

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for William D. Chin 7/19/16
Name of Case Attorney Date

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

Case Docket Number CWA-01-2015-0034

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:

Bacon - Agostini Construction Co., Inc. and K.R. Rezendes, Inc.
241 Narragansett Park Drive
East Providence, RI 02916

Total Dollar Amount of Receivable \$ 49,500 Due Date: 8/18/16

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



U.S. Environmental Protection Agency

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

July 19, 2016

VIA HAND DELIVERY

Wanda I. Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square, Suite 100
Mail Code: ORA18-1
Boston, MA 02109-3912



Re: In the Matter of: Bacon-Agostini Construction Co., Inc. and K.R. Rezendes, Inc.,
Docket No. CWA-01-2015-0034

Dear Ms. Santiago,

Enclosed for filing, please find a Consent Agreement and Final Order (CAFO) settling the matter referenced above.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "William D. Chin".

William D. Chin
Enforcement Counsel
U.S. EPA, Region 1

Enclosure

cc: James P. Killoran, Esq.
Doreen M. Zankowski, Esq.
Scott A. McQuilkin, Esq.

CERTIFICATE OF SERVICE

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

Original and one copy,
by Hand Delivery:

Ms. Wanda I. Santiago
Regional Hearing Clerk
U.S. EPA, Region 1 (ORA18-1)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Copy, by Certified Mail,
Return Receipt Requested:

James P. Killoran, Esq.
Killoran & Killoran
350 North Main Street
Fall River, Massachusetts 02720

Doreen M. Zankowski, Esq.
Duane Morris LLP
100 High Street, Suite 2400
Boston, MA 02110

Scott A. McQuilkin, Esq.
Duane Morris LLP
100 High Street, Suite 2400
Boston, MA 02110

Dated: 7/19/16



William D. Chin
Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square, Suite 100 (OES04-4)
Boston, MA 02109-3912
Tel: (617) 918-1728

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

IN THE MATTER OF:)	
)	Docket No. CWA-01-2015-0034
Bacon-Agostini Construction Co., Inc. and)	
K.R. Rezendes, Inc.)	CONSENT AGREEMENT
Respondents.)	AND FINAL ORDER

CONSENT AGREEMENT

1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority granted to the United States Environmental Protection Agency (“EPA”) by Section 309(g) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1319(g), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22.

I. PRELIMINARY STATEMENT

2. Complainant, EPA Region 1, initiated this proceeding against Respondents, Bacon-Agostini Construction Co., Inc. (“Bacon-Agostini”) and K.R. Rezendes, Inc. (“Rezendes”), pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), by filing an administrative complaint against Respondents on March 31, 2015 (“Complaint”).

3. The complete alleged factual and jurisdictional basis for proposing the assessment of a civil penalty is set forth in the Complaint and is incorporated herein by reference.

4. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), the Commonwealth of Massachusetts has been given an opportunity to consult with EPA regarding the assessment of the administrative penalty for CWA violations against Respondents.

5. Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), provides that, prior

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EPA ORC *WS*
Office of Regional Hearing Clerk

to issuing an order assessing a penalty under Sections 309(g) of the CWA, 33 U.S.C. § 1319(g), Complainant must provide public notice of, and reasonable opportunity to comment on, the proposed issuance of such order. Complainant represents that it has satisfied this requirement by providing public notice of, and reasonable opportunity to comment on, the proposed issuance of such order.

II. WAIVER OF RIGHTS

6. Respondents stipulate that EPA has jurisdiction over the subject matter alleged in the Complaint.

7. Respondents waive any defenses they may have to jurisdiction and venue, and, without admitting or denying the facts and violations alleged in the Complaint, consent to the terms of this CAFO. Respondents understand and agree that this CAFO is a compromise of disputed claims by Complainant in order to avoid protracted litigation, and that the settlement contemplated hereby is not to be construed as an admission of liability whatsoever by Respondents or an admission by Respondents of the validity or merit of any claim or allegation.

8. Respondents hereby waive their right to request a hearing under Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), and to any appeal of the Final Order in this matter under Sections 309(g)(8)(B), 33 U.S.C. § 1319(g)(8)(B). Respondents consent to the issuance of the Final Order included with this Consent Agreement without further adjudication, and consent for the purposes of settlement to the payment of the civil penalty as set forth in this CAFO.

III. PENALTY

9. Complainant and Respondents agree that Respondents shall pay a civil penalty in the amount of \$49,500 in settlement of this matter (the "Payment").

10. In agreeing to the Payment described in Paragraph 9 above, Complainant has taken into account the particular facts and circumstances of this matter, with specific reference to

the penalty factors set forth in Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3),

11. Respondents shall make the Payment set forth in this CAFO no later than 20 calendar days after this CAFO becomes final.

12. This CAFO shall become final thirty (30) calendar days after it is signed by the Regional Administrator.

13. Complainant hereby releases all claims, demands, and causes of action for federal civil penalties, whether known or unknown, against each Respondent, and each of their agents, attorneys, employees, successors, assigns, officers, directors, owners, principals, and insurers (“Claims”) asserted in the Complaint, for the violations alleged in the Complaint, or Claims for federal civil penalties arising out of the facts alleged in the Complaint. This release shall become effective upon (a) this CAFO becoming final in accordance with Paragraph 12 and (b) the payment of the civil payment described in Paragraph 11.

14. Respondents shall make the Payment by cashier’s or certified check, payable to “Treasurer, United States of America,” and referencing the case name and docket number of this action (*In the Matter of: Bacon-Agostini Construction Co., Inc. and K.R. Rezendes, Inc., CWA-01-2015-0034*) on the check. The payment shall be mailed via regular U.S. Postal Service mail, to:

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

15. At the time of payment, Respondents shall also send notice of the payment and copies of the check to:

Wanda I. Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square, Suite 100
Mail Code: ORA18-1
Boston, MA 02109-3912

and

William Chin
Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square, Suite 100
Mail Code: OES04-4
Boston, MA 02109-3912

16. Pursuant to Sections 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), a failure by Respondents to make the Payment assessed by this CAFO in full by its due date shall subject Respondents to a civil action to collect the Payment, plus interest at the prevailing rates, from the date this Agreement becomes final. The rate of interest assessed shall be at the rate set forth in 31 C.F.R. § 901.9(b), promulgated under 31 U.S.C. § 3717. Any person who fails to pay on a timely basis the amount of the Payment shall be required to pay, in addition to such amount and interest, attorney's fees, costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent of the aggregate amount of such person's penalties and nonpayment penalties that are unpaid 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.

IV. GENERAL PROVISIONS

17. The provisions of this CAFO shall apply to and be binding on Respondents, its officers, directors, agents, servants, employees, successors, and assigns.

18. The civil penalty provided under this CAFO, and any interest, nonpayment penalties, and charges described in this CAFO, shall represent penalties assessed by EPA within

the meaning of 26 U.S.C. § 162(f) and are not tax deductible for purposes of federal, state, or local law. Accordingly, Respondents agree to treat all payments made pursuant to this CAFO as penalties within the meaning of 26 U.S.C. § 162(f), and further agree not to use those payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.

19. This CAFO does not constitute a waiver, suspension, or modification of the requirements of the CWA or any regulations or permits promulgated thereunder, and does not affect the right of the EPA Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law. Payment under this CAFO resolves only Respondents' liability for federal civil penalties for the violations and facts alleged in the Complaint.

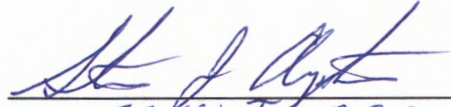
20. Except as described in Paragraph 16, each party shall bear its own costs and fees in this action, including attorney's fees, and specifically waives any right to recover such costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C § 504, or other applicable laws.

21. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

22. Nothing herein shall be construed to constitute a release or waiver of any claims, causes of action, or potential claims of any kind by either Respondent against the other Respondent.

THE UNDERSIGNED enter into this CAFO on behalf of her/his respective party for In the Matter of: Bacon-Agostini Construction Co., Inc. and K.R. Rezendes, Inc., Docket No. CWA-01-2015-0034

For Bacon-Agostini Construction Co., Inc.:



Date: 7/11/14


Name: STEVEN J. AGOSTINI

Title: PRESIDENT

Company: BACON - AGOSTINI CONSTRUCTION INC

THE UNDERSIGNED enter into this CAFO on behalf of her/his respective party for In the Matter of: Bacon-Agostini Construction Co., Inc. and K.R. Rezendes, Inc., Docket No. CWA-01-2015-0034

For K.R. Rezendes, Inc.:

By: 
Name: JAMES REZENDES
Title: PRESIDENT AND TREASURER
Company: K.R. REZENDES, INC.

Date: JULY 13, 2016

THE UNDERSIGNED enter into this CAFO on behalf of her/his respective party for In the Matter of: Bacon-Agostini Construction Co., Inc. and K.R. Rezendes, Inc., Docket No. CWA-01-2015-0034

For U.S. EPA, Region 1:

Susan Studlien

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

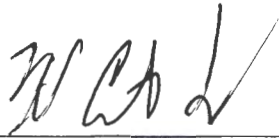
Date: 07/18/2016

FINAL ORDER

23. The forgoing Consent Agreement is hereby approved and incorporated by reference into this Order. Respondents are hereby ordered to comply with the terms of the above Consent Agreement, which will become final 30 days from the date it is signed by the Regional Administrator.

Date:

7/18/16



H. Curtis Spalding
Regional Administrator
U.S. EPA, Region 1