

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for

Steven Viggiani  
Name of Case Attorney

9/30/13  
Date

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

Case Docket Number CAA-01-2013-0049

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:

Duclos Corporation  
One Riverside Ave  
Somerset, MA 02726-0300

Total Dollar Amount of Receivable \$ 13,250 Due Date: 10/30/13

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 1**

In the Matter of:	)	Docket No. CAA-01-2013-0049
Duclos Corporation	)	CONSENT AGREEMENT
One Riverside Avenue	)	AND FINAL ORDER
Somerset, MA 02726-0300	)	
Proceeding under Section 113(d) of the	)	
Clean Air Act, 42 U.S.C. § 7413(d)	)	

**RECEIVED**  
2013 SEP 30 P 4: 59  
EPA ORC  
OFFICE OF  
REGISTRATION & CLERK  
WS

**I. INTRODUCTION**

1. The United States Environmental Protection Agency ("EPA"), Region 1, has alleged that Duclos Corporation ("Duclos") has violated the Clean Air Act ("CAA"), 42 U.S.C. §§ 7401-7671q, and regulations implementing the CAA, at a shipbuilding and ship repair yard owned and operated by Duclos. EPA Region 1 ("Complainant") and Duclos ("Respondent") have agreed to settle this matter through an administrative Consent Agreement and Final Order ("CAFO"). EPA's regulations governing CAA administrative penalty actions and settlements are set out at 40 C.F.R. Part 22. Pursuant to 40 C.F.R. § 22.13(b), this CAFO simultaneously commences and concludes this proceeding.

**II. ENFORCEMENT AUTHORITY**

2. Sections 113(a)(3) and 113(d)(1) of the CAA, 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1), provide, among other things, that EPA may commence an administrative penalty action against any person found in violation of CAA provisions and

their implementing regulations, including CAA Section 112, CAA subchapter V (“CAA Title V”) and their implementing regulations. Pursuant to Section 113(d)(1) of the CAA, the Debt Collection Improvement Act (“DCIA”), 31 U.S.C. § 3701, and the DCIA’s implementing regulations at 40 C.F.R. Part 19, EPA may assess penalties of up to \$37,500 per day for each violation of these CAA statutory provisions and regulations.

3. This CAFO alleges violations that occurred more than twelve months ago. EPA and the U.S. Department of Justice have jointly determined in accordance with Section 113(d)(1) of the CAA that this matter is appropriate for an administrative penalty action.

### **III. FACTUAL BACKGROUND**

4. Duclos is a corporation organized under Massachusetts law.

5. In 1984, Duclos purchased an existing shipbuilding and ship repair facility, known as the Gladding-Hearn shipyard, located in Somerset, Massachusetts. Duclos has owned and operated this facility (“Gladding-Hearn Shipyard” or “Yard”) from 1984 to the present.

6. The Gladding-Hearn Shipyard builds commercial vessels and is involved in commercial and military ship repair operations that include, among other things, the application of paints, solvents, faring compounds, and sealants (collectively, “coatings”) that contain volatile organic compounds, hazardous air pollutants, and volatile organic hazardous air pollutants.

7. Based on information obtained from an EPA Region 1 inspection conducted in 2011, and Duclos’s responses to a CAA Section 114 Reporting Requirement issued in 2012, EPA Region 1 determined that the Gladding-Hearn

Shipyard violated CAA hazardous air pollution regulations for shipbuilding and ship repair yards, and violated CAA Title V permitting requirements. EPA Region 1 issued Duclos a CAA Notice of Violation regarding these violations on April 25, 2013.

#### IV. SHIPBUILDING NESHAP VIOLATIONS

8. Pursuant to Section 112 of the CAA, 42 U.S.C. § 7412, EPA promulgated the National Emission Standards for Hazardous Air Pollutants for Shipbuilding and Ship Repair (Surface Coating) (the "Shipbuilding NESHAP") at 40 C.F.R. Part 63, Subpart II.

9. The Shipbuilding NESHAP applies to shipbuilding and ship repair operations at any facility that is a major source of HAPs. See 40 C.F.R. § 63.781(a). An "affected source" is any shipbuilding or ship repair facility subject to the NESHAP that has surface coating operations with a minimum 1,000 liters (264 gallons) annual marine coating usage. See 40 C.F.R. § 63.782.

10. The term "major source" is defined by the Shipbuilding NESHAP as "any source that emits or has the potential to emit, in the aggregate, 9.1 megagrams per year (10 tons per year) or more of any HAP or 22.7 megagrams per year (25 tons per year) or more of any combination of HAPs." See 40 C.F.R. § 63.782.

11. The effective date of the Shipbuilding NESHAP was December 15, 1995. See 60 Fed. Reg. 64330 (Dec. 15, 1995). The owner or operator of an existing affected source was required to comply with the Shipbuilding NESHAP by two years after the NESHAP's effective date (that is, by December 16, 1997). The owner or operator of an existing unaffected source that increased its actual or potential to emit HAPs so that

the source became a major source was required to comply with the Shipbuilding NESHAP within one year after becoming a major source. See 40 C.F.R. §§ 63.784(a) and 63.784(b).

12. The Gladding-Hearn Shipyard has been a major source of HAPs and an existing affected source under the Shipbuilding NESHAP since no later than on or about November 2, 2007. Accordingly, Duclos, as the owner/operator of the Gladding-Hearn Shipyard, has been required to comply with the Shipbuilding NESHAP at the Yard since no later than on or about November 2, 2008.

13. Pursuant to 40 C.F.R. §§ 63.787(a), 63.9(b)(1)(ii), and 63.9(b)(2), Duclos was required to submit to EPA written notification that the Yard was subject to the Shipbuilding NESHAP within 180 days of when the Yard became subject to the NESHAP.

14. At the time EPA issued Duclos a CAA Notice of Violation for the Yard in April 2013, Duclos had failed to submit this initial notification. Duclos submitted the initial notification via letter dated July 31, 2013. Accordingly, Duclos violated 40 C.F.R. §§ 63.787(a), 63.9(b)(1)(i), and 63.9(b)(2).

15. Pursuant to 40 C.F.R. § 63.787(b)(1), Duclos was required to submit an implementation plan addressing the Yard's compliance with the requirements set forth in 40 C.F.R. § 63.787(b)(3) within 180 days of when the Yard became subject to the NESHAP.

16. At the time EPA issued Duclos a CAA Notice of Violation in April 2013, Duclos had failed to submit this implementation plan. Duclos submitted its implementation plan for the Yard via letter dated August 16, 2013. Accordingly, Duclos violated 40 C.F.R. § 63.787(b)(1).

17. Pursuant to 40 C.F.R. § 63.788(c), Duclos is required to submit semiannual compliance reports for the Yard to EPA. As of April 2013, Duclos had failed to submit any semiannual compliance reports. Accordingly, Duclos violated 40 C.F.R. § 63.788(c).

18. Pursuant to 40 C.F.R. § 63.788(b)(2), Duclos is required to compile records for the Yard on a monthly basis and maintain those records for a minimum of five years. As of April 2013, Duclos had failed to keep some of these required monthly records. Duclos certifies that it has kept all of the required monthly records since June 2013. Accordingly, Duclos violated 40 C.F.R. § 63.788(b)(2).

#### **V. CAA TITLE V PERMIT VIOLATIONS**

19. Section 503(c) of the CAA, 42 U.S.C. § 7661b(c), and EPA's State Operating Permit Program regulations at 40 C.F.R. § 70.5(a)(1), require a major source to apply for and obtain a CAA Title V operating permit within 12 months of becoming subject to a state's operating permit program.

20. Massachusetts received interim approval for its CAA Title V operating permit program in May 1996, and final approval in November 2001. See 40 C.F.R. Part 70, Appendix A. The Massachusetts operating permit program applies to, among other things, any facility that is subject to a federal NESHAP. See 310 CMR 7.00, Appendix C, Section 2(a)(2).

21. Since the Gladding-Hearn Shipyard is subject to the Shipbuilding NESHAP, Duclos must apply for and obtain a Title V operating permit for the Yard. As of

April 2013, Duclos had neither applied for nor obtained a Title V operating permit. Accordingly, Duclos violated Section 503(c) of the CAA and 40 C.F.R. § 70.5.

#### **VI. GENERAL TERMS**

22. The terms of this CAFO shall apply to and be binding on Complainant and on Respondent, its officers, directors, successors and assigns.

23. For the purposes of this CAFO and any action necessary to enforce it, Respondent admits that Complainant has jurisdiction over the subject matter described in the CAFO and that the CAFO states claims upon which relief can be granted against Respondent. Respondent neither admits nor denies the factual allegations and legal conclusions of violation contained in Sections III through V above. Respondent waives any right to a judicial or administrative hearing or appeal regarding the CAFO, or to otherwise contest the CAFO.

24. Respondent consents to the assessment of the civil penalty set out in Section VIII below. Respondent also consents to the issuance of any compliance provisions and any conditions specified in the CAFO, including the performance of the supplemental environmental project described herein.

#### **VII. CAA COMPLIANCE ACTIVITIES**

25. Duclos shall comply with all applicable requirements of the Shipbuilding NESHAP and of CAA Title V and its implementing regulations.

26. Duclos has submitted the Shipbuilding NESHAP's required initial notification for the Gladding-Hearn Shipyard via letter dated July 31, 2013, submitted an implementation plan for the Yard via letter dated August 16, 2013, and certifies that it has kept all required monthly records for the Yard since June 2013. Duclos shall timely

submit a Shipbuilding NESPAP compliance report for the Yard for the next semiannual compliance period, which ends in December 2014.

27. Pursuant to CAA Title V and the approved Massachusetts operating permit program, Duclos submitted a Title V operating permit application for the Yard in September 2013 to the Massachusetts Department of Environmental Protection.

#### **VIII. CIVIL PENALTIES**

28. Duclos shall pay a civil penalty totaling \$26,500, plus calculated interest, in accordance with the terms and schedule set out below. EPA has determined that this is an appropriate settlement penalty based on the nature of the alleged violations and other relevant factors.

29. Duclos shall pay the penalty as follows: no later than 30 days after the effective date of this CAFO, Duclos shall pay \$13,250; and no later than 120 days after the effective date, Duclos shall pay \$13,381, comprised of \$13,250 plus \$131 in calculated interest. To make each of these penalty payments, Duclos shall submit a cashier's or certified check, payable to the order of the "Treasurer, United States of America," and referencing the title of this action and the CAA case docket number (CAA-01-2013-0049). The check shall be sent via regular mail to the following address:

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



If Duclos sends the check via express mail, the following address shall be used:

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101  
Contact: Natalie Pearson  
phone 314-418-4087

30. Duclos shall send a notice of each penalty payment and a copy of each check to:

Wanda I. Santiago  
Regional Hearing Clerk  
U.S. EPA, Region 1  
Mail Code ORA-18-1  
5 Post Office Square, Suite 100  
Boston, Massachusetts 02109-3812

and

Steven J. Viggiani  
Senior Enforcement Counsel  
U.S. EPA, Region 1  
Mail code OES04-3  
5 Post Office Square, Suite 100  
Boston, Massachusetts 02109-3912

31. If Duclos fails to make any penalty payment in full by its due date, Duclos shall pay increased interest on the late amount, calculated using the current 3% IRS "underpayment rate" established pursuant to 26 U.S.C. § 6621(a)(2). Duclos shall also pay a quarterly nonpayment penalty and any governmental enforcement expenses incurred to collect the late payment. See Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). In addition, the due dates of the remaining scheduled penalty payments under this CAFO shall be accelerated to the due date of the missed penalty payment, and Duclos shall pay increased interest, quarterly penalties and governmental expenses as provided above for the total of all the accelerated penalty payments.

32. Duclos certifies that it shall not use any payments made pursuant to this Section, or any payments made pursuant to Section X below, in any way as, or in furtherance of, a tax deduction for Duclos under federal, state or local law.

#### **IX. SUPPLEMENTAL ENVIRONMENTAL PROJECT**

33. Duclos shall perform and fully implement a supplemental environmental project ("SEP") -- the "Diesel Compressor SEP" -- in accordance with the terms and schedules set out in this Section and in Appendix 1, which is incorporated into this CAFO and is fully enforceable therein.

34. Duclos certifies to each of the following:

(a) that all cost information provided by Duclos to EPA in connection with EPA's approval of the SEP is complete and accurate;

(b) that, as of the effective date of this CAFO, Duclos is not required to develop or perform the SEP by any federal, state, or local law or regulation, and is not required to develop or perform the SEP by agreement, grant, or as injunctive relief, in any other action in any forum;

(c) that the SEP is not a project that Duclos was planning or intending to construct, perform or implement other than in settlement of the claims resolved in this CAFO; and

(d) that Duclos has not received and will not receive credit for the SEP in any other enforcement action; and

(e) that Duclos will not receive any reimbursement for any portion of the cost of the SEP from any other entity or person.

35. In accordance with the schedule set out in Appendix 1, Duclos shall submit a SEP Completion Report to EPA. The SEP Completion Report shall contain the following information:

(a) a description of the SEP as fully implemented;

(b) a detailed description of the costs expended on the SEP, with copies of invoices, purchase orders or canceled checks; and

(c) a certification of completion stating that the SEP has been performed and fully implemented pursuant to the provisions of this CAFO.

36. Duclos's SEP Completion Report must contain the following certification, signed by a corporate officer or senior manager responsible for environmental decision-making:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments to it, and that this document and its attachments were prepared either by me personally or under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gathered and presented the information contained therein. I further certify, based on personal knowledge or on my inquiry of those individuals immediately responsible for obtaining the information, 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.

37. Following receipt of the SEP Completion Report, EPA will do one of the following:

(a) inform Duclos that EPA accepts the SEP Completion Report;

(b) inform Duclos in writing that EPA rejects the SEP Completion Report, identify any SEP deficiencies, and grant Duclos an additional thirty (30) days, or such other time as EPA may in its sole and unreviewable discretion conclude is reasonable, in which to correct the deficiencies; or

(c) inform Duclos in writing that EPA rejects the SEP Completion Report and that Duclos has failed to fully implement the SEP in accordance with the requirements of this CAFO.

Duclos may invoke the procedures set forth in Section XII below to dispute EPA's determination the SEP was not fully implemented in accordance with the requirements of this CAFO.

38. For federal income tax purposes, Duclos agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in implementing the SEP.

39. Any public statement, oral or written, in print, film, or other media, made by Duclos making reference to the SEP shall include the following language: "This project was undertaken as part of the settlement of a federal enforcement action taken against Duclos by the U.S. Environmental Protection Agency for alleged violations of the Clean Air Act."

40. Duclos shall retain legible copies of all records, data or other information used to prepare any reports, notices or other correspondence submitted to EPA regarding the SEP, and shall provide any such records, data or information to EPA within ten (10) days of EPA's request for the information, for a period of one year following the full implementation of the SEP.

#### **X. STIPULATED PENALTIES**

41. If Duclos fails to perform or to fully implement the SEP, the following stipulated penalties shall apply:

(a) if Duclos fails to order or take delivery of the diesel compressor within the deadlines set out in Appendix 1, Duclos shall be liable for stipulated penalties of \$500 per day for each such failure;

(b) if Duclos fails to install or commence full operation of the compressor within the deadline set out in Appendix 1, Duclos shall be liable for stipulated penalties of \$500 per day for the first through tenth day of such failure, and \$1,000 per day for each day thereafter;

(c) If Duclos fails to timely submit the SEP Completion Report required by Paragraph 35 above, or fails to provide timely information to EPA pursuant to Paragraph 40 above, Duclos shall be liable for stipulated penalties of \$250 for each day of each such failure; and

(d) If Duclos wholly fails to perform or implement the SEP as required by Appendix 1, Duclos shall be liable for a stipulated penalty of \$50,000.

42. Stipulated penalties arising under this Section shall accrue for each violation set out in Paragraph 41 above. Separate stipulated penalties shall accrue simultaneously for separate violations. Stipulated penalties shall accrue regardless of whether EPA has notified Duclos that a violation has occurred.

43. Stipulated penalties shall become due and owing, and shall be paid by Duclos, not later than thirty (30) days after EPA issues Duclos a written demand for them. If any such demanded stipulated penalties are not paid in full when due, Duclos shall pay the unpaid penalties and interest thereon. Such interest shall accrue from the date the penalties were due, and shall be calculated using the interest rate set out in Paragraph 31 above.

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

45. Stipulated penalty payments shall be made by cashier's or certified check, payable to the order of the "Treasurer, United States of America" and referencing the title of this action and the CAA case docket number (CAA-01-2013-0049), together with a transmittal letter describing the calculation of the penalties (including any calculation of interest), sent via regular or express mail to the appropriate address listed in Paragraph 29 above. A copy of the check and transmittal letter shall be sent to EPA Region 1 at both addresses listed in Paragraph 30 above.

46. Stipulated penalties shall continue to accrue as provided in Paragraph 41 above during any dispute resolution for stipulated penalties arising under

Section XII below, with any interest on accrued penalties calculated using the interest rate set out in Paragraph 31 above, but need not be paid until the dispute is resolved by agreement between the parties or by a decision by EPA, at which time Duclos shall pay the accrued penalties determined to be owing, together with interest, to EPA within thirty (30) days of the effective date of the agreement or the receipt of EPA's decision.

47. The stipulated penalty provisions of this Section shall be in addition to all other rights reserved by EPA pursuant to Section XIII below. Nothing in this Section shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek other remedies or sanctions available by virtue of any violation by Duclos of this CAFO or of the statutes, regulations or permits referenced within it.

#### **XI. FORCE MAJEURE**

48. A "force majeure event" is defined as an event arising from circumstances entirely beyond Duclos's control that delays or prevents the performance or completion of the SEP, despite Duclos's best efforts to avoid or minimize such delay or non-completion. Force majeure events shall not include unexpected or increased costs, changed financial circumstances, change of ownership of Duclos, or the financial inability of Duclos to meet any requirement of the SEP.

49. If any event occurs that delays or prevents, or that is expected to delay or prevent, the performance or completion of the SEP required by this CAFO, Duclos shall notify EPA in writing not more than ten (10) days after the event or Duclos's knowledge of the event, whichever is earlier. The notice shall describe in detail the expected length of the delay or non-completion, the cause(s) of the delay or non-completion, the measures taken or planned to be taken by Duclos to prevent or

minimize the delay or non-completion, and the timetable for implementing these measures. Failure by Duclos to comply with the notice requirements of this Paragraph shall void the remainder of this Section as to the event causing the delay or non-completion, and shall constitute a waiver of Duclos's right to request a performance extension based on the event.

50. If EPA and Duclos agree that the actual or expected delay in performing the SEP, or the actual or expected non-completion of the SEP, has been or will be caused by a force majeure event, the time for SEP performance or completion shall be extended for a period no longer than the delay resulting from the event. An extension of time for performing one SEP requirement shall not automatically extend the time for performing other requirements.

51. If EPA does not agree that the actual or expected delay in performing the SEP, or the actual or expected non-completion of the SEP, has been or will be caused by a force majeure event, EPA will notify Duclos in writing of its decision, and any delays in the performance or completion of the SEP shall not be excused.

52. If EPA and Duclos are unable to agree as to (a) whether Duclos's actual or expected delay in performing the SEP, or actual or expected non-completion of the SEP, has been or will be caused by a force majeure event; (b) the number of days of delay that have been or will be caused by the force majeure event; or (c) whether Duclos has complied with the notice requirements of Paragraph 49 above, EPA's decision shall be final and binding on both parties unless Duclos seeks dispute resolution pursuant to Section XII below.

## XI. DISPUTE RESOLUTION

53. If Respondent objects to any EPA action taken pursuant to Sections IX or X, or Appendix 1, of this CAFO, Respondent may employ the dispute resolution provisions set out in the remainder of this Section, except where dispute resolution is expressly foreclosed by this CAFO.

54. Respondent shall notify EPA in writing of its objection(s) within ten (10) days of the disputed EPA action or within ten (10) days of Respondent's receipt of EPA's written demand for the disputed stipulated penalty. Respondent's written notice ("Objection Letter") shall describe the substance of the objection(s) and shall invoke this Section of the CAFO.

55. Upon EPA's receipt of Respondent's Objection Letter, the parties shall conduct negotiations for up to fifteen (15) business days, during which time Respondent has the right to meet with the Chief of the EPA's Regulatory Legal Office, or with his or her designee. By agreement of the parties, a neutral facilitator or mediator may assist in the conduct of this meeting. Respondent's obligation to perform the disputed action or pay the disputed stipulated penalty shall be suspended for the duration of this fifteen-day period. If there is no agreement at the conclusion of this 15-day period, but both parties agree that further negotiations would be fruitful, the parties may agree to continue dispute resolution (which can include more informal negotiations, mediation, or any other appropriate dispute resolution technique) for a period of time specified in writing. This written agreement to extend negotiations shall specify whether Respondent's obligation to perform the disputed action or pay the disputed stipulated penalty will be further suspended.



56. Any mutual resolution reached by the parties pursuant to Paragraph 55 shall be memorialized in writing, signed by both parties, and be incorporated as an enforceable provision of this CAFO. If the parties have not resolved the dispute by the conclusion of the dispute resolution period specified in Paragraph 55 (including any agreed-upon extensions), then Respondent shall abide by EPA's position regarding the disputed action or stipulated penalty unless Respondent, within five (5) business days after the end of the period, notifies EPA in writing that it seeks further dispute resolution of the matter.

57. In this written notice, Respondent shall request a meeting with the Manager of the Legal Enforcement Office in EPA's Office of Environmental Stewardship, in order for Respondent to make an oral presentation of its position. Respondent may in its discretion provide further details regarding the substance of the dispute in this notice. Within ten (10) business days of receiving Respondent's written notice, and after any requested meeting with Respondent, the Legal Enforcement Office Manager or his or her designee shall issue a written decision to Respondent regarding the disputed issue. Such decision shall be final, incorporated as an enforceable provision of this CAFO, and followed by both parties.

### **XIII. EFFECT OF SETTLEMENT**

58. This CAFO constitutes a settlement by EPA of all claims for federal civil penalties under Section 113 of the CAA for the violations set out in Sections IV and V through the effective date of this CAFO.

59. Nothing in this CAFO shall be construed to limit the authority of EPA or the United States to undertake any action against Respondent for criminal activity, or to

respond to conditions which may present an imminent and substantial endangerment to the public health, welfare or the environment. EPA reserves all rights and remedies available to it to enforce the provisions of this CAFO, the CAA and its implementing regulations and permits, and any other federal, state or local law or regulation.

60. This CAFO shall not relieve Respondent of its obligations to comply with all applicable provisions of federal or state law, and shall not be construed to be a ruling or determination regarding any issue related to any federal, state or local permit. Except as provided in Paragraph 58 above, compliance with this CAFO shall not be a defense to any action subsequently commenced pursuant to environmental laws and regulations administered by EPA.

61. Each party shall bear its own costs, disbursements and attorney's fees in connection with this enforcement action, and specifically waives any right to recover such costs, disbursements or fees from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable law.

62. Respondent's undersigned representative certifies that he or she is fully authorized by Respondent to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

**SO SIGNED:**

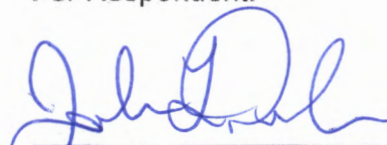
For Complainant:



Susan Studien, Director  
Office of Environmental Stewardship  
EPA Region 1

Date: 09/30/13

For Respondent:



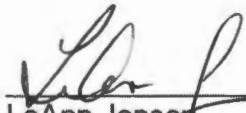
John F. Duclos  
Chief Executive Officer  
Duclos Corporation

Date: 9/26/2013

**FINAL ORDER**

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

**SO SIGNED:**

  
\_\_\_\_\_  
LeAnn Jensen  
Acting Regional Judicial Officer  
EPA Region 1

Date: 9/30/13

## APPENDIX 1 – DIESEL COMPRESSOR SEP

1. Duclos currently uses a diesel-powered air compressor manufactured in the mid-1960s to power its grit-blasting operations. The Diesel Compressor SEP will replace this old, higher-polluting air compressor with a newer compressor that will emit significantly less air pollutants.
2. By no later than October 30, 2013, Duclos shall purchase a diesel-powered air compressor that meets or exceeds EPA's s Tier 3 standards for the compressor's diesel engine. Duclos shall spend at least \$50,000 to purchase this compressor.
3. By no later than November 30, 2013, Duclos shall take delivery and install the new air compressor at Duclos's Gladding-Hearn Shipyard. By this same date, Duclos shall commence full operation of the new compressor by either (a) using it to power the grit blaster on a ship-building or ship repair project, (b) using it to power other machinery or equipment used at the Shipyard, or (c) test running the compressor throughout its power range to ensure that it is fully operational and ready to be used as described above.
4. On or before the date that Duclos commences full operation of the new compressor, Duclos shall cease using its old compressor and shall render the old compressor permanently inoperable by drilling the diesel engine block and dismantling the compressor.
5. In addition to the certifications contained in Paragraph 34 of the CAFO, Duclos certifies that it 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 SEP. Duclos

further certifies that to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of the certification above, 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.

6. Duclos shall submit its SEP Completion Report, demonstrating Duclos's compliance with the requirements of Paragraphs 2 through 4 of this Appendix and Paragraph 34 of the CAFO, within 30 days after the date that Duclos commences full operation of the new compressor at the Shipyard.

6. Duclos shall operate the new compressor for at least five years by using it to power the grit blaster and other machinery or equipment at the Shipyard.