



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
ONE CONGRESS STREET SUITE 1100
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April 9, 2009

Amy E. Boyd, Esq.
Foley Hoag, LLP
Seaport World Trade Center West
155 Seaport Boulevard
Boston, Massachusetts 02210-2600

Re: In the Matter of Phillips Academy;
Docket Nos. CWA-01-2009-0032; EPCRA-01-2009-0033


Dear Amy:

Enclosed is a copy of the fully executed Consent Agreement & Final Order resolving this matter.

Feel free to call me if you have any questions.

Thank you for your assistance.

Sincerely,


Tonia Bandrowicz
Sr. Enforcement Counsel
U.S. EPA

Enclosure

cc by LAN: Joe Canzano, EPA
Len Wallace, EPA

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

2009 APR -9 P 3: 08

EPA ORC
OFFICE OF
REGIONAL HEARING CLERK

IN THE MATTER OF)

Phillips Academy)
180 Main Street)
Andover, Massachusetts 01810,)

Respondent.)

Docket Nos. CWA-01-2009-0032
EPCRA-01-2009-0033

CONSENT AGREEMENT AND FINAL ORDER

This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 311(b)(6)(B)(ii) of the Clean Water Act ("CWA"), 33 U.S.C. § 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990, Section 325(c) of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045(c), and under the authority provided by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, set forth at 40 C.F.R. Part 22 ("Part 22").

I. PRELIMINARY STATEMENT

1. EPA initiated this proceeding against Phillips Academy (“Respondent”) pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), and Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), by filing an Administrative Complaint, Docket Nos. CWA-01-2009-0032 and EPCRA-01-2009-0033 (“Complaint”).

2. The Complaint alleges that Respondent’s violations of Sections 311(j) of the CWA and Section 312(a) of EPCRA had subjected Respondent to penalties up to the statutory maximum authorized under those statutes.

3. The factual and jurisdictional basis for proposing the assessment of civil penalties is set forth in the Complaint and incorporated herein by reference.

II. CONSENT AGREEMENT

4. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint and that the Complaint states a claim upon which relief can be granted against Respondent.

5. Respondent neither admits nor denies the specific factual allegations contained in the Complaint.

6. Respondent certifies that it will operate the facility described in the Complaint in compliance with Section 311 of the CWA and Section 312 of EPCRA and the federal regulations promulgated thereunder.

Waiver of Rights

7. Respondent waives any defenses it might have as to jurisdiction and venue and consents to the terms of this Consent Agreement and Final Order (“CAFO”).

8. Respondent waives its right to a judicial or administrative hearing on any issue of law or fact set forth in the Complaint.

9. Respondent waives its rights to appeal any Final Order in this matter, and consents to the issuance of a Final Order without further adjudication.

Penalty

10. For the purpose of settlement of this action, Complainant proposes and Respondent consents to the assessment of a civil penalty of \$18,000.

Payment Terms

11. In agreeing to the penalty described in paragraph 10 above, EPA has taken into account the statutory penalty factors at Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), and Section 325(b)(1) of EPCRA, 42 U.S.C. § 11045(b)(1). Respondent shall pay a total penalty of \$18,000 which shall be due within 30 calendar days of the effective date of this CAFO. Of this amount, \$3,000 shall represent the penalty for Respondent's alleged violation of Section 311(j) of the CWA and \$15,000 shall represent the penalty for Respondent's alleged violation of Section 312(a) of EPCRA.

12. Respondent shall pay the \$3,000 portion of its \$18,000 total penalty, which represents the alleged violation of Section 311(j) of the CWA, by cashier's or certified check, payable to "Environmental Protection Agency," and referencing the title and docket numbers of the action ("In the Matter of Phillips Academy, CWA-01-2009-0032") and "Oil Spill Liability Trust Fund - 311." The payment shall be mailed via regular U.S. Postal Service mail, to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

13. Respondent shall pay the \$15,000 portion of its \$18,000 total penalty, which represents the alleged violation of EPCRA, by cashier's or certified check, payable to "Treasurer, United States of America," and referencing the title and docket numbers of the action ("In the Phillips Academy, EPCRA-01-2009-0033"). The payment shall be mailed via regular U.S. Postal Service mail, to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

14. Respondent shall simultaneously submit copies of the checks referenced in paragraphs 12 and 13 above to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
One Congress Street, Suite 1100 (RAA)
Boston, Massachusetts 02114-2023

AND TO:

Tonia Bandrowicz, Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1
One Congress Street, Suite 1100 (SEL)
Boston, Massachusetts 02114-2023

15. Pursuant to Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H), failure by the Respondent to pay the penalty amount relating to the CWA violations assessed by this CAFO in

full by the date required shall subject the Respondent to a civil action to collect the assessed penalty, plus interest at the prevailing rates from the effective date of the CAFO. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review. Further, under Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H), if Respondent fails to pay on a timely basis any CWA penalty payment assessed by this CAFO, Respondent shall be required to pay, in addition to such amount and interest, attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter. Interest will be assessed pursuant to 31 C.F.R. § 901.9(b), promulgated pursuant to 31 U.S.C. § 3717.

16. With respect to payment of the EPCRA penalty, pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. In the event that any partial payment of the civil penalty, plus interest thereon, is not paid when due without demand, the penalty plus accrued interest shall be payable with additional interest from the original due date to the date of payment, at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. §901.9(b)(2). In addition, a penalty charge of six percent per year will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. However, should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due under 31 C.F.R. § 901.9(d).

17. The penalties provided for herein are penalties within the meaning of 26 U.S.C. §162(f) and are not tax deductible for purposes of federal, state, or local law.

18. The provisions of this CAFO shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

19. Respondent shall bear its own costs and attorneys fees in this proceeding.

20. This CAFO shall not limit the authority of the United States to enforce the underlying substantive legal requirements of this administrative penalty assessment, whether administratively or judicially.

21. This CAFO does not constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. §§ 1251 et seq., or any regulations promulgated thereunder.

22. This CAFO does not constitute a waiver, suspension or modification of the requirements of EPCRA, 42 U.S.C. §§ 11001 et seq., or any regulations promulgated thereunder.

23. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Sections 311(j) of the CWA, and 312(a) of EPCRA, for the violations of the CWA and EPCRA specifically alleged in the Complaint. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations. This CAFO in no way relieves Respondent or its employees of any criminal liability. 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.

24. The undersigned representative of Respondent certifies that he or she is fully authorized by Respondent to enter into the terms and conditions of this CAFO and legally bind Respondent.

FOR RESPONDENT (PHILLIPS ACADEMY)

Stephen D. Costa

Date: 3/16/09

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY


Susan Studlien
Susan Studlien, Director
Office of Environmental Stewardship
U.S. EPA, Region 1

Date: 03/20/09

FINAL ORDER

25. In accordance with 40 C.F.R. Part 22, the forgoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of the referenced Consent Agreement. This Final Order shall become effective 30 days from today pursuant to Section 311(b)(6)(D) of the CWA, 33 U.S.C. § 1321(b)(6)(D).

U.S. ENVIRONMENTAL PROTECTION AGENCY



LeAnn Jensen
Acting Regional Judicial Officer
U.S. EPA, Region 1

Date: 4/8/09

In the Matter of Phillips Academy
Docket Nos. CWA-01-2009-0032, EPCRA-01-2009-0033

CERTIFICATE OF SERVICE

I certify that the foregoing CONSENT AGREEMENT & FINAL ORDER was sent to the following persons, in the manner specified, on the date below:

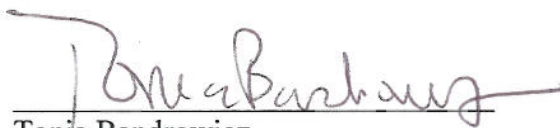
Original and one copy
hand-delivered:

Wanda Rivera
Regional Hearing Clerk
U.S. EPA, Region 1
One Congress Street (RAA)
Boston, MA 02114-2023

Copy mailed certified mail,
return receipt requested:

Amy E. Boyd, Esq.
Foley Hoag, LLP
Seaport World Trade Center West
155 Seaport Boulevard
Boston, Massachusetts 02210-2600

Dated: 4/9/09



Tonia Bandrowicz
Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1
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Boston, MA 02114-2023
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