

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Rivera for Gregory Dain
Name of Case Attorney

11/19/08
Date

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

Case Docket Number RCRA-01-2008-0063

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:

Hudson Lock LLC
81 Apsley Street
Hudson, MA

Total Dollar Amount of Receivable \$ 70,000 Due Date: _____

SEP due? Yes _____ No _____ Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

- 1st \$ 14,000 on 2/18/08
- 2nd \$ 15,120 on 5/18/08
- 3rd \$ 14,840 on 9/18/09
- 4th \$ 14,560 on 02/18/10
- 5th \$ 11,280 on 5/18/09

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 _____

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

RECEIVED

REGION I

2008 NOV 19 P 1:12

IN THE MATTER OF:)
)
 Hudson Lock LLC)
 81 Apsley Street)
 Hudson, Massachusetts,)
)
 Respondent)
)
 Proceeding under Section)
 3008(a) of the Resource Conservation)
 and Recovery Act, 42 U.S.C. § 6928(a))
 _____)

Docket No.)
 RCRA-01-2008-0063)
 EPA CRC)
 REGIONAL HEARING CLERK)

CONSENT AGREEMENT
 AND FINAL ORDER

CONSENT AGREEMENT AND FINAL ORDER

This is a Consent Agreement and Final Order (“CAFO”) assessing a civil penalty and requiring compliance with certain requirements of the Resource Conservation and Recovery Act (RCRA) pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g). This agreement is being filed pursuant to Section 22.13(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits. 40 C.F.R. Part 22. Pursuant to that Section, a proceeding may be simultaneously commenced and concluded by the issuance of a consent agreement and final order. The Complainant is the Enforcement Manager, Office of Environmental Stewardship, United States Environmental Protection Agency (EPA), Region I. Complainant alleges that Respondent, Hudson Lock LLC (Hudson or Respondent), violated Sections 3002 and 3004 of RCRA, 42 U.S.C. §§ 6922 and 6924, and state and federal regulations promulgated to implement those statutory provisions.

Consent Agreement and Final Order; Hudson Lock LLC: Docket No. RCRA-01-2008-0063

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Complainant has notified the Commonwealth of Massachusetts of the issuance of this CAFO.

GENERAL PROVISIONS

1. Respondent admits that Complainant has jurisdiction to initiate and settle this proceeding.
2. Respondent neither admits nor denies the facts or conclusions of law set forth in this CAFO.
3. Respondent agrees to waive any right to contest any statement of fact or violation or penalty amount set forth in this CAFO and consents to the issuance of this CAFO without adjudication. Respondent also waives its right to appeal the Final Order portion of this CAFO and waives any right to seek attorneys fees under the Equal Access to Justice Act, 5 U.S.C. § 504.
4. Each party shall bear its own costs and attorneys fees in the action resolved by this Consent Agreement.

FACTUAL BASIS AND ALLEGED VIOLATIONS

5. Respondent is a limited liability corporation organized under the laws of the Commonwealth of Massachusetts. Respondent is therefore a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
6. Respondent is the “owner” and “operator” as defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(4) of the Hudson Lock LLC facility located at 81 Apsley Street, Hudson, Massachusetts (facility).
7. On April 2, 2007 and February 13, 2008, authorized representatives of EPA performed

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an inspection of the facility to determine Respondent's compliance with RCRA.

8. Respondent generates wastes at the facility that are hazardous wastes as defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), 40 C.F.R. § 260.10, and 310 CMR 30.010 of the Commonwealth of Massachusetts Hazardous Waste Regulations. Respondent is, therefore, subject to the standards for generators of hazardous waste set forth in the Commonwealth of Massachusetts Hazardous Waste Regulations, 310 CMR 30.000 *et seq.* Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, EPA has authorized these Massachusetts regulations as being substantially equivalent to the federal hazardous waste generator regulations found at 40 C.F.R. Part 262. Accordingly, the Massachusetts generator regulations operate in lieu of the federal regulations. Respondent is also subject to the federal Land Disposal Restrictions at 40 C.F.R. Part 268.

9. On June 11, 2007, EPA sent to Respondent a request for information pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a). Respondent subsequently submitted information in response to EPA's RCRA information request.

10. Based on EPA's inspections of the facility and Respondent's response to EPA's information request, EPA has determined that, at the time of the violations cited herein Respondent was a "large quantity generator" of hazardous waste, as defined in 310 CMR 30.340(1), and that Respondent violated RCRA and its implementing regulations, as follows:

Count I - Failure to conduct adequate hazardous waste determinations.

11. Pursuant to 310 CMR 30.302 any person who generates a waste shall determine if that waste is a hazardous waste. Pursuant to 40 C.F.R. § 268.7(a), a generator of hazardous

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waste must adequately characterize the waste to determine if it has to be treated before it can be land disposed.

12. At the time of EPA's RCRA inspection of the facility on April 2, 2007, Respondent had failed to make adequate hazardous waste determinations for twelve (12) different waste streams contained within a total of thirty-four (34) individual 55-gallon containers.

13. Respondent generated the following waste streams, which were contained in a total of thirty-four (34) 55-gallon containers at the time of EPA's April 2, 2007 inspection, without determining adequately if the waste streams were hazardous waste:

- 1) Unknown wastes (two containers);
- 2) Pit Sludge (Plating Waste #1);
- 3) Black Magic Solids;
- 4) Die-Brite 54 Solids;
- 5) Waste Oil (Easy Cool 401 and Safety Kool 300);
- 6) Grinding dust;
- 7) Used Macrolead;
- 8) Die-Brite 54 Liquids;
- 9) Die-Brite 40 Liquids;
- 10) Aqualac;
- 11) Plating Waste #3 and #5; and
- 12) Plating Stream.

14. By failing to make adequate hazardous waste determinations, Respondent violated 310 CMR 30.302 and 40 C.F.R. § 268.7(a).

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Count II: Failure to comply with the general requirements for ignitable, reactive, or incompatible wastes

15. Pursuant to 30 CMR 30.341(1)(f), a large quantity generator of hazardous waste must follow the general requirements found in 30 CMR 30.560 for the treatment, storage, disposal or use of ignitable or reactive waste, and the mixture or commingling of incompatible wastes, or incompatible wastes and materials, such that the treatment, storage, use or disposal does not, and does not threaten to:

- (a) generate extreme heat or pressure, fire or explosion, or violent reaction;
- (b) produce uncontrolled toxic mists, fumes, dusts, or gases which may threaten public health, safety, welfare or the environment;
- (c) produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of explosion;
- (d) damage the structural integrity of the device or facility containing the waste; or
- (e) through other means threaten public health, safety, or welfare, or the environment.

Pursuant to 310 CMR 30.342(f), a large quantity generator of hazardous waste must follow the requirements of 310 CMR 30.688(4), which requires that a container holding a hazardous waste that is incompatible with any waste or other material stored nearby in other containers or in piles, open tanks or surface impoundments be separated from the other waste or other material or protected from it by means of a dike, berm, wall, or other device.

16. During his April 2, 2007 inspection, EPA's inspector observed that Respondent stored incompatible wastes and materials in a centralized location (basement) without any controls in place to prevent contact of those wastes with each other, with leaking wastes or

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materials in the area, or with releases of wastes from an area above the basement. Interaction of the various chemicals stored in Respondent's basement waste storage area had the potential to result in a number of serious hazards, including the generation of flammable gases and toxic fumes, intense or violent chemical reactions, and explosion. EPA's inspector identified at least eleven (11) different chemical compounds stored in the basement area of Respondent's facility without any means of separation, as follows:

- 1) ammonium hydroxide;
- 2) polychlorinated alkanes;
- 3) nitric acid;
- 4) ammonium bifluoride;
- 5) hydrofluoric acid;
- 6) mineral oil;
- 7) diethanolamine;
- 8) caustic soda;
- 9) sodium chlorite solution;
- 10) petroleum oil; and
- 11) hydrochloric acid.

17. By storing and commingling incompatible wastes and materials without separation in a manner that threatened to: (a) generate extreme heat or pressure, fire or explosion, or violent reaction; (b) produce uncontrolled toxic mists, fumes, dusts or gases in sufficient quantities to pose a threat to public health, safety or welfare or the environment; (c) produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of explosion; (d) damage the structural integrity of the device or facility containing the waste; or (e) through other means threaten public health, safety, or welfare or the environment, Respondent violated 310 CMR 30.560(3), as referenced by 30 CMR 30.341(1)(f), and 310 CMR 30.688(4), as referenced by 30 CMR 30.342(f).

Count III: Failure to mark and label containers of hazardous waste with the words “Hazardous Waste”; the hazardous waste identified in words (e.g., acetone, toluene) and the type of hazards associated with the waste in words (e.g., ignitable, toxic, dangerous when wet)

18. Pursuant to 310 CMR 30.341(2)(a-c), a large quantity generator of hazardous waste shall clearly mark and label tanks or containers containing hazardous waste with the name of the hazardous waste, in words; the type of hazards associated with the waste, in words; and the words “Hazardous Waste.”

19. At the time of EPA’s April 2, 2007 inspection, at least twenty-two (22) containers containing hazardous waste were not marked or labeled to indicate the name of the hazardous waste, in words; the type of hazards associated with the waste, in words, or the words “Hazardous Waste.”

20. By failing to mark and label the containers referenced in paragraph 19 above with the name of the hazardous waste, in words; the type of hazards associated with the waste, in words; or the words “Hazardous Waste,” Respondent violated 310 CMR 30.341(2)(a-c).

Count IV: Failure to label containers storing hazardous waste with the accumulation date

21. Pursuant to 310 CMR 30.341(2)(d), a large quantity generator of hazardous waste shall clearly mark and label tanks or containers containing hazardous waste with the initial date of waste accumulation.

22. During EPA’s April 2, 2007 inspection, at least twenty-seven (27) containers of hazardous waste stored in the basement of Respondent’s facility were not marked or labeled to indicate the initial date of waste accumulation.

23. By failing to mark or label the containers referenced in paragraph 22 above with the initial date of waste accumulation, Respondent violated 310 CMR 30.341(2)(d).

Count V: Failure to conduct weekly inspections of containers holding hazardous wastes

24. Pursuant to 310 CMR 30.686, as referenced by 310 CMR 30.342(1)(d), large quantity generators of hazardous waste must implement a weekly inspection program in order to look for containers that are leaking or deteriorating as a result of corrosion or other factors and to inspect the area's containment system.

25. At the time of EPA's April 2, 2007 inspection, Respondent had failed to implement a weekly inspection program for the hazardous waste storage area in the basement of Respondent's facility in order to look for containers that were leaking or deteriorating as a result of corrosion or other factors and to inspect the area's containment system.

26. By failing to implement a weekly inspection program for the hazardous waste storage area in the basement of Respondent's facility, Respondent violated 310 CMR 30.686, as referenced by 310 CMR 30.342(1)(d).

Count VI: Failure to ensure that containers holding hazardous wastes are in good condition

27. Pursuant to 310 CMR 30.683, as referenced by 310 CMR 30.342(1)(a), the owner or operator of a facility that generates hazardous waste shall transfer hazardous waste from containers that are not in good condition, or which begin to leak, to a container in good condition, or shall manage the hazardous waste in some other way that complies with the requirements of 310 CMR 30.000.

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28. During his April 2, 2007 inspection, EPA's inspector observed at least four (4) hazardous waste containers stored in the basement storage area at Respondent's facility that were not in good condition and were leaking their contents into the surrounding area. At the time of EPA's inspection, Respondent had not transferred the hazardous waste from those containers to containers in good condition and had not managed the hazardous waste in some other way that complies with the requirements of 310 CMR 30.000.

29. By failing to transfer the hazardous waste from the containers referenced in paragraph 28 above to containers in good condition or manage the hazardous waste in some other way that complies with the requirements of 310 CMR 30.000, Respondent violated 310 CMR 30.683, as referenced by 310 CMR 30.342(1)(a).

TERMS OF SETTLEMENT

30. Respondent certifies that it has come into compliance with the RCRA requirements cited in Counts I through VI above. In addition, Respondent certifies that it is operating its facility in compliance with all other applicable requirements of RCRA.

31. Based upon the nature of the violations and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of seventy thousand dollars (\$70,000), plus accrued interest, according to the following payment schedule:

(a) the first installment of \$14,000 (fourteen thousand dollars), which includes no interest, shall be paid within thirty (30) calendar days of the effective date of this CAFO as set forth in the Final Order herein;

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(b) the second installment of \$15,120 (fifteen thousand one hundred twenty dollars), which includes interest of \$1,120, shall be paid within one hundred and fifty (150) calendar days of the effective date of this CAFO as set forth in the Final Order herein;

(c) the third installment of \$14,840 (fourteen thousand eight hundred forty dollars), which includes interest of \$840, shall be paid within two hundred seventy (270) calendar days of the effective date of this CAFO as set forth in the Final Order herein;

(d) the fourth installment of \$14,560 (fourteen thousand five hundred sixty dollars), which includes interest of \$560, shall be paid within three hundred ninety (390) calendar days of the effective date of this CAFO as set forth in the Final Order herein;

(e) the fifth and final installment of \$14,280 (fourteen thousand two hundred eighty dollars), which includes interest of \$280, shall be paid within five hundred ten (510) calendar days of the effective date of this CAFO as set forth in the Final Order herein;

(f) Acceleration Clause: if Respondent fails to make any installment payment by the due date, as set forth above, all remaining installments shall become immediately due and payable as of the missed payment date. Interest on such unpaid penalty amounts shall accrue from the missed payment date.

32. Respondent consents to the issuance of this CAFO and consents for the purposes of settlement to the payment of the civil penalty cited in the foregoing paragraph.

33. Each payment of the civil penalty installments set forth in paragraph 31, above, shall be made by a bank, certified or cashier's check that references the Docket Number of this action (RCRA-01-2008-0063) and makes note of the title ("In the Matter of: Hudson Lock, LLC"), payable to the "Treasurer, United States of America." Respondent shall send each check to:

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

At the time of each payment, Respondent shall send a notice of such payment including a copy of the check to:

Regional Hearing Clerk
Office of Regional Counsel (RAA)
U.S. Environmental Protection Agency
One Congress Street, Suite 1100
Boston, MA 02114-2023

and to:

Gregory Dain, Esq.
Office of Environmental Stewardship (SEL)
U.S. Environmental Protection Agency
One Congress Street
Boston, MA 02114-2023

34. 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 agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

35. 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. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). A charge will be assessed to cover

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the costs of debt collection, including processing and handling costs and attorneys fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually 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).

36. All penalties, interest, and other charges shall represent penalties assessed by EPA, and shall not be deductible for purposes of federal taxes.

37. Payment of the penalties, interest, or other charges does not waive, suspend, or modify Respondent's responsibility to comply with the requirements of all of the federal laws and regulations administered by EPA, and shall not be a defense to any actions subsequently commenced pursuant to said laws and regulations.

38. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law.

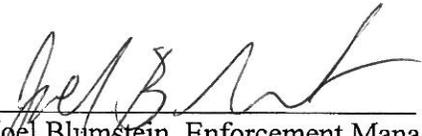
39. This CAFO resolves only Respondent's liability for and only provides Respondent, its officers and employees a release for federal civil penalties for those specific allegations set forth in Counts I through VI above. Complainant reserves any rights and remedies available to it to enforce the provisions of this CAFO, of RCRA and its implementing provisions, or of any other federal, state or local laws or regulations, following the entry of this CAFO. Nothing in this CAFO shall prevent Complainant from taking any necessary action to address conditions at Respondent's facility that may pose an imminent and substantial endangerment to public health or the environment. This CAFO in no way relieves Respondent of any criminal liability.

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40. 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 Consent Agreement and to execute and legally bind that party to it.

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For Complainant:

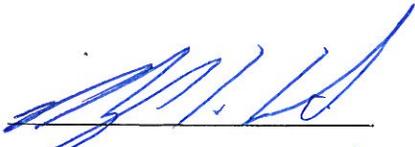


Joel Blumstein, Enforcement Manager
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1

Date: 11/17/08

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For Respondent:

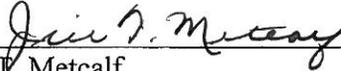


Title: *Managing Member*
Hudson Lock, LLC

Date: *11/5/08*

FINAL ORDER

In accordance with 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of the referenced Consent Agreement. This Final Order shall become effective upon filing, in accordance with 40 C.F.R. § 22.31(b).



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

Date: November 18, 2008

