

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Maximilian Boal 4/30/13
Name of Case Attorney Date

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

Case Docket Number TSEA-01-2012-0079

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:

Diane W. Whitney, Mark Javello, Manager
2910 Pratt Street, LLC
c/o Flatiron Real Estate Advisors
119 West 23rd St., Ste 903, New York, NY 10011

Total Dollar Amount of Receivable \$ 52,500 Due Date: 10/13/14

SEP due? Yes No Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:
1st \$ 13,125 on 5/30/13
2nd \$ 13,617 on 10/30/13
3rd \$ 13,519 on 4/30/13
4th \$ 13,322 on 10/13/14
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 APR 30 P 2:55
EPA ORC
OFFICE OF
REGIONAL HEARING CLERK

April 30, 2013

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

BY HAND

Re: *In re: 290 Pratt Street, LLC*
Docket No. TSCA-01-2012-0049

Dear Ms. Santiago:

Enclosed for filing in the above-referenced action, please find the original and one copy of a Consent Agreement and Final Order (CAFO) settling the matter referenced above pursuant to 40 C.F.R. § 22.18(b) and the certificate of service.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Maximilian Boal".

Maximilian Boal
Enforcement Counsel

Enclosure

cc: Diane W. Whitney, Esq.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
BEFORE THE ADMINISTRATOR

RECEIVED
2013 APR 30 P 2:55
EPA ORC
OFFICE OF
REGIONAL HEARING CLERK

_____))
In the Matter of:))
))
290 Pratt Street, LLC))
))
))
Respondent.))
_____)

Docket No. TSCA-01-2012-0049

CONSENT AGREEMENT AND FINAL ORDER

Complainant, the United States Environmental Protection Agency (“EPA”), and Respondent 290 Pratt Street, LLC have agreed 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.

I. PRELIMINARY STATEMENT

1. EPA initiated this proceeding against Respondent pursuant to Section 16 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615.
2. The Complaint alleges that Respondent violated Section 15 of TSCA, 15 U.S.C. § 2614, and the regulations promulgated thereunder at 40 C.F.R. Part 761, through the improper disposal of polychlorinated biphenyls (“PCBs”) at Respondent’s facility located at 290 Pratt Street, Meriden, CT 06450.
3. Respondent filed an Answer to the Complaint on September 25, 2012.

4. The provisions of this CAFO shall apply to and be binding on the Complainant and on the Respondent, its officers, directors, agents, servants, employees, successors and assigns.

5. 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.

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

II. TERMS OF SETTLEMENT

7. Respondent hereby certifies that it has completed the remediation of the concrete and soil impacted by the improper disposal of PCBs alleged in Count I of the Complaint in compliance with the disposal requirements of TSCA and 40 C.F.R. Part 761.61. Respondent shall take the steps outlined in Paragraphs 9 and 10 to complete the remediation of the sediment and water within and adjacent to Harbor Brook, which have been impacted by the improper disposal of PCBs alleged in Count I of the Complaint, in compliance with the disposal requirements of TSCA and 40 C.F.R. Part 761.61.

8. Respondent hereby certifies that it has completed the remediation of the improper disposal of PCBs alleged in Count II of the Complaint in compliance with the disposal requirements of TSCA and 40 C.F.R. Part 761.61.

9. **Addressing Potential PCB Contamination in Sediment and Water**

Originating from Respondent's Facility. Respondent has indicated that the improper disposal of PCBs from Respondent's Facility alleged in Count I of the Complaint may have resulted in PCB contamination in sediment and water within Harbor Brook. Respondent shall identify the nature and extent of PCB contamination in sediment and water within and adjacent to Harbor Brook originating from Respondent's Facility as described below:

- a. Within 30 days of the effective date of this CAFO, Respondent shall submit a Sediment Sampling Work Plan ("SSWP") addressing potential PCB contamination in Harbor Brook sediment and water from the improper disposal of PCBs alleged in Count I of the Complaint. Hard copies and electronic copies of the SSWP shall be submitted to EPA and the Commissioner of the Connecticut Department of Energy and Environmental Protection ("CTDEEP") for review and approval;
- b. Within 30 days of approval of the SSWP by EPA and CTDEEP, Respondent shall submit a Sediment Sampling Summary Report ("SSSR"), in both hard copy and electronic copy, to EPA and the Commissioner of the CTDEEP for review and approval. EPA and the CTDEEP will determine if a Remedial

Action Plan (“RAP”) is required to address PCB contamination in accordance with TSCA, 40 C.F.R. Part 761.61, and the General Statutes of Connecticut 22a-432, 22a-433 and 22-467;

- c. If EPA and CTDEEP determine a RAP is not required, Respondent shall submit a Completion Report in accordance with Paragraph 10;
- d. If a RAP is required, within 60 days of the approval of the SSSR by EPA and CTDEEP, Respondent shall submit a RAP, in both hard copy and electronic copy, to EPA and the Commissioner of the CTDEEP for review and approval. Respondent shall implement the approved RAP and comply with all schedules and actions in the RAP.

10. **Submission of Completion Report.** Within 60 days of EPA’s and CTDEEP’s determination that a RAP is not required, as described in Paragraph 9(c), or within 60 days of Respondent’s completion of all activities required in the approved RAP, as described in Paragraph 9(d), Respondent shall prepare and submit to EPA for approval a written Completion Report, in both hard copy and electronic copy. In the Completion Report, Respondent shall include:

- a. a short narrative of the remedial activities performed by Respondent;
- b. characterization and confirmation sampling analytical results;
- c. copies of the accompanying analytical chains of custody;
- d. field and laboratory quality control/quality assurance checks;

- e. an estimate of the quantity of PCB waste disposed of and the size of the remediated area(s);
- f. copies of manifest;
- g. copies of certificates of disposal or similar certifications issued by the disposer;
- h. a list of the cost of the cleanup activities;
- i. any photograph documentation; and,
- j. certification that Respondent has addressed the violations alleged in Count I of the Complaint in compliance with the disposal requirements of TSCA and 40 C.F.R. Part 761.61.

11. **Approval of Completion Report.** After receipt of the Completion Report described in Paragraph 10 above, EPA will notify Respondent in writing:

- a. That EPA concludes that Respondent has addressed the violations alleged in Count I of the Complaint in accordance with TSCA and 40 C.F.R. Part 761.61;
 - b. That EPA has determined that the violations alleged in Count I of the Complaint have not been addressed satisfactorily in compliance with TSCA and 40 C.F.R. Part 761.61, and EPA is specifying a reasonable schedule for correction of Respondent's remediation work and/or the Completion Report;
- or,

- c. That EPA has determined that the Respondent has failed to address the violations alleged in Count I of the Complaint and is in violation of the terms of this CAFO, and therefore EPA is seeking stipulated penalties in accordance with Paragraph 12 herein.

12. **Stipulated Penalties.** Respondent agrees that failure to meet the compliance obligations described in Paragraphs 9-10 shall be deemed violations of this CAFO, and Respondent shall become liable for stipulated penalties of: \$200 per day for the first fifteen (15) days of such violation; \$450 per day for the sixteenth (16th) through thirtieth (30th) day of such violation, and \$1,000 per day for each day of such violation, thereafter.

- a. Penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the day of correction of the violation. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this CAFO. Penalties shall continue to accrue regardless of whether EPA has notified Respondent of a violation.
- b. All penalties owed to the United States under this Paragraph shall be due and payable within thirty (30) days of Respondent's receipt from EPA of a written demand for payment of the penalties. Such a written demand will describe the violation and will indicate the amount of penalties due.

- c. All penalties shall be made payable by certified or cashier's check to the United States of America and shall be remitted to:

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

- d. All such checks shall reference, "In the Matter of 290 Pratt Street, LLC, Consent Agreement and Final Order, EPA Region 1," Respondent's name and address, and the EPA Docket Number of this action (TSCA-01-2012-0049). Copies of all such checks and letters forwarding the checks shall be sent simultaneously to the EPA contacts listed in Paragraph 16 herein.
- e. The payment of stipulated penalties in accordance with this Paragraph shall in no way alter Respondent's obligation to comply with the terms and conditions of this CAFO.
- f. The stipulated penalties set forth in this Paragraph do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the terms and conditions of this CAFO.
- g. No payments made under this Paragraph shall be tax deductible for federal tax purposes.

13. **Notifications.** Respondent shall submit all notices, submissions, and reports required by this CAFO by First Class mail or any other commercial delivery service and by e-mail to EPA and CTDEEP at the following addresses:

Maximilian Boal
Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code OES04-2
Boston, MA 02109-3912
boal.maximilian@epa.gov

Erik Bedan
State of Connecticut
Department of Energy and Environmental Protection
79 Elm Street
Hartford, CT 06106-5127
Erik.Bedan@ct.gov

14. Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, and taking into account the nature, circumstances, extent, and gravity of the violations, Respondent's cooperative attitude, the economic impact of the penalty upon the Respondent, and such other matters as justice may require, EPA has determined that an appropriate civil penalty to settle this action is in the amount of fifty-two thousand five hundred dollars (\$52,500), plus interest, which shall become due in accordance with the payment schedule described in Paragraph 15.

15. Without further admitting or denying the facts and allegations contained in the Complaint, Respondent consents to the issuance of this CAFO and consents to the payment of a civil penalty of \$52,500, plus interest (calculated at 3%) on any penalty amounts not paid within

30 days of the effective date of the CAFO, pursuant to 31 U.S.C. § 371 and 31 C.F.R. § 901.9(b), according to the following schedule:

- a. \$13,125 shall be due within 30 calendar days of the effective date of this CAFO;
- b. \$13,617 (i.e. \$13,125 principle, plus \$492 in interest) shall be due within 6 months of the effective date of this CAFO;
- c. \$13,519 (i.e. \$13,125 principle, plus \$394 in interest) shall be due within 12 months of the effective date of this CAFO; and,
- d. \$13,322 (i.e. \$13,125 principle, plus \$197 in interest) shall be due within 18 months of the effective date of this CAFO.
- e. Acceleration Clause: if Respondent fails to make any payment as described 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.

16. Respondent shall make payment by cashier's or certified check, or check issued in the normal course of business operations, payable to the order of the "Treasurer, United States of America," and referencing the EPA Docket Number of this action (TSCA-01-2012-0049), to the following address:

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

Respondent shall provide copies of the check to:

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

and

Maximilian Boal
Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code OES04-2
Boston, MA 02109-3912

17. Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, and 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. In the event that the civil penalty is not paid when due, the penalty shall be payable, plus accrued interest, without demand. Interest shall be payable at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2) and shall accrue from the original date on which the penalty was due to the date of payment. 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. However, should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due under 31 C.F.R. § 901.9(d).

18. All penalties, interest, and charges payable pursuant to this CAFO shall represent civil penalties assessed by EPA and shall not be deductible for purposes of federal taxes.

19. Respondent shall bear its own costs and attorneys' fees in connection with the action resolved by this CAFO.

20. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, for the violations alleged in the Complaint, contingent on Respondent's full compliance with the terms of this CAFO, including the submission and approval of reports as required by Paragraphs 9 and 10. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.

21. This CAFO in no way relieves Respondent or its employees of any criminal liability. Nothing in the CAFO shall be construed to limit the authority of the United States to undertake any action against Respondent in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment. Nothing in this CAFO 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

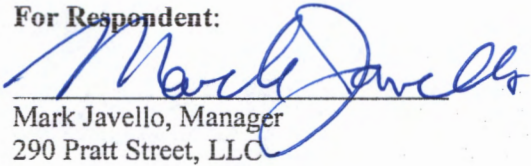
or Respondent's violation of the statutes and regulations upon which this agreement is based, or for Respondent's violation of applicable provision of law.

22. Each undersigned representative of the parties to this CAFO 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.

23. This CAFO does not constitute a waiver, suspension, or modification of the requirements of TSCA, 15 U.S.C. § 2601 et seq., or any regulations promulgated thereunder.

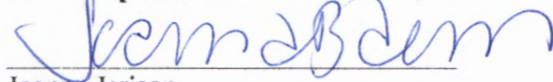
24. In accordance with 40 C.F.R. § 22.31(b), the effective date is the date on which this CAFO is filed with the Regional Hearing Clerk.

For Respondent:


Mark Javello, Manager
290 Pratt Street, LLC

4-18-13
Date

For Complainant:


Joanna Jerison
Legal Enforcement Manager
Office of Environmental Stewardship
U.S. Environmental Protection Agency
Region I

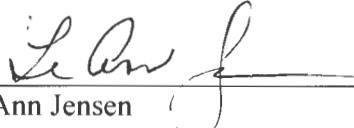
4/26/13
Date

III. FINAL ORDER

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

Date:

Apr. 29, 2013



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

