

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Amelia W. Katzen 7/7/10  
Name of Case Attorney Date

in the ORC (RAA) at 918-1113  
Office & Mail Code Phone number

Case Docket Number CAA-01-2010-0010

Site-specific Superfund (SF) Acct. Number \_\_\_\_\_

This is an original debt  This is a modification

Name and address of Person and/or Company/Municipality making the payment:

RI Airport Corp.; D.R. Colan Associates  
of Florida, LLC of The Jones Payne Group, Inc.

\_\_\_\_\_  
\_\_\_\_\_

Total Dollar Amount of Receivable \$ 25,000 Due Date: 7/31/10

SEP due? Yes \_\_\_\_\_ No  Date Due \_\_\_\_\_

Installment Method (if applicable)

INSTALLMENTS OF:  
1<sup>ST</sup> \$ \_\_\_\_\_ on \_\_\_\_\_  
2<sup>nd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_  
3<sup>rd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_  
4<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_  
5<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

For RHC Tracking Purposes:

Copy of Check Received by RHC \_\_\_\_\_ Notice Sent to Finance \_\_\_\_\_

**TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

IFMS Accounts Receivable Control Number \_\_\_\_\_

If you have any questions call: \_\_\_\_\_  
in the Financial Management Office Phone Number

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1

RECEIVED

2010 JUL -6 A 3:00

\_\_\_\_\_  
In the Matter of: )

RHODE ISLAND AIRPORT )  
CORPORATION )

T.F. Green Airport )  
2000 Post Road )  
Warwick, Rhode Island 02886 )

O.R. COLAN ASSOCIATES OF )  
FLORIDA, LLC )

2248 Post Road )  
Warwick, Rhode Island 02886 )

THE JONES PAYNE GROUP, INC. )  
123 N. Washington Street )  
Boston, Massachusetts 02114 )

Proceeding under Section 113 of the )  
Clean Air Act, 42 U.S.C. § 7413 )  
\_\_\_\_\_ )

Docket No. CAA-01-2010-0010

REGULATING CLERK

CONSENT AGREEMENT  
AND FINAL ORDER

**I. INTRODUCTION**

The United States Environmental Protection Agency, Region 1 ("EPA"), as Complainant, and Rhode Island Airport Corporation, O.R. Colan Associates of Florida, LLC, and The Jones Payne Group, Inc., collectively as Respondents, enter into this Consent Agreement and Final Order ("CAFO") by mutual consent. The CAFO notifies Respondents that EPA intends to assess penalties for violations of Section 112 of the Clean Air Act ("CAA" or "Act"), 42 U.S.C. § 7412, and of regulations promulgated under Section 112, the National Emission Standard for Hazardous Air Pollutants for asbestos, 40 C.F.R. Part 61, Subpart M ("Asbestos NESHAP"), by Respondents. The CAFO also informs Respondents of their right to request a hearing.

This CAFO simultaneously commences and concludes the cause of action described

herein, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b), and Section 113(d) of the CAA, 42 U.S.C. § 7413(d). Complainant and Respondents (collectively, the “Parties”) agree that settlement of this matter is in the public interest and that entry of this CAFO without litigation is the most appropriate means of resolving this matter.

Therefore, before any hearing or the taking of any testimony, without adjudication of any issue of fact or law herein, the Parties agree to comply with the terms of this CAFO.

## **II. PRELIMINARY STATEMENT**

1. Rhode Island Airport Corporation (“RIAC”) is a quasi-public corporation and public instrumentality of the State of Rhode Island organized pursuant to Chapter 64 of Title 42 of the Rhode Island General Laws and has its principal place of business at T.F. Green Airport, 2000 Post Road, Warwick, Rhode Island 02886-1533.

2. O.R. Colan Associates of Florida, LLC (“Colan”) is a limited liability corporation organized under the laws of the State of Florida, is authorized to do business in Rhode Island, and has a corporate address at 4651 Charlotte Park Drive, Suite 440, Charlotte, NC 28217 and a usual place of business at 2248 Post Road, Warwick, Rhode Island 02886.

3. The Jones Payne Group, Inc. (“Jones Payne”) is a corporation organized under the laws of the Commonwealth of Massachusetts and has a usual place of business at 123 N. Washington Street, Boston, Massachusetts 02114.

4. RIAC, Colan and Jones Payne are each a “person,” as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

5. Respondents stipulate that EPA has jurisdiction over the subject matter alleged in

this CAFO. For purposes of this proceeding, Respondents waive any defenses they might have as to jurisdiction and venue and, without admitting or denying EPA's factual findings or allegations of violation herein, Respondents consent to the terms of this CAFO.

6. Respondents acknowledge that they have been informed of the right to request a hearing and hereby waive their right to request a judicial or administrative hearing on any issue of law or fact set forth in this CAFO. Respondents also waive their right to appeal the Final Order accompanying the Consent Agreement.

7. By signing this CAFO, Respondents certify that they are presently operating in compliance with Section 112 of the Clean Air Act and the Asbestos NESHAP regulations.

8. Section 113(d) of the Act provides authority for the assessment of penalties for violation of, *inter alia*, regulations promulgated under Section 112 of the Act. The Administrator of EPA and the Attorney General for the U.S. Department of Justice have jointly determined that this action, which addresses certain violations that occurred more than 12 months ago, is an appropriate administrative penalty action under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1).

9. Under the Asbestos NESHAP, certain notification requirements set forth at 40 C.F.R. § 61.145(b) apply to each owner or operator of a demolition or renovation activity at a regulated facility. The Asbestos NESHAP program has not been delegated to the State of Rhode under the CAA.

### **III. EPA FINDINGS**

10. In connection with its operation of T.F. Green Airport, a Noise Management

Program and Voluntary Land Acquisition Program established by RIAC (the “Program”) enables RIAC to purchase and demolish homes within certain Federal Aviation Administration noise contour lines.

11. From September 2004 to December 2008, RIAC acquired and demolished 146 residences whose addresses are listed in Attachment A hereto (the “Residences”), during five phases of the Program.

12. From September 2004 to December 2008, Colan served as the “prime consultant” overseeing the Program, and Jones Payne served as the “sub-prime consultant,” responsible for coordinating all pre-demolition, demolition and post-demolition activities for the Program.

13. EPA does not consider a residence with four or fewer dwelling units that is demolished or renovated as part of a commercial or public project to be excluded from the Asbestos NESHAP. 55 Fed. Reg. 48405, 48412. The Residences are therefore each part of a “facility,” as defined at 40 C.F.R. § 61.141.

14. From approximately September 2004 to December 2008, Respondents conducted work at the Residences that included, without limitation, the wrecking or taking out of load-supporting structural members of the Residences (the “Demolition”).

15. Inspection and sampling conducted at the Residences prior to Demolition by a sub-consultant to Jones Payne showed the presence of friable asbestos material, which meets the definition of regulated asbestos-containing material (“RACM”) under 40 C.F.R. § 61.141.

16. The above-described work (i.e., the Demolition) carried out by Respondents at the Residences was a “demolition,” as defined at 40 C.F.R. § 61.141.

17. With respect to the Demolition, each Respondent was an “owner or operator of demolition or renovation activity,” as defined at 40 C.F.R. § 61.141, subject to the Asbestos NESHAP.

18. Pursuant to 40 C.F.R. § 61.145(b), for all scheduled demolition operations at a facility, the Asbestos NESHAP requires that each owner or operator of a demolition or renovation activity provide EPA with prior written notification of intention to demolish or renovate in the manner specified by 40 C.F.R. § 61.145(b).

19. In accordance with 40 C.F.R. § 61.145(b)(1), as the owner or operator of a demolition activity, Respondents were required to provide the Administrator with written notice of intention to demolish or renovate prior to the commencement of the activity.

20. Respondents have represented to EPA that, in accordance with contracts by and among Respondents, Colan and Jones Payne were responsible for providing notice to the Administrator in accordance with 40 C.F.R. § 61.145(b)(1). Respondents further represented that, by agreement between and among themselves, Jones Payne will pay the full amount of the penalty owed under this CAFO.

21. Respondents failed to provide EPA with written notification of intention to demolish or renovate prior to the Demolition, as required by 40 C.F.R. § 61.145(b).

22. Accordingly, Respondents violated the Asbestos NESHAP, 40 C.F.R. § 61.145(b), and Section 112 of the Act and, as a result, are properly subject to the assessment of civil penalties pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

#### IV. TERMS OF SETTLEMENT

23. In light of the above, and taking into account the factors enumerated in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), EPA's October 25, 1991 "Clean Air Act Stationary Source Civil Penalty Policy" and Appendix III thereto (the May 5, 1992 "Asbestos Demolition and Renovation Civil Penalty Policy"), and such other factors as justice may require, EPA has determined that it is fair and appropriate that Respondents pay a civil penalty in the amount of twenty-five thousand dollars (\$25,000) in settlement of the violations alleged herein.

24. Respondents shall pay the penalty of \$25,000 within thirty (30) days of the date on which this CAFO is filed with the Regional Hearing Clerk, pursuant to 40 C.F.R. §22.31(b).

25. Respondents shall make payment by submitting a bank or certified check, to the order of the "Treasurer, United States of America," in the amount of \$25,000 to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Respondents should note on the check the name and docket number of this case (*In re: Rhode Island Airport Corporation, O.R. Colan Associates of Florida, LLC and The Jones Payne Group, Inc.*, Docket No. CAA-01-2010-0010). In addition, at the time of payment, notice of payment of the civil penalty and copies of the check should be forwarded to both the Regional Hearing Clerk and the EPA attorney handling this case, at the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100 (Mail Code ORA18-1)  
Boston, Massachusetts 02109-3912

and

Amelia Welt Katzen, Senior Enforcement Counsel  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100 (Mail Code OES04-3)  
Boston, Massachusetts 02109-3912

26. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), if Respondents fail to pay the civil penalty, Respondents will be subject, jointly or severally, to an action to compel payment plus interest, enforcement expenses (including attorneys' fees and costs for collection proceedings), and a nonpayment penalty. Interest will be assessed on any past due civil penalty amount if the penalty is not paid within thirty (30) calendar days of the date Respondents receive the CAFO signed by the Regional Judicial Officer. Interest on the civil penalty amount will accrue from the date of receipt and will be assessed at rates established in accordance with 26 U.S.C. § 6621(a)(2). A quarterly nonpayment penalty will also be assessed for each calendar quarter during which the failure to pay persists. The nonpayment penalty will be 10 percent of the total amount of any penalties, interest, enforcement expenses, and nonpayment penalties which are unpaid as of the beginning of each calendar quarter. If a collection action is necessary, the validity, amount, and appropriateness of the penalty shall not be subject to review.

27. The civil penalty due, and any interest, non-payment penalties or charges that arise pursuant to this CAFO shall represent penalties assessed by EPA and shall not be deductible for purposes of Federal taxes. Accordingly, Respondents agree to treat all payments made pursuant to this Consent Agreement and Final Order as penalties within the meaning of Section 1.162-21



of the Internal Revenue Code, 26 U.S.C. § 1.162-21, and further agree not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state or local law.

28. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 113(d) of the CAA, for the specific violations alleged in this CAFO. Except as otherwise provided herein, EPA reserves all civil and criminal enforcement authorities, and specifically reserves its authority to address imminent hazards. Compliance with this CAFO shall not be a defense to any action subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondents to comply with said laws and regulations.

29. The Parties each shall bear their own costs and attorneys fees in the action resolved by this CAFO and Respondents specifically waive their right to seek attorneys' fees under the Equal Access to Justice Act, 5 U.S.C. § 504.

30. Each undersigned representative of the Respondents certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

For Respondents:

RHODE ISLAND AIRPORT CORPORATION

Kevin A. Dallon

(Name)

Rhode Island Airport Corporation  
2000 Post Road  
Warwick, Rhode Island 02886

President and CEO

(Title)

June 23, 2010

(Date)

O.R. COLAN ASSOCIATES OF FLORIDA, LLC

Steven T. Cleary

(Name)

O.R. Colan Associates of Florida, LLC  
2248 Post Road  
Warwick, Rhode Island 02886

VICE PRESIDENT

(Title)

6/21/10

(Date)

THE JONES PAYNE GROUP, INC.



(Name)

The Jones Payne Group, Inc.  
123 N. Washington Street  
Boston, Massachusetts 02114

PRESIDENT

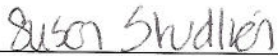
(Title)

6/18/10

(Date)

For Complainant:

U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 1



Susan Studlien, Director  
Office of Environmental Stewardship

Date: 07/01/10




Amelia Welt Katzen, Senior Enforcement Counsel  
Regulatory Legal Office  
Office of Environmental Stewardship

Date: 6/29/10

**V. FINAL ORDER**

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby ordered to comply with the terms of the above Consent Agreement, effective on the date it is filed with the Regional Hearing Clerk.

Date: July 1, 2010

  
\_\_\_\_\_  
Jill T. Metcalf  
Acting Regional Judicial Officer  
U.S. Environmental Protection Agency, Region I