

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Kathleen Woodward 5/16/13  
Name of Case Attorney Date

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

Case Docket Number CWA-01-2013-0007

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:

Stephen P. Lynch, Jr., President  
J. H. Lynch + Sons, Inc.  
50 Lynch Place  
Cumberland, RI 02864

Total Dollar Amount of Receivable \$ 55,000.00 Due Date: 5/26/13

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



RECEIVED

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I

Suite 1100, 1 Congress Street  
Boston, MA 02114-2203

2013 MAY 16 P 2 56  
EPA ORC  
OFFICE OF  
REGIONAL HEARING CLERK

**BY HAND**

May 16, 2013

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

Re: In the Matter of: J.H. Lynch & Sons, Inc. and Massachusetts Department of  
Transportation.  
CWA-01-2013-0007

Dear Ms. Santiago:

For the above-referenced matter, please file the enclosed Consent Agreement and Final Order and Certificate of Service. I have included the original and one copy of these documents

Thank you for your attention to this matter. Should you have any questions, please contact me at (617) 918-1780.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kathleen E. Woodward".

Kathleen E. Woodward  
Senior Enforcement Counsel

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I

5 Post Office Square, Suite 100  
Boston, MA 02109-3912

RECEIVED

2013 MAY 16 P 2:56

EPA ORC  
OFFICE OF  
REGIONAL HEARING CLERK

**CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

May 16, 2013

Frank DePaola, Administrator  
Highway Division  
Massachusetts Department of Transportation  
10 Park Plaza, Suite 4160  
Boston, Massachusetts 02116

Re: In the Matter of J.H. Lynch & Sons, Inc. and Massachusetts Department of  
Transportation  
Consent Agreement and Final Order: Docket No. CWA-01-2013-0007

Dear Mr. DePaola:

Enclosed please find the fully executed Consent Agreement and Final Order (CAFO) for the above-referenced case. Note that, pursuant to paragraph 21, the Order becomes final 30 days from the date signed by the Regional Judicial Officer (May 14, 2013), and that pursuant to paragraph 10, the penalty is due no later than 10 days after the CAFO is final (June 24, 2013).

Sincerely,

A handwritten signature in blue ink that reads "Kathleen E. Woodward".

Kathleen E. Woodward  
Senior Enforcement Counsel  
Office of Environmental Stewardship

cc: Tracy W. Klay, Esq., MassDOT  
Lawrence P. McCarthy, III, Counsel for J.H. Lynch & Sons, Inc.

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I

RECEIVED

2013 MAY 16 P 2: 56

In the Matter of )

J.H. Lynch & Sons, Inc. )  
50 Lynch Place )  
Cumberland, RI 02864 )

Massachusetts Dept. of Transportation )  
10 Park Plaza, Suite 4160 )  
Boston, Massachusetts 02116 )

Respondents )

Docket No. CWA-01-2013-0007

EPA ORC  
OFFICE OF  
REGIONAL HEARING CLERK

CONSENT AGREEMENT AND  
FINAL ORDER

This Consent Agreement and Final Order ("CAFO") is issued under the authority granted to the U.S. Environmental Protection Agency ("EPA") by Section 309(g) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," at 40 C.F.R. Part 22 ("Part 22 Rules").

**I. PRELIMINARY STATEMENT**

1. EPA initiated this proceeding against the Respondents pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), by filing an administrative Complaint against Respondents, Docket No. CWA-01-2013-0007 (the "Complaint"), on December 10, 2012.

CONSENT AGREEMENT AND FINAL ORDER  
U.S. EPA Region I  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

Docket No. CWA-01-2013-0007

2. The complete factual and jurisdictional basis for proposing the assessment of an administrative civil penalty is set forth in the Complaint and is incorporated herein by reference.
3. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), the Commonwealth of Massachusetts has been given an opportunity to consult with EPA regarding the proposed assessment of the administrative civil penalty for CWA violations against Respondents.
4. Section 309(g)(4)(A) of the CWA, 33 U.S.C. 1319(g)(4)(A), provides that, prior to issuing an order assessing an administrative civil penalty under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA must provide public notice of, and reasonable opportunity to comment on, the proposed issuance of such order. EPA has satisfied this requirement by providing public notice of, and reasonable opportunity to comment on, the proposed penalty from December 19, 2012 through January 17, 2013. EPA did not receive comments on the Complaint.
5. The parties agree that settlement of this matter without further litigation is in the public interest.

## **II. CONSENT AGREEMENT**

6. Respondents stipulate that EPA has jurisdiction over the subject matter alleged in the Complaint.
7. Respondents waive any defenses they might have as to jurisdiction and venue, and, without admitting or denying the facts and violations alleged in the Complaint, consent to the terms of this CAFO.

### III. WAIVER OF RIGHTS

8. Respondents hereby waive their right to request a judicial or administrative hearing on any issue of law or fact set forth in the Complaint, and consent to the issuance of the Final Order included with this Consent Agreement without further adjudication.

### IV. TERMS OF SETTLEMENT

9. Based upon the statutory factors at Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA proposes and the Respondents consents to the assessment of an administrative civil penalty in the amount of fifty-five thousand dollars (\$55,000).
10. Respondents shall pay the administrative civil penalty set forth in Paragraph 9 of this CAFO no later than 10 calendar days after this CAFO is final.
11. Respondents shall make payment by depositing in the United States mail a cashier's or certified check, payable to the order of "Treasurer, United States of America" and referencing the title and docket number of the action ("In the Matter of J.H. Lynch & Sons, Inc., and Massachusetts Department of Transportation, CWA-01-2013-0007") to:

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

12. Respondents shall simultaneously submit copies of the payment check to:

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region I

5 Post Office Square, Suite 100  
Mail Code ORA17-1  
Boston, MA 02109-3912

and

Kathleen E. Woodward  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency, Region I  
5 Post Office Square, Suite 100  
Mail Code OES4-2  
Boston, MA 02109-3912

### **V. GENERAL PROVISIONS**

13. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), failure by Respondents to pay the penalty assessed by this CAFO in full by the payment due date shall subject Respondents to a civil action to collect the assessed penalty, plus interest at current prevailing rates from the date the penalty was due pursuant to Paragraph 10 of this CAFO. The rate of interest assessed shall be at the rate set forth in 31 C.F.R. § 901.9(d), promulgated under 31 U.S.C. § 3717. If Respondents fail to pay the required payment on or before its due date, they shall be required to pay in addition to such amount and interest, attorney's fees, 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 20 percent of the aggregate amount of such person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of any amount required to be paid herein shall not be subject to review.

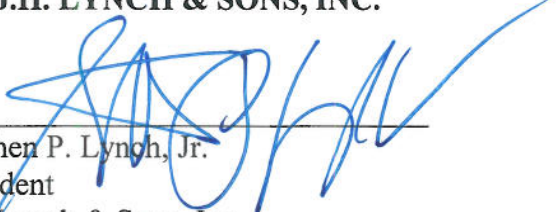
14. The payment required provided under this CAFO, and any interest, nonpayment penalties, and charges described in this CAFO, shall represent penalties assessed by EPA within the meaning of 26 U.S.C. § 162(f) and are not tax deductible for purposes of federal, state, or local law. Accordingly, Respondents agree to treat all payments made pursuant to this CAFO as penalties within the meaning of 26 C.F.R. § 1.162-21, and further agree not to use those payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.
15. The provisions of this CAFO shall be binding upon Respondents, their officers, directors, agents, servants, employees, and successors or assigns.
16. Except as described in Paragraph 13 above, each party shall bear its own costs and attorneys fees in this proceeding.
17. Issuance of this CAFO constitutes a full and complete settlement by EPA of all claims for judicial and administrative civil penalties pursuant to Sections 309(d) and (g) of the CWA, 33 U.S.C. §§ 1319(d) and (g), for all past violations of the CWA alleged in the Complaint referenced in Paragraph 1.
18. 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, pursuant to Sections 309(a), (b), and (c) of the Act, 33 U.S.C. §§ 1319(a), (b), and (c), or Section 504 of the Act, 33 U.S.C. § 1364.
19. 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 or permits issued thereunder.



20. Each of the undersigned representatives of Respondents certifies that he or she is fully authorized by Respondents to enter into the terms and conditions of this CAFO and legally bind Respondents.

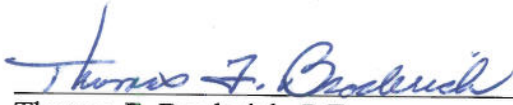
**STIPULATED AND AGREED:**

**For J.H. LYNCH & SONS, INC.**

  
\_\_\_\_\_  
Stephen P. Lynch, Jr.  
President  
J.H. Lynch & Sons, Inc.

Date: 4/12/13

For MASSACHUSETTS DEPARTMENT OF TRANSPORTATION



Thomas F. Broderick, P.E.  
Chief Engineer  
Massachusetts Department of Transportation  
10 Park Plaza, Room 7410  
Boston, MA 02116

Date: 4/17/13

CONSENT AGREEMENT AND FINAL ORDER  
U.S. EPA Region 1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

Docket No. CWA-01-2013-0007

For U.S. ENVIRONMENTAL PROTECTION AGENCY

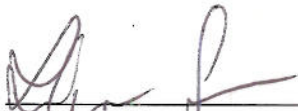
Susan Studlien  
Susan Studlien, Director  
Office of Environmental Stewardship  
U.S. EPA, Region 1

Date: 05/14/13

**FINAL ORDER**

21. The forgoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondents are ordered to comply with the terms of the above Consent Agreement which will become final thirty (30) days from the date it is signed by the Regional Judicial Officer.

U.S. ENVIRONMENTAL PROTECTION AGENCY



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

Date: 5/17/13

**In the Matter of: J.H. Lynch & Sons, Inc. and  
Massachusetts Department of Transportation  
Docket No. CWA 01-2013-0007**

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent to the following persons, in the manner specified on the date below:

Copy hand-delivered:

Wanda Santiago  
Regional Hearing Clerk  
U.S. EPA, Region I  
5 Post Office Square, Suite 100  
Mail Code ORA17-1  
Boston, Massachusetts 02109-3912

Copy by certified mail, return  
receipt requested

Stephen P. Lynch, Jr., President  
J.H. Lynch & Sons, Inc.  
50 Lynch Place  
Cumberland, Rhode Island 02864

Frank DePaola, Administrator, Highway Division  
Massachusetts Department of Transportation  
10 Park Plaza, Suite 4160  
Boston, MA 02116

Copy by first-class mail to:

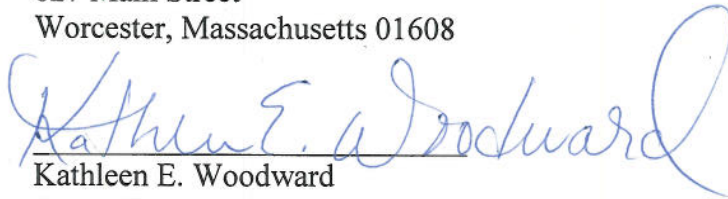
Tracy W. Klay, Esq.  
General Counsel's Office  
Massachusetts Department of Transportation  
10 Park Plaza, Suite 4160  
Boston, MA 02116

Lawrence P. McCarthy, III  
Higgins, Cavanagh & Cooney  
The Hay Building  
123 Dyer Street  
Providence, RI 02903

Martin Suuberg, Regional Director Central Region  
Massachusetts Department of Environmental  
Protection

627 Main Street  
Worcester, Massachusetts 01608

Dated: May 16, 2013



Kathleen E. Woodward  
Senior Enforcement Counsel  
U.S. EPA, Region I  
5 Post Office Square, Suite 100  
Mail Code OES4-2  
Boston, MA 02109-3912  
(617) 918-1780