

File

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Rivera for Kathleen E. Woodward 9/20/10
Name of Case Attorney Date

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

Case Docket Number CWA-01-2009-0072

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 Dennis, MA
Town Hall
485 Main Street
South Dennis, MA 02460

Total Dollar Amount of Receivable \$ 2,000 Due Date: 10/20/10

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 _____



RECEIVED
SEP 20 2010
EPA ORC
Office of Regional Hearing Clerk

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

BY HAND

September 20, 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 Dennis, Massachusetts
Administrative Penalty Action Settlement: Docket No. CWA-01-2009-0072

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,

Kathleen E. Woodward
Senior Enforcement Counsel

Enclosure

cc: Richard White, Town Administrator
Gregg J. Corbo, Esq.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

RECEIVED

SEP 20 2010

EPA ORC WSS
Office of Regional Hearing Clerk

_____))
IN THE MATTER OF))

Town of Dennis)
Town Hall)
485 Main Street)
South Dennis, MA 02660)

Respondent.)
_____))

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. CWA 01-2009-0072

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 (the "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-01-2009-0072 (the "Complaint"), on August 12, 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-01-2009-0072

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. TERMS OF SETTLEMENT

8. Based upon the statutory penalty factors at Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), and Respondent's agreement to perform a Supplemental Environmental Project ("SEP"), and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of two thousand dollars (\$2,000.00).

V. PAYMENT TERMS

9. Respondent shall pay the civil penalty set forth in Paragraph 8 of this CAFO no later than 10 calendar days after the date 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 the Town of Dennis, Massachusetts, CWA-01-2009-0072") 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. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

12. Respondent shall undertake and complete the following supplemental environmental project ("SEP"), which the parties agree is intended to secure significant environmental improvements. In accordance with the schedule set forth in Paragraph 13 hereof, Respondent shall substantially mitigate the discharge of pollutants in stormwater that flows from the outfall draining the 13.8-acre Country Circle subdivision by installing structural improvements to the drainage system. Country Circle subdivision is densely developed and has a high percentage of impervious surface. The drainage system improvements include installing a series of three intercepting manholes into the existing pipe system that would direct the first flush (1/2") of storm water runoff to a subsurface leaching system. The outfall draining the Country Circle subdivision discharges stormwater to an unnamed creek which flows into Kelly's Bay on the Bass River. The SEP will benefit the environment by substantially reducing pollutant transport from the Country Circle subdivision to a tributary to the Bass River.

13. Respondent shall undertake and complete the SEP as follows:

- A. Within 30 days of the date that the CAFO is final: complete design work;**
- B. Within 60 days of completion of design: complete permitting and advertising for bids;**
- C. Within 30 days of advertising for bids: award contract;**
- D. Project shall be complete by June 1, 2011.**

The SEP is more specifically described in the scope of work (hereinafter, the "Scope of Work"), attached hereto as Exhibit A and incorporated herein by reference.

14. The total cost to the Respondent of the SEP shall be not less than twenty four thousand four hundred dollars (\$24,400) in accordance with the specifications set forth in the Scope of Work. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.
15. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation, nor is Respondent required to perform or develop the SEP under any grant or agreement with any governmental or private entity, as injunctive relief in this or any other case, or in compliance with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

16. SEP Reports:

a. **SEP Completion Report:** Respondent shall submit a SEP Completion Report to EPA for the SEP within thirty (30) days of completion of the SEP. The SEP Completion Report shall contain the following information:

- (i) A detailed description of the SEP as implemented;
- (ii) A description of any operating problems encountered and the solutions thereto;
- (iii) Itemized costs, documented by copies of purchase orders and receipts, canceled checks, or wire transfer records;
- (iv) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Order; and
- (v) A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

b. **Quarterly Reports:** Until Respondent submits its Completion Reports for the SEP, Respondent shall submit quarterly written reports ("Quarterly Reports") outlining work performed on the SEP to date and funds spent to date, commencing with the first full calendar quarter following the effective date of this Consent Agreement and Final Order. Such reports shall be provided to EPA postmarked no later than the last day of the calendar month following the end of each calendar quarter. Calendar quarters end on the

following dates: March 31, June 30, September 30 and December 31. Quarterly Reports are to be postmarked not later than April 30, July 31, October 31, and January 31. The first Quarterly Report shall be prepared for the calendar quarter during which the CAFO becomes final. Each Quarterly Report shall contain a narrative description of the SEP activities undertaken to date, an itemization (with copies of supporting documentation) of costs incurred on the SEP, and a report of any difficulties or delays in the implementation of the SEP. The absence of EPA comments on the Quarterly Reports shall not constitute approval of the progress being made on the SEP or waiver of EPA's rights to determine that the SEP was not completed satisfactorily and to take any action specified in Paragraph 20 of this Consent Agreement and Final Order.

c. Respondent agrees that an unexcused failure to submit the SEP Completion Report or any Quarterly Report required by subsections a. and b. above shall be deemed a violation of this Consent Agreement and Order and that Respondent shall become liable for stipulated penalties pursuant to Paragraph 20 below.

d. Respondent shall submit all Quarterly Reports and the Completion Report and any other notices required by this Consent Agreement and Order by first class mail to:

Andrew Spejewski
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region I
5 Post Office Square, Suite 100
Mail Code OES4-1
Boston, MA 02109-3912

e. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP completion report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

17. EPA right to inspect: Respondent agrees that EPA may inspect the facility at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

18. Document retention and certification: Respondent shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to EPA pursuant to this Consent Agreement and shall provide the documentation of any such underlying research and data to EPA not more than seven days after a request for such

information. In all documents or reports, including, without limitation, any SEP reports, submitted to EPA pursuant to this Consent Agreement, Respondent shall, by its Town Administrator or Board of Selectmen, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe 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.

19. EPA acceptance of SEP Completion Report and Determination of SEP Compliance

a. After receipt of the SEP Completion Report described in Paragraph 16(a) above, EPA will notify the Respondent in writing: (i) that EPA concludes that the SEP has been completed satisfactorily; (ii) that EPA has determined that the project has not been completed satisfactorily and is specifying a reasonable schedule for correction of the SEP or the SEP Completion Report; or (iii) that EPA has determined that the SEP does not comply with the terms of this CAFO and is seeking stipulated penalties in accordance with Paragraph 20 herein.

b. If EPA notifies Respondent pursuant to clause (ii) above that the SEP itself or the SEP Completion Report does not comply with the requirements of this CAFO,

Respondent shall make such corrections to the SEP and/or modify the SEP Completion Report in accordance with the schedule specified by EPA.

c. If EPA notifies Respondent pursuant to clause (iii) above that the SEP itself does not comply with the requirements of this CAFO, Respondent shall pay stipulated penalties to EPA in accordance with Paragraph 20 herein.

20. Stipulated Penalties:

a. In the event that Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP described in Paragraphs 12 through 16 above and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in Paragraph 14 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

(i) Except as provided in subparagraph (ii) immediately below, for a SEP which has not been completed satisfactorily pursuant to this Consent Agreement and Order, Respondent shall pay a stipulated penalty to the United States in the amount of \$24,400, plus interest at the rate identified in Paragraph 23.

(ii) If the SEP is not completed in accordance with Paragraph 12 and but the Complainant determines that the Respondent: a) made good faith and timely efforts to complete the project; and b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.

(iii) If the SEP is completed in accordance with paragraph 12, but the Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to the United States in the amount of the difference between \$24,400 and the amount of eligible costs that Respondent spent on the SEP, plus interest pursuant to Paragraph 23.

(iv) If the SEP is completed in accordance with Paragraph 12, and the Respondent spent at least 90 percent of the amount of money required to be spent for the project, Respondent shall not be liable for any stipulated penalty.

(v) For failure to submit the SEP Completion Report required by Paragraph 16(a) above or for failure to submit an adequate Completion Report, Respondent shall pay a stipulated penalty in the amount of \$100 per day for each day from the day after the report is due until the report is submitted, or in the case of an inadequate report, until the report is submitted with deficiencies addressed.

(vi) For failure to submit any other report required by Paragraph 16(b) above, Respondent shall pay a stipulated penalty in the amount of \$100 per day for each day from the day after the report is due until the report is submitted, or in the case of an inadequate report, until the report is submitted with deficiencies addressed.

b. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.

c. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of a written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of Paragraph 10 above. Interest and late charges shall be paid as stated in Paragraph 23 herein.

d. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

21. **Public statements must acknowledge enforcement action:** Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the Clean Water Act."

22. **No relief from compliance; no endorsement by EPA:** This Consent Agreement and Order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval of the design used or materials installed by Respondent in connection with the SEP undertaken pursuant to this Agreement.

VI. General Provisions

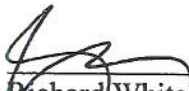
23. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), a failure by Respondent to pay the penalty or stipulated penalties assessed by this CAFO in full by the payment due date shall subject Respondent to a civil action to collect the assessed penalty, plus interest at current prevailing rates from the date the penalty was due pursuant to Paragraph 9 or 20 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.
24. The penalties specified in Paragraph 8 and 20 above shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes. For Federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

25. The provisions of this CAFO shall be binding upon Respondent and their successors and assigns.
26. Except as described in Paragraph 23 above, each party shall bear its own costs and attorneys fees in this proceeding.
27. 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) or (g), for all past violations of the CWA alleged in the Complaint referenced in Paragraph 1.
28. 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 Sector 504 of the Act, 33 U.S.C. § 1364.
29. 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.

30. 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:

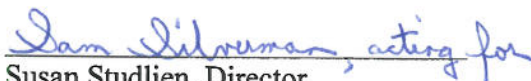
For RESPONDENT TOWN OF DENNIS, MASSACHUSETTS



Richard White
Town Administrator
Town of Dennis, Massachusetts

Date: 8-23-10

For U.S. ENVIRONMENTAL PROTECTION AGENCY



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

Date: 9-16-10


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

Docket No. CWA-01-2009-0072

FINAL ORDER

31. 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 above 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: Sept. 20, 2010

Attachment A

Country Circle Subdivision Drainage Mitigation Project Dennis Massachusetts

April 14, 2010

A. Background Information:

The Country Circle subdivision, located off Mayfair Road in the village of South Dennis is a residential subdivision comprised of 55 homes on a total of 13.8 acres. In addition to Country Circle, the subdivision includes Linda Way and Joanne Drive. These roads are all town ways and are paved with bituminous concrete. Storm water runoff in the subdivision is collected in catch basins located within the paved road surfaces and piped to an outfall between # 94 and #102 Country Circle. The outfall discharges all runoff into a small unnamed creek within the Bass River watershed. The outfall into the creek is located approximately 700 feet north of Kelley's Bay which is part of Bass River. Bass River is a tidal river feeding into Nantucket Sound. The river also forms the boundary line with the Town of Yarmouth

B. Environmental Issues:

With 55 residential dwellings located on lots having an average area of less than 8,000 square feet, the Country Circle subdivision area can be described as densely developed with a high percentage of impervious surface. Storm water runoff from the impervious areas quickly enters the storm drain system via a series of catch basins located within the paved roadway areas and untreated, passes through the existing pipe system and enters the Bass River estuary system. The mitigation of storm water pollution into Bass River was made the number one priority by both the Towns of Dennis and Yarmouth in 2002. Since then, both towns have individually and collectively eliminated outfalls or installed BMPs at most outfall locations identified along the river in a study performed by Stearns & Wheler Inc.

C. Proposed Project:

The scope of work proposed for this project to mitigate runoff from the entire subdivision includes installing a series of intercepting manholes into the existing pipe system at six (6) locations that would direct the first flush (1/2") of storm water runoff to subsurface leaching systems. The excess runoff from storm events exceeding the first flush design would be allowed to overflow back into the pipe system and exit out to the tidal creek. Work would also include replacing disturbed pavement, loam and seed and all appurtenant work.

The costs associated with the work proposed above are:

Implementation of this project is an environmental improvement in exceedance of what is required under the Small MS4 Permit. The Town could opt to mitigate the Country Circle stormwater runoff impacts in a manner short of the substantial mitigation proposed by this project at significantly less expense by making minor structural improvements and continuing to sweep the road and clean the catch basins. However, the more substantial improvements proposed for this project will have a significantly greater positive environmental impact in that it eliminates the first flush of stormwater runoff which has been shown to be the most highly contaminated portion of stormwater runoff.

E. Schedule:

The Town will complete the SEP in accordance with the following schedule:

- 1) Within 30 days of the date that the CAFO is final: complete design work;
- 2) Within 60 days of completion of design: complete permitting and advertising for bids;
- 3) Within 30 days of advertising for bids: award contract;
- 4) Project shall be complete by June 1, 2011.

In the Matter of: Town of Dennis, Massachusetts
Docket No. CWA 01-2009-0072

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent to the following persons, in the manner specified on the date below:

Copy hand-delivered:

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

Copy by certified mail, return receipt requested:

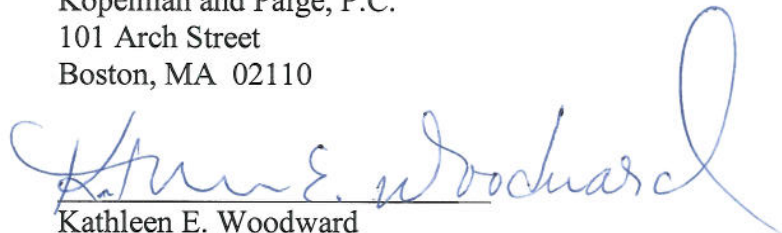
Richard White
Town Administrator
Town of Dennis
P.O. Box 2060
485 Main Street
South Dennis, Massachusetts 02660

Copy by first-class mail to:

David Johnston, Acting Regional Director
Massachusetts Department of Environmental Protection
Southeast Regional Office
20 Riverside Drive
Lakeville, Massachusetts 02347

Gregg J. Corbo, Esq.
Kopelman and Paige, P.C.
101 Arch Street
Boston, MA 02110

Dated: September 20, 2010



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