

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Jeffrey Kopf
Name of Case Attorney

9/1/16
Date

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

Case Docket Number CWA-01-2016-0032

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:

Foster Materials, Inc.
1778 Old Concord Road
Henniker, NH 03242

Total Dollar Amount of Receivable \$ 20,000 Due Date: 7/27/17

SEP due? Yes _____ No Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

1st \$ 6,700 on 9/10/16

2nd \$ 6,872 on 1/28/17

3rd \$ 6,783 on 7/27/17

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

August 31, 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

RECEIVED

AUG 31 2016

EPA ORC WS
Office of Regional Hearing Clerk

Re: In the Matter of: Foster Materials, Inc. Docket No. CWA-01-2016-0032

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, appearing to read "Jeffrey Kopf".

Jeffrey Kopf
Senior Enforcement Counsel
U.S. EPA, Region 1

Enclosure

cc: Sherilyn Burnett Young, Esq.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

)	
)	
In the Matter of:)	Docket No. CWA-01-2016-0032
)	
Foster Materials, Inc.)	CONSENT AGREEMENT AND
1778 Old Concord Road)	FINAL ORDER FOR CLASS II
Henniker, NH 03242)	CIVIL PENALTY UNDER
)	CLEAN WATER ACT
Respondent)	
)	
)	

The Regional Administrator of the United States Environmental Protection Agency, Region 1 (“EPA”) issues this Consent Agreement and Final Order (“CAFO”) to Foster Materials, Inc. (“Foster Materials” or “Respondent”). EPA alleges that Respondent violated Section 301(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1311(a). The parties agree to resolve this action by the issuance of this CAFO as provided under 40 C.F.R. § 22.13(b) and 22.18(b)(2) of EPA’s “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits,” 40 C.F.R. Part 22 (“Part 22”).

I. DESCRIPTION OF VIOLATIONS

1. EPA alleges that Respondent: (1) discharged process water containing pollutants into navigable waters of the United States without authorization, in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Statutory and Regulatory Authority

2. EPA takes this action under the authority of Section 309(g) of the CWA,

CONSENT AGREEMENT AND FINAL ORDER
In re: Foster Materials, Inc.
Docket No. CWA-01-2016-0032

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

RECEIVED

AUG 31 2016

EPA ORC *WS*
Office of Regional Hearing Clerk

33 U.S.C. § 1319(g). Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1) and 40 C.F.R. § 22.38(b), EPA has notified the State of New Hampshire of this action.

3. EPA has provided a thirty-day opportunity for public notice and comment on this proposed CAFO, pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b).

General Allegations

Discharge of Pollutants

4. The CWA is designed to restore and maintain the chemical, physical, and biological integrity of the nation's waters. 33 U.S.C. § 1251(a). To accomplish these objectives, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into navigable waters except in compliance with the terms and conditions of a permit issued pursuant to Section 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344, and EPA's implementing regulations, found at 40 C.F.R. Part 122.

5. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), authorizes the Administrator of EPA to issue National Pollutant Discharge Elimination System ("NPDES") permits for the discharge of pollutants into navigable waters in compliance with the CWA.

6. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines "person" to include "an individual, corporation, [or] partnership."

7. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines "discharge of a pollutant" to include "any addition of any pollutant to navigable waters from any point source."

8. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines "pollutant" to include,

inter alia, solid waste, chemical wastes, rock, sand, and industrial waste discharged into water.

9. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” to include “any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged.”

10. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “the waters of the United States, including the territorial seas.”

11. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), provides for the assessment of penalties for violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Violations

Unauthorized Process Water Discharges

12. Foster Materials is a New Hampshire for-profit corporation incorporated under the laws of the state of New Hampshire, with its principal place of business located at 1778 Old Concord Road, Henniker, New Hampshire.

13. Foster Materials is a “person,” as defined at Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

14. Foster Materials owns and operates a sand and gravel mine and production facility consisting of two locations on Old Concord Road in Henniker, New Hampshire (“the Facility”).

15. Foster Materials controls all daily business and industrial operations at the Facility, and otherwise meets the definition of an “operator” of the Facility, as defined at 40 C.F.R. § 122.2.

16. The Facility operates three serial connected infiltration ponds, or settling basins, as a part of the sand washing operation. The material washing process creates water laden with dirt and fine sediment. The ponds accept the wash water from the material washing process, allowing the water to infiltrate into the ground. During the construction season (May-November), sand and gravel material are washed approximately three times per week; when the ponds reach maximum water capacity, the Facility's design is to cease operation of the ponds until the water naturally drops to a level sufficient to restart washing operations.

17. At some point prior to November, 2014, a pipe was installed from the wash pond to discharge overflow wash water directly into the Contoocook River.

18. Until at least July 21, 2015, Respondent conducted sand washing operation activities resulting in the unauthorized discharge from said overflow pipe of sediment-laden process water into the Contoocook River.

19. The Contoocook River flows into the Merrimack River at Concord, NH. The Merrimack River flows into the Atlantic Ocean at Newburyport, MA.

20. The Contoocook River, the Merrimack River, and the Atlantic Ocean are, "navigable waters," as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

21. The process water discharges from the Facility resulted in the "discharge of pollutants," as defined at Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

22. The overflow pipe installed connecting the settling ponds with the Contoocook River constitutes a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

23. From at least November, 2014 through July, 2015, Foster Materials conducted activities in association with the operation of wash ponds that resulted in the discharge of process waters to waters of the United States.

24. Respondent did not have a NPDES permit authorizing the discharges described in the previous paragraph and therefore was in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

II. CONSENT AGREEMENT

25. EPA and Respondent agree that settlement of this cause of action is in the public interest and that entry of this CAFO without further litigation is the most 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 and agreement of the parties, it is hereby ordered and adjudged as follows:

26. Respondent admits the jurisdictional allegations set forth in Section I above and hereby waives any defenses it might have as to jurisdiction and venue.

27. Respondent neither admits nor denies the factual allegations contained in Section I above.

Waiver of Rights

28. Respondent waives the right to a hearing under Sections 309(g)(2)(B) of the CWA, 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) of the CWA, 33 U.S.C. § 1319(g)(8)(B). Respondent consents to the issuance of a Final Order without further adjudication.

Penalty

29. EPA proposes, and Respondent consents to, the assessment of a civil penalty of \$20,000 for all violations contained in this CAFO.

Payment Terms

30. In agreeing to the penalty described in paragraph 29 above, EPA has taken into account the statutory penalty factors at Sections 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), including Respondent's ability to pay the proposed penalty.

31. Respondent shall pay a total penalty of \$20,000 for violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), in installments according to the payment schedule identified in paragraph 32 below. Interest at the rate of four percent (4%) per annum shall be included in any and all payments made more than 10 days after the date this CAFO becomes final, and shall accrue from 10 days after the date this CAFO becomes final until the date of payment.

32. Respondent shall pay the total penalty amount of \$20,000 plus interest, according to the following schedule:

- a. Payment of \$6,700 shall be made within 10 calendar days of the date this CAFO is final;
- b. Payment of \$6,872 (\$6,650 principal, plus \$222 accrued interest) shall be made within 150 days after this CAFO becomes final; and
- c. Payment of \$6,783 (includes \$6,650 principal, plus \$133 accrued interest) shall be made within 330 days after this CAFO become final.

33. Respondent shall make each payment by company, bank, cashier's or certified check, payable to "Treasurer, United States of America," referencing the title and docket numbers of the action ("*In the Matter of: Foster Materials, Inc.*, Docket No. CWA-01-2016-0032). The payment shall be mailed via regular U.S. Postal Service mail, to:

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

34. Respondent shall note the case name and respective docket number ("*In the Matter of Foster Materials, Inc.*," Docket No. CWA-01-2016-0032) in cover letters accompanying the payments and shall provide copies of the checks and letters 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

and

Jeffrey Kopf, Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code OES04-4
Boston, MA 02109-3912

35. If Respondent fails to make any payment required by paragraph 32 by the required due date, the total penalty amount of \$20,000, plus all accrued interest (less

payments already made), shall become due immediately to the United States upon such failure. Then, interest as calculated under paragraph 37 shall continue to accrue on any unpaid amounts until the total amount due has been received by the United States.

Respondent shall be liable for such amount regardless of whether EPA has notified

Respondent of its failure to pay or made a demand for payment.

36. The penalty provided for herein is a penalty within the meaning of 26 U.S.C. § 162(f) and is not tax deductible for purposes of federal, state, or local law.

General Provisions

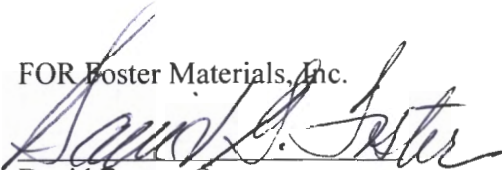
37. Pursuant to Sections 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), a failure by the Respondent to pay the penalty assessed by this CAFO in full by its due date shall subject Respondent to a civil action to collect the assessed penalty, plus interest at current prevailing rates, from the date when this CAFO 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 an assessed penalty 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.

38. The Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, successors, or assigns.

39. The Final Order does not constitute a waiver, suspension, or modification of the requirements of CWA, or any regulations 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 of the penalty pursuant to this Consent Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts stipulated to herein.

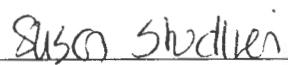
40. Except as described in paragraph 37 of this Consent Agreement, each party shall bear its own costs and attorney's fees in connection with the action resolved by this CAFO.

41. The undersigned representative of Respondent certifies that he is fully authorized by Foster Materials to enter into the terms and conditions of this CAFO and to execute and legally bind Foster Materials to it.

FOR Foster Materials, Inc.

David Foster, Owner,
Foster Materials, Inc.

Date: 7/14/16

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

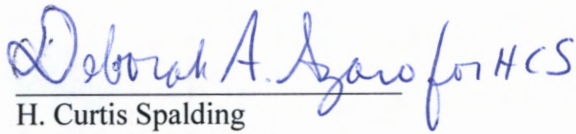

Susan Studlien, Director
Office of Environmental Stewardship
U.S. EPA, Region 1

Date: 08/29/2016

III. FINAL ORDER

42. The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order.

43. Respondent is 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 unless a petition to set aside the order is filed by a commenter pursuant to Section 309(g)(4)(C) of the CWA, 33 U.S.C. § 1319(g)(4)(C) and 40 C.F.R. Part 22.



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

Date: 8/29/16

In the matter of Foster Materials, Inc.
Docket No. CWA-01-2016-0032

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,
hand-delivered:

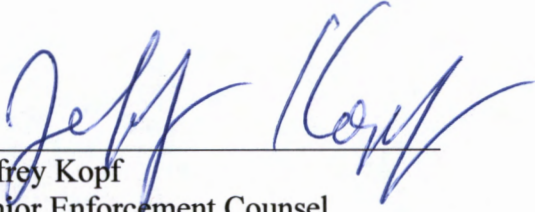
Ms. Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region I (ORA18-1)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Copy, by Certified Mail,
Return Receipt Requested

Sherilyn Burnett Young
Attorney-At-Law
Rath, Young and Pignatelli, P.C.
One Capital Plaza
Concord, NH 03302-1500

Dated: _____

8/31/16



Jeffrey Kopf
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (OES04-3)
Boston, MA 02109-3912
Tel (617) 918-1796
Fax (617) 918-0796