



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
ONE CONGRESS STREET SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

September 30, 2010

BY HAND

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 1
5 Post Office Square, Suite 100
Mail Code: ORA-18-1
Boston, MA 02109-3912

RECEIVED
SEP 30 2010
EPA ORC WS
Office of Regional Hearing Clerk


Re: In the Matter of: American Science & Engineering, Inc.
Docket No. CWA 01-2010-0060

Dear Ms. Santiago:

Please find enclosed a partially-executed copy of a proposed Consent Agreement and Final Order (CAFO) that will simultaneously commence and settle the above-referenced action. Please note that the proposed CAFO has not yet been signed by the Regional Judicial Officer due to the public notice requirements of the Clean Water Act and the Consolidated Rules of Practice (40 C.F.R. Part 22). This proposed CAFO is being filed in the event that you receive requests seeking copies of this document in response to a public notice scheduled to be posted on Region 1's web site. The notice will announce a 30 day public comment period regarding the proposed CAFO. The original of the proposed CAFO will be maintained in my personal files until the public notice period expires. It is expected that an original, fully executed CAFO will be filed with your office no sooner than 10 days after the public notice period expires.

Thank you for your attention to this matter.

Sincerely,


Gregory Dain
Senior Enforcement Counsel
EPA Region 1

Enclosure (CAFO)

cc: Mark Kalpin, Esq. (legal counsel for AS&E)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

RECEIVED

SEP 30 2010

Office of Regional Hearing Clerk
EPA ORC WS

_____)
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In the Matter of:)
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)
American Science & Engineering, Inc.)
829 Middlesex Turnpike)
Billerica, MA 01821)
)
Respondent)
_____)

Docket No. CWA-01-2010-0060

CONSENT AGREEMENT AND
FINAL ORDER FOR CLASS II
CIVIL PENALTY UNDER
CLEAN WATER ACT

This Consent Agreement and Final Order ("CAFO") is issued pursuant to Section 309(g) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g). The Regional Administrator of the United States Environmental Protection Agency, Region 1 ("EPA") and American Science & Engineering, Inc. ("AS&E" or "Respondent") agree to resolve this action by issuance of this CAFO as provided under 40 C.F.R. § 22.13(b) 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 discharged stormwater associated with industrial activity into waters of the United States without a permit, in violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

2. EPA alleges that Respondent failed to apply for a National Pollutant Discharge Elimination System (“NPDES”) permit, in violation of CWA Section 308(a), 33 U.S.C. § 1318(a).

3. EPA takes this action under the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for violations of Sections 301(a) and 308 of the CWA, 33 U.S.C. §§ 1311(a) and 1318. 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 notified the Commonwealth of Massachusetts of this action and consulted with the Massachusetts Department of Environmental Protection (“MA DEP”) on this action.

4. The CWA is designed to restore and maintain the chemical, physical, and biological integrity of the nation’s waters. Section 101(a) of the CWA, 33 U.S.C. §1251(a). To accomplish the objectives of the CWA, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person except in compliance with a permit issued pursuant to Section 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344.

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

6. 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.”

7. 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.”

8. 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.”

9. Section 402(p) of the CWA, 33 U.S.C. § 1342(p) requires any storm water discharge “associated with industrial activity” to be authorized by a NPDES permit.

10. EPA promulgated 40 C.F.R. 122.26(c), pursuant to the CWA Sections 308 and 402, 33 U.S.C. §§ 1318 and 1342, which requires dischargers of stormwater “associated with industrial activity” to apply for an individual permit or seek coverage under a general permit.

11. Forty C.F.R. § 122.26(b)(13) defines “stormwater” to include stormwater runoff, snow melt runoff, and surface runoff and drainage.

12. Forty C.F.R. § 122.26(b)(14)(ii) specifies that “stormwater discharge associated with industrial activity” includes stormwater discharge from facilities classified under Standard Industrial Classification (“SIC”) code 38 (including 3844).

13. On October 30, 2000, EPA issued a NPDES Multi-Sector General Permit (2000 MSGP) for stormwater discharges associated with industrial activity. The permit expired on October 30, 2005. The permit was administratively extended until the NPDES Multi-Sector General Permit (“2008 MSGP”) was re-issued on September 29, 2008, 73 Fed. Reg. 56572 (September 29, 2008). The expiration date of the 2008 MSGP is September 29, 2013.

14. Respondent is a Massachusetts corporation with its principal place of business and headquarters located at 829 Middlesex Turnpike in Billerica, Massachusetts.

15. Respondent is a “person,” as defined at CWA Section 502(5), 33 U.S.C. § 1362(5).
16. Respondent owns and operates a manufacturing facility in Billerica, Massachusetts (“the Facility”). The Facility is classified under SIC code 3844 (X-Ray Apparatus and Tubes and Related Irradiation Apparatus) and is categorized as Sector AC (Electronic, Electrical, Photographic and Optical Goods) under the 2000 MSGP and 2008 MSGP. Under 40 C.F.R. § 122.26(b)(14)(xi), Respondent’s facility is considered to be engaging in “industrial activity” within the meaning of the phrase “storm water discharge associated with industrial activity” at 40 C.F.R. § 122.26(b)(14).
17. The stormwater discharges from the Facility contain “pollutants” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).
18. Respondent is an “owner” and “operator” of the Facility as defined by 40 C.F.R. § 122.2.
19. From at least September 30, 2005 through January 4, 2009, Respondent’s Facility did not have a permit under the CWA to discharge stormwater to waters of the United States.
20. On January 5, 2009 Respondent filed a Notice of Intent (“NOI”) for coverage under the 2008 MSGP.
21. On February 4, 2009, EPA authorized Respondent to discharge storm water to waters of the United States subject to the conditions of the 2008 MSGP.
22. During storm events from at least September 30, 2005 through January 4, 2009 Respondent discharged from its Facility stormwater associated with industrial

activity into wetlands adjacent to a tributary of the Shawsheen River. The discharges occurred through four industrial outfalls at the Facility.

23. Industrial outfalls discharging stormwater constitute “point sources” within the meaning of CWA Section 502(14), 33 U.S.C. §1362(14).

24. Stormwater associated with industrial activity contains “pollutants” as defined under CWA Section 502(6), 33 U.S.C. § 1362(6).

25. Stormwater discharges from the Facility resulted in the “discharge of pollutants” as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

26. The Shawsheen River is a tributary of the Merrimack River, which flows directly into the Atlantic Ocean.

27. The wetlands and tributary to the Shawsheen River identified in Paragraph 22, above, the Shawsheen River, Merrimack River, and the Atlantic Ocean are “waters of the United States,” within the meaning of 40 C.F.R. § 122.2, and thereby, “navigable waters,” as defined by CWA Section 502(7), 33 U.S.C. § 1362(7).

28. From at least September 30, 2005 through January 4, 2009, AS&E discharged “stormwater associated with industrial activity,” as defined at 40 C.F.R. § 122.26(b)(14)(ii), to waters of the United States without a permit, in violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

29. During the period from at least September 30, 2005 through January 4, 2009, AS&E failed to apply for an individual permit or submit a NOI for coverage under the 2000 MSGP, in violation of CWA Section 308, 33 U.S.C. § 1318.

30. AS&E disclosed to EPA the noncompliance referenced in paragraphs 28 and 29 above, but EPA determined that AS&E’s disclosure did not meet the relevant

criteria of EPA's "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations," originally published on December 22, 1995 at 60 FR 66706, revised on April 11, 2000 at 65 FR 19617.

II. CONSENT AGREEMENT

31. 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:

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

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

Waiver of Rights

34. Respondent waives the right to a hearing under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and to appeal any Final Order in this matter under Section 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

35. EPA proposes, and Respondent consents to, the assessment of a civil penalty of \$40,000.

Payment Terms

36. In determining the amount of the penalty described in Paragraph 35 above, EPA has taken into account the nature, circumstances, extent and gravity of the violation, and Respondent's ability to pay, any prior history of violations, the degree of culpability, economic benefit resulting from the violation, and such other matters as justice may require under CWA Section 309(g)(3), 33 U.S.C. § 1319(g)(3).

37. Respondent must pay a total penalty of \$40,000 for the violations of Sections 301 and 308 of the CWA, 33 U.S.C. §§ 1311, 1318, set forth herein, which must be paid within ten (10) calendar days after this CAFO becomes final.

38. Respondent must pay the penalty, and any interest thereon, by submitting a bank, cashier's, or certified check, payable to "Treasurer, United States of America." The penalty must be sent to:

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

39. Respondent must include the case name and docket number ("In the Matter of American Science & Engineering, Inc," Docket No.CWA-01-2010-0060) on the check and on an accompanying cover letter. Respondent must send copies of the check and letter to:

Wanda I. Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square – Suite 100
Mail Code: ORA 18-1
Boston, Massachusetts 02109-3912

and to:

Gregory Dain
Senior Enforcement Counsel
U.S. EPA, Region 1

5 Post Office Square – Suite 100
Mail Code: OES04-2
Boston, Massachusetts 02109-3912
Tel: (617) 918-1884

40. 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

41. Pursuant to Section 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.

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

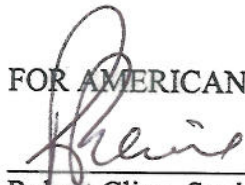
43. The Final Order does not constitute a waiver, suspension, or modification of the requirements of Sections 301 and 308 of the CWA, 33 U.S.C. §§ 1311, 1318, or any regulations promulgated thereunder, and does not affect the right of the EPA

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.

44. Except as described in Paragraph 41 this Consent Agreement, each party shall bear its own costs and attorney's fees in connection with the action resolved by this CAFO.

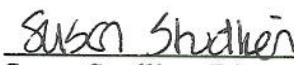
45. The undersigned representative of Respondent certifies that s/he is fully authorized by AS&E to enter into the terms and conditions of this CAFO and to execute and legally bind AS&E to it.

FOR AMERICAN SCIENCE & ENGINEERING:


 Robert Cline, Senior Vice President
 Operations
 American Science & Engineering

Date: 23 Sept 2010

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:


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

Date: 09/30/10

FINAL ORDER

46. EPA has provided a thirty (30) 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), and has not received any public comments.

47. Pursuant to Section 309(g)(2) of the CWA, 3 U.S.C. § 1319(g)(2), and the delegated authority of the undersigned, and in accordance with Part 22, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order.

48. The Respondent is ordered to comply with the terms of the above Consent Agreement, which will become final thirty (30) days from the date it is signed by the Regional Judicial Officer 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.

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

Date: _____

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Rivera for

Gregory Dain
Name of Case Attorney

Date _____

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

Case Docket Number CWA-01-2010-0060

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:

American Science &
Engineering, Inc.
829 Middlesex Turnpike
Billerica, MA 01821

Total Dollar Amount of Receivable \$ 40,000

Due Date: _____

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 _____