

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Laura J. Beveridge 1/24/14
Name of Case Attorney Date

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

Case Docket Number CAA-01-2013-0047 & CERCLA-01-2013-0048

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:

Timothy Gaffney
JCI Jones Chemicals, Inc.
40 Railroad Avenue
Merrimack, NH 03054

Total Dollar Amount of Receivable \$ 40,920 Due Date: 8/2/14

SEP due? Yes _____ No _____ Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:
1st \$ 6,748 CAA + 6,189 CERCLA due 2/23/14
on _____
2nd \$ 6,817 + 6,961 due 4/24/14
on _____
3rd \$ 6,817 + 6,961 due 8/2/14
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 1

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

RECEIVED
2013 JAN 24 10:37
EPA ORC
OFFICE OF
REGIONAL HEARING CLERK

Reply to: (617) 918-1345
Fax: (617) 918-0345
Mail Code: OES 04-3

January 24, 2014

BY HAND

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

Re: *In the Matter JCI Jones Chemicals, Inc.* Docket Nos. CAA-01-2013-0047;
CERCLA 01-2013-0048

Dear Ms. Santiago:

Enclosed for filing are the following original documents, and one copy of each, relating to the above-referenced matter:

- i) Consent Agreement and Final Order
- ii) Administrative Complaint; and
- iii) Certificates of Service for both documents listed above.

Very truly yours,

Laura J. Beveridge
Enforcement Counsel

Enclosures

cc: Timothy Gaffney, JCI Jones Chemicals, Inc.; CT Corporation

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

IN THE MATTER OF)

JCI JONES CHEMICALS, INC.)

40 Railroad Avenue)
Merrimack, NH 03054)

Respondent)

Proceeding under Section 113(d) of)
the Clean Air Act, 42 U.S.C. § 7413(d); and)
Section 109(a) of the Comprehensive)
Environmental Response, Compensation, and)
Liability Act, 42 U.S.C. § 9609(a))

Docket Nos. CAA-01-2013-0047
CERCLA-01-2013-0048

CONSENT AGREEMENT
AND FINAL ORDER

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2013 JAN 24 P 10:38
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OFFICE OF
REGIONAL HEARING CLERK

CONSENT AGREEMENT

Complainant, the United States Environmental Protection Agency ("EPA"), having filed an Administrative Complaint and Notice of Opportunity for Hearing ("Complaint") against JCI Jones Chemicals, Inc., ("Respondent" or "JCI") herewith, and Respondent hereby agree that settlement of this matter is in the public interest and that entry of this Consent Agreement and Final Order ("CAFO") without further litigation is the most appropriate means of resolving this matter.

STATUTORY AND REGULATORY AUTHORITY

1. This CAFO resolves an administrative action for the assessment of monetary penalties brought pursuant to Section 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d); Section 109(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9609(a); and the 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.

2. The Complaint alleges that Respondent violated Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and implementing regulations set forth in 40 C.F.R. Part 68 when it failed to: (1) identify, evaluate, and control hazards related to the storage and handling of chlorine and sulfur dioxide at its facility in Merrimack, New Hampshire (“the Facility”) as required by 40 C.F.R. § 68.67; (2) document compliance with “recognized and generally accepted good engineering practices” reflecting industry best practices for the safe storage and handling of chlorine and sulfur dioxide as required by 40 C.F.R. § 68.65(d)(2); and (3) prepare an adequate emergency response plan containing procedures for notifying affected communities of an accidental release of chlorine and sulfur dioxide as required by 40 C.F.R. § 68.95.

3. In addition, the Complaint alleges that Respondent violated Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. Part 302 when it failed to immediately notify the National Response Center of an unpermitted release of sodium hypochlorite above the reportable quantity set forth in 40 C.F.R. Table 302.4.

4. The allegations are fully set forth in the Complaint filed herewith.

TERMS OF SETTLEMENT

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

6. 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. Respondent waives any defenses it might have as to jurisdiction and venue and,

without admitting or denying the factual and legal allegations contained in the Complaint, consents to the terms of this CAFO.

7. Respondent hereby waives the right to a judicial or administrative hearing on any issue of law or fact set forth in the Complaint and the right to appeal the Final Order.

8. Respondent represents that it is currently revising its Process Hazard Analysis for the Facility and that it is otherwise operating the Facility in compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68, and Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

9. Respondent further certifies that all information provided to EPA for the purposes of determining compliance with Section 112(r) of the CAA and Section 103(a) of CERCLA, along with all information provided to establish JCI's net worth is true and accurate.

10. Pursuant to Section 113(e) of the CAA, 42 U.S.C. § 7413(e), Section 109(a) of CERCLA, 42 U.S.C. § 9609(a), and taking into account the relevant statutory penalty criteria, the facts alleged in the Complaint, and such other circumstances as justice may require, EPA has determined that it is fair and proper to assess a total civil penalty of \$40,920.00 for the violations alleged in this matter.

11. Of this total civil penalty, \$20,244.00 shall be designated as the "CAA penalty" and \$20,676.00 shall be designated as the "CERCLA penalty."

12. Respondent shall pay both the CAA penalty of \$20,244.00 and the CERCLA penalty of \$20,676.00 in three installments and in the manner specified below in Paragraphs 13 through 15. Interest at a rate of three percent (3%) per annum shall be included in all payments made more than thirty (30) days after the effective date of the CAFO and shall accrue from thirty (30) days after the effective date of the CAFO.

13. Respondent shall pay the total penalty amount of \$40,920.00 plus interest according to the following schedule:

- a. The first CAA penalty payment of \$6,748.00 and the first CERCLA penalty payment of \$6,892.00 shall be made within thirty (30) days of the effective date of this CAFO.
- b. The second CAA penalty payment of \$6,817.00 (\$6,748.00 principal plus \$69.00 accrued interest) and the second CERCLA penalty payment of \$6,961.00 (\$6,892.00 principal plus \$69.00 accrued interest) shall be made within ninety days (90) days of the effective date of this CAFO.
- c. The third and final CAA penalty payment of \$6,817.00 (\$6,748.00 principal plus \$69.00 accrued interest) and the third and final CERCLA penalty payment of \$6,961.00 (\$6,892.00 principal plus \$69.00 accrued interest), shall be made within one hundred and fifty (150) days of the effective date of this CAFO.

14. Respondent shall pay each installment of the CAA penalty by submitting a bank, cashier's or certified check in the amount specified in Paragraph 13 made payable to the order of the "*Treasurer, United States of America*" and referencing the case name (*In the Matter of JCI Jones Chemicals, Inc.*) and docket number (CAA-01-2013-0047) of the CAA action on its face to:

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

In addition, at the time of payment, Respondent shall simultaneously send notice of each payment and copies of the check to:

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

and

Laura Beveridge
Enforcement Counsel (Mail Code OES 04-3)
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

15. Respondent shall pay the CERCLA penalty by submitting a bank, cashier's or certified check in the amount specified in Paragraph 13 made payable to the order of the "**EPA Hazardous Substance Superfund**" and referencing the case name (*In the Matter of JCI Jones Chemicals, Inc.*) and docket number (CERCLA-01-2013-0048) of the CERCLA action on its face to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
PO Box 979076
St. Louis, MO 63197-9000

In addition, at the time of payment, Respondent shall simultaneously send notice of the payment and copies of the check to:

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

and

Laura Beveridge
Enforcement Counsel (Mail Code OES 04-3)
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

16. If Respondent fails to make any of the payments required by Paragraph 13 by the due dates specified therein, the total penalty amount of \$40,920.00, plus all accrued interest as calculated pursuant to Paragraph 18 and/or Paragraph 19 (less payments already made, if any), shall become immediately due to the United States upon such failure. Interest shall continue to accrue on all unpaid amounts until the total amount due has been received by the United States. Respondent shall be liable for such amounts regardless of whether EPA has notified Respondent of its failure to pay or made demand for payment.

17. 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.

18. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), if Respondent fails to pay any of the CAA penalty amount described in Paragraph 13, plus interest thereon, it will be subject to an action to compel payment, plus interest, enforcement expenses, and a nonpayment penalty. Interest will be assessed on the penalty if it is not paid by the due dates established herein. In that event, interest will accrue from the date the CAFO is signed by the Regional Judicial Officer, at the "underpayment rate" established pursuant to 26 U.S.C § 6621(a)(2). In the event that the penalty is not paid when due, an additional charge will be assessed to cover the United States' enforcement expenses, including attorneys fees and collection costs. A quarterly nonpayment penalty will be assessed for each quarter during which the failure to pay the penalty persists. Such nonpayment penalty shall be 10 percent of the

aggregate amount of Respondent's outstanding penalties and nonpayment penalties hereunder accrued as of the beginning of such quarter.

19. In the event that any payment of the CERCLA penalty amount described in Paragraph 13, plus interest thereon, is not paid when due, the penalty plus accrued interest shall be payable with additional interest accruing 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 (6) percent per year will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid 31 C.F.R. § 901.9(d).

20. 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.

21. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), for the violations alleged in the Complaint. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to federal laws and regulations administered by EPA for matters not addressed in the Complaint or this CAFO, and it is the responsibility of Respondent to comply with all applicable provisions of federal, state, or local law.

22. Except as specifically settled herein, 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 are based, or for Respondent's violation of any applicable provision of law.

23. This CAFO in no way relieves Respondent or its employees of any criminal liability. EPA reserves all 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.

24. This CAFO shall not relieve Respondent of its obligations to comply with all applicable provisions of federal, state, or local law; nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

25. The Parties shall bear their own costs and fees in this action, including attorneys 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.

26. 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.

27. Pursuant to 40 C.F.R. § 22.31, the effective date of this CAFO shall be the date on which the Regional Judicial officer signs this CAFO.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

U.S. Environmental Protection Agency:

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

Date: 01/17/14

JCI Jones Chemicals, Inc.
By: Timothy J. Gaffney
Timothy J. Gaffney
Executive Vice President

Date: January 2, 2014

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the terms of the above Consent Agreement, effective on the date of filing with the Regional Hearing Clerk.

Date: January 21, 2014

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

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

IN THE MATTER OF)	
)	Docket Nos. CAA-01-2013-0047
)	CERCLA-01-2013-0048
)	
JCI JONES CHEMICALS, INC.)	
)	
40 Railroad Avenue)	
Merrimack, NH 03054)	
)	
Respondent)	
)	
Proceeding under Section 113(d) of)	
the Clean Air Act, 42 U.S.C. § 7413(d); and)	
Section 109(a) of the Comprehensive)	
Environmental Response, Compensation, and)	
Liability Act, 42 U.S.C. § 9609(a))	
)	

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Consent Agreement and Final Order has been sent to the following persons on the date noted below:

Original and one copy,
hand-delivered:

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:

CT Corporation
(Designated Agent for JCI Chemicals, Inc.)
8040 Excelsior Drive, Suite 200
Madison, WI 53717
866-924-9247

and

Timothy J. Gaffney
Executive Vice President
JCI Jones Chemicals, Inc.
100 Sunny Sol Boulevard
Caledonia, New York 14423

Dated:

1/24/2014



Laura J. Beveridge
Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (OES04-3)
Boston, MA 02109-3912
Tel (617) 918-1345
Fax (617) 918-0345