

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for JEFF KOPF 2/6/19
Name of Case Attorney Date

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

Case Docket Number CWA-01-2019-0008

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:

Ralph Anderson, OWNER
Marblehead Trading Company
89 Front Street
Marblehead, MA 01945

Total Dollar Amount of Receivable \$ 15,000.00 Due Date: 2/16/19

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 I
FIVE POST OFFICE SQUARE SUITE 100
BOSTON, MASSACHUSETTS 02109-3912

RECEIVED

FEB 07 2019

EPA OFFICE OF REGIONAL HEARING CLERK
BY HAND

February 6, 2019

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region I
5 Post Office Square
Suite 100, Mail Code ORC04-6
Boston, MA 02109-3912

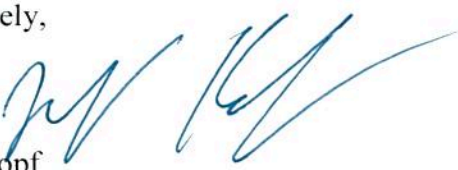
Re: *In the Matter of: Marblehead Trading Company*; Docket No. CWA-01-2019-0008

Dear Ms. Santiago,

Enclosed for filing, please find an original and one copy of the Consent Agreement and Final Order (CAFO) settling the matter referenced above.

Thank you for your attention to this matter.

Sincerely,


Jeff Kopf
Senior Enforcement Counsel
EPA Region 1

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

IN THE MATTER OF)	Docket No. CWA-01-2019-0008
)	
MARBLEHEAD TRADING COMPANY)	
3 Beacon St.)	
Marblehead, MA 01945)	CONSENT AGREEMENT AND FINAL ORDER FOR CLASS II CIVIL PENALTY UNDER CLEAN WATER ACT
Respondent.)	
)	
Proposing to Assess a Civil Penalty Under)	
Section 309(g) of the Clean Water Act)	
33 U.S.C. § 1319(g))	

1. The Director of the Office of Environmental Stewardship of the United States Environmental Protection Agency, Region 1 (“EPA”) enters into this Consent Agreement and Final Order (“CAFO”) with Marblehead Trading Company (“Respondent” or “MTC”). EPA alleges that Respondent violated Section 301(a) of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1311(a). The parties agree to resolve this action by the issuance of this CAFO as provided under 40 C.F.R. § 22.13(b) 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

2. EPA alleges that Respondent discharged stormwater associated with industrial activity into navigable waters of the United States without following all requirements of the NPDES Storm Water Multi-Sector General Permit for Industrial Activities, in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Statutory and Regulatory Authority

3. EPA takes this action under the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g). 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 of this action.

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

General Allegations

5. The CWA is designed to restore and maintain the chemical, physical, and biological integrity of the nation's waters. Section 101(a) of the Act, 33 U.S.C. § 1251(a). To accomplish the objectives of the Act, 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 the terms and conditions of 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.

6. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), authorizes the Administrator of EPA to issue National Pollution Discharge Elimination System permits for the discharge of pollutants into navigable waters in compliance with the CWA.

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

8. 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."

9. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines "pollutant" to include,

inter alia, solid waste, chemical wastes, biological materials, rock, sand, and industrial waste discharged into water.

10. 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.”

11. 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.”

Stormwater Permits

12. 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.

13. 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.

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

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 that facilities discharging storm water associated with industrial activity obtain a permit. Under 40 C.F.R. § 122.26(c)(1), dischargers of stormwater associated with industrial activity must apply for an individual permit or seek coverage under a general permit.

16. Facilities within the categories set out in 40 C.F.R. § 122.26(b)(14), including those

in Standard Industrial Classification (“SIC”) code 3732 (boat building and repairing) are industrial activities that must obtain permit authorization for stormwater discharges.

17. EPA re-issued the NPDES Storm Water Multi-Sector General Permit for Industrial Activities on June 4, 2015 (“2015 MSGP”), which was effective on the date of issuance. 80 Fed. Reg. 34,403.

18. The 2015 MSGP contains terms and conditions designed to ensure the implementation of practices to minimize the pollutants in stormwater discharges associated with industrial activity.

19. Under the 2015 MSGP, a facility discharging stormwater associated with industrial activity is required to submit a Notice of Intent (“NOI”) to be covered under the Permit, prepare and implement a Stormwater Pollution Prevention Plan (“SWPPP”), conduct inspections, conduct monitoring and sampling, and meet other eligibility requirements.

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

Findings of Violation

21. Respondent is a company with its principal place of business located at 89 Front St. Marblehead, Massachusetts.

22. Respondent is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

23. Respondent owns and operates a boat maintenance, repair and storage operation located at 3 Beacon St., in Marblehead, Massachusetts (the “Facility”), which is classified under

Standard Industrial Classification (“SIC”) code 3732 (Boat Building and Repairing), listed under “Sector R– Ship and Boat Building and Repair Yards” of the 2015 MSGP.

24. The Facility encompasses approximately 2.5 acres and provides boat storage and maintenance services, including yacht repair, maintenance and upgrade services. Some services provided by the MTC are: repair and maintenance of diesel and gas engines, sanding with dustless sander, fiberglass repair and gel coat finishing, varnishing, bottom painting, woodwork, and pressure bottom washing.

25. Respondent has, at all times relevant to this Complaint controlled daily business and industrial operations at the Facility and otherwise meets the definition of “operator” of the Facility, as defined under the 2015 MSGP.

26. Respondent submitted a Notice of Intent to be covered for discharges of stormwater associated with industrial activity under the 2015 MSGP and received coverage under the 2015 MSGP, effective October 30, 2015. The NPDES ID for the Facility is MAR052014.

27. Respondent prepared a Stormwater Pollution Prevention Plan (“SWPPP”) for the Facility. The SWPPP identified three¹ storm drains that discharge into Marblehead Harbor.

28. EPA has determined that the storm drains are “point source[s]” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

29. Marblehead Harbor is a “navigable waters,” under Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

30. On May 18, 2018, authorized representatives of EPA inspected the Facility to review compliance with Federal and State environmental laws and regulations, including compliance

¹ Respondent has indicated to the Region that it intends on amending its SWPPP to account for two storm drains.
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U.S. EPA, Region 1
5 Post Office Square, Suite 100
Boston, MA 02109

with the CWA (the “Inspection”).

Count 1: Discharge of Stormwater Not in Compliance with the 2015 MSGP Permit Terms and Conditions

31. Section 3.1 of the 2015 MSGP requires that a permittee conduct routine facility inspections, at least quarterly, including but not limited to:

- a. Areas where industrial materials or activities are exposed to stormwater;
- b. Areas identified in the SWPPP and those that are potential pollutant sources;
- c. Areas where spills and leaks have occurred in the past three years;
- d. Discharge points; and
- e. Control measures used to comply with the effluent limits contained in the permit.

32. Section 3.1.2 of the 2015 MSGP requires a permittee to document all findings of the routine facility inspections on a facility inspection report.

33. MTC did not document quarterly routine facility inspections as required by the 2015 MSGP at the Facility for the following quarters: 2016 (Q2, Q4), 2017 (Q2) and 2018 (Q2).

34. Section 3.2 of the 2015 MSGP requires that a permittee conduct quarterly visual assessments of stormwater samples from each designated outfall. Furthermore, whenever the visual assessment shows evidence of stormwater pollution, the permittee must initiate the corrective action procedure.

35. Section 3.2.2 of the 2015 MSGP requires a permittee document all findings of the quarterly visual assessments on site.

36. MTC did not properly conduct and document quarterly visual assessments as

required by the 2015 MSGP at the Facility from October 30, 2015 through at least August 2018.

37. Section 6.2.1 of the 2015 MSGP applies specific pollutant benchmarks to certain sectors and subsectors. When a permittee applies for coverage under one of these sectors or subsectors, the permittee is required to conduct quarterly benchmark monitoring for each designated pollutant.

38. Through its Coastal Zone Management Program, the Commonwealth of Massachusetts has incorporated additional sector-specific requirements into the 2015 MSGP. These requirements include benchmark monitoring for aluminum, iron, lead, and copper for Sector R facilities.

39. MTC did not document quarterly benchmark sampling required by the 2015 MSGP at the Facility for the following quarters: 2016 (Q1, Q2, Q3, Q4), 2017 (Q1, Q2, Q3, Q4) and 2018 (Q1, Q2).

40. By discharging stormwater from the Facility into waters of the U.S. in violation of the terms and conditions of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and by failing to comply with all the conditions in the 2015 MSGP, Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a) from January 1, 2016 through at least August 2018.

CONSENT AGREEMENT

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:

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U.S. EPA, Region 1
5 Post Office Square, Suite 100
Boston, MA 02109

41. Respondent admits the jurisdictional allegations set forth in Section I above and hereby waives any defenses it might have as to jurisdiction and venue.

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

Waiver of Rights

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

Penalty

44. EPA proposes, and Respondent consents to, the assessment of a civil penalty of **\$15,000** for all violations contained in this CAFO.

Payment Terms

45. In agreeing to the penalty described in paragraph 44 above, EPA has taken into account the statutory penalty factors at Sections 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3).

46. Respondent shall pay a total penalty of \$15,000 due within 10 days of the date this CAFO becomes final.

47. Respondent shall make the payment by cashier's or certified check, or by wire transfer. Respondent shall include the case name and docket number (*In re: Marblehead Trading Company*; Docket No. CWA-01-2019-0008) on the face of the check or wire transfer confirmation. A check should be payable to "Treasurer, United States of America" and shall be remitted as follows:

If remitted by regular U.S. mail:

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

If remitted by any overnight commercial carrier:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
“D 68010727 Environmental Protection Agency”

In addition, at the time of payment, Respondent should also forward notice of payment of the civil penalty as well as copies of the payment check or payment receipt to:

Wanda Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code: ORC 04-6
Boston, Massachusetts 02109-3912

and

Jeff Kopf, Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code: OES 04-4
Boston, Massachusetts 02109-3912

48. Pursuant to Sections 309(g)(9) of the CWA, 33 U.S.C. §§ 1319(g)(9), 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

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

50. 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.

51. 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 herein.

52. 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.


53. 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 this CAFO is based, or for Respondent's violation of any applicable provision of law.

54. 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.

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

56. 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 MARBLEHEAD TRADING COMPANY



Ralph C. Anderson, Owner
Marblehead Trading Company

Date: 12/13/18

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:



Tim Conway, Acting Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1

Date: 1/29/19

FINAL ORDER

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

2. Pursuant to 40 C.F.R. §§ 22.18(b) & (c) of EPA's Consolidated Rules of Practice, the foregoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

3. 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 Regional Judicial Officer unless a petition to set aside the order is filed by a commenter pursuant to Section 309(g)(4)(C), 33 U.S.C. § 1319(g)(4)(C), and 40 C.F.R. Part 22.

Date: February 5, 2019



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

