

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Maximilian Boal 4/1/16
Name of Case Attorney Date

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

Case Docket Number CAA-01-2015-0065

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:

Pendobscot McCrum, LLC
Jay McCrum, Manager
28 Pierce Street
Belfast, ME 04915

Total Dollar Amount of Receivable \$ 60,500 Due Date: 5/1/16

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 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

April 1, 2016

BY HAND-DELIVERY

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

RECEIVED
APR 01 2016
EPA ORC WS
Office of Regional Hearing Clerk

Re: *In the Matter of Penobscot McCrum, LLC*
Docket No. CAA-01-2015-0065

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.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Maximilian Boal".

Maximilian Boal
Enforcement Counsel

Enclosure

cc: Jay McCrum, Manager and CEO
Penobscot McCrum, LLC
28 Pierce Street
Belfast, ME, 04915

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

_____)
IN THE MATTER OF)
)
Penobscot McCrum, LLC) Docket No. CAA-01-2015-0065
28 Pierce Street)
Belfast, ME 04915) **CONSENT AGREEMENT**
) **AND FINAL ORDER**
)
Respondent.)
_____)

The United States Environmental Protection Agency, Region 1 (“EPA” or “Complainant”) and Penobscot McCrum, LLC (“Respondent”) 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.

NOW THEREFORE, before any hearing or the taking of any testimony, without adjudication of any issue of fact or law, upon the record, and upon consent and agreement of the Parties, it is hereby ordered and adjudged as follows:

I. PRELIMINARY STATEMENT

1. EPA initiated this proceeding against Respondent pursuant to Section 113(d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(d).
2. EPA’s Complaint, filed on September 30, 2015, alleged that Respondent violated the chemical accident prevention provisions of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), and implementing regulations at 40 C.F.R. Part 68 with regard to Respondent’s

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APR 01 2016

EPA ORC *WS*
Office of Regional Hearing Clerk

operation of an ammonia-based refrigeration system at its potato processing facility located at 32 Pierce Street, Belfast, ME, 04915 ("the Facility").

3. EPA and Respondent agree to settle this matter through this CAFO, as authorized under 40 C.F.R. § 22.18(b).

II. TERMS OF SETTLEMENT

A. General Settlement Provisions

4. The provisions of this CAFO shall apply to and be binding on the Parties, their officers, directors, agents, servants, employees, successors, and assigns. From the Effective Date of this Agreement until the end of the Tolling Period, as set out in Paragraph 35, Respondent must give written notice and a copy of this Agreement to any successors in interest prior to any transfer of ownership or control of any portion of or interest in the Facility. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to the EPA. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this Agreement unless the EPA has provided written approval of the release of said obligations or liabilities.

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 Complaints and waives its rights to appeal the Final Order.

Respondent consents to the issuance of this CAFO hereinafter recited and consents for purposes of settlement to the performance of the non-penalty compliance conditions as required in Paragraphs 7 through 11 below; the performance of Supplemental Environmental Projects, as required in Paragraphs 12 through 25 below; and to the payment of the civil penalty, as required in Paragraphs 27 through 28 below.

B. Compliance Conditions

7. Compliance Certifications.

a. Respondent certifies that it currently is upgrading the Facility and its RMP Program to be in compliance with 40 C.F.R. Part 68 and that all of the allegations in Count 1 and Counts 3 through 7 of the Complaint have been addressed.

b. Respondent certifies that upon completion of the Emergency Response Program requirements described in Paragraphs 8 through 11 below, the Facility and its RMP Program will be in compliance with 40 C.F.R. Part 68 and that all of the Process Hazard Analysis violations alleged in Count 2 will have been addressed.

c. Respondent certifies that it is currently upgrading the Facility and its RMP Program to correct the Emergency Response Program violations alleged in Count 8. Respondent shall comply with the provisions in Paragraphs 8 through 11 below to come into compliance with 40 C.F.R. §§ 68.90 and 68.95.

8. Emergency Response Program Work Plan.

a. Within thirty (30) days of the effective date of this CAFO, Respondent shall submit hard copies and electronic copies of an Emergency Response Program Work Plan

for EPA review and approval regarding coming into compliance with the emergency response requirements of 40 C.F.R. §§ 68.90 and 68.95 at the Facility. Among other things, the Emergency Response Program Work Plan shall set out a plan to ensure that emergency responders who are trained to Occupational Health and Safety Administration (“OSHA”) “Operations” level and Hazardous Materials “Technician” level can timely respond to ammonia releases at the Facility in with accordance OSHA emergency responder requirements as set forth at 29 C.F.R. § 1910.120(q). The plan must address the concern that, currently, there may not be properly trained Technician level responders nearby who can respond to ammonia releases in a timely manner. In developing this plan, Respondent shall coordinate with the local fire department and the appropriate state regional hazardous materials response team(s). However, if those public agencies do not have the resources or training to provide this response function in a safe and timely manner, it shall be Respondent’s responsibility to train and maintain a hazardous materials response team, either by itself, in coordination with nearby businesses that also use hazardous materials, or in coordination with nearby towns or counties with which Respondent may be able to coordinate to provide such services.

b. Within three (3) months of EPA’s approval of the Emergency Response Program Work Plan, Respondent shall complete all activities required in the approved Work Plan.

9. Submission of Emergency Response Program Completion Report. Within thirty (30) days of completing all activities in the approved Emergency Response Program Work Plan, Respondent shall submit for EPA review and approval a written Emergency Response Program Completion Report. In the Emergency Response Program Completion Report, Respondent shall

certify that the Facility is in compliance with the emergency response requirements of CAA § 112(r) and 40 C.F.R. §§ 68.90 and 68.95. The report shall also include a revised copy of Respondent's Emergency Response Plan, a narrative description of what measures were taken to comply with the Emergency Response Program Work Plan, and documentation of costs associated with implementing the Emergency Response Program Work Plan (such as costs of training, personal protective equipment, contractor costs, etc.).

10. Notices and Approval of Submissions:

a. Respondent shall send all submissions required by Paragraphs 8 through 9 above to EPA, as specified in Paragraphs 20 and 21 below.

b. After receipt of each submission required by Paragraphs 8 through 9 above, EPA will notify Respondent in writing: (i) indicating that the submission is approved; (ii) identifying any deficiencies and granting Respondent an additional thirty (30) days to correct any deficiencies; or (iii) determining that the submission is inadequate and seeking stipulated penalties in accordance with Paragraph 26 below.

c. If EPA elects to exercise options (ii) or (iii) in subparagraph b above, Respondent may object in writing to the notice of deficiency given pursuant to this paragraph within ten (10) days of receipt of such notice. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of Respondent's objection to reach agreement on changes necessary to the submission. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on the adequacy of the submission, which decision shall be final and binding upon Respondent. Respondent agrees to comply with any reasonable requirements imposed by EPA that are consistent with this

CAFO as a result of any failure to comply with the terms of this CAFO. In the event that the submission is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent in accordance with Paragraph 26, below.

11. Respondent's failure to comply with each of the provisions in Paragraphs 7 through 10, above, shall become liable for stipulated penalties as set forth in Paragraph 26, below.

C. Supplemental Environmental Projects

12. Respondent shall satisfactorily complete the two supplemental environmental projects ("SEPs") described below and in the Scope of Work attached to this CAFO as Exhibit A, which is incorporated herein by reference and which is enforceable by this CAFO. The Parties agree that the SEPs are intended to secure significant environmental and public health protection and benefits:

a. The Emergency Response Equipment SEP will enhance the hazardous materials response capabilities of the Fire Department for the City of Belfast, ME and the Maine Department of Environmental Protection ("ME DEP") by providing them with adequate equipment and personal protective equipment to respond to ammonia releases; and,

b. The Facility Safety Upgrades SEP will help prevent or mitigate releases of ammonia from, and improve chemical safety at the Facility.

13. SEP Certifications. With regard to the Emergency Response Equipment SEP and the Facility Safety Upgrades SEP, Respondent hereby certifies the truth and accuracy of each of the following:

a. That all cost information provided to EPA in connection with EPA's approval of the SEPs is complete and accurate and that Respondent, in good faith, estimates that the cost to complete the Emergency Response Equipment SEP is approximately \$15,900, and the cost to complete the Facility Safety Upgrades SEP is approximately \$67,500.

b. That, as of the date of executing this CAFO, Respondent is not required to perform or develop the SEPs by any federal, state, or local law or regulation, and is not required to perform or develop the SEPs by agreement, grant, or as injunctive relief awarded in any other action in any forum;

c. That the SEPs are not projects that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CAFO and that any equipment being replaced or upgraded was otherwise intended to remain in use for at least ten years but for this settlement;

d. That Respondent has not received and will not receive credit for the SEPs in any other enforcement action;

e. That Respondent will not receive any reimbursement for any portion of the SEPs from any other person;

f. That for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEPs;

g. That Respondent is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEPs;

h. That Respondent has inquired of the Belfast Fire Department, whether it is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the Belfast Fire Department that it is not a party to such a transaction;

i. That Respondent has inquired of ME DEP, whether it is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by ME DEP that it is not a party to such a transaction; and,

j. For the purposes of this certification, the term “open federal financial assistance transaction” refers to a grant, cooperative agreement loan, federally-guaranteed loan guarantee, or other mechanism for providing federal financial assistance whose performance period has not yet expired.

14. Respondent agrees that EPA may inspect the Facility at any time to confirm that the Facility Safety Upgrades SEP was undertaken in conformity with the representations made herein.

15. Respondent hereby waives any confidentiality rights it has under 26 U.S.C. § 6103 with respect to such SEP costs on its tax returns and on the information supporting its tax returns. This waiver of confidentiality is solely as to EPA and the Department of Justice and solely for the purpose of ensuring the accuracy of Respondent’s SEP cost certification.

16. Respondent agrees that any public statement, oral or written, in print, film, or other media, made by Respondent, contractors, or third party implementers making reference to a SEP shall include the following language: “This project was undertaken in connection with the

settlement of an enforcement action, *In the Matter of Penobscot McCrum, LLC*, taken by the U.S. Environmental Protection Agency to enforce federal laws.”

17. Emergency Response Equipment SEP

a. Respondent shall provide emergency response equipment to the City of Belfast Fire Department and to ME DEP, both of which Respondent has selected to be the SEP Recipients, according to the requirements, specifications, and deadlines described in Exhibit A. The purpose of this SEP is to enhance emergency planning and chemical spill response capabilities, including those for an ammonia release, for local and state responders. The Emergency Response Equipment SEP is expected to cost approximately \$15,900.

b. “Satisfactory completion” of the Emergency Response Equipment SEP shall mean: (a) providing the City of Belfast Fire Department with emergency response equipment according to the requirements, specifications, and deadlines described in Exhibit A; (b) providing ME DEP with emergency response equipment according to the requirements, specifications, and deadlines described in Exhibit A; (c) confirming that the purchased equipment is functional and that Belfast Fire Department and ME DEP personnel are trained to use it; and (d) spending approximately \$15,900 to carry out the Emergency Response Equipment SEP.

c. Respondent shall include documentation of the expenditures made in connection with the Emergency Response Equipment SEP as part of the SEP Completion Report, described below. Cost overruns on one of the Emergency Response Equipment SEP projects described in Exhibit A may be offset by savings from another part of the Emergency Response Equipment SEP that cost less than anticipated, as the case may be.

d. Within seven (7) days of completion of the Emergency Response Equipment SEP, Respondent shall send an electronic mail message to Jim Gaffey, gaffey.jim@epa.gov and to Maximilian Boal, boal.maximilian@epa.gov, to confirm that the emergency response equipment has been purchased and presented to the Belfast Fire Department and ME DEP. Upon completion of the Emergency Response Equipment SEP, Respondent shall submit a SEP Completion Report for the Emergency Response Equipment SEP, as specified below.

18. Facility Safety Upgrades SEP

a. Respondent shall make safety improvements at the Facility in accordance with the requirements and deadlines described in Exhibit A, including, but not limited to: installing external ammonia detectors; installing an emergency siren system to warn about ammonia releases, in coordination with the City of Belfast, ME; and installing a video monitoring security system.

b. Respondent represents that, to the best of its knowledge after thorough review of the most current industry standards by Respondent or its agents, that each part of the Facility Safety Upgrades SEP described above and in Exhibit A exceeds the requirements of the most current industry standards.

c. The total cost of the Facility Safety Upgrades SEP is anticipated to be approximately \$67,500.

d. "Satisfactory completion" of the Facility Safety Upgrades SEP shall mean:
(a) making the safety improvements at the Facility according to the requirements and deadlines

described above and in Exhibit A, and (b) spending approximately \$67,500 to carry out the Facility Safety Upgrades SEP.

e. Respondent shall include documentation of the expenditures made in connection with the Facility Safety Upgrades SEP as part of the SEP Completion Report described below.

f. Within seven (7) days of completion of the Facility Safety Upgrades SEP, Respondent shall send an electronic mail message to Jim Gaffey, gaffey.jim@epa.gov and to Maximilian Boal, boal.maximilian@epa.gov, to confirm that the safety upgrades have been installed and are in operation. Upon completion of the Facility Safety Upgrades SEP, Respondent shall submit a SEP Completion Report for the Facility Safety Upgrades SEP, as specified below.

D. SEP Completion Reports

19. As described above, Respondent shall submit SEP Completion Reports to EPA within sixty (60) days of completion of each SEP. The SEP Completion Reports shall contain the following information:

a. A detailed description of the SEP as implemented, including photographs of newly installed equipment, and for the Emergency Response Equipment SEP, a list of the equipment and/or provided to the Belfast Fire Department and to ME DEP;

b. A certification that Respondent has updated its Emergency Plan to take into account the changes at the Facility after completion of the Facility Safety Upgrades SEP and a certification that Respondent has shared the revised Emergency Plan with the appropriate local and regional emergency planners and responders.

- c. A brief description of any implementation problems encountered and the solutions thereto;
- d. Itemized costs, documented by copies of invoices, purchase orders, receipts, canceled checks, or wire transfer records that specifically identify and itemize the individual costs associated with each SEP;
- e. Certification that each SEP has been fully completed;
- f. A detailed description of the environmental and public health benefits resulting from the implementation of the SEP;
- g. A statement that no tax returns filed or to be filed by Respondent will contain deductions or depreciations for any expense associated with the SEP; and,
- h. The following statement, signed by Respondent's officer, under penalty of law, attesting that the information contained in the SEP Completion Report is true, accurate, and not misleading:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

20. Respondent shall submit all notices and reports required by this CAFO by first class mail or any other commercial delivery service to:

Jim Gaffey
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code: OES 05-4

21. Respondent shall submit electronic copies to Jim Gaffey, at gaffey.jim@epa.gov and to Maximilian Boal, EPA Enforcement Counsel, at boal.maximilian@epa.gov.

22. Respondent shall maintain, for a period of three (3) years from the date of submission of each SEP Completion Report, legible copies of all research, data, and other information upon which the Respondent relied to write the SEP Completion Reports and shall provide such documentation within fourteen (14) days of a request from EPA.

23. Respondent agrees that failure to submit the SEP Completion Report shall be deemed a violation of this CAFO, and the Respondent shall become liable for stipulated penalties in accordance with Paragraph 26.

24. After receipt of each SEP Completion Report described in Paragraph 19, above, EPA will notify Respondent in writing: (i) indicating that the project has been completed satisfactorily; (ii) identifying any deficiencies in the SEP Completion Report itself and granting Respondent an additional thirty (30) days to correct any deficiencies; or (iii) determining that the project has not been completed satisfactorily and seeking stipulated penalties in accordance with Paragraph 26 below.

25. If EPA elects to exercise options (ii) or (iii) in Paragraph 24, above, Respondent may object in writing to the notice of deficiency given pursuant to this paragraph within ten (10) days of receipt of such notice, except that this right to object shall not be available if EPA found that the project was not completed satisfactorily because Respondent failed to implement or abandoned the project. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of Respondent's objection to reach agreement on changes necessary to the SEP or SEP Completion Report. If agreement cannot be reached on any such issue within this thirty

(30) day period as may be extended by the written agreement of both EPA and Respondent, EPA shall provide a written statement of its decision on the adequacy of the completion of the SEP to Respondent, which decision shall be final and binding upon Respondent. Respondent agrees to comply with any reasonable requirements imposed by EPA that are consistent with this CAFO as a result of any failure to comply with the terms of this CAFO. In the event that the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent in accordance with Paragraph 26, below.

E. Stipulated Penalties

26. In the event that Respondent fails to complete the Emergency Response Program described in Section B, Paragraphs 7 through 10, and the SEPs as outlined in Paragraphs 12 through 25 above and in Exhibit A in a satisfactory manner, Respondent shall be liable for stipulated penalties in accordance with the provisions set forth below. The determination of whether the SEPs have been satisfactorily completed shall be in the sole discretion of EPA.

a. If EPA determines that Respondent failed to satisfactorily complete the Emergency Response Program compliance obligations as described in Paragraphs 7 through 10 above, Respondent shall be liable for stipulated penalties in the following amounts: \$500 per day for the first fifteen (15) days of such violation; \$1,000 per day for the sixteenth (16th) through 30th days of such violation; and, \$1,500 per day for each day of violation thereafter. The determination of whether the Emergency Response Program compliance obligations have been satisfactorily completed shall be in the sole discretion of EPA.

b. If EPA determines that Respondent completely or substantially failed to implement the Emergency Response Equipment SEP in accordance with this CAFO, Respondent shall pay a stipulated penalty in the amount of 125% of the estimated cost for each such upgrade, as outlined in Paragraph 1 of Exhibit A;

c. If EPA determines that Respondent completely or substantially failed to implement the Facility Safety Upgrades SEP in accordance with this CAFO, Respondent shall pay a stipulated penalty in the amount of 125% of the estimated cost for each such project, as outlined in Paragraph 2 of Exhibit A;

d. If Respondent spends less than approximately \$83,400 on the two SEPs, but EPA determines that Respondent *otherwise satisfactorily completes each SEP*, Respondent shall only be required to pay a stipulated penalty in the amount equal to the difference between \$83,400 and the actual amount spent on the SEPs, plus interest from the effective date of this CAFO;

e. After giving effect to any extensions of time granted by EPA, Respondent shall pay a stipulated penalty in the amount of \$200 for each day the following submissions are late: (a) each SEP electronic mail message required by Paragraphs 17 and 18 above and (b) the SEP Completion Reports required by Paragraph 19;

f. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of Paragraph 28, below. Interest and late charges shall be paid as stated in Paragraph 30, below.

g. EPA may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this CAFO.

h. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and charge to cover the cost of processing and handling a delinquent claim, as further discussed in Paragraphs 29 and 30, below.

F. Penalty Payment

27. Pursuant to Sections 113(d)(2)(B) and (e) of the CAA, 42 U.S.C. § 7413(d)(2)(B) and (e), and taking into account the relevant statutory penalty criteria, the facts alleged in the Complaint, the Emergency Response Project, and the SEPs described above, Respondent's cooperation in agreeing to perform the non-penalty obligations in the CAFO, and such other circumstances as justice may require, EPA has determined that it is fair and proper to assess a civil penalty of sixty thousand five hundred dollars (\$60,500) for the violations alleged in this matter.

28. Within thirty (30) calendar days of the effective date of this CAFO, Respondent shall make a payment by cashier's or certified check, or by wire transfer, in the amount of \$60,500 and shall include the case name and docket number (CAA-01-2015-0065) on the face of the check or wire transfer confirmation. A check should be payable to "Treasurer, United States of America." The payment shall be remitted as follows:

If remitted by regular U.S. mail:
U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

If remitted by any overnight commercial carrier:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

In addition, within 24 hours of payment, Respondents shall forward notice of payment of the civil penalty as well as copies of the payment check or payment receipt by first class mail or other delivery service to:

Wanda I. 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,

with a copy by electronic mail to: Jim Gaffey, at gaffey.jim@epa.gov and to Maximilian Boal, EPA Enforcement Counsel, at boal.maximilian@epa.gov.

29. Collection of Unpaid Civil Penalty: Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), if Respondent fails to pay the civil penalty referenced in Paragraph 28 in full, it will be subject to an action to compel payment, plus interest, enforcement expenses, and a nonpayment penalty. Interest will be assessed on the civil penalty if it is not paid within thirty

(30) calendar days of the effective date of this CAFO. In that event, interest will accrue from the effective date of this CAFO at the “underpayment rate” established pursuant to 26 U.S.C § 6621(a)(2). In the event that a 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. In addition, 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 civil penalties and nonpayment penalties hereunder accrued 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. There are other actions EPA may take if respondent fails to timely pay: refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33; collect the debt by administrative offset (*i.e.*, the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; suspend or revoke Respondent’s licenses or other privileges; or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

30. Collection of Unpaid Stipulated Penalty: 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. In the event that any portion of the stipulated penalties relating to the performance of the Emergency Response Program or the SEPs are 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 percent per year will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 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). In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

31. All penalties, interest, and other charges shall represent penalties assessed by EPA within the meaning of 26 U.S.C. § 162(f) and are not 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 these payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.

G. Effect of Consent Agreement and Attached Final Order

32. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Consent Agreement and Final Order resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.

33. By signing this Agreement, both parties agree that each party's obligations under this Consent Agreement and attached Final Order constitute sufficient consideration for the other party's obligations. Additionally, both parties agree that Complainant's covenant not to sue Respondent (stated in Paragraph 34) during the time period between the issuance of the attached Final Order and the deadlines (stated in Paragraphs 7 through 10 for compliance obligations, and in Paragraphs 12 through 25 and Exhibit A for the SEPs) for Respondent to complete the non-

penalty conditions of this Consent Agreement constitutes sufficient consideration for Respondent's obligations to completely perform the non-penalty conditions of this Consent Agreement, regardless of whether the covenant not to sue subsequently terminates.

34. Complainant covenants not to sue Respondent for injunctive or other equitable relief for the violations and facts alleged in this matter, but such covenant automatically terminates if and when Respondent fails to timely and satisfactorily complete every condition stated in Paragraphs 7 through 26 (including payment of any stipulated penalties owed). If and when such covenant terminates, the United States at its election may seek to compel performance of the conditions stated in Paragraphs 7 through 26 in a civil judicial action under the CAA or as a matter of contract. The covenant not to sue becomes permanent upon satisfactory performance of the conditions stated in Paragraphs 7 through 26.

35. Respondent agrees that the time period from the Effective Date of this Agreement until all of the conditions specified in Paragraphs 7 through 28 are completed (the "Tolling Period") shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by Complainant on any claims (the "Tolled Claims") set forth in the Complaint or regarding enforcement of this CAFO. Respondent shall not assert, plead, or raise in any fashion, whether by answer, motion or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolled Claims.

36. Penalties paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

37. This Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.

38. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Regional Judicial Officer, except that the Regional Judicial Officer need not approve written agreements (a) modifying the SEP schedules described in Exhibit A; or (b) allowing any excess amounts from one SEP to be applied towards another.

39. Any violation of this Order may result in a civil judicial action for an injunction or civil penalties of up to \$37,500 per day per violation, or both, as provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.

40. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

41. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

42. EPA reserves the right to revoke this Agreement and settlement penalty if and to the extent that the EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, and EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.

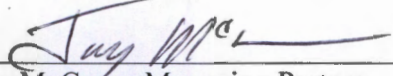
43. This CAFO in no way relieves Respondent or its employees of any criminal liability, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.

44. Except as qualified by Paragraph 29 [Collection of Unpaid Civil Penalties], each party shall bear its own costs and fees in this proceeding including attorney's 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.

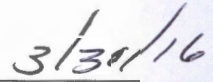
45. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, EPA will transmit a copy of the filed Consent Agreement to Respondent. In accordance with 40 C.F.R. § 22.31(b), the effective date of this CAFO is the date on which it is filed with the Regional Hearing Clerk.

46. Each undersigned representative of the parties certifies that he is fully authorized by the party responsible to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

For Respondent Penobscot McCrum, LLC:



Jay McCrum, Managing Partner
Penobscot McCrum, LLC



Date

For EPA:

Susan Studlien

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

04/01/2016

Date

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I**

IN THE MATTER OF:)	
)	
)	
Penobscot McCrum, LLC)	EPA Docket No.
28 Pierce Street)	CAA-01-2015-0065
Belfast, Maine,)	
)	
Respondent.)	
)	

FINAL ORDER

In accordance with 40 CFR § 22.18(b) of the United States Environmental Protection Agency's Consolidated Rules of Practice, the Parties to this matter have forwarded the foregoing executed Consent Agreement for final approval. Section 113(d)(1) of the Clean Air Act, 42 U.S.C. § 7413(d)(1), authorizes EPA to issue an administrative penalty to enforce the requirements of this Act. In addition, Section 113(d)(2)(B) of the Clean Air Act, 42 U.S.C. § 7413(d)(2)(B), authorizes EPA to compromise, modify or remit, with or without conditions, the maximum civil penalty of \$37,500 per day per violation. In addition, the penalty assessed must take into consideration the penalty factors set forth in Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1). Pursuant to these provisions, EPA has compromised the maximum civil penalty and imposed the compliance conditions described in Section C of the Consent Agreement. Respondent has consented to the terms of this Consent Agreement.

Pursuant to 40 C.F.R. § 22.18(b) of EPA's Consolidated Rules of Practice and Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), the Consent Agreement is incorporated by reference into this Final Order and is hereby ratified. The Respondent, Penobscot McCrum, LLC, is ordered to pay the civil penalty amount in the amount of \$60,500 in the manner

RECEIVED
APR 01 2016
EPA ORC WS
Office of Regional Hearing Clerk

EXHIBIT A

Scope of Work for Supplemental Environmental Projects (SEPs)

1. Emergency Response Equipment SEP

Required Actions: Respondent shall provide the following to the Belfast Fire Department:

	Equipment:	Quantity:	Expected Cost
1.	Signal gas monitor for ammonia	1	\$2,972.00
2.	Level "B" suits for response to ammonia incidents	8	\$1,412.02
3.	Box of silver shield gloves for response to ammonia incidents	1	\$31.67
4.	Chemical resistant boots— certified to NFPA	4 pairs	\$260.24
5.	Hazmat rescue system with strap kits	2	\$573.52
6.	Air Monitors, calibration station, and calibration gas	2	\$5,447.78
7.	Packages of pH paper	2	\$112.02

Respondent shall provide the following to ME DEP:

	Equipment:	Quantity:	Expected Cost:
1.	Photo Ionization Detector (PID) with Standard KIT	2	\$5,100.00

Respondent shall provide all of the above items and training to the Belfast Fire Department by within thirty (30) days of the effective date of this CAFO. The cost of this project is approximately \$15,900.

Benefit: Responders require specialized protective equipment, including gloves, suits, and air monitors. The equipment provided through this SEP will improve the Belfast Fire Department's and ME DEP's abilities to detect and safely respond to releases of ammonia and other toxic substances.

2. Facility Safety Upgrades SEP

Required Actions: Respondent or its contractor(s) shall install the following safety upgrades at the Facility:

	Equipment:	Explanation:	Quantity:	Expected Cost:
1.	External Ammonia Sensors	Outside sensors to detect ammonia release.	4	\$5,285.00 \$864.00 for installation

2.	Siren Alarm System	This alarm system will be mounted within the Facility and will broadcast to the local area and out approximately 2 miles to 60 dB level.		\$30,980.00
3.	Video Monitoring Security System	32 cameras will be installed on the Penobscot McCrum, LLC property.	System with 32 cameras, including 11 infrared.	\$30,414.39

This project shall be completed no later than 180 days after the effective date of this CAFO. The cost of this project is approximately \$67,500.

Update Emergency Plan:

Within 30 days after completion of the Facility Safety Upgrades SEP, Respondent shall revise its Emergency Plan to take into account the Facility Safety Upgrades SEP. Respondent shall train under the revised Emergency Plan, which Respondent will share with appropriate local and regional emergency planners and responders, including the Belfast Fire Department and the Local Emergency Planning Commission, Waldo County EMA.

Benefits:

1. External Ammonia Sensors:

The sensors will be tied into the emergency alarm system. The external ammonia sensors go beyond the standard industry practice of interior refrigerant detectors. The ammonia sensors and alarms will help reduce risks by assisting with early identification of an ammonia release and by providing early notification to local authorities.

2. Siren Alarm System:

This alarm system shall be mounted within the Facility and will broadcast to the local area out to approximately two miles at a 60 decibel level. The alarm system will warn employees and the local population surround the Facility if an ammonia release occurs at the Facility.

3. Video Monitoring Security System:

The video monitoring security system will enhance security at the Facility by monitoring access points and providing the Facility with the ability to visually monitor the ammonia area in the

event of a release. The recording ability of the system will allow the Facility to review any incident or security issues that arise. 11 of the cameras will have infrared capabilities for night monitoring. The Belfast Police Department will have access to the system in the event of an incident.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

In the Matter of:)
)

Penobscot McCrum, LLC)
28 Pierce Street)
Belfast, ME 04915)

Respondent.)
_____)

Docket No. CAA-01-2015-0065

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Administrative Complaint and Notice of Opportunity for a Hearing 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
5 Post Office Square, Suite 100 (ORA18-1)
Boston, Massachusetts 02109-3912

(Certified Mail, Return Receipt
Requested):

Jay McCrum, Managing Partner
Penobscot McCrum, LLC
28 Pierce Street
Belfast, ME 04915

Dated: 4-1-2016



Maximilian Boal
Enforcement Counsel
U.S. EPA, Region I
5 Post Office Square, Suite 100 (OES04-2)
Boston, Massachusetts 02109-3912