

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Tonia Bandrowicz 6/3/14
Name of Case Attorney Date

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

Case Docket Number CWA-01-2013-0033

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:

City of Attleboro
City Hall
77 Park Street
Attleboro, MA 02703

Total Dollar Amount of Receivable \$ 32,000 Due Date: 7/3/14

SEP due? Yes No Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:
1st \$ _____ on _____
2nd \$ _____ on _____
3rd \$ _____ on _____
4th \$ _____ on _____
5th \$ _____ 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**

_____)
IN THE MATTER OF)
)
ATTLEBORO, CITY OF)
City Hall)
77 Park Street)
)
Attleboro, MA 02703)
)
Respondent.)
_____)

Docket No. CWA-01-2013-0033

**ADMINISTRATIVE CONSENT
AGREEMENT & FINAL ORDER**

RECEIVED
2014 JUN - 3 A 10: 29
EPA ORC
OFFICE OF
REGIONAL HEARINGS CLERK

I. STATEMENT OF AUTHORITY

1. Pursuant to Section 309(g)(2)(B) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g)(2)(B), and in accordance with Section 22.13(b) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation, Termination or Suspension of Permits*, 40 C.F.R. Part 22 (“*Consolidated Rules*”), and applicable delegations of authority, the Regional Administrator of the United States Environmental Protection Agency, Region I (“EPA”) issues, and the City of Attleboro, Massachusetts (the “City” or “Respondent”) agrees to this Consent Agreement and Final Order (“CAFO”).

2. EPA takes this action based on its allegations that Respondent discharged supernatant containing pollutants into a navigable water of the United States without authorization of a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

3. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), EPA has consulted with the Massachusetts Department of Environmental Protection about this action.

II. STATUTORY AND REGULATORY BACKGROUND

National Pollutant Discharge Elimination System

4. The CWA is designed “to restore and maintain the chemical, physical, and biological integrity of the nation’s waters.” Section 101(a) of the CWA, 33 U.S.C. § 1251(a).

5. To accomplish the objectives of the CWA, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into navigable waters except in compliance with, among other things, the terms and conditions of a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and EPA’s implementing regulations, found at 40 C.F.R. Part 122.

6. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines “person” to include a “municipality . . . [or] political subdivision.”

7. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

8. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, among other things, chemical wastes.

9. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” to include “any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged.”

10. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “the waters of the United States, including the territorial seas.”

11. Section 309(g)(1)(B) of the CWA, 33 U.S.C. § 1319(g)(1)(B), provides for the assessment of penalties for violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

III. VIOLATIONS

General Allegations

12. Respondent is a city in the Commonwealth of Massachusetts and, therefore, a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

13. Respondent owns and operates the Russell F. Tennant Water Treatment Facility located at 1296 West Street, Attleboro, Massachusetts, 02703 (the “Facility”).

14. The Facility treats water drawn from Orr’s Pond for consumption by the City’s residents.

15. The Facility draws water from Orr’s Pond into a Pretreatment Tank. The Pretreatment Tank consists of four chambers (referred to as “Basins”) into which the water flows and treatment occurs. Each Basin has a capacity of approximately 332,000 gallons for a total volume of approximately 1,300,000 gallons.

16. The Facility operators add the coagulant polyaluminum chloride (“PAC”) to the water in the Pretreatment Tank to help remove suspended and dissolved solids.

17. The water mixed with PAC flows to a series of flocculation tanks where fine particles (“floc”) are formed from the removal of suspended and dissolved solids.

18. The water flows from the flocculation tanks into sedimentation tanks where the floc settles to the bottom forming a layer of sludge. Suspended over the sludge is a layer of liquid called the supernatant containing, among other things, aluminum.

19. The supernatant contains “chemical waste” and, therefore, the supernatant contains “pollutants” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

20. A storm drain system is located at the Facility. At least two catch basins are located in the paved area adjacent to the Facility's Pretreatment Tank. The catch basins are used to collect and convey stormwater to the storm drain system.

21. Stormwater collected by the catch basins is conveyed through the storm drain system piping to a stormwater retention basin located directly adjacent to and west of the Facility. The stormwater retention basin is surrounded by an earthen berm.

22. The earthen berm surrounding the stormwater retention basin is constructed with a second pipe located on the north side of the berm. This pipe is an open-ended pipe that allows stormwater and other liquids collected in the retention basin to flow and discharge directly into Orr's Pond

23. Orr's Pond is a "water[] of the United States," and, therefore, a "navigable water[]," as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and its implementing regulations.

COUNT 1: UNAUTHORIZED DISCHARGE OF UNTREATED SUPERNATANT CONTAINING POLLUTANTS

24. Paragraphs 1 through 23 are incorporated herein by reference.

25. On May 6, 2013, EPA received information about a possible discharge of wastewater from the Facility to Orr's Pond.

26. On May 7, 2013, EPA inspectors arrived at the Facility and observed an unknown liquid discharging from a yellow fire hose onto the paved area located adjacent to the Pretreatment Tank.

27. The EPA inspectors traced the source of the discharge to the Facility's Pretreatment Tank Basin #1.

28. Based on information provided by Facility representatives, on April 18, 2013,

Facility operators commenced the cleanout of the four Pretreatment Tank Basins which involved separately closing and cleaning each Basin. Facility operators discharged the sludge collected in the Basins to the City's wastewater treatment facility located on Pond Street, Attleboro, Massachusetts ("Wastewater Facility").

29. On May 7, 2013, EPA inspectors observed the yellow fire hose inserted into Pretreatment Tank Basin #1 to remove the supernatant. One end of the yellow fire hose was submerged below the surface of the water in Basin #1 and connected to a transfer pump. The opposite end of the yellow fire hose was located on the pavement adjacent to the Pretreatment Tank. EPA inspectors observed water from Basin #1 discharging from the end of the hose onto the pavement and into two catch basins for the City's stormwater drainage system. One catch basin was located immediately next to the free end of the fire hose and the second catch basin was less than two hundred (200) feet away from the first storm drain.

30. The fire hose was a "discernible, confined and discrete conveyance . . . from which pollutants . . . may be discharged." 33 U.S.C. § 1362(14). Therefore, the fire hose was a "point source" as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

31. Respondent certifies that, while the cleanout of the four Pretreatment Tank Basins occurred during the period April 18, 2013 through May 7, 2013, Facility operators did not start to discharge the supernatant contained in the Pretreatment Tank Basins through the yellow fire hose and onto the pavement adjacent to the Pretreatment Tank until April 22, 2013.

32. During the period April 22, 2013 through May 7, 2013, the discharged supernatant entered the storm drain system through the catch basins and flowed into the stormwater retention basin adjacent to Orr's Pond.

33. On May 7, 2013, EPA inspectors observed a discharge from the stormwater

retention basin into Orr's Pond through the pipe located in the northern section of the earthen berm surrounding the stormwater retention basin.

34. The pipe connecting the retention basin to Orr's Pond was a "discernible, confined and discrete conveyance . . . from which pollutants . . . may be discharged," 33 U.S.C. § 1362(14), and was, therefore, a "point source" as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

35. From the period April 22, 2013 through May 7, 2013, the supernatant pumped from the Pretreatment Basins into the stormwater retention basin was intermittently discharged into Orr's Pond through the pipe connecting the stormwater retention basin to Orr's Pond.

36. During the period April 22, 2013 and continuing through May 7, 2013, the Respondent intermittently discharged stormwater mixed with the Pretreatment supernatant containing pollutants through point sources into Orr's Pond, a navigable water of the U.S. without authorization of a NPDES permit, or any other federal or state permit or license.

37. Sampling and monitoring of the water in the stormwater retention basin revealed the presence of high levels of aluminum.

38. By discharging stormwater mixed with untreated supernatant containing pollutants through point sources into a navigable water of the United States from April 22, 2013 and May 7, 2013 without authorization of an NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

39. Respondent's discharge of supernatant containing pollutants to the City's Municipal Separate Storm Sewer System ("MS4"), is in violation of the prohibition against non-stormwater connections to the MS4 contained in the City's Stormwater Management Ordinance,

dated 2008, which was adopted pursuant to the EPA's *National Pollutant Discharge Elimination System General Permit For Storm Water Discharges From Small Municipal Separate Storm Sewer Systems* ("MS4 General Permit"), dated 2001.

40. Section 309(g)(1)(B) of the CWA, 33 U.S.C. § 1319(g)(1)(B), authorizes EPA to assess Class II administrative penalties for violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

41. Respondent is therefore subject to an assessment of penalties under Section 309(g)(1)(B) of the CWA, as amended by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. §§ 2461 *et seq.*, the Debt Collection Improvement Act of 1996, 31 U.S.C. §§ 3701 *et seq.*, and the rule for Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §§ 19.1-19.4 (61 Fed. Reg. 69360 (Dec. 31, 1996); 69 Fed. Reg. 7121 (Feb. 13, 2004); 73 Fed. Reg. 75340 (Dec. 11, 2008)). As amended, Section 309(g)(1)(B) authorizes EPA to assess a civil penalty of up to \$16,000 per day for each day during which the violations of Section 301(a) occurred, up to a maximum of \$177,500.

IV. CONSENT AGREEMENT

42. The parties agree that the above matter constitutes a disputed claim and that settlement of the above 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 taking any testimony, and without adjudication of any issue of fact or law, the parties hereby agree as follows:

Terms of Settlement

43. The provisions of this CAFO shall apply to and be binding on EPA, the Respondent, and the officers, representatives, employees, agents, successors and assigns of Respondent, until Respondent has completed all obligations required by this CAFO.

44. The parties agree to settle EPA's cause of action described herein by the issuance of this CAFO as provided under 40 C.F.R. § 22.13(b).

45. Respondent stipulates that EPA has jurisdiction over the subject matter alleged herein and that EPA has stated a claim upon which relief can be granted against Respondent.

46. Respondent admits the jurisdictional allegations herein and neither admits nor denies specific factual allegations contained herein.

47. Respondent waives any defenses it might have as to jurisdiction and venue, waives its right to request a judicial or administrative hearing, and consents to the terms of this CAFO. Respondent further waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.

48. In settlement hereof, Respondent agrees to pay the penalty specified below.

Payment of Penalty by Respondent

49. Pursuant to Sections 309(g)(1)(A) and (2)(B) of the CWA, 33 U.S.C. §§ 1319(g)(1)(A) and (2)(B), violators are liable for the administrative assessment of civil penalties.

50. Based on the foregoing, the Respondent agrees to pay an administrative civil penalty of \$ 32,000 for the violation specifically alleged herein within thirty (30) days of the effective date of this CAFO.

51. Respondent shall make the penalty payment by submitting, to the address below, a check payable to "Treasurer, United States of America," and referencing the title and docket number of the action:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Copies of the check must also be mailed to:

Wanda Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region I (ORA 18-1)
5 Post Office Square, Suite 100
Boston, MA 02114-2023

and

Tonia Bandrowicz, Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region I (OES 04-03)
5 Post Office Square, Suite 100
Boston, MA 02114-2023

Public Notice

52. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), the EPA is providing public notice of, and a reasonable opportunity to comment on, this proposed assessment of administrative penalties against the Respondent. If a hearing is held on this matter, members of the public who submitted timely comments on this penalty proposal shall have the right under Section 309(g)(4)(B) of the CWA, 33 U.S.C. § 1319(g)(4)(B), to be heard and to present evidence at the hearing.

Additional Provisions

53. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), shall affect Respondent's continuing obligation to comply with the CWA, and with other applicable federal, state or local laws, regulations, permits, or requirements, including any separate compliance orders issued under Section 309(a) of the CWA, 33 U.S.C. § 1319(a), concerning the violations alleged herein. Nothing in this CAFO shall affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. Nothing in this CAFO shall be construed to limit the authority of the United States to undertake any action against Respondent in response to conditions which may present an imminent and substantial

endangerment to the public.

54. Full payment of the settlement penalty above shall only resolve Respondent's liability for federal civil penalties for the violations and facts alleged herein.

55. Pursuant to Section 22.5(c)(4) of the *Consolidated Rules*, the following individual is authorized to receive service on behalf of EPA:

Tonia Bandrowicz
Senior Enforcement Counsel
U.S. Environmental Protection Agency
5 Post Office Square, Suite 100,
Mail Code: OES 04-03
Boston, MA 02114-2023

56. Each party shall pay its own costs and counsel fees in connection with this action, except as described in herein.

57. The undersigned representative of Respondent 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.

THE UNDERSIGNED PARTY enters into this Consent Agreement and Final Order in the Matter of the City of Attleboro, Massachusetts, EPA Docket No. CWA-01-2013-0033, on behalf of EPA:

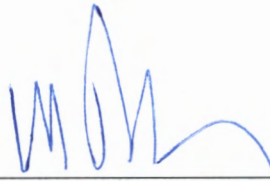
4-10-14
Date

Susan Studlien, acting for
Susan Studlien, Director
Office of Environmental Stewardship
U.S. EPA

THE UNDERSIGNED PARTY enters into this Consent Agreement and Final Order in the Matter of the City of Attleboro, Massachusetts, EPA Docket No. CWA-01-2013-0033,

on behalf of the City of Attleboro:

Date 4/3/2011

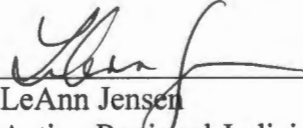


Kevin Dumas, MAYOR
City of Attleboro, MA

FINAL ORDER

Pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), the above Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ordered to comply with the terms of the above Consent Agreement which shall become final thirty (30) days from the date it is signed by the Regional Judicial Officer unless a petition to set aside the Final Order is filed by a commenter pursuant to Section 309(g)(4)(C) of the CWA, 33 U.S.C. § 1319(g)(4)(C), and the *Consolidated Rules*. If the petition is denied, this Final Order shall become effective thirty (30) days after such denial. If the evidence presented by the petitioner in support of the petition is material and was not considered in issuance of the Final Order, then the petition will be granted and the Final Order immediately set aside and a hearing in accordance with Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), will be held.

5/29/19
Date


LeAnn Jensen
Acting Regional Judicial Officer
U.S. Environmental Protection Agency, Region 1

CERTIFICATE OF SERVICE

I hereby certify that the foregoing fully executed Consent Agreement and Final Order has been sent to the following persons in the manner and on the date specified below.

Original and one copy,
hand-delivered:

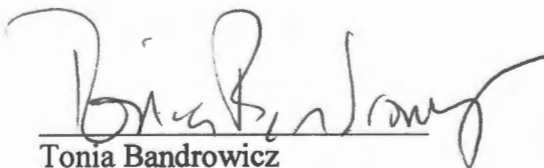
Ms. Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region I (ORA18-1)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Original, by Certified Mail,
Return Receipt Requested:

Karis L. North, Esq.
Murphy, Hesse, Toomey & Lehane, LLP
300 Crown Colony Drive
Quincy, MA 02169

Dated: _____

6/3/14



Tonia Bandrowicz
Senior Enforcement Counsel
U.S. EPA, Region I (OES 04-03)
5 Post Office Square, Suite 100
Boston, MA 02114-2023

In the Matter of
Attleboro, Massachusetts
Docket No. CWA 01-2013-0033