

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Michael Wagner 9/27/11
Name of Case Attorney Date

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

Case Docket Number CWA-DI-2011-0052

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:

Mayhew Steel Products, Inc.
Turner Falls, MA

Total Dollar Amount of Receivable \$ 157,500 Due Date: 11/11/11

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

5 Post Office Square, Suite 100
BOSTON, MASSACHUSETTS 02109-3912

RECEIVED

2011 SEP 27 A 11:41

EPA ORC
OFFICE OF
REGIONAL HEARING CLERK
BY HAND WS

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

Re: In the Matter of: Mayhew Steel Products, Inc.; Docket No. CWA 01-2011-0052

Dear Ms. Santiago,

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

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Wagner".

Michael Wagner
Senior Enforcement Counsel
EPA Region 1

Enclosure

cc: Kenneth J. Albano, Esq.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

RECEIVED

2011 SEP 27 A 11: 41

In the Matter of:

Mayhew Steel Products, Inc.
Turner Falls, MA

Respondent.

Docket No. CWA-01-2011-0052

EPA ORC
OFFICE OF
REGIONAL HEARING CLERK

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

The Regional Administrator of the United States Environmental Protection Agency, Region I ("EPA"), issues this Consent Agreement and Final Order ("CAFO") to Mayhew Steel Products, Inc. ("Respondent"). EPA alleges that Respondent violated Sections 307(d) and 308 of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. §§ 1317(d) and 1318. 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

1. EPA alleges that Respondent discharged process water to a Publicly Owned Treatment Works ("POTW") in violation of a categorical pretreatment standard and a pretreatment effluent prohibition in violation of Section 307(d) of the CWA, 33 U.S.C. § 1317(d), and that the Respondent did not comply with reporting requirements for Industrial Users of a POTW in violation of 40 C.F.R. Part 403 and Section 308(a) of the CWA, 33 U.S.C. § 1318(a).

II. STATUTORY AND REGULATORY AUTHORITY

2. EPA takes this action under the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), for violation of Sections 307(d) and 308(a) of the Act, 33 U.S.C. §§ 1317(d) and

1318(a). Pursuant to Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), EPA notified the State of Massachusetts of this action, and has consulted with the Massachusetts Department of Environmental Protection ("MassDEP") on this action.

III. GENERAL ALLEGATIONS

3. Pursuant to Section 307(b) of the Clean Water Act, 33 U.S.C. §1317(b), the Administrator promulgated the National Categorical Pretreatment Standards governing the Metal Finishing Point Source Category (the "Metal Finishing Regulations"), which appear at 40 C.F.R. Part 433.

4. Section 307(d) of the CWA, 33 U.S.C. §1317(d), prohibits the operation of any source in violation of any applicable pretreatment standard established pursuant to Section 307(b) of the CWA, 33 U.S.C. §1317(b).

5. Mayhew Steel Products, Inc. ("Respondent") is a person within the meaning of Section 502(5) of the Act, 33 U.S.C. §1362(5).

6. The Respondent owns and operates a hand and edge tool manufacturing plant at 2 Sears Street Extension in Shelburne Falls, Massachusetts (the "Facility").

7. Since at least June 1, 2001, Respondent has been discharging pollutants, as defined at Section 502(6) of the Act, 33 U.S.C. §1362(6), into a publicly owned treatment works ("POTW"), as defined at 40 C.F.R. Part 403.3(o), that is owned and operated by the Town of Shelburne Falls, Massachusetts ("Shelburn Falls"), a municipality within the meaning of Section 502(4) of the Act, 33 U.S.C. §1362(4).

8. Respondent performed metal finishing operations in a portion of the Facility on which Respondent began construction in June 1985, after EPA proposed 40 C.F.R. Part 433 for promulgation. Respondent had not previously performed metal finishing operations at the Facility. Respondent's metal finishing operations were substantially independent of previously existing sources of wastewater at the Facility and a "new source" within the meaning of 40 C.F.R. §403.3(k).

9. The EPA, Region I is, and was at all times relevant to this action, the Control Authority, as defined by 40 C.F.R. §403.12(a).

FINDINGS OF VIOLATION

FAILURE TO SUBMIT A TIMELY BMR

10. Pursuant to Sections 307(b) and 308(a) of the Act, 33 U.S.C. §§ 1317(b) and 1318(a), the Administrator promulgated 40 C.F.R. §403.12(b). This regulation requires, among other things, that industrial users subject to categorical pretreatment standards submit a Baseline Monitoring Report ("BMR") to the Control Authority. The Respondent was required to submit a Metal Finishing BMR by March 4, 2001.

11. The Respondent failed to submit a timely BMR to the Complainant in accordance with 40 C.F.R. §403.12(b). The Respondent did not submit a BMR until January 27, 2009, and thus violated Sections 307 and 308 of the Act, 33 U.S.C. §§ 1317 and 1318.

FAILURE TO SUBMIT A 90 DAY COMPLIANCE REPORT

12. Pursuant to Sections 307(b) and 308(a) of the Act, 33 U.S.C. §§ 1317(b) and 1318(a), the Administrator promulgated 40 C.F.R. §403.12(d). This regulation requires, among other things, that new source industrial users subject to a categorical pretreatment standard submit a Report on Compliance ("90 Day Compliance Report") to the Control Authority within 90 days of the commencement of discharges. Respondent was required to submit to the Complainant a 90 day Compliance Report for the Metal Finishing Regulations by September 1, 2001.

13. In violation of Sections 307 and 308 of the Act, 33 U.S.C. §§ 1317 and 1381, the Respondent failed to submit a timely 90 Day Compliance Report to the Complainant.

FAILURE TO SUBMIT PERIODIC REPORTS ON COMPLIANCE

14. Pursuant to Sections 307(b) and 308(a) of the Act, 33 U.S.C. §§ 1317(b) and 1318(a), the Administrator promulgated 40 C.F.R. §403.12(e). This regulation requires, among other things, that industrial users subject to a categorical pretreatment standard submit Periodic Reports on Compliance ("Periodic Compliance Reports") to the Control Authority at least during the months of June and December.

15. In violation of Sections 307 and 308 of the Act, 33 U.S.C. §§ 1317 and 1318, Respondent failed to submit Periodic Compliance Reports to the Complainant from December 2001 until February 6, 2008.

FAILURE TO REPORT DISCHARGES OF HAZARDOUS WASTE

16. Forty C.F.R. § 403.12(p)(1) requires the Industrial User to "notify the POTW, the EPA Regional Waste Management Division Director, and State hazardous waste authorities in writing of any discharge into the POTW" of a substance that would be designated a "hazardous waste under 40 CFR part 261," within 180 days after the discharge. Under 40 C.F.R. § 261.22, "[a] solid waste exhibits the characteristic of corrosivity" and is designated a hazardous waste if "it is aqueous and has a pH...greater than or equal to 12.5...."

17. In violation of 40 C.F.R. § 403.12(p)(1), on numerous occasions after February 1986 Mayhew did not notify the appropriate authorities within 180 days of discharges of a hazardous waste into the POTW.

FAILURE TO MAINTAIN RECORDS

18. Under 40 C.F.R. § 403.12(o), Mayhew was required to maintain "any records of monitoring activities and results" for a minimum of three years.

19. Between at least December 2001 and February 2008, Mayhew did not retain pH effluent monitoring records, and thus failed to maintain a minimum of three years of wastewater

monitoring records in violation of 40 C.F.R. § 403.12(o).

FAILURE TO ACHIEVE COMPLIANCE WITH PRETREATMENT
STANDARDS FOR NEW SOURCES

20. At all times relevant to this action, Respondent was subject to, and required to comply with, the Pretreatment Standards for New Sources which appear at 40 C.F.R. §433.17.

21. On numerous occasions after February 11, 1986, the Respondent exceeded the pretreatment standards for new sources established under the Metal Finishing Regulations for zinc, in violation of 40 C.F.R. §433.17 and Section 307(d) of the Act, 33 U.S.C. §307(d).

FAILURE TO COMPLY WITH GENERAL PROHIBITIONS

22. Pursuant to Section 307(b) of the Act, 33 U.S.C. § 1317(b), the Administrator of the EPA established National Prohibited Discharge Standards prohibiting certain discharges into POTWs by non-domestic sources, including discharges with a pH of less than 5.0 standard units. These standards appear at 40 C.F.R. § 403.5(b)(2). All non-domestic sources were required to comply with the specific prohibitions established at 40 C.F.R. § 403.5(b)(2) by March 16, 1981.

23. The Respondent has periodically discharged effluent with a pH lower than 5.0 standard units to the POTW in violation of the 40 C.F.R § 403.5(b)(2) and Section 307(d) of the Act, 33 U.S.C. § 1317(d), from at least February 1986 until the present.

IV. CONSENT AGREEMENT

24. EPA and Respondent 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, 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:

25. Respondent admits the jurisdictional allegations in Section I and II above.

26. Respondent neither admits nor denies the specific factual allegations contained in Section III above.

V. WAIVER OF RIGHTS

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

VI. PENALTY

28. Complainant proposes, and Respondent consents to, the assessment of a civil penalty of one hundred seventy-seven thousand five hundred dollars (\$157,500).

VII. PAYMENT TERMS

29. In agreeing to the penalty described in paragraph 28 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). Respondents shall pay a total penalty of \$157,500 which shall be due within 15 calendar days of the effective date of this CAFO.

30. Respondent shall pay a penalty of \$157,500 for violation of Sections 301, 307, and 308 of the CWA and shall make payment by cashier's or certified check, payable to "United States Treasurer," and referencing the title and docket numbers of the action ("In the Matter of Mayhew Steel Tools, Inc., CWA-01-2011-0052"). 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\

31. Respondent shall note on the penalty payment checks the title and docket number of this case. Respondent shall submit copies of the checks to the following people:

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

and

Michael Wagner
Office of Environmental Stewardship (SEL)
U.S. Environmental Protection Agency
Region I
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

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

VIII. GENERAL PROVISIONS

33. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. §§ 1319(g)(9), a failure by the 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 current prevailing rates from the date of this CAFO. 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 nonpayment penalty 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 which 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.

34. The Final Order shall be binding upon Respondent and Respondent's officers,

directors, agents, servants, employees, and successors or assigns.

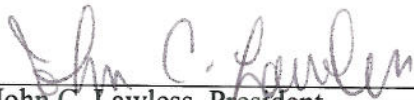
35. The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondent is hereby ordered to comply with the terms of the above Consent Agreement, which will become final thirty (30) days from the date it is signed by the Regional Judicial Officer unless a petition to set aside the order is filed by a commenter pursuant to Section 309(g)(4) (C) of the CWA, 33 U.S.C. 1319(g)(4) (C) and 40 C.F.R. Part 22.

36. Except as described in paragraph 33 of the Consent Agreement, each party shall bear its own costs and attorney's fees in connection with the action resolved by this CAFO.

FOR MAYHEW STEEL PRODUCTS, INC.

Date: _____

7/13/11




John C. Lawless, President
Mayhew Steel Products, Inc.

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date: _____

8-11-11



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

III. FINAL ORDER

37. 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 Act, 33 U.S.C. §§ 1319(g)(4)(A) and 1321(b)(6)(C)(i), and 40 C.F.R. § 22.45(b), and has not received any public comments.

38. Pursuant to Sections 309(g)(2) and 311(b)(6) of the Act, 33 U.S.C. §§ 1319(g)(2) and 1321(b)(6), and the delegated authority of the undersigned, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits," codified at 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order.

39. The Respondent is ordered to comply with the terms of the Consent Agreement, which will become final thirty (30) days from the date it is signed by the Regional Judicial Officer.

Date:

September 27, 2011

Jill T. Metcalf

Jill T. Metcalf
Acting Regional Judicial Officer
U.S. Environmental Protection Agency, Region 1

In the Matter of Mayhew Steel Products, Inc., Docket No. Docket No. CWA-01-2011-0052

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:

Two copies, hand-delivered:

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 1
5 Post Office Square, Suite 100
Mail Code: ORA18-1

A true and correct copy, by certified mail, return receipt requested and a copy of the Part 22 Rules:

Kenneth J. Albano, Esquire
Bacon Wilson, P.C.
33 State Street Springfield, MA 01103

Date:

9/27/2011



Michael Wagner
Senior Enforcement Counsel