

**EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS**

This form was originated by Wanda I. Santiago for Kathleen E. Woodward 6/7/10  
Name of Case Attorney Date

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

Case Docket Number CWA-01-2009-0071

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:

Town of Concord, MA  
Town House  
22 Monument Square  
Concord, MA 01742

Total Dollar Amount of Receivable \$ 10,000 Due Date: 6/26/10

SEP due? Yes  No  Date Due \_\_\_\_\_

Installment Method (if applicable)

INSTALLMENTS OF:

- 1<sup>st</sup> \$ \_\_\_\_\_ on \_\_\_\_\_
- 2<sup>nd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_
- 3<sup>rd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_
- 4<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_
- 5<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

For RHC Tracking Purposes:

Copy of Check Received by RHC \_\_\_\_\_ Notice Sent to Finance \_\_\_\_\_

**TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

IFMS Accounts Receivable Control Number \_\_\_\_\_

If you have any questions call: \_\_\_\_\_  
in the Financial Management Office

\_\_\_\_\_ Phone Number

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I**

<b>IN THE MATTER OF</b>	)	
	)	<b>CONSENT AGREEMENT</b>
	)	<b>AND FINAL ORDER</b>
Town of Concord	)	
Town House	)	<b>Docket No. CWA 01-2009-0071</b>
22 Monument Square	)	
Concord, Massachusetts 01742	)	
	)	
<b>Respondent.</b>	)	
_____	)	

This Consent Agreement and Final Order ("CAFO") is issued under the authority granted to the U.S. 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 or Suspension of Permits," at 40 C.F.R. Part 22 ("Part 22 Rules").

**I. PRELIMINARY STATEMENT**

1. EPA initiated this proceeding against the Respondent pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), by filing an administrative Complaint against Respondent, Docket No. CWA-01-2009-0071 (the "Complaint"), on August 13, 2009.
2. The complete factual and jurisdictional basis for proposing the assessment of a civil penalty is set forth in the Complaint and is incorporated herein by reference.

CONSENT AGREEMENT AND FINAL ORDER  
U.S. EPA Region 1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

Docket No. CWA-01-2009-0071

3. 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 Respondent.
4. Section 309(g)(4)(A) of the CWA, 33 U.S.C. 1319(g)(4)(A), provides that, prior to issuing an order assessing a penalty under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA must provide public notice of, and reasonable opportunity to comment on, the proposed issuance of such order. EPA has satisfied this requirement by providing public notice of, and reasonable opportunity to comment on, the proposed penalty on August 24, 2009.

## **II. CONSENT AGREEMENT**

5. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint.
6. Respondent waives any defenses it might have as to jurisdiction and venue, and, without admitting or denying the facts and violations alleged in the Complaint, consents to the terms of this CAFO.

## **III. WAIVER OF RIGHTS**

7. Respondent hereby waives its right to request a judicial or administrative hearing on any issue of law or fact set forth in the Complaint, and consents to the issuance of the Final Order included with this Consent Agreement without further adjudication.

#### **IV. PENALTY**

8. Based upon the statutory penalty factors at Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA has determined that an appropriate civil penalty to settle this action is in the amount of ten thousand dollars (\$10,000).

#### **V. PAYMENT TERMS**

9. Respondent shall pay the civil penalty set forth in Paragraph 8 of this CAFO no later than 30 calendar days after this CAFO is final.
10. Respondent shall make payment by depositing in the United States mail a cashier's or certified check, payable to the order of "Treasurer, United States of America" and referencing the title and docket number of the action ("In the Matter of Town of Concord, Massachusetts, CWA-01-2009-0071") to:

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

11. Respondent shall simultaneously submit copies of the penalty payment check to:

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region I  
5 Post Office Square, Suite 100  
Mail Code ORA17-1  
Boston, MA 02109-3912

and

Kathleen E. Woodward  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency, Region I  
5 Post Office Square, Suite 100  
Mail Code OES4-2  
Boston, MA 02109-3912

#### **VI. General Provisions**

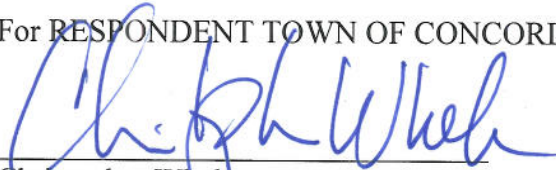
12. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), a failure by Respondent to pay the penalty assessed by this CAFO in full by the payment due date shall subject Respondent to a civil action to collect the assessed penalty, plus interest at current prevailing rates from the date the penalty was due pursuant to Paragraph 9 of this CAFO. The rate of interest assessed shall be at the rate set forth in 31 C.F.R. § 901.9(d), 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 20 percent of the aggregate amount of such person's penalties and nonpayment penalties which

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.

13. The penalty specified in Paragraph 8 above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.
14. The provisions of this CAFO shall be binding upon Respondent and its successors or assigns.
15. Except as described in Paragraph 12 above, each party shall bear its own costs and attorneys fees in this proceeding.
16. Issuance of this CAFO constitutes a full and complete settlement by EPA of all claims for judicial and administrative civil penalties pursuant to Sections 309(d) and (g) of the CWA, 33 U.S.C. §§ 1319(d) and (g), for all past violations of the CWA alleged in the Complaint referenced in Paragraph 1.
17. This CAFO shall not limit the authority of the United States to enforce the underlying substantive legal requirements of this administrative penalty assessment, whether administratively or judicially, pursuant to Sections 309(a), (b), and (c) of the Act, 33 U.S.C. §§ 1319(a), (b), and (c), or Section 504 of the Act, 33 U.S.C. § 1364.
18. This CAFO does not constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. §§ 1251 et seq., or any regulations promulgated or permits issued thereunder.
19. The undersigned representative of Respondent certifies that he or she is fully authorized by Respondent to enter into the terms and conditions of this CAFO and legally bind Respondent.

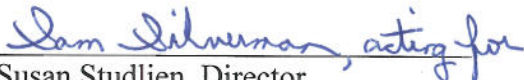
STIPULATED AND AGREED:

For RESPONDENT TOWN OF CONCORD, MASSACHUSETTS

  
\_\_\_\_\_  
Christopher Whelan  
Town Manager  
Town of Concord, Massachusetts

Date: 5/13/10

For U.S. ENVIRONMENTAL PROTECTION AGENCY


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

Date: 5-26-10

**FINAL ORDER**

20. The forgoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondent is ordered to comply with the terms of the Consent Agreement which will become final 30 days from the date it is signed by the Regional Judicial Officer.

U.S. ENVIRONMENTAL PROTECTION AGENCY

  
\_\_\_\_\_  
Jill Metcalf  
Acting Regional Judicial Officer  
U.S. EPA, Region 1

Date: May 27, 2010



**In the Matter of: Town of Concord, Massachusetts**  
**Docket No. CWA-01-2009-0071**

CERTIFICATE OF SERVICE

I certify that the foregoing complaint was sent to the following persons, in the manner specified on the date below:

Copy hand-delivered:

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region I  
5 Post Office Square, Suite 100  
Mail Code ORA17-1  
Boston, MA 02109-3912

Copy by certified mail, return receipt requested:

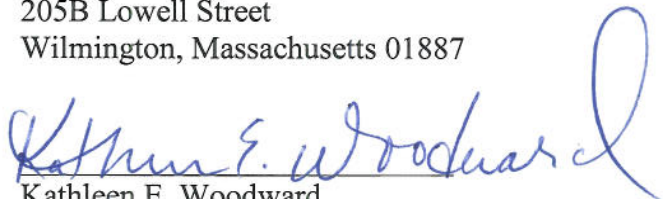
Christopher Whelan  
Town Manager  
Town House, P.O. Box 535  
22 Monument Square  
Concord, Massachusetts 01742

Rebekah Lacey, Esq.  
Anderson & Kreiger LLP  
One Canal Park, Suite 200  
Cambridge, Massachusetts 02141

Copy by first-class mail to:

Richard Chalpin, Regional Director  
Massachusetts Department of Environmental  
Protection  
Northeast Regional Office  
205B Lowell Street  
Wilmington, Massachusetts 01887

Dated: June 1, 2010

  
Kathleen E. Woodward  
Senior Enforcement Counsel  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency, Region I  
5 Post Office Square, Suite 100  
Mail Code OES4-2  
Boston, MA 02109-3912  
(617) 918-1780



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912**

**BY HAND**

June 1, 2010

Ms. Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region I  
5 Post Office Square, Suite 100  
Mail Code ORA17-1  
Boston, MA 02109-3912

Re: In the Matter of Town of Concord, Massachusetts  
Administrative Penalty Action Settlement: Docket No. CWA-01-2009-0071

Dear Ms. Santiago:

For the above-referenced matter, please file the enclosed Consent Agreement and Final Order. I have included the original and one copy of these documents.

Thank you for your attention to this matter. Should you have any questions, please contact me at (617) 918-1780.

Sincerely,

Senior Enforcement Counsel

Enclosure

cc: Christopher Whelan, Town Manager  
Rebekah Lacey, Esq.