

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Rivera for Thomas Olivier 7/1/11
Name of Case Attorney Date

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

Case Docket Number CAA-01-2011-0016

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:

Harbor Industries, LLC
4744 Shelburne Rd
Shelburne, VT

Total Dollar Amount of Receivable \$ 80,000 Due Date: 7/30/11

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
JUN 30 2011
EPA ORC WS
Office of Regional Hearing Clerk

June 30, 2011

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

Re: Harbour Industries, LLC, Docket No. CAA-01-2011-0016

Dear Ms. Santiago:

Please file the enclosed Consent Agreement and Final Order in Docket No. CAA-01-2011-0016. I enclose an extra copy.

I certify that this day I have served a copy by first class mail on:

Susan Franzetti, Esq.
Nijman Franzetti LLP
10 South LaSalle St., Suite 3600
Chicago, IL 60603

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas T. Olivier".

Thomas T. Olivier
Senior Enforcement Counsel

Encl.

cc: Susan Franzetti, Esq.

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION I

RECEIVED

JUN 30 2011

EPA ORC WS
Office of Regional Hearing Clerk

In the Matter of)
)
)

Harbour Industries, LLC)
Respondent)
_____)
)

Docket No: CAA-01-2011-0016

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency ("EPA") issued a Complaint and Notice of Opportunity for Hearing to Respondent Harbour Industries, LLC ("Respondent") on January 14, 2011. Respondent has moved for and been granted an extension of time in which to file an answer.

The EPA and Respondent agree that settlement of this matter is an 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 of the parties, it is hereby agreed:

I. PRELIMINARY STATEMENT

- A. The Complaint seeks a civil penalty of \$123,840, pursuant to Section 113(d) of the Clean Air Act, (the "Act"), 42 U.S.C. § 7413(d).
- B. The Complaint alleges that Respondent violated condition #s 5 and 12 of the "Air Pollution Control Permit to Construct and Operate #AOP-06-051" ("Permit"), issued by the Vermont Department of Environmental Conservation, concerning emissions tracking

procedures and an operations and maintenance plan for pollution control equipment. The Complaint does not allege any violations of air emissions limitations.

- C. The provisions of this Consent Agreement and Final Order (“CAFO”) shall apply to and be binding on EPA and on Respondent, its officers, directors, partners, successors and assigns.
- D. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint. Respondent waives any defenses it might have as to jurisdiction and venue; and, without admitting or denying the facts and violations alleged in the Complaint, consents to the terms of this CAFO.
- E. Respondent hereby waives its right to request a judicial or administrative hearing on any issue of law or fact set forth in the Complaint, and waives its right to appeal the Final Order.

II. DEFINITIONS

- A. “Effective Date” means the date on which the Consent Agreement and Order is filed with the Regional Hearing Clerk.

III. TERMS OF SETTLEMENT

- A. Respondent represents that it is operating in compliance with conditions #5 and #12 of its Permit.
- B. Training. Within 120 days of the Effective Date of this CAFO, Respondent will provide training to all of its employees with direct or supervisory responsibility for compliance with the Permit.

1. The training will consist of at least six hours of presentation and discussion, presented by a qualified environmental professional, and at a minimum will cover the federal Clean Air Act and Vermont air regulatory and permitting processes, compliance with Permit conditions, monitoring, recordkeeping, reporting, air pollution control practices to minimize emissions, and effective communications with air pollution control agencies.
 2. Within 180 days of the Effective Date of this CAFO, Respondent shall submit a Training Report to EPA describing the training program and documenting completion of the training by all employees with direct or supervisory responsibility for compliance with the Permit.
- C. Stipulated Penalties. In the event that Respondent fails to comply with any of the terms or provisions of this CAFO relating to the training requirements of Section III.B, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
1. For a failure to perform the training as set forth in Section III.B.1, Respondent shall pay a stipulated penalty of \$10,000.
 2. For failure to submit a complete and timely Training Report under Section III.B.2, Respondent shall pay a stipulated penalty of \$500 for each day after the Training Report was originally due under Section III.B.2 until the report is submitted.
 3. The determinations of whether the training has been completed in accordance with the requirements of Section III.B., whether the Respondent has made a good faith, timely effort to implement the training, and whether a Force Majeure event has delayed implementation of the training in accordance with Attachment A, shall be

made by EPA in the exercise of its reasonable discretion. If EPA determines that the training has not been completed in accordance with the requirements of Section III.B., EPA shall provide Respondent with a written notice stating the basis for its decision, including a description of the requirements of Section III.B which the EPA contends were not completed by Respondent.

D. Civil Penalty. In light of the above, and taking into account such other circumstances as justice may require, EPA has determined to assess a penalty for the violations alleged in the Complaint in the amount of eighty thousand dollars (\$80,000).

1. Respondent shall pay the penalty of \$80,000 so that payment is received within thirty (30) days of the Effective Date of the Consent Agreement and Final Order.
2. Respondent shall make payments by submitting a cashier's or certified check, to the order of the "Treasurer, United States of America," in the required amount, to:

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

Respondent shall note the case name and docket number of this action on the check and in an accompanying cover letter, and shall provide copies of the check and letter to:

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

and to:

Thomas T. Olivier, Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1

5 Post Office Square – Suite 100 (Mail Code OES04-3)
Boston, Massachusetts 02109-3912

3. The penalty paid pursuant to this CAFO is a civil penalty within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and is not a tax deductible expenditure for purposes of federal law.

IV. GENERAL PROVISIONS

- A. The dispute resolution procedures of Attachment B shall be the exclusive mechanism to resolve disputes arising under or with respect to Section III.B (Training) and Attachment A of this CAFO, including stipulated penalties relating to Section III.B.
- B. No other disputes shall be subject to dispute resolution procedures, and such procedures shall not apply to actions by EPA to enforce obligations of Respondent that have not been disputed in accordance with this Section.
- C. Pursuant to Section 113(d)(5) of the Act, if Respondent fails to pay any penalty amount 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 date established herein. In that event, interest will accrue from the date the Consent Agreement and Final Order was signed by the EPA Regional Judicial Officer, at the "underpayment rate" established pursuant to 26 U.S.C § 6621(a)(2). In the event that 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.

- D. Notices. Reports and notices required under this CAFO shall be submitted by electronic mail and mailed by postal or courier service, no later than the date specified in this CAFO, to:

Thomas T. Olivier, Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square – Suite 100 (Mail Code OES04-3)
Boston, Massachusetts 02109-3912
Email: Olivier.Tom@EPA.gov

In all reports or notices including, without limitation, the SEP Completion Report, submitted to EPA pursuant to this CAFO, Respondent shall, by one of its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

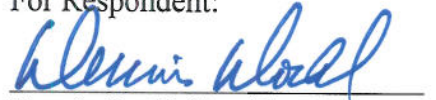
I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, the information is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

- E. This Consent Agreement and Final Order constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 113 of the Act for the violations alleged in the Complaint. Compliance with this Consent Agreement and Final Order shall not be a defense to any other actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with said laws and regulations. EPA reserves all its other criminal and civil enforcement

authorities, including the authority to seek injunctive relief and the authority to address imminent hazards.

- F. The parties shall bear their own costs and fees in this action.
- G. The undersigned representative of the Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and to execute and legally bind Respondent to it.

For Respondent:


Dennis Dodd, President
HARBOUR INDUSTRIES, LLC

6/24/11
Date

For Complainant:

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

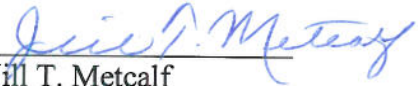
06/29/11
Date

Thomas T. Olivier
Thomas T. Olivier
Senior Enforcement Counsel
U.S. Environmental Protection
Agency, Region I

6/27/11
Date

V. FINAL ORDER

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


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

Date *June 30, 2011*

ATTACHMENT A: Force Majeure

A. "Force Majeure" for purposes of this CAFO, is defined as any event arising from causes beyond the control of Respondent, including its contractors and subcontractors, that delays or prevents the timely performance of a SEP under this CAFO notwithstanding Respondent's best efforts to avoid the delay. "Best efforts" include anticipating any potential Force Majeure event and addressing the effects of any such event (a) as it is occurring, and (b) after it has occurred, such that the delay is minimized to the greatest extent possible. Force Majeure does not include Respondent's financial inability to perform any action under a SEP.

B. If an event occurs which causes or may cause Respondent to fail to fully comply in a timely manner with any provision of a SEP, Respondent shall provide written notice via electronic mail and overnight mail to EPA within seven (7) days of when Respondent first knew or should have known of the event. In the notice, Respondent shall specifically reference this Force Majeure Attachment A, and describe the expected length of time the delay or impediment to performance may persist; the known or suspected causes of the delay or impediment; the measures taken or to be taken by Respondent to prevent or minimize the delay or impediment; and the timetable by which those measures will be implemented by Respondent.

C. Failure by Respondent to comply with the notice requirements set out in Paragraph B, above, shall render the remainder of this Attachment A void and of no effect as to the particular event involved, and shall constitute a waiver of Respondent's rights under this CAFO to obtain an extension of time based on such event.

D. If the EPA agrees that Respondent's failure to comply with a provision of a SEP is attributable to Force Majeure, the EPA and Respondent shall stipulate in writing to an extension

of time for the performance of the affected requirements of the SEP, not to exceed the amount of time lost due to the actual unavoidable delay resulting from such circumstances. Stipulated penalties shall not accrue for the number of days constituting the actual unavoidable delay caused by such circumstances.

ATTACHMENT B: Dispute Resolution

A. Informal Dispute Resolution: Any dispute subject to dispute resolution under this CAFO shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Respondent provides written notice to EPA describing the nature of the dispute and requesting informal negotiations to resolve it. The period of informal negotiations shall not exceed twenty (20) days beyond the date that EPA receives Respondent's written notice unless EPA and Respondent agree in writing to a longer period. If the parties cannot resolve a dispute by informal negotiations, then the position advanced by EPA shall be considered binding unless, within fifteen (15) days after the conclusion of the informal negotiation period, Respondent invokes formal dispute resolution procedures as set forth below.

B. Formal Dispute Resolution: Respondent shall invoke formal dispute resolution procedures, within the time period provided in the preceding Section A, by providing written notice to EPA containing a statement of position regarding the matter in dispute. The statement of position shall include, but may not be limited to, any factual data, analysis, or opinion supporting Respondent's position and any supporting documentation relied upon by Respondent. Following receipt of Respondent's statement of position submitted pursuant to this Paragraph, EPA will serve on Respondent its statement of position. EPA's statement of position shall include, but may not be limited to, any factual data, analysis, or opinion supporting EPA's position and any supporting documentation relied upon by EPA.

C. Following receipt of the statements of position submitted by Respondent and EPA pursuant to Section B, the Director of the Office of Environmental Stewardship (“OES Director”), EPA Region 1, will issue a determination resolving the dispute. The determination of the OES Director shall be final. The parties to this CAFO each reserve any rights they may have under applicable law with respect to any appeal from the determination of the OES Director.

D. The invocation of dispute resolution procedures shall not extend, postpone, or affect any obligation of Respondent under this CAFO not directly in dispute, unless the final resolution of the dispute so dictates. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of nonperformance, but payment shall be stayed pending resolution of the dispute as provided in this Section. If Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section III.C of the CAFO.