NJDEP Office of Local Government Assistance  
Jill Lipoti, NJDEP Water Monitoring  
Bruce Freidman, NJDEP Marine Water Monitoring  
Mellissa Miller, NJDEP Tidelands  
David Smith, NJDEP Green Acres

Rai Belonzi, NJDEP Water Enforcement  
James Manual, NJDEP SRP  
Brian McLendon, NJDEP BNPC  
Pat Ferarro, NJDEP Solid Waste Enforcement  
Randy Bearce, NJDEP Land Use Enforcement