

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Tahari Rivers 8/24/17
Name of Case Attorney Date

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

Case Docket Number CWA-01-2017-0059

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:

P.J. Keating Company
72 South Main Street
Acushnet, MA 02743

Total Dollar Amount of Receivable \$ 140,000 Due Date: 10/3/17

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



U.S. Environmental Protection Agency

Region 1
5 Post Office Square – Suite 100
Boston, MA 02109-3912

August 24, 2017

VIA HAND DELIVERY

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



Re: *In the Matter of P.J. Keating Company*
Docket No. CWA-01-2017-0059

Dear Ms. Santiago,

Enclosed for filing, please find a Consent Agreement and Final Order (CAFO) settling the matter referenced above.

Thank you for your attention to this matter.

Best regards,

Tahani A. Rivers

Tahani A. Rivers
Enforcement Counsel
U.S. EPA, Region 1

Enclosure

cc: Deborah Murphey, Esq.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

In the matter of)

P.J. KEATING COMPANY,)
72 South Main Street)
Acushnet, MA 02743)

Respondent.)
_____)

Docket No. CWA-01-2017-0059

**CONSENT AGREEMENT AND
FINAL ORDER FOR CLASS II
CIVIL PENALTY UNDER THE
CLEAN WATER ACT**

CERTIFICATE OF SERVICE

I certify that I hand-delivered to the office of the Regional Hearing Clerk of EPA Region 1 the original and one copy of the final Consent Agreement and Final Order ("CAFO") in the above-captioned case, together with a cover letter, and arranged to send copies of the CAFO and letter via mail to Respondent at the address set forth 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

Copy, by Certified Mail,
Return Receipt Requested:

Deborah L. Murphey, Esq.
900 Ashwood Parkway, Suite 700
Atlanta, Georgia 30338-4780

Dated: 8/24/17

Tahani Ann Rivers

Tahani Ann Rivers
Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (OES04-2)
Boston, MA 02109-3912
Tel (617) 918-1299
Fax (617) 918-0148

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

In the matter of)	Docket No. CWA-01-2017-0059
)	
P.J. KEATING COMPANY)	CONSENT AGREEMENT AND
72 South Main Street)	FINAL ORDER FOR CLASS II
Acushnet, MA 02743)	CIVIL PENALTY UNDER THE
)	CLEAN WATER ACT
Respondent.)	
)	

The Regional Administrator of the United States Environmental Protection Agency, Region 1 ("EPA") issues this Consent Agreement and Final Order ("CAFO") to P.J. Keating Company ("P.J. Keating" or "Respondent"). EPA alleges that Respondent violated Sections 301(a), and 311(j) of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1311(a), and 1321(j). The parties agree to resolve this action by the issuance of this CAFO as provided under 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) of EPA's 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 ("Part 22").

I. DESCRIPTION OF VIOLATIONS

1. EPA alleges that Respondent: (1) failed to comply with specific effluent limits in the facility's National Pollutant Discharge Elimination System ("NPDES") permit in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and 40 C.F.R. Part 122; (2) failed to comply with specific stormwater pollution prevention requirements in the NPDES permit in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and 40 C.F.R. Part 122; and (3) failed to comply with Section 311(j) of the CWA, 33 U.S.C. § 1321(j) and the Oil Pollution Prevention regulations set forth at 40 C.F.R. Part 112.

RECEIVED

AUG 24 2017

EPA ORC *WS*
Office of Regional Hearing Clerk

Statutory and Regulatory Authority

2. EPA takes this action under the authority of Sections 309(g) and 311(b)(6) of the Clean Water Act (“CWA” or the “Act”), 33 U.S.C. §§ 1319(g) and 1321(b)(6), as amended by the Oil Pollution Act of 1990. 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 notified the Commonwealth of Massachusetts Department of Environmental Protection of this action.

General Allegations

National Pollutant Discharge Elimination System

3. 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).

4. 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 except in compliance with a permit issued pursuant to Section 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344, and EPA’s implementing regulations, found at 40 C.F.R. Part 122.

5. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines “person” to include “an individual, corporation, partnership, [or] association.”

6. Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), defines “person” to include “an individual, firm, corporation, association, [or] partnership.”

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, garbage, chemical wastes, biological materials, heat, wrecked or discarded equipment, rock, sand, and industrial waste discharged into water.

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 308(a) of the CWA, 33 U.S.C. § 1318(a), authorizes the Administrator of EPA to require the owner or operator of any point source to provide such information as the Administrator may reasonably need to carry out the objectives of the CWA, including, among other things, the development and issuance of NPDES permits under Section 402 of the CWA, 33 U.S.C. § 1342.

12. Pursuant to Sections 308 and 402 of the CWA, 33 U.S.C. §§ 1318 and 1342, EPA promulgated stormwater discharge regulations at 40 C.F.R. § 122.26.

13. 40 C.F.R. § 122.26(b)(13) defines “stormwater” to include stormwater runoff, snow melt runoff, and surface runoff and drainage.

14. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), authorizes the Administrator of EPA to issue NPDES permits for the discharge of pollutants into navigable waters in compliance with the CWA.

15. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and implementing regulation 40 C.F.R. § 122.26(a)(1)(ii) require stormwater discharges associated with industrial activity to be authorized by a NPDES permit.

16. 40 C.F.R. § 122.26(c)(1) provides that dischargers of stormwater associated with industrial activity are required to apply for an individual permit, apply for a permit through a group application, or seek coverage under a general permit.

17. 40 C.F.R. § 122.26(b)(14)(ii) specifies that facilities engaging in industrial activity

include facilities classified as Standard Industrial Classification (“SIC”) code 29, including SIC code 2951 (asphalt paving and roofing materials).

18. 40 C.F.R. § 122.26(b)(14)(iii) specifies that facilities engaging in industrial activity include facilities classified as SIC code 14, including active or inactive mining operations, including SIC code 1429 (crushed and broken stone).

19. 40 C.F.R. § 122.26(b)(14) specifies that, for the categories of facilities classified in SIC codes 14 and 29, the term “stormwater discharge associated with industrial activity” includes stormwater discharges from, among other things, industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to stormwater. Material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product.

20. On September 29, 1995, EPA issued the NPDES Stormwater Multi-Sector General Permit for Industrial Activities (“1995 MSGP”). 60 Fed. Reg. 50804 (Sept. 29, 1995). EPA reissued the Multi-Sector General Permit for Industrial Activities on October 30, 2000 (“2000 MSGP”), 65 Fed. Reg. 64746 (Oct. 30, 2000), and again on September 29, 2008 (“2008 MSGP”), 73 Fed. Reg. 56572 (Sept. 29, 2008), and again on June 4, 2015 (“2015 MSGP”), 80

Fed. Reg. 34403 (June 16, 2015).

21. The 2008 and 2015 MSGPs contain terms and conditions designed to ensure the implementation of practices to minimize the pollutants in stormwater discharge associated with industrial activity.

22. Section 309(g) of the CWA, 33 U.S.C. § 1319, provides for the assessment of penalties for violations of Sections 301 and 308 of the CWA, 33 U.S.C. §§ 1311, 1318, and for violating any condition or limitation in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

Oil and Hazardous Substances Liability

23. Section 311(j)(1) of the CWA, 33 U.S.C. § 1321(j)(1), provides that the President shall issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances . . . from onshore and offshore facilities, and to contain discharges...”

24. Under the authority of Section 311(j)(1) of the CWA, the Oil Pollution Prevention regulations, found at 40 C.F.R. Part 112, establish procedures, methods, and requirements for preventing the discharge of oil. These requirements apply to owners or operators of non-transportation-related facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil or oil products which, due to their location, could reasonably be expected to discharge oil in harmful quantities (as defined in 40 C.F.R. Part 110) to navigable waters of the United States or adjoining shorelines. 40 C.F.R. § 112.1(b).

25. Under 40 C.F.R. § 112.3(a)(1), an owner or operator of an onshore facility that became operational prior to August 16, 2002 and that has discharged or, due to its location, could reasonably be expected to discharge, oil in harmful quantities unto or upon the navigable waters

of the United States must prepare and fully implement a Spill Prevention, Control, and Countermeasure (“SPCC”) plan in accordance with 40 C.F.R. § 112.7.

26. Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), provides for the assessment of penalties for violations of Section 311(j) of the CWA, 33 U.S.C. § 1321(j), and the Oil Pollution Prevention regulations, found at 40 C.F.R. Part 112.

Findings of Violation

27. P.J. Keating Company is a corporation organized under the laws of the Commonwealth of Massachusetts with its principal place of business in Massachusetts.

28. Respondent is a “person” within the meaning of Sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7), 1362(5), and 40 C.F.R. § 112.2.

29. Respondent owns and/or operates a facility located at 72 Main Street in Acushnet, Massachusetts (the “Facility”). It mines stone and gravel, conducts trap rock quarrying, processes sand, gravel, and stone, and produces concrete asphalt. It is classified under SIC codes 1429 (crushed and broken stone), and 2951 (asphalt paving and roofing materials).

30. Respondent controls daily business and industrial operations at the Facility, and otherwise meet the definition of “owner or operator” of the Facility, as defined at Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2.

31. Since at least April 2011, Respondent has conducted “industrial activity,” within the meaning of 40 C.F.R. § 122.26(b)(14)(ii) and 40 C.F.R. § 122.26(b)(14)(iii) at the Facility.

32. On September 12, 2007, EPA issued a NPDES permit MA0029297 to Respondent (the “2007 Permit”). The 2007 Permit became effective on the first day of the calendar month following 60 days after signature, on December 1, 2007, and expired five years from the last day

of the month preceding the effective date, on November 30, 2012.¹

33. The 2007 Permit authorizes Respondent to discharge the following to an un-named tributary to the Acushnet River, subject to the terms and conditions in the 2007 Permit: water from stone processing/washing operations, quarry dewatering, vehicle and equipment rinsing/washing, various dust control measures, concrete production, Asphalt Plant Wash/Soap Rack runoff, dewatering from the Silt Material Storage Area and Stone Processing Plant, and stormwater runoff over the entire site, including the Vehicle Fueling Area, through Outfall Serial Number 001 (“Outfall 001”).

34. Outfall 001 described in paragraph 33 above is a “point source” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

35. The discharges from Outfall 001 described in paragraph 33 above may contain oils and vehicle fluids associated with vehicular traffic, sediment and solids in contact with construction aggregates, diesel fuel, lubrication oil, used oil, and liquid asphalt resulting from container spill during handling/transport, dumpster related materials, asphalt release agent overspray, and fine sediments, among other things, which are “pollutants” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

36. Respondent stores, transfers, and consumes more than 1,320 gallons of oil at the Facility, and the Facility’s stormwater collection system discharges to an un-named tributary, which flows into the Acushnet River, from Outfall 001 described in paragraph 33 above.

37. The un-named tributary and Acushnet River, are waters of the United States and, thereby, “navigable waters,” as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

38. On September 14, 2016, authorized representatives of EPA inspected the Facility for

¹ Because Respondent timely submitted a reapplication for its NPDES permit, the permit was administratively continued until issuance of the new permit.

compliance with federal environmental laws and regulations under the CWA (the “Inspection”).

Failure to comply with effluent limitations in 2007 Permit

39. The 2007 Permit, Part I.A.1, and the combined Spill Prevention Control & Countermeasures Plan Stormwater Pollution Prevention Plan (“Plan”),² Section 5.5.9 require regular monitoring of total suspended solids (“TSS”), hydrogen ion (“pH”), turbidity, and oil and grease (“O & G”) among other things, in wastewater discharges from Outfall 001.

40. The 2007 Permit, Part I.A.1, and the Plan, Section 5.5.9 require that the maximum daily and average monthly concentrations of TSS in effluent from Outfall 001 shall not be greater than 23 milligrams per liter (“mg/L”), and 15 mg/L, respectively.

41. During the months of June 2013, July 2014, August 2014, October 2014, August 2015, September 2015, October 2015, December 2015, June 2016, and July 2016, Respondent discharged effluent from Outfall 001, during dry weather, to the un-named tributary to the Acushnet River having a TSS concentration above the daily maximum limit of 23 mg/L set forth in the 2007 Permit, Part I.A.1, and the Plan, Section 5.5.9.³

42. During the months of June 2015, December 2015, March 2016, and December 2016, Respondent discharged effluent from Outfall 001, during wet weather, to the un-named tributary to the Acushnet River having a TSS concentration above the daily maximum limit of 23 mg/L set forth in the 2007 Permit, Part I.A.1, and the Plan, Section 5.5.9.

43. During the months of June 2012, February 2013, May 2013, June 2013, May 2014, July 2014, August 2014, October 2014, August 2015, September 2015, October 2015, December 2015, June 2016, July 2016, and August 2016, Respondent discharged effluent from Outfall 001,

² Facility personnel told EPA inspectors at the Inspection, that the Facility completed the Plan between 2012-2013, but it was undated, in draft form, never signed, or certified.

³ The Discharge Monitoring Report (“DMR”) refers to discharges from Outfall 001 during dry weather as discharges from Outfall 001a, and discharges during wet weather, as discharges from Outfall 001b.

during dry weather, to the un-named tributary to the Acushnet River having a TSS concentration above the monthly average of 15 mg/L set forth in the 2007 Permit, Part I.A.1, and the Plan, Section 5.5.9.

44. During the months of June 2012, December 2012, December 2013, June 2015, December 2015, March 2016, and December 2016, Respondent discharged effluent from Outfall 001, during wet weather, to the un-named tributary to the Acushnet River having a TSS concentration above the monthly average of 15 mg/L set forth in the 2007 Permit, Part I.A.1, and the Plan, Section 5.5.9.

45. The 2007 Permit, Part I.A.1 and the Plan, Section 5.5.9, require that the pH of discharges from Outfall 001 shall not be less than 6.5 standard units nor greater than 8.3 standard units.

46. During the months of May 2012, January 2013, March 2013, April 2013, June 2013, December 2013, January 2014, April 2014, May 2014, November 2014, December 2014, February 2015, March 2015, April 2015, June 2015, October 2015, February 2016, May 2016, and January 2017, Respondent discharged effluent from Outfall 001, during dry weather, to the un-named tributary to the Acushnet River having a pH less than the 6.5 standard unit limit set forth in the 2007 Permit, Part I.A.1, and the Plan, Section 5.5.9.

47. During the months of March 2013, September 2015, and March 2016, Respondent discharged effluent from Outfall 001, during wet weather, to the un-named tributary to the Acushnet River having a pH less than the 6.5 standard unit limit set forth in the 2007 Permit, Part I.A.1, and the Plan, Section 5.5.9.

48. During the months of October 2013, July 2016, and August 2016, Respondent discharged effluent from Outfall 001, during dry weather, to the un-named tributary to the

Acushnet River having a pH greater than the 8.3 standard unit limit set forth in the 2007 Permit, Part I.A.1, and the Plan, Section 5.5.9.

49. The 2007 Permit, Part I.A.1, and the Plan, Section 5.5.9, require that the maximum daily turbidity from Outfall 001 shall not be greater than 25 Nephelometric Turbidity Units (NTU).

50. During the months of June 2012, and October 2014, Respondent discharged effluent from Outfall 001, during dry weather, with a turbidity of greater than 25 NTU, set forth in the 2007 Permit, Part I.A.1, and the Plan, Section 5.5.9.

51. During the months of June 2012, and December 2015, Respondent discharged effluent from Outfall 001, during wet weather, with a turbidity of greater than 25 NTU, set forth in the 2007 Permit, Part I.A.1, and the Plan, Section 5.5.9.

52. The 2007 Permit, Part I.A.1, and the Plan, Section 5.5.9, require that the maximum daily and average monthly O & G in effluent shall not be greater than 15 mg/L, or 10 mg/L, respectively.

53. During the month of November 2015, Respondent discharged effluent above the maximum daily O & G limit of 15 mg/L, set forth in the 2007 Permit, Part I.A.1, and the Plan Section 5.5.9.

54. Accordingly, by discharging effluent that violated the effluent limitations in Part I.A.1 of the 2007 Permit, and the Plan, Section 5.5.9, Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Failure to Comply with the Stormwater Pollution Prevention Plan Requirements

55. The 2007 Permit requires that the permittee develop, implement, and maintain a stormwater pollution prevention plan (“SWPPP”) designed to reduce, or prevent, the discharge

of pollutants in stormwater to the receiving waters identified in its 2007 Permit. The SWPPP shall be a written document and consistent with the terms in its 2007 Permit. The permittee shall comply with the terms of its SWPPP. 2007 Permit, Part I.B.1.

56. Respondent has a SWPPP for the Facility, which is a part of the Plan referenced above.

57. The 2007 Permit requires that the permittee complete or update and sign the SWPPP within 90 days after the effective date of its 2007 Permit. 2007 Permit, Part I.B.2.

58. The 2007 Permit requires that the SWPPP include: (a) a pollution prevention team responsible for developing, implementing, maintaining, revising and ensuring compliance with the SWPPP. 2007 Permit, Part I.B.4.a.

59. The 2007 Permit requires that the SWPPP contain a site map showing stormwater flows. 2007 Permit, Part I.A.1.B.

60. The 2007 Permit requires that the permittee amend and update the SWPPP within 14 days for any changes at the facility affecting the SWPPP. Changes which may affect the SWPPP include, but are not limited to, the following activities: a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the United States; a release of a reportable quantity of pollutants as described in [CWA] § 302; or a determination by the permittee or EPA that the SWPPP appears to be ineffective in achieving the general objectives of controlling pollutants in stormwater discharges associated with industrial activity. Any amended or new versions of the SWPPP shall be re-certified by the permittee. Such re-certifications shall be signed in accordance with the requirements identified in 40 C.F.R. § 122.22. 2007 Permit, Part I.B.6.

61. The SWPPP shall be revised for reasons including if there are changes to the

Pollution Prevention Team, or other changes affecting the SWPPP. Plan, Part 5.5.10.

62. The 2007 Permit requires that all areas identified in the SWPPP be inspected, at least on a quarterly basis. 2007 Permit, Part I.B.5. The Plan provides that the Facility address this requirement by the monthly combined SPCC/SWPPP multi-media inspection and with the related multi-media inspection form. Plan, Part 8.2.2.

63. The Plan provides that monthly inspections are completed to address best management practices and other controls established to address potential impacts to stormwater from quarry operations. The Plan provides that monthly inspections are done of designated equipment and sensitive areas of the site. The Plan identifies a monthly inspection form, and indicates that records of the inspections should be kept with the Plan. Plan, Part 8.2.1.

64. The Plan, in accordance with MSGP requirements, requires that a stormwater sample be collected on a quarterly basis and visually assessed from Outfall 001. The Plan requires that a signed, certified report be produced, and kept with the Plan. The Plan also references a related Quarterly Visual Assessment Procedure Form. Plan, Part 8.2.3.

65. The Plan also requires a Comprehensive Facility Compliance Evaluation at least once a year to assess the condition of the stormwater drainage systems. The Plan requires that the Facility document the evaluation's findings in a report, and keep the report with the Plan. Plan, Part 8.2.4.

66. The 2007 Permit requires that the permittee certify at least annually that the previous year's inspections and maintenance activities were conducted, results were recorded, records were maintained, and that the facility is in compliance with the SWPPP. If the facility is not in compliance with any aspect of the SWPPP, the annual recertification shall state the non-compliance and the remedies which are being undertaken. 2007 Permit, Part I.B.7.

67. Facility personnel told EPA inspectors at the Inspection, that the Facility completed the Plan between 2012-2013, but it was in draft form, not dated, signed, nor certified, in violation of 40 C.F.R. § 122.22, the 2007 Permit, Parts I.B.2 and I.B.6.

68. The Plan has outdated information for some of the stormwater and wastewater flow paths, in violation of the 2007 Permit, Part I.B.6, and Plan, Part 5.5.10.

69. The Plan's Emergency and Spill Prevention Team facility contact information is out of date, in violation of the 2007 Permit, Part I.B.6, and Plan, Part 5.5.10.

70. The EPA inspectors determined that Facility personnel would have difficulty inspecting or maintaining Basin 1C due to heavy plant growth, resulting in potential violations of the inspection requirements in the 2007 Permit, Part I.B.5, and Plan Parts 8.2.1, 8.2.2, 8.2.3, and 8.2.4.

71. The Facility failed to present records of quarterly or annual stormwater inspections, in violation of the 2007 Permit, Part I.B.5, and the Plan, Parts 8.2.2, 8.2.3, and 8.2.4.

72. Accordingly, by failing to implement and maintain its Plan, Respondent violated its 2007 Permit, and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Failure to Maintain and Fully Implement a Spill Prevention, Control and Countermeasure Plan

73. Paragraphs 1 through 72 are incorporated herein by reference.

74. At all times relevant to the allegations in this CAFO, Respondent engaged in storing, using, and consuming "oil" or oil products located at the Facility within the meaning of 40 C.F.R. § 112.2.

75. At all times relevant to the allegations in this CAFO, the Facility had an aboveground oil storage capacity greater than 1,320 gallons in containers each with a shell capacity of at least 55 gallons, within the meaning of 40 C.F.R. § 112.1.

76. The Facility is an “onshore facility” within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

77. The Facility became operational prior to August 16, 2002, within the meaning of 40 C.F.R. § 112.3.

78. The Facility is a “non-transportation-related” facility within the meaning of Appendix A to 40 C.F.R. Part 112, as incorporated by reference within 40 C.F.R. § 112.2.

79. The Facility’s Outfall 001 discharges into the un-named tributary which flows into the Acushnet River. The topography leading from the Facility to the un-named tributary to the Acushnet River presents a clear path into navigable waters. Due to the location of the Facility with respect to the un-named tributary to the Acushnet River and the topography of the area, the Facility could reasonably be expected to discharge oil into the un-named tributary, Acushnet River, and downstream bodies of water.

80. The un-named tributary, and Acushnet River are “navigable waters of the United States” and are subject to the jurisdiction of Section 311 of the CWA, 33 U.S.C. § 1321, as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

81. Based on the allegations in paragraphs 73 through 80 above, Respondent is the owner and/or operator of a non-transportation-related facility engaged in storing, using, and consuming oil or oil products that could reasonably be expected to discharge oil in harmful quantities to navigable waters of the United States, and is therefore subject to the Oil Pollution Prevention regulations at 40 C.F.R. Part 112.

82. During the Inspection, EPA determined that Respondent had a SPCC Plan for the Facility, which is a part of the Plan referenced above.

83. Respondent failed to maintain and fully implement the SPCC component of the Plan

including, but not limited to the following deficiencies:

- a. Respondent failed to include in the Plan a 30,000 gallon asphalt aboveground storage tank (“AST”), as required by 40 C.F.R. § 112.7(a)(3);
- b. Respondent failed to provide adequate secondary containment for some of the oil storage containers, in order to prevent a discharge of oil, as required by 40 C.F.R. §§ 112.7(c) and 112.8(c)(2).
- c. Respondent failed to document monthly SPCC inspections. 40 C.F.R. § 112.7(e), Plan, pg. 47, Appendices C and K.
- d. Respondent failed to ensure that the Plan was certified by a Professional Engineer in accordance with the requirements in 40 C.F.R. § 112.3(d).
- e. Respondent failed to amend the Plan with the updated contact list and phone numbers for the facility response coordinator. 40 C.F.R. § 112.7(a)(3), Plan, pg. iii.

84. Respondent’s failure to fully maintain and implement its Plan is a violation of 311(j) of the CWA.

II. CONSENT AGREEMENT

85. EPA and Respondent agree that settlement of this cause of action is in the public interest and that entry of this CAFO without further litigation is the most appropriate means of resolving this matter. Therefore, before taking any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

86. Respondent admits the jurisdictional allegations set forth in Section I above and

hereby waives any defenses it might have as to jurisdiction and venue.

87. Respondent neither admits nor denies the factual or non-jurisdictional allegations contained in Section I above.

Waiver of Rights

88. Respondent waives the right to a hearing under Sections 309(g)(2)(B) and 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. §§ 1319(g)(2)(B) and 1321(b)(6)(B)(ii), and to any appeal of the Final Order in this matter under Sections 309(g)(8)(B) and 311(b)(6)(G)(ii) of the CWA, 33 U.S.C. §§ 1319(g)(8)(B) and 1321(b)(6)(G)(ii). Respondent consents to the issuance of a Final Order without further adjudication.

Penalty

89. EPA proposes, and Respondent consents to, the assessment of a civil penalty of one hundred and forty thousand dollars (\$140,000) for all violations contained in this CAFO.

Payment Terms

90. In agreeing to the penalty described in paragraph 89 above, EPA has taken into account the statutory penalty factors at Sections 309(g)(3) and 311(b)(8) of the CWA, 33 U.S.C. §§ 1319(g)(3) and 1321(b)(8).

91. Respondent shall pay a total penalty of \$140,000 for violations of Section 301 and 311 of the CWA, 33 U.S.C. §§ 1311 and 1321, within ten (10) days of the date this Agreement becomes final.

a. Respondent shall pay a penalty of \$133,500 for the violations of Section 301 of the CWA, and shall make this payment by cashier's, certified, or company check, payable to "Treasurer, United States of America," referencing the case name and docket number of this action (*In the matter of P.J. Keating Company*, No. CWA-01-2017-0059) on the face of the

check. The payment shall be made via regular U.S. Postal Service mail to:

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

b. Respondent shall pay a penalty of \$6,500 for the violations of Section 311 of the CWA, and shall make this payment by cashier's, certified, or company check, payable to "Treasurer, United States of America," referencing the case name and docket number of this action (*In the matter of P.J. Keating Company*, No. CWA-01-2017-0059) and "Oil Spill Trust Liability Fund – 311" on the face of the check. The payment shall be made via regular U.S. Postal Service mail to:

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

c. At the time of payment, Respondent shall simultaneously send notice of the payments and copies of the checks to:

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code ORA 18-1)
Boston, MA 02109-3912

and

Tahani Ann Rivers
Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code OES 04-2)
Boston, MA 02109-3912

92. Pursuant to Sections 309(g)(9) and 311(b)(6)(H) of the CWA, 33 U.S.C.

§§ 1319(g)(9) and 1321(b)(6)(H), a failure by Respondent to pay the penalty assessed by this CAFO in full by its due date shall subject Respondent to a civil action to collect the assessed penalty, plus interest at the prevailing rates, from the date this Agreement becomes final. The rate of interest assessed shall be at the rate set forth in 31 C.F.R. § 901.9(b), promulgated under 31 U.S.C. § 3717. Any person who fails to pay on a timely basis the amount of an assessed penalty shall be required to pay, in addition to such amount and interest, attorney's fees, costs for collection proceedings, and a quarterly non-penalty payment for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent of the aggregate amount of such person's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

General Provisions

93. The provisions of this CAFO shall apply to and be binding on Respondent, its officers, directors, agents, servants, employees, successors, and assigns.

94. The civil penalty 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, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of 26 C.F.R. § 1.162-21, and further agrees not to use those payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.

95. This CAFO does not constitute a waiver, suspension, or modification of the requirements of the CWA or any regulations or permits promulgated thereunder. Payment of the penalty pursuant to this CAFO resolves only Respondent's liability for federal civil penalties for

the violations and facts alleged in Section I above.

96. This CAFO in no way relieves Respondent or its employees of any criminal liability, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.

97. Nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this CAFO or of the statutes and regulations upon which the Complaint and this CAFO is based, or for Respondent's violation of any applicable provision of law.

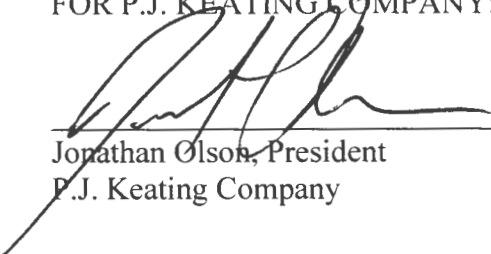
98. Except as described in paragraph 92 above, the parties shall bear their own costs and fees in this action, including attorney's fees, and specifically waive any right to recover such costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C § 504, or other applicable laws.

99. Respondent's obligations under the CAFO shall end when it has paid in full the scheduled civil penalty and submitted the documentation required by this CAFO.

100. The terms, conditions, and requirements of this CAFO may not be modified or amended except upon the written agreement of all parties, and approval of a Regional Administrator or his or her properly authorized delegate.

101. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

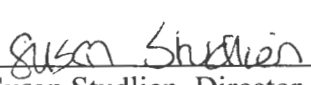
FOR P.J. KEATING COMPANY:


Jonathan Olson, President
P.J. Keating Company

Date: _____

7/18/17

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:


Susan Studien, Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1

Date: _____

08/08/2017

FINAL ORDER

102. EPA has provided a thirty-day opportunity for public notice and comment on this proposed CAFO, pursuant to Sections 309(g)(4)(A) and 311(b)(6)(C)(i) of the CWA, 33 U.S.C. §§ 1319(g)(4)(A) and 1321(b)(6)(C)(i), and 40 C.F.R. § 22.45(b).

103. The foregoing Consent Agreement is incorporated by reference into this Order and is hereby ratified.

104. Respondent is hereby 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 Acting Regional Judicial Officer unless a petition to set aside the order is filed by a commenter pursuant to Sections 309(g)(4)(C) and 311(b)(6)(C)(iii) of the CWA, 33 U.S.C. §§ 1319(g)(4)(C) and 1321(b)(6)(C)(iii), and 40 C.F.R. Part 22.

Date: 8/24/2017



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

Timothy Williamson for LAJ